

# ISLAM, JUSTICE AND PREJUDICE: RETHINKING THE EUROPEAN COURT OF HUMAN RIGHTS' APPROACH TO RELIGIOUS SYMBOLS

*İslam, Adalet ve Önyargı: Avrupa İnsan Hakları Mahkemesi'nin Dini Sembol Yaklaşımını Yeniden Düşünmek*

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**Abstract:** The European Court of Human Rights (ECtHR) has been criticized on the grounds that its approach to religious symbols is shaped not by fundamental rights and freedoms, but by subjective biases. Despite being bound by the European Convention on Human Rights (ECHR) and universal legal norms, it has been observed that in cases involving Islam, the ECtHR invokes abstract and culturally loaded concepts such as "European cultural heritage," "shared past and future vision," "active and passive object," and "fragility." As a result of this selective approach, religious symbols associated with Islam have been disproportionately restricted and a biased attitude has been exhibited by the Court. The analysis of relevant cases reveals a departure from the principle of proportionality in ECtHR judgments, along with a weakening of the principles of justice and impartiality. Through these controversial rulings, it is concluded that an approach potentially associated with Islamophobia has been adopted, and that the Court has been transformed into an institution shaped by cultural and societal prejudices, drifting away from universal legal standards.

**Keywords:** Religious symbols, freedoms, Islamophobia, ECtHR, Islam, Christianity.

**Öz:** Avrupa İnsan Hakları Mahkemesi'nin (AİHM) dini sembollere yönelik yaklaşımı, temel haklar ve özgürlükler yerine öznel önyargılarla şekillendirildiği gerekçesiyle eleştirilmektedir. Avrupa İnsan Hakları Sözleşmesi'ne (AİHS) ve evrensel hukuk normlarına bağlı olunmasına rağmen, İslam dinini içeren davalarda AİHM tarafından "Avrupa kültürel mirası", "ortak geçmiş ve gelecek tasavvuru", "aktif ve pasif nesne" ile "kırılganlık" gibi soyut ve kültürel değer yüklü kavramlara başvurulduğu görülmektedir. Bu seçici yaklaşım sonucunda, Mahkeme tarafından İslam'a ilişkin dini semboller orantısız biçimde kısıtlanmış ve önyargılı bir tutum sergilenmiştir. Örnek davaların analizinde, AİHM kararlarında orantılılık ilkesinden uzaklaşıldığı; adalet ve tarafsızlık ilkelerinin zayıflatıldığı tespit edilmektedir. Verilen tartışmalı kararlar aracılığıyla, İslamofobi ile ilişkilendirilebilecek bir yaklaşımın benimsendiği ve Mahkeme'nin, evrensel hukuk normlarından uzaklaşarak kültürel ve toplumsal önyargılarla şekillenen bir kurum hâline geldiği sonucuna varılmaktadır.

**Anahtar Kelimeler:** Dini semboller, özgürlükler, İslamfobi, AİHM, İslâm, Hristiyanlık

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## I. INTRODUCTION

Symbols are generally seen as an attempt to make sense of the objects or sounds found in one's environment. Although there is no universally agreed-upon definition, symbols can be broadly summarized as expressions of "transcendental reality," "linguistic" or "visual signs," and "experiences consisting of connotations surrounding a sign." A symbol is any concrete entity or sign that, through natural relationships, evokes something beyond the grasp of the senses. Gustav Mensching explains that "everything can be a symbol, but nothing can be a symbol by itself. A symbol is something established by a person or society. Every symbol has two elements: one is the material that is symbolized or accepted as a symbol, and the other is the spiritual truth that this material represents. The symbol that emerges from the cooperation of these two elements can belong to all areas of life"<sup>1</sup>.

In daily life, language serves as a primary means of communication. Through this function, people find meaning and connection by communicating directly with one another. Occasionally, communication is achieved through indirect means, where symbolic expressions evoke meanings beyond the literal. These symbolic methods enrich understanding and create profound connections within human experiences. Symbols, as such, are not arbitrary associations; they are carriers of meaning that penetrate the essence of human existence.

However, in modern society, the interpretation and application of symbols are not always neutral. The politicization and cultural framing of symbols often reflect deeper societal issues, such as bias and prejudice. In this context, the phenomenon of **Islamophobia**—defined as the irrational fear, hatred, or prejudice against Islam and Muslims—has significantly influenced the perception of Islamic symbols. From the hijab to minarets, symbols associated with Islam are often subject to heightened scrutiny, restriction, or outright rejection in ways that do not apply to other religious or cultural symbols.

Islamophobia has transformed religious symbols into sites of contestation and cultural conflict, particularly in legal and political arenas. The European Court of Human Rights (ECtHR) has been a key battleground in this regard, where decisions involving Islamic symbols frequently highlight broader societal discomfort with Islam. These rulings often invoke abstract concepts such as "European Cultural Heritage" or "social cohesion," effectively framing Islamic symbols as threats rather than as expressions of religious freedom or identity. Such attitudes perpetuate a symbolic narrative that marginalizes Islam while privileging other religions, reinforcing Islamophobic tendencies in public and legal discourses.

In light of this, the role of symbols becomes not only a means of human expression but also a reflection of societal biases. As Martin Lings notes, while humans themselves are symbols of life's central truths, the symbols they create often reflect their cultural and ideological priorities. When these priorities are shaped by Islamophobia, symbols cease to be neutral expressions and become tools of exclusion and prejudice. This paper critically examines this dynamic, with a particular focus on the ECtHR's rulings on Islamic symbols, to explore

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<sup>1</sup> Gustav Mensching, *Structures and Patterns of Religion*, Motilal Banarsidass, Michigan University, 1976, p. 220.

how Islamophobia has reshaped the perception and regulation of religious symbols in contemporary Europe.

A symbol is broadly understood as an attempt to attribute meaning to objects or sounds in one's environment<sup>2</sup>. While the concept lacks a universally agreed-upon definition, prevailing interpretations generally align around key ideas. Symbols are described as "transcendental realities<sup>3</sup>," "linguistic or visual signs," or "experiences consisting of connotations surrounding a sign."<sup>4</sup> These experiences serve to signify meanings that extend beyond the tangible or immediately perceptible. The term "symbol," often synonymous with notions like sign, emblem, or representation, is defined as any concrete object<sup>5</sup> or sign that evokes or points to something that cannot be directly grasped through sensory perception. In this sense, "a symbol is the expression of the inexplicable"<sup>6</sup> and serves as "a communication tool capable of conveying multiple meanings." More specifically, "a symbol is an object, an action, or any human-made sign that directs attention to a reality beyond itself, represents something, or depicts it."<sup>7</sup> Gustav Menshing encapsulates the complexity of symbols by asserting that "everything can be a symbol, but nothing is inherently a symbol<sup>8</sup>." According to Menshing, a symbol arises from the collective attribution of meaning by an individual or a society. He identifies two essential elements in any symbol: the physical substance that is symbolized or designated as a symbol, and the spiritual or conceptual truth that this substance represents. Through the interplay of these two components, symbols transcend their materiality to acquire profound meaning, permeating all domains of human life<sup>9</sup>.

In everyday life, language serves as a primary tool for communication, enabling individuals to connect and derive meaning from their interactions. Through direct communication, people share thoughts, ideas, and emotions, thereby making sense of the world around them. At times, however, communication is pursued through more indirect means, employing methods that invoke meanings extending beyond the literal. Such approaches, enriched by symbolic expressions, create a resonant and expansive effect, deepening the layers of understanding and interpretation<sup>10</sup>. Symbols are far from arbitrary associations; they are profound carriers of meaning that resonate with the core of

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<sup>2</sup> Hüsnü Aydeniz, "Religious Symbols, Loss of Meaning of the Symbol and A Traditionalist Approach to Its Effects (Renê Guênnon Example), EKEV Academy Magazine, Issue 15, No. 48 (Summer 2011), p. 76; Martin Lings, *Simge ve Kökenörnek: Oluşum Anlamı Üzerine*, Trans. Süleyman Sähra, Ankara, Hece Publications, p. 10-11.

<sup>3</sup> Ömer Faruk Yavuz, "The Symbolic Value of the Concepts of Sacred Space, Time and Things in the Quran", *Milel and Nihal, Journal of Faith and Culture Mythology Research*, No. 3, No. 1-2, December 2005-June 2006, p. 42.

<sup>4</sup> *Ibid*, s. 42.

<sup>5</sup> Rıza Kardaş, "Symbol", *Turkish Encyclopedia (I-XXXIII)*, National Education Basımevi, Ankara, 1980, XXVIII/417, *New Türk Encyclopedia (I-XII)*, Ötüken Neşriyat, İstanbul, 1985, IX/3495, "Symbol" clause.

<sup>6</sup> Sadık Kılıç, *Symbolic Language in Islam*, İstanbul, 1995, p. 56.

<sup>7</sup> Benjamin Franklin Kimpel, *The Symbols of Religious Faith*, New York, 1954, p. 132.

<sup>8</sup> *Ibid*, p. 56.

<sup>9</sup> Annemarie Shchimmel, "What is the Function of Symbol in Religion?", *AÜ Faculty of Theology Journal*, Ankara 1954, Vol. III, pp. 3-4, p. 68.

<sup>10</sup> Aydeniz, p. 15-17.

human existence. Through these meaningful connections, the language of communication breathes life into symbols, imbuing them with purpose and depth<sup>11</sup>. Symbols are far from arbitrary associations; they are profound carriers of meaning that resonate with the core of human existence.<sup>12</sup>

Symbols, with their inherently dynamic nature, are not universally understood. Their meaning often evolves in response to changes in the specific time or place to which they are tied. For instance, symbols associated with a particular era or location may transform as the context of that era or location shifts<sup>13</sup>. Symbols are closely tied to culture. Because the symbol contains all visible and invisible elements of culture. The connotation of the symbol aims for everyone to understand the same thing. In this regard, the use of a symbol evokes the religious beliefs, culture and historical values of the person using it<sup>14</sup>. Again, the symbol is also understood as another reality that exceeds its own reality or the object that depicts this reality<sup>15</sup>. Elements of symbolism cannot be ignored in any way. In this context, it also points to a universal "phenomenon"<sup>16</sup>. Attributing meaning to symbols is equivalent to human history<sup>17</sup>.

It is known that in human history, every society, every belief, whether celestial or not, created a life form by attaching meaning to symbols. For example, beliefs such as idolatry and pagan culture have been accepted as a transcendent element that unites societies. However, it is also seen that the "religious symbols" related to the heavenly religions have a more clear and privileged quality. This quality is in such an intense form that, for example, the symbols in Judaism, which have remained unchanged for two thousand years, have gained a content that affects the geography of the Middle East in social, cultural and political terms today. Covenant, circumcision, rainbow, ark of the covenant, menorah - seven-branched candelabra, star of David - seal of David - shield of David, wailing wall, tablets, ten commandments, tabernacle - tent, Jerusalem temple - Temple of Solomon, Synagogue, worship - prayer, fasting, cross, sacrifice, manna and quail meat, Rosh Ha Shanah - New Year's Eve, Yom Kippur - Day of Atonement, Sukkoth - Feast of Tabernacles or Tabernacles, Pesach - Passover or Passover, Shavuot - Pentecost or Feast of Weeks, Hanukkah - Feast of Instruction, Purim - Religious symbols such as the Feast of Esther,

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<sup>11</sup> Kılıç, p. 76; A. N. Whitehead, "Uses of Symbolism ", Daedalus , Vol . 87, No. 3, Symbolism in Religion oath Literature, pp. 109-123.

<sup>12</sup> Aydeniz, p. 76; Martin Lings, Simge ve Kökenörnek, Trans. Süleyman SAHRA, Ankara, Hece Publications, p. 10-11.

<sup>13</sup> Aydeniz, p. 76; Lester B. Rowntree/Margaret W. Conkey, "Symbolism oath Cultural Landscape ", Annals of the Association of Americans Geographers , Vol . 70, No. 4, p. 462.

<sup>14</sup> Selçuk Kürşad Koca, "The Relationship between Culture and Symbol in General Lines", SAU Journal of Science and Literature , 2010-II, p. 90.

<sup>15</sup> Galip Atasagun, Religious Symbols in Divine Religions (Judaism, Christianity and Islam) , Doctoral Thesis, Selçuk University Institute of Social Sciences, Departament of Philosophy and Religious Sciences, Departatment of History of Religions, Konya 1996, p. 1, footnote 4, Kimpel, p. 132.

<sup>16</sup> Aydeniz, p. 88.

<sup>17</sup> Atasagun , p. 30 ; Kenan Has, Symbolism and the Cross, Ankara, Theology Publications, p. 30.

Shabbath-Sabbath or Saturday<sup>18</sup> are discussed in a way that unifies the Jewish society and even guides socio-political decision-making mechanisms.

On the other hand, trinity, church, bell, icon, fish, indulgence, excommunication, twelve apostles, rooster, rosary, original crime or original sin, problem of atonement and crucifix, crucifix, worship-prayer, fasting, crucifix, christmas or christmas, which are found in Christianity. Religious symbols such as tree, easter or easter, pentecost, baptism, repentance-confession of sin, oil of the sick or anointing with oil have created a Christian Culture and Civilization.

Religious symbols<sup>19</sup> related to the religion of Islam such as the Kaaba, mosque, adhan, qibla, prayer, fasting, cross, zakat, sacrifice and Eid al-Adha, Eid al-Fitr, Reqaib night, Miraj night, Berat night, Qadir night and so on are<sup>20</sup> included in Islamic Culture and Civilization. Islamic symbols, while deeply significant on an individual level, have historically had less societal projection compared to those of Judaism and Christianity. The symbols of the latter two religions have been regarded as integral to shaping modern societal frameworks and cultural identities. In contrast, Islamic symbols have often been framed as representative of underdeveloped Eastern societies, perpetuating a narrative that marginalizes their contributions to broader cultural and civilizational discourse.

The negative perception of Islamic symbols in Europe is largely rooted in their prominent visibility in public spaces, which challenges established cultural norms. This perception has been further exacerbated by historical and political events, particularly the September 11 attacks, which became a turning point in shaping attitudes towards Islam. Additionally, the rise of global terrorist organizations like Al Qaeda and the escalating violence in parts of the Islamic world have reinforced stereotypes, contributing to a distorted view of Islamic symbols as markers of extremism rather than expressions of faith and identity. This dynamic underscores the need for greater efforts to foster understanding and dismantle biases in multicultural societies.

Certain symbols have attained profound significance and a unique symbolic language due to the extraordinary events associated with them. Examples include the Staff and Tablets of Moses and the Throne of Bilqis. Through divine intervention, Moses' Staff was miraculously transformed into a giant serpent, and the Tablets were bestowed from the heavens. These objects, transcending their physical forms, convey layered meanings and serve as conduits for deeper connotations<sup>21</sup>. Each time these symbols are referenced, they evoke distinct associations, ranging from sacredness in some communities to manifestations of identity in others. Their multifaceted nature allows them to carry profound spiritual and cultural resonance, making them enduring markers of collective memory and belief systems across diverse societies<sup>22</sup>. Similarly, the turban traditionally worn by Muslim men and the headscarf worn by Muslim women are recognized as significant symbols of Islam. In Christianity, the cross

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<sup>18</sup> Atasağun, p. 23 ff.

<sup>19</sup> Husband, p. 97 ff.

<sup>20</sup> Atasağun, p. 177 ff.

<sup>21</sup> Ibid, s. 65.

<sup>22</sup> Robert A. Orsi, *Religious Studies*, Cambridge University Press, New York, 2012, p. 86 ; Laurent Berger , "Why Maurice Bloch's Work on 'Religion' Is "Nothing Special but Is Central", *Religion oath Society : Advances in Research* , 1 (2010): 14–18, p. 16.

of Jesus stands as a powerful emblem of faith, while in Judaism, the kippah or skullcap is a visible representation of religious identity.

These symbols not only signify adherence to respective religious traditions but also hold profound spiritual and cultural importance. In Christianity, the Apostles' Creed, recited during baptism, is referred to as the "Symbol of the Apostles." This creed, proclaimed by an individual converting to Christianity, is regarded as a deeply meaningful affirmation of faith. It serves as a formal and authoritative declaration of the individual's acceptance of the Christian religion, embodying their commitment to its teachings and values<sup>23</sup>.

In the Holy Quran<sup>24</sup>, descriptions such as "the Hand of Allah" and "Allah has ascended to the throne" serve as religious symbols not intended to define the essence of Allah<sup>25</sup>, but rather to aid human understanding of His divine nature through symbolic representation. Similarly, symbolic language is frequently employed in the depiction of paradise within the Quran. Expressions like "paradise with rivers flowing beneath,"<sup>26</sup> "paradise with mansions,"<sup>27</sup> and "paradise with flowing sherbet"<sup>28</sup> illustrate the use of symbols to convey spiritual concepts in a relatable manner. Symbols play a fundamental role in every belief system, carrying a deeply symbolic character that facilitates the interpretation of transcendent realities. Concepts such as turning towards God, obedience to the divine, reverence for supernatural entities, and relationships among beings are often communicated through symbols. In the Quran, this symbolic framework is evident in various elements, such as the mysterious letters known as *Hurûf-u Mukatta* found at the beginning of certain surahs. These letters, which have no direct linguistic equivalent in Arabic, are understood through Hadith narrations<sup>29</sup> to hold metaphorical meanings, serving as a spiritual code between Allah and His servants.

Ultimately, symbols, whether religious or secular, are inseparable from their cultural and societal contexts. They embody a collective expression of emotion, thought, belief, and feeling that evolves alongside societies. Attempts to alter, replace, or ban such symbols would undermine their inherent role as vital instruments of communication and identity<sup>30</sup>.

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<sup>23</sup> Atasagun, p. 2.

<sup>24</sup> Surah al-Fath, 11.

<sup>25</sup> Purgatory Surah, 54 ff.

<sup>26</sup> Repentance Surah, 72; ra'd Surah, 35 ff.

<sup>27</sup> Surah Sajdah, 19.

<sup>28</sup> Surah Muhammad, 15.

<sup>29</sup> Abdullah Önder, "Hurûf-u Mukatta'a I", İslami İlimler Araştırmaları Dergisi, 2019/1, p. 98.

<sup>30</sup> Atasagun, p. 20.

## II. RELIGIOUS SYMBOLS IN EUROPE AND AMERICA: LEGAL AND SOCIAL DIMENSIONS

### A. Generally

The regulation and role of religious symbols in Europe and America encapsulate a multifaceted interaction shaped by migration, cultural integration, and the evolution of legal frameworks. Migration, as a transformative social phenomenon, extends beyond the mere relocation of individuals; it encompasses the transfer of cultural and religious identities symbolized by tangible and intangible markers. These symbols, when introduced into new geographies, not only enrich the cultural mosaic of host societies but also provoke debates over their visibility and acceptability, particularly within the public sphere. The ensuing controversies highlight the divergent legal approaches adopted by nations, shaped by their unique historical trajectories, social dynamics, and constitutional principles. Such regulatory responses reveal an ongoing negotiation between the universal commitment to religious freedom and the localized concerns of public order, secularism, and social cohesion.

In Europe, religious symbols such as the headscarf, cross, and minaret have become central to debates about cultural identity, secularism, and religious freedom, with nations adopting varied regulatory approaches. In France, the headscarf became a contentious issue in 1989 when Muslim students sought to wear it in schools. While the French Council of State acknowledged the headscarf as part of religious freedom, it imposed conditions to prevent disruptions to education or coercion of others, leading to ongoing tensions under the banner of secularism (*laïcité*). Similarly, Germany addressed the matter in the 2003 *Ferīṣtah Ludin* case, where the Constitutional Court ruled against outright bans on headscarves but allowed states to legislate. As a result, eight states enacted "Neutrality Acts," prohibiting religious symbols in public roles while permitting Christian symbols, exposing biases in secularist interpretations. In Switzerland, a 2009 referendum banned minarets, driven by Islamophobic propaganda that used polarizing imagery, such as veiled women and missile-like minarets, which undermined principles of pluralism, equality, and the rule of law, emphasizing the tension between majority rule and minority rights. The United Kingdom, in contrast, has no explicit prohibitions on religious symbols, yet societal attitudes—especially post-9/11—have marginalized certain symbols like the headscarf. Denmark adopts a more balanced approach, allowing public officials to wear religious symbols with specific exceptions, such as the burqa, reflecting a regulated inclusivity. Across the Atlantic, the United States Constitution and the Civil Rights Act of 1964 offer robust protections for religious expression in both public and private employment, permitting restrictions only when justified by compelling government interests, underscoring proportionality and minimal interference. These diverse legal responses illustrate the complex interplay between religious freedom, societal norms, and constitutional principles in addressing religious symbols.

The regulation of religious symbols centers on fundamental constitutional principles, particularly freedom of religion, equality, and non-discrimination. Article 9 of the European Convention on Human Rights (ECHR) guarantees the right to manifest one's religion, permitting limitations only when necessary in a democratic society, such as for public safety, order, or the protection of others' rights. Similarly, the United States Constitution protects religious expression under the First Amendment, while the Civil Rights Act provides safeguards in



public and private employment, balancing individual liberties against compelling government interests. Despite these legal protections, restrictions on religious symbols often expose implicit biases and discriminatory practices. For instance, headscarf bans in some European countries disproportionately target Muslim women, framing the headscarf as inherently oppressive while disregarding the agency of those who choose to wear it. In Switzerland, the minaret ban, enacted through a 2009 referendum, exemplifies majoritarian encroachments on minority rights, undermining principles of pluralism and the rule of law. Similarly, Germany's "Neutrality Acts," which prohibit religious symbols in public roles while allowing Christian symbols, reveal inconsistencies in the application of secularism, reflecting selective interpretations that privilege dominant cultural norms over genuine neutrality. These examples underscore the tension between universal human rights and the sociopolitical contexts that shape their enforcement.

Islamophobia, exacerbated by events like 9/11, has fueled negative perceptions of Islamic symbols across Europe. This has led to discriminatory visa policies, stricter identification requirements, and physical attacks on mosques and Muslim cemeteries. The burqa and minaret bans symbolize broader efforts to exclude Islamic visibility from public life. Paradoxically, this exclusion operates under the guise of pluralism, which ostensibly accommodates diversity while implicitly privileging certain cultural norms. The United States and Canada provide contrasting examples of inclusivity. For instance: In *Bhinder v. Canadian National Railway Company* (1985), the Supreme Court ruled that workplace safety could justify restrictions on religious symbols, provided such measures were proportional. However, courts recognize the sincerity of religious beliefs, as in cases allowing Sikhs to carry symbolic daggers if deemed indispensable to their faith. The regulation of religious symbols must balance individual rights with public interests. Key principles include: Proportionality: Restrictions must be narrowly tailored to achieve legitimate objectives, minimizing unnecessary infringements on fundamental rights. Equality and Non-Discrimination: Laws must apply uniformly, avoiding biases that privilege one religion over another. Pluralism: A democratic society thrives on accommodating diverse beliefs, ensuring minority rights are protected against majoritarian impositions. Rule of Law: Measures regulating religious symbols must be clear, predictable, and consistent with constitutional norms. The regulation of religious symbols reflects broader societal values and challenges. Countries like Switzerland and France demonstrate how legal measures can sometimes perpetuate exclusion, while the United States and Canada showcase frameworks that prioritize inclusivity. Future policies should emphasize proportionality, equality, and respect for pluralism, ensuring that religious freedom is preserved without undermining public order or democratic principles.

Religious symbols in Europe and America have taken on a multiple structure with the influence of migrations. Not only people moved to the places of migration, but also cultures, beliefs and symbols that were the projection of these beliefs. People, whether they had a belief or not, carried the symbols they valued to these new places of migration. For example, just as Muslims brought to Europe symbols considered sacred by the Islamic religion such as mosques, minarets, and in some places the call to prayer, turban, robe, chador, and headscarf, Buddhists brought symbols considered sacred by the religion of Islam,



such as<sup>31</sup> Dharmachakra, Naga, Lotus Flower, and monk clothes. However, the debates about religious symbols are mainly about symbols that are visible in the public sphere. Therefore, the headscarf, the cross and the minaret are the main symbols.

In this section, uses that are more visible than religious symbols and become evident in the official public sphere are examined through sample countries. There is no uniform regulation regarding the use of religious symbols in Europe. In this regard, while there are absolute legal restrictions on public employees in some cantons of Ukraine, Turkey and Switzerland, there is no ban on private sector employees. In France, Germany, the Netherlands and the Scandinavian countries, which we examine below, it is accepted that employers may impose restrictions on private sector employees. However, prohibitions regarding restrictions are not at the level of law. In European countries, the restrictions imposed by employers on private sector employees must also comply with principles such as proportionality, legitimate purpose and customer image<sup>32</sup>.

The debate, which started in 1989 when three Muslim female students wanted to use headscarves in classes, divided France into two. When the school administration responded negatively to the headscarf request, a decision was made to suspend the students who did not comply with the decision. Lionel, who was the Minister of National Education at the time when Jospin's statements that the issue should be resolved by consensus, received harsh reactions, the issue was taken to the Council of State. The Council of State evaluated the use of headscarf in the context of "freedom of religion and conscience"; he stated that this right cannot be restricted as long as it is not used as a means of putting pressure on other students. Again, according to the Council of State, the use of headscarf cannot be understood as harming the normal functioning of education. Although this decision made by the French Council of State grants relative freedom to the headscarf, the limits of its use will be evaluated according to each concrete case, and whether the headscarf is used as "interference with the normal functioning of education" by evaluating the conditions of the concrete case may bring individual administrative bans to the agenda<sup>33</sup>.

The 2003 Constitutional Court decision regarding the headscarf in Germany states that wearing a headscarf will not prevent the practice of a profession. The decision regarding the case brought before the Constitutional Court regarding the plaintiff Feriştah Ludin not being allowed to teach has led to a new debate in terms of its legal consequences. Although the Constitutional Court decision states that the headscarf cannot be prevented, states can make legal regulations. Following this decision, 8 states enacted the "Neutrality Act" and this law prohibited the use of religious symbols in public. The law in question also allowed the use of some objects belonging to Christianity. The reason for the creation of the Neutrality Law is that wearing the headscarf is considered a serious and unacceptable situation against women's freedom. Again, according to this justification, women are isolated from the public sphere in Islam, and the

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<sup>31</sup> <http://www.buddhism.org/en/node/buddhism1>, (Accessed March 24, 2025).

<sup>32</sup> <http://www.inhak.adalet.gov.tr/ara/karar/eweidavd.pdf>, (Accessed March 24, 2025).

<sup>33</sup> Tevfik Sönmez Küçük, "Use of Religious Symbols in the French Education System", Ankara Bar Association Magazine, Year: 68, Issue: 2010/1, p. 102.

headscarf becomes a tool for this<sup>34</sup>. There is no regulation in the UK prohibiting the use of religious symbols. Despite this, prejudices against religious symbols, especially the headscarf, have been increasing after the September 11 attack<sup>35</sup>. There is no regulation prohibiting the use of religious symbols in Italy<sup>36</sup>. However, since the Catholic sect of Christianity is widespread, the sign of the cross is hung in classrooms in state education and training institutions<sup>37</sup>. The Netherlands attaches importance to keeping religious symbols alive in public spaces. There is no regulation banning religious symbols or even the headscarf<sup>38</sup>.

In Switzerland, only Geneva has a regulation banning primary school teachers from wearing religious symbols. There is no such ban in other education and training institutions<sup>39</sup>. Again, the referendum against the minaret held in Switzerland on 29.11.2009 is important in terms of revealing the perception of religious symbols in this country. The minaret is considered a religious symbol<sup>40</sup>. After intense propaganda on the basis of anti-Islamism, the referendum results were 58%. As a result of the Islamophobic wave that exists throughout Europe, making the minaret, which is accepted as a symbol based on belief, culture and emotion, the subject of a referendum is dangerous as it shows that the minority will be subjected to a way of life based on majoritarian rule, not on the rules of law based on pluralism. Because, on the basis of intense campaigns carried out by far-right groups, a fundamental right and freedom (freedom of belief, and to practice one's belief) has been violated by mobilizing people's fears<sup>41</sup>. In Switzerland, other symbols were used to implement the minaret ban. These symbols are in the form of a veiled woman on the posters and a minaret resembling a gun on a black background. These symbols used on the promotional panels of the minaret ban, in addition to offending a minority, have also called into question the universal norms that form the basis of Europe, such as freedom, equality, pluralism, rule of law and respect for faith. Because,

<sup>34</sup> <https://perspektif.eu/2023/02/03/basortusu-yasagi-berlin-tarafsizlik-yasasini-acilen-degistirmeli>. (Accessed March 24, 2025) ; Mustafa Özcan, Hijab Discussions in Europe, Köprü Magazine, Fall 2003, No. 84, p. one.

<sup>35</sup> Ibid, p. 7.

<sup>36</sup> Jeroen Temperman, Religious Symbols in The Public School, The lautsi Papers : Multidisciplinary Reflections on Religios Symbols in The In Public School Classroom ( Edt : Jeroen Temperman ), IDC Publishers oath Martinus Nijhoff Publishers , Netherlands , 2012, p. 143.

<sup>37</sup> Mustafa Özcan, Hijab Discussions in Europe, p. 8.

<sup>38</sup> Ibid, p. 8.

<sup>39</sup> Ibid, s. 8.

<sup>40</sup> *"Every nation has got architectural a character according to its understanding, it was built as various structures in different styles. The first minaret was built by the Egyptian Governor Maslama bin Mahled, on the orders of Muawiyah, in 58 Hijri. Minaret among Turks begins with the Seljuks. Tthe most harmonious andbeautiful Minarest have been shaped in the Ottoman period, in the sixteenth century, when architectural art reached its peak during the time of Sinan. It is the place where the muezzin comes out and calls the adhan to announce that the prayer time has come. The highest point of the minaret is the realm.. Minaret towers are the religious symbols of the Islamic world. Between the grips of some worlds in our country star is also available. "Our historical minarets are like pens that sign the title deed of our country."*

<http://minare.nedir.com/#ixzz2vpbrNAdi> (Accessed March 23, 2025).

<sup>41</sup> Zeynep Songülen İnanc/Selvet Çetin, Europe's Self-Turning Weapon: Exclusionism and Discrimination, SDE Analysis, December, 2011, p. 13.

the desire to build a minaret, which is a current and legitimate demand, was rejected by harmonizing fears through another illegitimate, prohibitive and offensive symbol, and it also caused permanent damage among the communities<sup>42</sup>.

In Denmark, it is mandatory for public officials to wear a specially marked headscarf. In fact, it has been stated that all kinds of religious symbols can be worn in the Danish army, except the "burka"<sup>43</sup>. There is no regulation prohibiting the use of religious symbols in Greece. In addition, there is no problem since even religious symbols such as headscarves resemble Orthodox clothing<sup>44</sup>. The United States Constitution and the Civil Rights Act of 1964 guarantee the right of public employees to wear religious symbols. Additionally, there is no regulation limiting the exercise of the right for private sector employees<sup>45</sup>. The 1982 Charter of Rights and Freedoms provides constitutional protection for the use of religious symbols. Exceptionally in Part 1 of this requirement, if a "compelling government interest" is necessary, the limitation may be made to a minimum. As can be seen, the use of religious symbols in Europe will be achieved through the limited areas defined by states, not through the understanding of pluralism that is claimed to form the basis of Europe. The damage caused by the Islamophobic perception in European nations, especially after September 11, has developed negative attitudes and codes of behavior towards minorities in general and Muslims in particular. These codes, as accepted at the official level (visa restrictions, strict requirements for identification), have even led to acts of harassment against religious symbols by the local population in private (attacks on mosques, destruction of Muslim cemeteries). The burqa-burka and minaret ban has brought to the agenda the need to take legal measures to ban Islamic symbols in public spaces. The use of religious symbols for Muslims in Europe has caused the following irony: Pluralism is allowed in the European public sphere, provided that one does not dress like a Muslim, does not build minarets, and places of worship are hidden<sup>46</sup>.

In the case filed in the Canadian court on the right of a person belonging to the Sikh religion to carry a turban and dagger, the court focused on the nature of this right; *Bhinder v. In the case of Canadian National Railway Company* (1985) 2 SCR 561, it was decided that wearing a headscarf in the workplace would prevent the wearing of a helmet and that this was a sufficient condition for the restriction. In Canada, the courts accept a vague concept such as the sincerity of a religious symbol as a given and are trying to prove this situation. In other words, if wearing that symbol is a necessity or a "sine qua non" for the person's faith, it should be allowed. For example, the Sikh student's carrying of a dagger was evaluated in this context. Because, according to the court, carrying a dagger is an indispensable condition and a basic indicator of that belief<sup>47</sup>.

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<sup>42</sup> Ibid, p. 15.

<sup>43</sup> Özcan, p. 8.

<sup>44</sup> Ibid, p. 9.

<sup>45</sup> <http://www.inhak.adalet.gov.tr/ara/karar/eweidavd.pdf>. E.T. (Accessed March 24, 2025).

<sup>46</sup> İnanç/Çetin, p. 27.

<sup>47</sup> <http://www.inhak.adalet.gov.tr/ara/karar/eweidavd.pdf>. (Accessed March 23, 2025).

## B. The European Court of Human Rights' Approach to Religious Symbols

The European Convention on Human Rights (ECHR) art. 9 includes four elements regarding the freedom of religion and conscience, and these are the freedom to believe or not to believe, to fulfill the requirements of religion, to inculcate and communicate religious belief to others, and the freedom to teach<sup>48</sup>. The Court interprets the right to "education" in Article 9 broadly and states that everyone has the right to convey their religion and belief to others<sup>49</sup>. From this point of view, the connotation made by religious symbols can be interpreted within the framework of the right to convey a religion or belief to others. Again, the ECHR accepts that religious symbols are included within the freedom of belief, albeit indirectly, by taking into account the principle of pluralism and respect for the rights of parents in the context of religious education and training<sup>50</sup>.

### 1. Symbol or Threat? The Subjective Dimensions of the Leyla Şahin Case

In its 2004 *Leyla Şahin v. Turkey* decision, the European Court of Human Rights (ECtHR) upheld the prohibition on wearing headscarves in universities, ruling that it did not constitute a violation of the European Convention on Human Rights<sup>51</sup>. The Court reasoned that, in a country like Turkey, where concerns about radical religious influences exist, such restrictions could be justified under the Convention's provisions for maintaining public order and protecting the rights of others. It emphasized that national authorities possess a margin of appreciation in addressing complex issues like secularism and religious freedom, and thus their discretionary power in such matters is not subject to extensive judicial review<sup>52</sup>. As noted by Ulusoy, this approach raises critical concerns regarding the ECHR's consistency in applying its own principles and standards. The reliance on country-specific conditions introduces subjective assessments that could undermine the principle of legal certainty. Legal systems, especially those tasked with safeguarding fundamental rights, must strive for objectivity and uniformity to ensure predictable and equitable adjudication. A departure from these principles, as reflected in the ECHR's reliance on Turkey's specific sociopolitical context, risks eroding the universality of human rights protections and may lead to inconsistent jurisprudence that compromises legal security<sup>53</sup>.

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<sup>48</sup> Adnan Küçük, "Legal Framework of Religious Education and Training in Some EU Member Countries, the USA and Turkey", *Liberal Thought Magazine*, Vol. 14, No. 55, Summer: 2009, p. 62, footnote. 1, Mustafa Erdoğan, *Human Rights Theory and Law*, Orion: Ankara, 2007, p. 161.

<sup>49</sup> *Ibid*, p. 63.

<sup>50</sup> *Ibid*, p. 64.

<sup>51</sup> *Ibid*, p. 126. Case of Leyla Şahin v. Turkey, Application no. 44774/98, KT. 10 November 2005, para 152-156; [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70956#{"itemid":\["001-70956"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70956#{)

<sup>52</sup> *Ibid*, p. 128.

<sup>53</sup> *Ibid*, p. 129. Case of Leyla Şahin v. Turkey, Application no. 44774/98, para 157-162.

The Fourth Chamber of the ECtHR declared the application admissible on 2 July 2002. Following a trial, the Chamber dismissed the case on 29 June 2004, holding that while the applicant's freedom of religion had been restricted, the limitation was justified as a "reasonable measure"<sup>54</sup> in a country like Turkey, which faces challenges related to religious extremism. Dissatisfied with this outcome, the applicant appealed the decision to the Grand Chamber. On 10 December 2005, the Grand Chamber<sup>55</sup> upheld the Fourth Chamber's ruling, reiterating its reasoning and confirming the dismissal of the application<sup>56</sup>.

*The Leyla Şahin* decision, the Court accepted that wearing the headscarf is a requirement of the Islamic religion and that this use is prohibited under ECHR. It is evaluated within the framework of freedom of religion in its article 9 sense. However, it is also stated that Government intervention regarding the headscarf is *legitimate and acceptable in a democratic society*. For this reason, the Court ruled that ECHR Art 9. It is of the opinion that 9 has not been violated. Dissenting from this aspect of the decision, Judges Rozakis and Vajic stated in their dissenting opinion that *"the main issue of the case is the state's right to wear a headscarf at the university and express its religious views, ECHR Art 9. They stated that <sup>57</sup>"it has been violated in the sense of 9"*.

The decision states that the freedom to manifest religious belief is not absolute and unlimited and that this freedom is subject to the limitations set out in the Convention. It is stated that Article 9/2 of the ECHR outlines the right to manifest religious belief and five limitation criteria are introduced. These are *public safety, public order, health, morality and protection of the rights and freedoms of others*. These criteria were deemed by the Court to be legitimate purposes for limitation. In this context, the Government's action regarding *Leyla Şahin* was *found to be legitimate and acceptable in a democratic society*. In the continuation of the decision, it was emphasized that it was legitimate to ban the headscarf in universities in order to protect the rights and freedoms of others. In its decision, which is very clear to constitute a double standard, the court stated that *"freedom of religion is a founding element of a democratic society"* but that *"ECHR Art. 9 does not protect every act with religious motifs"*. It is also noteworthy that the decision makes a dual distinction between freedom of education and freedom of religion. Because the Court stated that *"The right to education is a human right and cannot be waived", "Higher education is a natural part of the right to education", "The state is responsible for ensuring effective access to educational institutions", and even "Leyla Şahin's reason for attending classes and exams with a headscarf"* It also includes the justification that *"preventing education means restricting the right to education."* On the other hand, by stating that the applicant *"has the right to go to the department he wants as a result of the university exam", the Court adopted an opinion that has no legal basis, as the Government provided the opportunity for choice in education*. Moreover, there is no dual education model as *secular and non-secular in educational institutions in Turkey*. In Turkey, education is provided *on the basis of secularism* in both state and private (foundation) universities. There is no legal accuracy in the court's opinion that the applicant *has the right to choose and that he can attend the educational institution he wishes*. The Court, which sees the applicant's right to

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<sup>54</sup> Case of Leyla Şahin v. Turkey, Application no. 44774/98, para 71.

<sup>55</sup> Case of Leyla Şahin v. Turkey, Application no. 44774/98, para 73.

<sup>56</sup> Case of Leyla Şahin v. Turkey, Application no. 44774/98, para 14-28.

<sup>57</sup> Case of Leyla Şahin v. Turkey, Application no. 44774/98, Joint Concurring Opinion of Judges Rozakis and Vajic, Dissenting Opinion of Judge Tulkens, para. 1-2.

choice as a democratic solution, appears to have adopted a coercive attitude regarding the applicant's ability to study at another educational institution<sup>58</sup>.

By relying on the court decisions about the headscarf ban in Turkey, the court established a norm that the ban was foreseeable. This was incompatible with the democratic social order<sup>59</sup>. Because, even in universal legal norms, the principle of "certainty of a legal norm" or "legal certainty" is essential, not the predictability of a prohibition. In other words, the court developed jurisprudence by creating a norm "*against freedoms*" regarding the concepts of essential and exception, which would constitute a justification for the ban. The applicant is already bringing the prohibitive attitude in Turkey before the ECtHR and is waiting for a solution from the court. However, the court recommends that the applicant develop "codes of attitude and behavior" according to the prohibitive attitude in Turkey, as if it were not a "*court of freedoms*" or a "*court protecting freedoms*". The ECHR is not a court of confirmation. The ECHR should prosecute not only government practices but also court decisions that are considered to be unlawful. However, this did not happen, and hypothetical claims were included, such as "*the attitude and behavior was not foreseen in accordance with the ban*" and that this situation would be contrary to the principle of "legal certainty".

The Grand Chamber took the issue further and referred to the decisions of the Turkish Constitutional Court and saw the principle of secularism as a principle that aims to protect the individual (the individual who, in the opinion of the Court, is uniquely worthy of benefiting from rights and freedoms) from extremist groups.<sup>60</sup> According to the Grand Chamber, the existence of extremist groups in Turkey was emphasized, the majority could put pressure on the minority in fulfilling Islamic rules, and the necessity of protecting the rights of groups that did not comply with these rules. Again, it is stated that "*Due to Turkey's unique conditions, the margin of appreciation cannot be interfered with*".

The *Leyla Şahin* case is marked in the history of the European Court of Human Rights (ECHR) as a controversial decision characterized by several contentious elements: the application of "double standards," reliance on the argument that "extremist groups pose a potential threat to others," the Court's depiction of the "ideal individual" deemed worthy of enjoying rights and freedoms, and the assertion that disregarding prohibitory decisions constitutes a "violation of foreseeability." It further highlighted the Court's stance that "administrative and judicial bodies have a margin of appreciation in implementing bans" and that "there is no guaranteed right to attend a secular educational institution." When compared to the *Lautsi v. Italy* case, the *Leyla Şahin* decision stands out as "a political and dependent decision influenced by external pressures." In the *Leyla Şahin* case, no external intervention by states or non-governmental organizations representing the Islamic faith influenced the ruling, underscoring its isolation as a political judgment. Conversely, the *Lautsi* case became infamous as an instance where the Court succumbed to external religious and political pressure. This included intervention from the Vatican, Christian-majority states, and non-governmental organizations, leading to what has been described in legal history as the "inevitable consequence of external influence." This contrast underscores the inconsistencies in the Court's approach

<sup>58</sup> Case of Leyla Şahin v. Turkey, Application no. 44774/98, para 98.

<sup>59</sup> Case of Leyla Şahin v. Turkey, Application no. 44774/98, para 85.

<sup>60</sup> Case of Leyla Şahin v. Turkey, Application no. 44774/98, para 115.

to religious freedoms, shaped significantly by the differing contexts of external advocacy and pressure.

As of today, the European Court of Human Rights cannot be regarded as an entirely independent decision-making body, a reality exemplified by the *Leyla Şahin* case. Regrettably, the Court has increasingly exhibited tendencies to issue rulings based on subjective, arbitrary, and politically influenced considerations rather than adhering to general and objective legal norms grounded in the principles of impartial justice. This shift reflects a susceptibility to the pressures of powerful political lobbies and interest groups, undermining the Court's credibility as a guardian of universal human rights. Such tendencies not only erode the legal predictability expected from a supranational judicial body but also raise concerns about the consistency and impartiality of its jurisprudence, particularly in cases involving contentious sociopolitical and religious dynamics.

## **2. Dahlab v. Switzerland: The Role of Negative Value Judgments in Shaping Justice**

The applicant was born in Switzerland in 1965 and lives in Geneva. He also works as a primary school teacher. He was appointed as a primary school teacher by the Geneva Cantonal Government on 1 September 1990 and has been teaching since that date. After his spiritual quest, he abandoned the Catholic faith and embraced Islam in March 1991. He married an Algerian citizen on October 19, 1991 and had three children from this marriage<sup>61</sup>.

The applicant began to wear an Islamic headscarf towards the end of the 1990-91 academic year, citing a rule depicted in the Quran that adult women must cover their faces with a veil in the presence of men. In May 1995, she was found by the school inspector to regularly wear the Islamic headscarf at school. On 27 June 1996, a meeting was held between the General Director of Primary Education and the applicant on the subject of wearing the headscarf. On 11 July 1996 the Director General also confirmed the applicant's position adopted at the meeting. The applicant was pointed out that he had not acted in accordance with Section 6 of the Public Education Act in the course of his professional duties. In a letter dated 21 August 1996, the applicant requested the Director General to issue a formal rule on the matter. On 23 August 1996, the General Director of Primary Education restated his initial decision. It ruled that the applicant was prohibited from using the headscarf during her professional duties, on the grounds of a practice contrary to Section 6 of the Public Education Law, and that "it is clear that there is a clear imposition of identity by the teacher on her students, especially in the public and secular education system." On 26 August 1996, the applicant formally objected to the decision issued by the Cantonal Government of Geneva. However, on 16 October 1996, the Cantonal Government rejected the appeal, providing the following rationale: "Teachers are required to adhere strictly to the principles of the state school system, comply with the obligations set by the educational authorities, and uphold the principle of class neutrality. Attire must not convey any religious message or serve any religious purpose beyond the personal sphere"<sup>62</sup>.

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<sup>61</sup> Case of Lucia Dahlab v. Switzerland, Application no. 42398/98.

<sup>62</sup> Case of Lucia Dahlab v. Switzerland, Application no. 42398/98. (The Circumstances of Case)



The applicant argued that the imposed restrictions violated their right to freely practice their religion, as guaranteed under Article 9 of the Convention. They contended that the Swiss courts erred in interpreting the headscarf as a threat to public order and security, emphasizing that for four years, the headscarf went unnoticed and caused no discomfort to anyone. Furthermore, the applicant claimed that the ban imposed by the Swiss authorities amounted to gender discrimination, as outlined in Article 14 of the Convention, in conjunction with Article 9<sup>63</sup>. The European Court of Human Rights concluded that the applicant's actions had the potential to influence students' religious beliefs, thereby violating the principle of class (sectarian) neutrality. Aligning with the Swiss Federal Court's decision on the ban, the ECHR emphasized that public school teachers are required to consider the nature of their profession and uphold impartiality within the state education system. This impartiality necessitates limiting the expression of religious freedom to safeguard legality and maintain the secular nature of education. The Court further held that while the applicant faced a difficult choice, such restrictions on religious freedom were tolerable within the framework of a democratic society. The Federal Court's reasoning was upheld as justified in its defense of students' rights and the necessity of maintaining class neutrality. The Court reiterated that the expression of religious beliefs must be balanced against the need to protect public order, public security, and the rights and freedoms of others in a democratic context<sup>64</sup>.

In its justification of the decision, the court further states that it is difficult to evaluate the impact of religious symbols such as headscarves on very young students. The applicant's students are aged 4 and 8 and are impressionable. In this case, it is natural that a rule stated in the Quran seems to be imposed on women or that the headscarf is seen as a missionary act. In this regard, wearing the Islamic headscarf is difficult to reconcile with tolerance and respect for others. Because, first of all, teachers must convey the messages of equality and non-discrimination to their students in a democratic society. Therefore, although the applicant expresses his freedom to practice his religion, protecting the rights of students is a duty given to the state. The Geneva authorities did not exceed their discretion and the ban decision was therefore reasonable. As stated in the Federal Court decision of 12 November 1997, it is of the opinion that state principles and principles aimed at the protection of public order, public security and other rights and freedoms are admissible. The court considers that the measure banning the wearing of headscarves during education is also necessary for a democratic society<sup>65</sup>.

The applicant claims that Article 9 of the Convention has been violated, as well as that he has been discriminated against on the basis of Article 14. He claims that a male Muslim can practice his belief without being subject to any prohibitions, whereas a female Muslim cannot practice her belief without doing the practice in question. The applicant states that Article 14 should be applied to him in this context<sup>66</sup>. The Court states that different treatment cannot be applied to individuals without an objective and reasonable justification, and that a violation of Article 14 may occur if there is no legitimate purpose or if there is no

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<sup>63</sup> Case of Lucia Dahlab v. Switzerland, Application no. 42398/98. (Complaints 1)

<sup>64</sup> Case of Lucia Dahlab v. Switzerland, Application no. 42398/98.

<sup>65</sup> Case of Lucia Dahlab v. Switzerland, Application no. 42398/98.

<sup>66</sup> Case of Lucia Dahlab v. Switzerland, Application no. 42398/98, para 2.

proportionality between the means used and the aim<sup>67</sup>. Moreover, Contracting States maintain a margin of appreciation in assessing whether a different treatment is justified for similar situations, subject to exceptions<sup>68</sup>. The Court also reiterates that the overriding aim of the Member States of the Council of Europe today is to promote gender equality. This means that, for very important reasons, different codes of conduct on the basis of gender may be developed in line with the Convention<sup>69</sup>. In this context, the Court accepts that a woman may be prohibited from wearing a headscarf in accordance with her religious belief, based on the principle of state neutrality, and that the same prohibition may be applied if a man identifies himself as a member of a different faith in similar situations. Therefore, the Court is not of the opinion that there was discrimination on the basis of gender in the present case. For this reason, it found the application unacceptable<sup>70</sup>.

The European Court of Human Rights in the current case justified its support for the prohibitory stance by invoking concepts such as state impartiality, public order, public security, proportionality, the margin of appreciation, and the protection of children. These principles, widely recognized in public and international law, were used to substantiate the restrictive measures. However, it appears that these concepts served more as abstract justifications rather than being applied to concrete, objective, and current circumstances. The reliance on these principles without adequately linking them to specific evidence risks undermining the legal validity of the decision. While the Court acknowledged the potential positive impact of wearing a headscarf on children, it also engaged in subjective reasoning, critiquing religious texts by asserting that the headscarf represents "imposing a rule stated in the Quran on women" and equating its use with "a missionary act." These value-laden judgments suggest a departure from an impartial evaluation of the issue and an inconsistency in applying the principles of state neutrality and class neutrality. Furthermore, the Court's interpretation of these principles appears rooted in its understanding of a "democratic social order," which it conceptualizes through an idealized vision of "ideal individuals." This perspective allowed the Court to defer to states' margin of appreciation, granting them discretionary authority to determine the balance between religious expression and broader societal values. Such reasoning underscores the tension between protecting individual freedoms and upholding perceived notions of secularism and democratic ideals.

### **3. Discretion or Arbitrary? Islamophobia and Religious Symbolism in the Lautsi Case**

The plaintiff contended that the display of a crucified Christ figure in the classrooms attended by his children at a public school represented a religious symbol that contravened the principle of secularism and should be removed.

<sup>67</sup> *Observer Oath Guardian v. the United Kingdom*, 26 November 1991, Series A no. 216, p. 35, § 73, and *The Sunday Times v. the United Kingdom* (no. 1), p. 43, § 70.

<sup>68</sup> *Van Raalte v. the Netherlands*, 21 February 1997, Reports of Judgments and Decisions 1997-I, p. 186, § 39.

<sup>69</sup> *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, Series A no. 94, p. 38, § 78, and *Schuler-Zgraggen v. Switzerland*, 24 June 1993, Series A no. 263, pp. 21-22, § 67.

<sup>70</sup> *Case of Lucia Dahlab v. Switzerland*, Application no. 42398/98.

Following the rejection of his initial appeal to the school administration, he pursued legal action in the Administrative Court, asserting that the display breached constitutional provisions safeguarding secularism<sup>71</sup>. The Administrative Court referred the matter to the Constitutional Court, questioning the constitutionality of Articles 118 and 119 of the Royal Decree, which mandated the presence of a crucified Christ figure in classrooms. The referral was based on the assertion that these provisions violated the principle of secularism. However, the Constitutional Court dismissed the application, reasoning that the Royal Decree held the status of a regulation and, therefore, the challenge was inadmissible<sup>72</sup>.

In its reconsideration of the case, the Administrative Court argued that although the crucified Christ figure is unequivocally a religious symbol, it also serves as a cultural and historical reference point for other beliefs, represents a value linked to identity, and reflects Europe's historical and cultural development. Relying on these justifications, the court dismissed the claim. On appeal, the Council of State affirmed the lower court's decision. The case was subsequently escalated to the European Court of Human Rights, with allegations that the figure's presence contravened Article 2 of Protocol No. 1 and Article 9 of the European Convention on Human Rights<sup>73</sup>. In its decision dated 3 November 2009, the Second Chamber of the European Court of Human Rights determined that the alleged violation fell under Article 9 of the European Convention on Human Rights, which protects freedom of thought, conscience, and religion, and Article 2 of Additional Protocol No. 1, concerning the right to education. The Court justified its decision with several points: "The state must refrain from imposing any belief, even indirectly," "the cross is a symbol of profound religious significance," "students who do not identify with Christianity may experience discomfort," "the negative right to freedom from religion requires specific protection," "the state has an obligation to maintain religious neutrality," "educational pluralism is incompatible with the presence of overt religious symbols," and "the imposition of religious symbols infringes upon parents' right to educate their children in accordance with their own religious or philosophical convictions"<sup>74</sup>.

The Second Chamber's decision of the European Court of Human Rights met with significant opposition from Catholic and Orthodox Christian communities, who feared it could establish a precedent affecting schools across other nations. In response, on 28 January 2010, the Italian Government contested the ruling, presenting a series of counter arguments. They asserted that "the cross is not solely a religious symbol but also represents values intrinsic to culture and identity," noting that "the cross is featured on the flags of several European countries." They argued further that "while the symbol holds religious significance, it is passive in nature," and emphasized that "the state does not actively influence or guide individual beliefs." The government also characterized the depiction of Jesus as "a reflection of national heritage," and dismissed concerns about the imposition of another religion as "ambiguous."

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<sup>71</sup> Case of Lautsi and Others v. Italy, Applicable no. 30814/06, KT. March 18, 2011, para 10. <http://www.ihb.gov.tr/dosyagoster.ashx?id=318>

<sup>72</sup> Case of Lautsi and Others v. Italy, Applicable no. 30814/06, KT. 18 March 2011, para 16.

<sup>73</sup> Case of Lautsi and Others v. Italy, Applicable no. 30814/06, KT. 18 March 2011, para 29.

<sup>74</sup> Case of Lautsi and Others v. Italy, Applicable no. 30814/06, KT. 18 March, 18, 2011, para 30-32.

Additionally, they pointed out that “members of minority religions are permitted to wear religious attire and display symbols within the school environment.” Based on these justifications, the Italian Government requested a review by the Grand Chamber of the ECtHR. The request was granted on 1 March 2010, with a hearing held on 30 June 2010.

The Second Chamber's decision of the European Court of Human Rights sparked considerable opposition from Christian-majority nations and various non-governmental organizations. In reaction, 33 members of the European Parliament and representatives from seven NGOs intervened in the case, submitting written and verbal arguments to governments in Armenia, Bulgaria, the Greek Cypriot Administration of Southern Cyprus, Russia, Greece, Lithuania, Malta, Monaco, Romania, and San Marino. These interventions sought to persuade the Grand Chamber to overturn the Second Chamber's ruling. Ultimately, these coordinated efforts succeeded, as the Grand Chamber reversed the earlier decision on 18 March 2011.

The Grand Chamber recognized the cross as an unequivocally religious symbol but found no evidence that its presence in classrooms positively impacted students. It acknowledged that the display could be viewed as a failure by the State to uphold children's freedom of education, training, and religious belief. However, this was not sufficient to establish a violation of Article 2 of Protocol No. 1 of the European Convention on Human Rights (ECHR). The Court emphasized that the role of religious or philosophical beliefs in education lies within the margin of appreciation granted to states, provided no direct indoctrination occurs. The absence of a European consensus on this issue further reinforced the discretion allowed to individual states. In the context of Italy, the Grand Chamber found no indication that the government was promoting or imposing a specific religious perspective on students. Referring to its earlier rulings, such as **Hasan and Eylem Zengin v. Turkey** (09.10.2007), the Court reiterated that prioritizing the majority religion in a nation's curriculum does not inherently equate to indoctrination. Additionally, it maintained that the cross in classrooms, being a passive symbol, does not exert the same influence as active instruction or participation in religious practices, as clarified in **Folgero et al. v. Norway** (29.06.2007).

The European Court of Human Rights (ECHR) concluded that the presence of the cross in classrooms is unrelated to the compulsory religion course on Christianity and highlighted that Italian schools also provide instruction on other religions. The Court emphasized that students are free to display symbols representing their religious beliefs or philosophical views and that minorities are able to practice their beliefs without interference. Additionally, elective religion courses are offered, supporting the argument that no systemic discrimination against members of other religions is evident. The applicants did not report instances of religious propaganda involving the cross or teachers referencing it during educational activities. Based on this, the Grand Chamber determined that the applicant's religious beliefs or practices were not restricted during their children's education. The Grand Chamber's rationale included several key points: recognizing the cross as a religious symbol but finding no evidence of its influence on students; affirming the discretion of states to ensure education reflects religious and philosophical diversity; emphasizing that discretion should be respected unless evidence of religious indoctrination exists; and noting the absence of a European consensus on religious symbols, requiring such issues to be evaluated within the specific national context. The decision underscored that the cross, as a passive symbol, should not be conflated

with active participation in religious activities. As a result, the Grand Chamber found no violation of Article 2 of Protocol No. 1 of the ECHR and concluded that further examination under Article 9 was unnecessary<sup>75</sup>.

The decision was rendered with 15 votes in favor and two dissenting opinions from Judges Malinverni and Kalaydjieva. In their dissent, the judges raised significant concerns. First, they criticized the Royal Decree mandating the presence of the cross in Italian classrooms, arguing that it lacked democratic legitimacy as it was not enacted through a parliamentary decision. They pointed out that European Supreme and Constitutional Courts consistently emphasize the principle of impartiality, irrespective of sectarian or class distinctions, as a cornerstone of democratic governance. Second, the dissenting judges focused on the second sentence of Article 2 of Protocol No. 1 of the European Convention on Human Rights, which imposes a positive obligation on states to ensure that families can organize the education and training of their children in accordance with their religious and philosophical beliefs. They underscored that this obligation stems from the term "respect" within the article, as acknowledged by the Grand Chamber, which noted that states must adhere to both negative and positive obligations under the Convention. The dissent further argued that Article 9 of the Convention supports a broad interpretation of positive obligations, including the promotion of mutual respect and understanding among diverse religious and philosophical groups. They questioned the scope of state discretion in fulfilling these obligations, particularly when the beliefs of the majority might conflict with the rights of minority groups. Specifically, they asked where the limits of state discretion lie in balancing the majority's beliefs with its duty to protect the rights of minorities and ensure impartiality. The dissenting judges stressed that, according to established case law, state discretion in such matters is always subject to European supervision to ensure adherence to the principles of mutual respect, equality, and impartiality. They concluded that the failure to critically assess the decree in this context represented a significant departure from these foundational principles<sup>76</sup>.

In a multicultural society, the state has an essential obligation to uphold neutrality, particularly in the sphere of education, to promote pluralism as a fundamental element of a democratic society. This neutrality safeguards core rights, such as freedom of religion and the right to education, ensuring that no individual or group is disadvantaged based on their beliefs. The Italian Constitutional Court has explicitly affirmed that genuine equality among citizens can only be realized when the state adopts an impartial stance, refraining from favoring any specific religion. Failure to maintain neutrality risks entrenching systemic discrimination and undermining social cohesion. The principle of state neutrality is further enshrined in Article 2 of Protocol No. 1 of the European Convention on Human Rights, which obliges states to ensure that educational content is delivered in an objective, critical, and pluralistic manner. Schools, as critical arenas for learning and personal development, must function as inclusive spaces where diverse religious and philosophical perspectives are represented and respected. They should facilitate an environment that enables students to

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<sup>75</sup> Case of Lautsi oath Others v. Italy, Applican no. 30814/06, KT, March 18, 2011, para 57-78.

<sup>76</sup> Case of Lautsi oath Others v. Italy, Applican no. 30814/06. Dissenting Opinion of Judge Malinverni Joined By Judge Kalaydjieva, para 1.

explore their own beliefs while fostering an appreciation for the beliefs and values of others, thereby cultivating mutual respect and peaceful coexistence in a diverse society<sup>77</sup>.

These principles must extend beyond the structured curriculum to encompass the entire educational environment. Article 2 of Protocol No. 1 not only delineates the state's responsibilities in providing education but also emphasizes the necessity of "respect for parental rights" in ensuring that education aligns with the religious and philosophical beliefs of parents. Consequently, the principle of state neutrality, particularly regarding sectarian or class bias, must apply holistically to the education system. This includes the content, processes, and implementation of educational activities. The European Court of Human Rights reinforced this perspective in the *Folgero* case, where it clarified that the state's obligations under Article 2 of Protocol No. 1 extend to all dimensions of education. This encompasses not only the curriculum's procedural and substantive elements but also the broader implementation of educational practices. By addressing these obligations comprehensively, the Court underscored the importance of maintaining an inclusive and neutral educational environment that respects diversity and safeguards the rights of all stakeholders<sup>78</sup>. This perspective is consistent with the positions of other national and international institutions<sup>79</sup>. For instance, the United Nations Committee on the Rights of the Child, in its General Comment No. 1, emphasized that the right to education extends beyond the mere content of the curriculum—whether delivered at home, in schools, or through other means. It also encompasses the educational process, teaching methods, and the broader school environment. These aspects must embody principles of equality, tolerance, peace, mutual understanding, and freedom across all ethnic, national, and religious groups, as well as uphold gender equality. Similarly, the Supreme Court of Canada has recognized that the school environment is a vital element of equitable education. It ruled that for an educational setting to be truly non-discriminatory, it must ensure equal treatment and actively promote the full participation of all students. This holistic approach underscores the importance of inclusivity, fostering an educational system that respects and embraces the diverse beliefs, values, and identities of all participants<sup>80</sup>. The Supreme Court of Canada has viewed the school environment as an integral part of education that is non-discriminatory: "for the educational environment to be non-discriminatory, the school environment must be based on equal treatment and the promotion of the full participation of all"<sup>81</sup>.

Religious symbols are an inherent aspect of the school environment, but their presence may conflict with the state's duty of neutrality, potentially affecting students' rights to education and freedom of religion. Such symbols,

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<sup>77</sup> Case of Lautsi oath Others v. Italy, Applican no. 30814/06. Dissenting Opinion Of Judge Malinverni Joined By Judge Kalaydjieva, para 2.

<sup>78</sup> *Folgerø* oath Others v. Norway, 29 June 2007, § 84.

<sup>79</sup> Committee on the Rights of the Child, General Comment No. 1, of 4 April 2001, "The Aims of Education", para 8.

<sup>80</sup> *Ibid*, para 19.

<sup>81</sup> Case of Lautsi oath Others v. Italy, Applican no. 30814/06, para. Dissenting Opinion of Judge Malinverni Joined By Judge Kalaydjieva para 3; Supreme Court Canada, *Ross v. New Brunswick School District* no. 15, para 100.

when displayed in educational settings, may be perceived as being imposed on students, even against their personal beliefs or preferences. In a notable ruling, the German Constitutional Court acknowledged the complexities of this issue, emphasizing that in a society that accommodates diverse religious beliefs, individuals cannot assert a right to act in complete isolation from other manifestations of belief, including religious symbols or forms of worship. This decision underscores the delicate balance required between accommodating religious expression and ensuring that state institutions maintain neutrality to protect the inclusive nature of the educational environment<sup>82</sup>. The Swiss Federal Court held that public schools offering compulsory education are obligated to uphold class (sectarian) neutrality. As the guarantor of this neutrality within the educational system, the state must neither favor a particular religion nor allow the majority to impose its dominance over minority groups. The Court emphasized that the constant visibility of a religious symbol associated with a specific faith could create a sense of pressure for individuals who do not share that belief, just as individuals may feel compelled by their own religious convictions. This principle underscores the importance of preserving an inclusive and neutral educational environment that respects the diverse beliefs of all students<sup>83</sup>.

The cross is undeniably a religious symbol, yet the defendant government argues that within the school environment, this symbol—while rooted in religion—has evolved to carry a secular significance and should be approached with mutual respect and tolerance. Beyond its religious aspect, the government asserts that the cross serves a profoundly educational and symbolic function for students, representing the essence of an entire civilization and universal values. Its presence in classrooms transcends mere historical usage, embodying both cultural and educational dimensions. The Court highlights the traditional character of the cross, noting that similar symbols, such as those referenced in parliamentary oaths, are valued for their historical and societal significance rather than their religious implications. The Grand Chamber further underscores that the negative freedom of religion, which ensures freedom from coercive religious expressions, does not equate to the absence of educational or institutional expressions of belief. Instead, this negative right, deserving of special protection, broadens the scope of religious and philosophical expression. While it may be acknowledged that the cross carries multiple interpretations, its religious meaning remains the most dominant and significant. Within the context of public education, the cross is perceived as an integral element of the school environment and as a potent external symbol. Notably, even the Italian Supreme Court has dismissed the notion that the cross possesses an independent value detached from its specific religious connotations<sup>84</sup>.

In conclusion, dissenting members of the Grand Chamber emphasized the necessity for states to maintain strict impartiality to effectively safeguard the rights guaranteed under Article 2 of Protocol No. 1 and Article 9 of the European

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<sup>82</sup> German Constitutional Court, BVerfGE 93, I I BvR 1097/91, judgment of 16 May 1995 § C (II) (I).

<sup>83</sup> Swiss Federal Court, ATF 116 Ia 252, *Commune di Cadro*, judgment of 26 September 1990, § 7; Case of Lautsi *Others v. Italy*, Applicable no. 30814/06, para. Dissenting Opinion of Judge Malinverni Joined By Judge Kalaydjieva para 4.

<sup>84</sup> Case of Lautsi *Others v. Italy*, Applicable no. 30814/06, para. Dissenting Opinion of Judge Malinverni Joined By Judge Kalaydjieva para 5.



Convention on Human Rights. They argued that this impartiality must be upheld not only within the curriculum but also throughout the broader school environment. Specifically, in the context of compulsory primary and secondary education, the state must refrain from imposing religious symbols on students, particularly those symbols associated with a religion they do not follow or accept, as their removal may not always be feasible. Consequently, the dissenting opinion concluded that the respondent government had violated Article 8 of the Convention and Article 2 of Protocol No. 1<sup>85</sup>.

The decision in the *Lautsi Case*, a landmark in the history of the European Court of Human Rights, reflects the influence of religious and political pressures on the Court's ruling. The principles of pluralism, tolerance, peace, mutual respect, and understanding—core elements of European values—and the rights enshrined in Article 9 of the European Convention on Human Rights and Article 2 of Protocol No. 1 were explicitly recognized in the Second Chamber's decision. However, these principles were notably altered in the Grand Chamber's judgment following interventions by religious groups and certain countries, concerned about the case setting a precedent. This shift undermines the legal objectivity of the Grand Chamber's decision. A critical examination of the decision highlights its reliance on the argument that the cross symbol has no adverse effect on students, framing it instead as a representation of the shared heritage of Christian culture and civilization. However, dissenting judges underscored key concerns: the duty of states to maintain neutrality toward religions and sects, parents' rights to ensure their children's education aligns with their religious and philosophical beliefs, and the cross's undeniable status as a religious symbol. They warned that its presence in schools offering compulsory education could be construed as an imposition of a particular religion, contradicting the principles of religious neutrality and equality.

The Grand Chamber deviated from the libertarian ethos of the European Convention on Human Rights by emphasizing the ambiguous and easily manipulated concept of the "margin of appreciation." This concept was invoked to justify avoiding external pressures, yet its abstract nature detracts from the consistency and predictability of the legal framework. The decision underscores a troubling lack of legal certainty, favoring subjective interpretations over the application of general and objective legal norms. The ruling itself, shaped by external pressures, demonstrates a deficiency in rigorous legal analysis and synthesis. The Italian practice in question further compounded this issue by shifting the burden of proof onto perceptions and sentiments of the majority, rather than safeguarding the rights of minority groups. A truly pluralistic perspective would have acknowledged the existence of individuals whose views diverge from those of the majority, emphasizing that legality alone cannot serve as the sole foundation for legitimacy. Legal legitimacy requires not only adherence to the law but also a profound respect for individual freedoms, which form a cornerstone of democratic societies.

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<sup>85</sup> Case of *Lautsi and Others v. Italy*, Applicable no. 30814/06, para. Dissenting Opinion of Judge Malinverni Joined By Judge Kalaydjieva para 8.

#### 4. The Minaret Ban: A Democratic Dilemma in the Context of Rights and Freedoms

The European Court of Human Rights reviewed two applications concerning the minaret ban. The first was submitted by the former spokesperson of the Geneva Mosque, and the second by three associations and a foundation. On June 28, 2011, the Court deemed both applications inadmissible, reasoning that the applicants could not demonstrate victim status as required under the ECHR<sup>86</sup>.

The European Court of Human Rights declared the first two applications regarding the minaret ban inadmissible, citing the applicants' inability to establish a direct causal link under the ECHR framework. In other words, the applicants were not deemed direct victims of the alleged violation. The remaining cases have yet to proceed to substantive examination. Should the merits of these cases be addressed, it is anticipated that the Court will evaluate them within the framework of Articles 9 and 14 of the Convention. This is because the minaret holds significant religious and cultural importance in Islam, serving as an indispensable structure for the "sacred call to prayer." For centuries, the call to prayer has symbolized a unifying tradition among Islamic nations, delivered from the highest point of the minaret. The minaret is not merely an auxiliary building or an architectural addition; it represents the central outbuilding of the mosque, the most sacred site in Muslim religious life.

One of the key criteria established by the European Court of Human Rights (ECHR) for assessing the use of religious symbols is that the symbol must be essential, consistent, and credible within the context of the religious belief it represents. The minaret undeniably meets these criteria, as it is an indispensable element of Islamic practice, reflecting necessity, coherence, and authenticity. This could even be empirically evaluated through tools such as a referendum, for instance, among the Muslim population in Switzerland. However, any decision by the ECHR will ultimately be based on the provisions of the European Convention on Human Rights, particularly Articles 9 and 14, ensuring a dual review: one focusing on legal compliance and the other on the protection of freedoms. The ECHR now faces a critical test of its role as a court of freedoms: whether it will prioritize the principles enshrined in the Convention or defer to the outcomes of a referendum, even when the latter is incompatible with human rights protections. It is expected that the ECHR will recognize the referendum result as a clear violation of Articles 9 and 14, as these provisions guarantee freedom of religion and protection against discrimination. Conversely, upholding a referendum result that undermines fundamental human rights and privileges majority decisions, even if conducted through democratic mechanisms, risks eroding the authority of the ECHR as a guardian of universal freedoms. Such an outcome would challenge the ontological foundation of the ECHR, undermining its status as an institution committed to protecting non-derogable norms of human rights.

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<sup>86</sup> Association league des Musulmans de Suisse and Others v. Switzerland (66274/09) and Ouairi v. Switzerland (65840/09); Baechler v. Switzerland (66270/09), Koella Naouali-Switzerland Case (1317/10), Al-Zarka-Switzerland Case (9113/10),

[http://www.inhak.adalet.gov.tr/tematik/dusunceler/din\\_ozgurlugu.pdf](http://www.inhak.adalet.gov.tr/tematik/dusunceler/din_ozgurlugu.pdf) (Accessed March 24, 2025).

## 5. Analysis of *Eweida and Others v. United Kingdom*: A Critical Legal Perspective

The case *Eweida and Others v. United Kingdom*<sup>87</sup> (2013) represents a landmark decision by the European Court of Human Rights (ECtHR) regarding the interplay between religious freedom and the rights of employers to maintain workplace policies. The judgment addressed four applications collectively, each raising questions about the scope of Article 9 (freedom of thought, conscience, and religion) of the European Convention on Human Rights (ECHR) in the context of employment disputes<sup>88</sup>. This case is pivotal in shaping the jurisprudence on balancing religious expression with other competing rights.

The applicants in the case were four individuals who claimed their rights under Article 9 were infringed by their employers in the United Kingdom. The claims can be grouped into two categories: *Nadia Eweida*, a British Airways employee was prohibited from wearing a visible Christian cross necklace, in contravention of the company's uniform policy. *Shirley Chaplin*, a nurse who was restricted from wearing a cross necklace due to health and safety concerns in a hospital setting. Religious beliefs in conflict with job duties, *Lillian Ladele*, a local authority registrar refused to conduct civil partnership ceremonies for same-sex couples due to her Christian beliefs. *Gary McFarlane*, a counselor dismissed for expressing reluctance to provide sexual counseling to same-sex couples due to his religious convictions. The ECtHR's decision considered whether the limitations imposed on the applicants' religious expressions were "necessary in a democratic society."

The judgments of the European Court of Human Rights (ECtHR) in *Eweida and Others v. United Kingdom*<sup>89</sup> reveal a nuanced approach to balancing religious freedoms with competing interests in a pluralistic society: The Court ruled in favor of Eweida, finding that British Airways failed to strike an equitable balance between her right to manifest her religion and the company's interest in maintaining a corporate image. The Court highlighted that Eweida's wearing of a cross did not interfere with the rights of others and warranted protection under Article 9 of the European Convention on Human Rights. Shirley Chaplin, the claim was rejected on the grounds that the hospital's restriction on necklaces, including religious symbols, was proportionate to the legitimate aim of safeguarding health and safety. Ladele's claim was dismissed. The Court reasoned that accommodating her refusal to officiate civil partnerships would undermine the employer's obligation to promote equality and non-discrimination, as well as infringe on the rights of same-sex couples. Similarly, McFarlane's claim was denied. The Court determined that his dismissal was justified to ensure equal access to services, a cornerstone of anti-discrimination principles. The ECtHR's judgments illustrate a pragmatic balancing of rights. While Article 9 protects individual religious freedoms, these rights are not absolute and can be restricted when they interfere with the rights of others or legitimate public interests. The Court's distinction between visible religious symbols and conduct conflicting

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<sup>87</sup> Application nos. 48420/10, 59842/10, 51671/10, and 36516/10, European Court of Human Rights, Judgment of 15 January 2013.

<sup>88</sup> Legal Basis: European Convention on Human Rights, Articles 9 and 14, and Article 2 of Protocol No. 1.

<sup>89</sup> European Court of Human Rights, "Case of *Eweida and Others v. the United Kingdom*," HUDOC database. Available at: <https://hudoc.echr.coe.int>. (Accessed March 24, 2025).

with job duties underscores a hierarchical approach to weighing competing interests.

The concept of proportionality was central to the Court's reasoning. In Eweida's case, the restriction was deemed disproportionate because it lacked a compelling justification, whereas in Chaplin's case, health and safety concerns outweighed religious expression. This demonstrates the importance of context-specific evaluations in human rights adjudication. The decisions in Ladele and McFarlane highlight the ECtHR's commitment to upholding equality and non-discrimination as societal values. These rulings affirm that religious beliefs cannot be used as a basis for exempting individuals from duties that ensure equal treatment under the law, especially in roles with public service obligations.

The differing outcomes for Eweida and Chaplin raise questions about the consistency of the Court's approach to religious symbols. Critics argue that health and safety concerns in Chaplin's case were insufficiently scrutinized, potentially leading to an overly deferential stance toward employer policies. The judgments reflect limited engagement with the doctrine of reasonable accommodation, which some argue could offer a more balanced framework for resolving such disputes. By dismissing Ladele's and McFarlane's claims, the Court avoided deeper exploration of how workplace policies might be adapted to respect religious diversity while upholding equality. Although the case predominantly addressed Christian applicants, its implications extend to all religious groups. The judgments underscore the importance of developing workplace policies that are inclusive and sensitive to religious diversity, while also reaffirming the boundaries of religious accommodation in pluralistic societies.

*Eweida and Others v. United Kingdom* is a landmark case that encapsulates the challenges of reconciling religious freedom with competing rights and interests in modern democracies. The ECtHR's judgments underscore the importance of proportionality, context, and equality in adjudicating these complex disputes. However, the case also reveals areas for further legal development, particularly in refining the doctrine of reasonable accommodation and ensuring consistent protection for religious expression across varied contexts<sup>90</sup>.

## **6. Legal Analysis and Critique of Osmanoglu and Kocabaş v. Switzerland**

The *Osmanoglu and Kocabaş v. Switzerland* (2017) decision by the European Court of Human Rights (ECtHR) addressed a contentious issue concerning the balance between religious freedom and a state's interest in promoting social integration through education. The case involved a Muslim couple, the applicants, who objected to their daughters attending mixed-gender swimming lessons in school, citing their religious beliefs. The ECtHR ultimately ruled against the applicants, finding that Switzerland had not violated Article 9 of the European Convention on Human Rights. However, the ruling invites critical examination, particularly concerning its reasoning on proportionality and the potential inconsistencies in the Court's approach to religious freedom.

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<sup>90</sup> Mark Hill Qc. "Religious Freedom in European Employment Law: Eweida and Others v. United Kingdom," *Ecclesiastical Law Journal*, Volume 15, Issue 2, May 2013, p. 200 e.g.

The applicants, Turkish-Swiss nationals practicing Islam, argued that the mandatory attendance of their daughters in mixed-gender swimming lessons infringed upon their religious beliefs. They requested an exemption based on their faith, proposing alternative measures such as single-gender classes or the use of modest swimwear (e.g., burkinis). Swiss authorities denied the request, citing the importance of school activities in fostering social integration and gender equality. The ECtHR upheld Switzerland's decision, emphasizing that the educational authorities' aim to promote integration and equality was a legitimate and proportionate interference with the applicants' religious freedom. The Court concluded that the interference was proportionate to the legitimate aim of ensuring social integration and gender equality. While these aims are indeed compelling, the proportionality assessment raises concerns about whether the restriction imposed was necessary or whether alternative accommodations could have achieved the same goals with less infringement on religious freedom.

Critics argue that the Court gave undue deference to state policies without sufficiently considering the applicants' rights. For instance, the availability of modest swimwear or alternative classes might have allowed the children to participate without compromising their family's religious convictions. The judgment reflects a limited application of the principle of reasonable accommodation, a doctrine often employed to balance competing rights in pluralistic societies. By rejecting the applicants' proposals, the Court appeared to endorse a rigid application of state policies, potentially undermining the broader goals of inclusivity and respect for diversity. Unlike in cases such as *Eweida v. United Kingdom* (2013), where the Court sided with an individual's right to manifest religion, the *Osmanoğlu* decision signals a shift toward prioritizing state interests over individual religious expression. This inconsistency may erode the coherence of ECtHR jurisprudence on Article 9<sup>91</sup>. The Court's reasoning in *Osmanoğlu* contrasts with other cases that afforded greater weight to religious freedoms. For example, in *Lautsi v. Italy* (2011), the Court acknowledged a state's discretion in displaying religious symbols in schools but emphasized the importance of proportionality in assessing potential violations of religious neutrality. In *Osmanoğlu*, however, the proportionality analysis appears less rigorous, leading to concerns about a double standard in cases involving religious minorities.

The decision disproportionately affects Muslim families, who are more likely to seek exemptions from mixed-gender activities based on their faith. By endorsing a strict interpretation of integration, the Court risks marginalizing minority religious groups instead of fostering genuine inclusivity. This tension highlights the need for a more balanced approach that respects cultural and religious diversity while promoting shared societal values. The *Osmanoğlu* case presented an opportunity for the ECtHR to provide clearer guidance on the scope of reasonable accommodation in religious freedom cases. By failing to explore alternative measures, the Court reinforced a binary approach to conflicts between religious practices and public policies, leaving little room for constructive dialogue. The Court's strong emphasis on integration may inadvertently legitimize overly broad state measures that disproportionately burden religious minorities. Such an approach risks undermining the pluralistic values that the ECHR seeks to protect. While promoting integration and equality

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<sup>91</sup> Edt. Kevin Boyle & Juliet Sheen, *Freedom of Religion and Belief: A World Report*, 1<sup>st</sup> Edition, Routledge, London 2013, para 335-336.

is laudable, the Court's ruling does not sufficiently safeguard the applicants' religious freedom. The lack of robust scrutiny of alternative solutions undermines the proportionality principle and risks setting a precedent for future cases where religious freedoms may be disproportionately restricted<sup>92</sup>.

The *Osmanoğlu and Kocabaş v. Switzerland* decision reflects the ECtHR's ongoing struggle to balance religious freedom with state interests. While the promotion of integration and equality are legitimate goals, the Court's reasoning in this case raises significant concerns about the proportionality of the measures imposed and the lack of accommodation for minority religious practices. This decision underscores the need for a more nuanced approach to Article 9 cases, one that rigorously evaluates alternative measures and ensures consistency in the protection of religious freedom. Future jurisprudence must address these concerns to maintain the Court's legitimacy as a guardian of pluralistic and democratic values under the ECHR<sup>93</sup>.

## CONCLUSION

The decisions of the European Court of Human Rights reveal a troubling reliance on subjective frameworks that prioritize European cultural narratives, civilization, and shared heritage over objective principles and universal legal norms. This interpretative approach allows socio-cultural constructs, such as necessity, consistency, and persuasiveness, to dominate judicial reasoning, often at the expense of impartiality. These subjective criteria, influenced by the sociology of religion, create room for inconsistent and context-dependent rulings, undermining the ECtHR's credibility as a guardian of human rights.

A particularly concerning trend is the Court's frequent invocation of abstract and indeterminate concepts like the "margin of appreciation," especially in cases involving religious freedoms under the pressures of conservative or Orthodox groups. While intended to balance national discretion with European standards, this concept often results in ambiguous and politically charged judgments.

The *Leyla Şahin* case, for instance, illustrates how contextual political considerations can overshadow the universal application of principles like proportionality, discretion, and state neutrality. These principles, while necessary for balancing competing rights, are selectively applied, exposing the underlying political dimensions of the Court's rulings.

The ECtHR's handling of Islamic religious symbols and practices further reveals stark double standards. Restrictions on Islamic symbols are frequently justified through appeals to concepts such as "democratic society" or "legitimate limitations," while Christian symbols are often framed as reflections of cultural heritage or public morality. Criteria like public safety, state neutrality, and the protection of others' rights are disproportionately employed in cases involving Islam, creating a perception of systemic bias. This approach fails to recognize rituals and symbols associated with Islam as inherent rights under the European

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<sup>92</sup> Carolyn Evans, *Freedom of Religion Under the European Convention on Human Rights*, Oxford University Press, February 08, 2021, p. 180 e.g.

<sup>93</sup> European Court of Human Rights Annual Report (2013), Overview of Key Cases

Convention on Human Rights, disregarding the pluralistic values and cultural diversity the ECtHR purports to uphold.

The Grand Chamber has further entrenched this inequity by preserving established norms at the expense of fostering pluralism. While lower Chambers of the Court have occasionally extended protections to both Christian and Islamic principles when deemed necessary and consistent, the Grand Chamber frequently restricts these protections to Christianity. This discrepancy reinforces discriminatory practices and underscores the Eurocentric bias embedded in the ECtHR's jurisprudence. The selective treatment of Islamic symbols—contrasted with the Court's more accommodating stance on Christian symbols—betrays a broader failure to embrace a genuinely pluralistic judicial philosophy.

This bias cannot be divorced from the socio-political climate of Islamophobia that has increasingly shaped Europe, particularly in the aftermath of 9/11. The Court's reluctance to robustly protect Islamic symbols and practices reflects a broader Eurocentric skepticism, often framing Islam as incompatible with democratic values, public order, or secularism. This selective protection alienates Muslim communities and undermines the ECtHR's stated mission to uphold universal human rights and freedoms.

Ultimately, the ECtHR's selective application of principles like pluralism, neutrality, and proportionality has eroded its standing as a court of freedoms. By perpetuating discriminatory practices and failing to treat all religious expressions with equal regard, particularly in cases involving Islam, the Court has assumed a contested and increasingly polarizing role. Its decisions reveal a troubling dissonance between its foundational ideals and its practical jurisprudence, raising profound questions about its capacity to function as an impartial arbiter of justice in an increasingly diverse and pluralistic Europe.



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