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MUSLIMS IN THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS THROUGH THE PRISM OF FREEDOM OF RELIGION IN EDUCATION[1]

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Abstract

In this paper, the authors presented the characteristic cases from the case law of the European Court of Human Rights in which members of the Islamic community considered that their freedom of religion under Article 9 of the European Convention on Human Rights and Fundamental Freedoms has been violated. At the same time, in those cases, there was frequently violation of Article 2 of Protocol No. 1 to the Convention, which provides for the right to education, cumulatively with above mention article. The starting point is the case of Dahlab v. Switzerland, after which the authors specifically addressed several other cases in which the European Court of Human Rights considered these rights.

Keywords: Muslims, European Court of Human Rights, Convention, freedom of religion, right to education

1. Introduction

Islam is one of the world's largest religions, that counts approximately 1.6 billion believers, which representing 23% of the total population. The founder of the Islamic religion is considered to be the Prophet Muhammad. He was born in Mecca in 570. In his fortieth year of life, he began to have visions of the god Allah (Allah) who commanded him to convey his message to the people (Syed, M.H, Syed, S.A, Usmani, B, 2011: 11). Shortly after the death of the Prophet Muhammad, the teaching spread of this religious started to spread in the countries around the world. This action has also led to the creation of mistrust and prejudice against members of the Islamic

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faith by members of other faiths, especially Christians.[2] The term Islamophobia, coined in 1922, refers to the attitudes and prejudices of the non-Muslim population towards members of the Islamic faith (Alghamdi, A, 2011: 19). Although this term originated only at the beginning of the 20th century, regarding the existence of fear of Muslims by the Christian population, it should be noted that there is a history of over fifteen centuries, that is full of examples of violence against each other due to lack of mutual understanding and prejudice. Regardless of the previous, there were examples of coexistence of members of these religious communities, although the relationship between these two religions is often permeated with violence. The growing Muslim population in Western Europe has only heightened prejudices against them.

Wanting to enable the international legal protection of individuals, the Council of Europe adopted the European Convention on Human Rights and Fundamental Freedoms on 4 November 1950 (hereinafter: the Convention). Any individual may apply to the European Court of Human Rights (hereinafter: the Court) if he considers that his rights, that are provided under the Convention, have been violated. Members of the Islamic faith are victims of violations of various rights enshrined in the Convention.

Even the adoption of the Convention could not remove the deep-rooted prejudices against members of the Islamic faith. Namely, as a result of their history and constant manifestations of prejudice, violence and discrimination, members of the Islamic community have become a minority whose rights under the Convention are particularly endangered. Regardless of the fact that members of the Islamic faith can be found as victims of violations of all rights under the Convention, the subject of analysis of this scientific article will be the case law of the Court regarding the right to education.

2. The right to education of Muslims through freedom of religion in the case law of the European Court

In the case of Dahlab v. Switzerland, the applicant Lucia Dahlab complained about the decision of the school authorities to ban her from wearing a headscarf during the lecture. Previously, she wore a headscarf to school for several years without any problems. She claimed that the school measure which prohibited her from wearing the headscarf while she performed teaching, violated her freedom of religion, guaranteed by Article 9 of the Convention. She further complained that the Swiss courts had erred in accepting that the measure had a sufficient legal basis and in believing that there was a threat to public safety and the protection of public order. She noticed that the fact that she wore an Islamic headscarf went unnoticed for four years and that it did not seem to cause any obvious disorders at school. In regard to Article 9, she argued that the mention ban imposed by the Swiss authorities constituted discrimination on grounds of sex within the meaning of Article 14 of the Convention,

[2] Retrieved 11, May 2018, from: http://www.searcct.gov.my/publications/our-publications?id=41

prohibition to them. On the other hand, the Government stated that the measure that prohibited the applicant to wear a headscarf while perform teaching in a public school did not constitute an interference with her right to freedom of religion. In this regard, they drew attention to the principle that public schools are not religious buildings, as provided for in Article 27, paragraph 3 of the Federal Constitution. The principle of secularism is applied in every public school in Switzerland. The Government argued that the applicant was qualified to teach children between the ages of four and eight and that she was accordingly able to work with children in private schools; such classes, of which there were many in the canton of Geneva, were not bound by the demands of secularism. If the Court considers that the measure in question constituted an interference with the applicant's right to freedom of religion, the Government alternatively argued that the interference was necessary under Article 9 § 2 of the Convention. The interference, the Government claimed, had a basis in the law. Article 27, paragraph 3 of the Federal Constitution obliged everyone to respect the principle of confessional neutrality in schools. The Government argued that the aims pursued in the present case were undoubtedly legitimate and were among those listed in the second paragraph of Article 9 of the Convention. In their view, the measure which prohibited the applicant to wear the Islamic headscarf was based on the principle of religious neutrality in schools and, more broadly, on the principle of religious harmony. At the same time, the ban was necessary in a democratic society. According to the Government, where the applicant was bound to the State by a special status, the national authorities enjoyed a wider margin of appreciation in restricting the exercise of their liberty. As a teacher in a public school, the applicant freely accepted the requirements arising from the principle of confessional neutrality in schools. As a civil servant she represented the state. Therefore, her behavior should not suggest that the state identified with one religion and not with another. This was especially true where devotion to a particular religion was manifested by a strong religious symbol, such as wearing an Islamic headscarf (Dahlab v. Switzerland).

The Court emphasized that, although freedom of religious is primarily a matter of the conscience of the individual, it also implies the freedom to manifest one's own religion. Further more, in democratic societies, where several religions coexist within the same population, it may be necessary to restrict this freedom in order to reconcile the interests of different groups and ensure that all beliefs are respected (Kokkinakis v. Greece, § 31, Otto-Preminger-Institut v. Austria, § 47).

The Court made the observations on the term "prescribed by law" from paragraph 2 of Article 9 and put the rule in the case law. The term prescribed by law, at first "represents that the law must be adequately available: the citizen must be able to have an indication that the law is adequate in the circumstances of the legal rules applicable to the case. Second, a norm cannot be considered as a law, if it is not formulated with sufficient precision to enable a citizen to regulate his conduct: he must be able - if necessary with appropriate advice - to foresee, the consequences that

a particular action may cause." The text of many laws is not absolutely accurate. The need to avoid excessive rigidity and keep up with changing circumstances means that many laws are inevitably set in terms that are, to a greater or lesser extent, unclear. Interpretation and application of such acts depend on practice(The Sunday Times v. the United Kingdom). Examining the Federal Court's reasoning on this point, the Court notes that sections 6 and 120 (2) of the Cantonal Law of 6 November 1940 were sufficiently precise to enable citizens to regulate their conduct. The measure in question is therefore prescribed by law within the meaning of Article 9 § 2 of the Convention. The applicant further claimed that the measure did not pursue a legitimate aim. Taking into account the circumstances of the case and the actual conditions of the decisions of the three relevant authorities, the Court considered that the measure pursued legitimate aims within the meaning of Article 9 § 2 (Dahlab v. Switzerland).

Finally, returning to the above mention facts of the case Dahlab v. Switzerland, considering whether the measure was necessary in a democratic society, the Court reiterates that, according to settled case-law, States parties have some discretion in assessing the existence and extent of the need for interference, but this margin is subject to European scrutiny, including law and decisions that enforce it, even those made by independent courts. The Court notes that the Federal Court considered that the measure prohibiting the applicant from wearing the headscarf was justified by potential interference with the religious beliefs of her students, other students at the school and parents of the students, and violation of the principle of confessional neutrality in schools. Accordingly, in weighing the teacher's right to practice her religion according to the need to protect students by preserving religious harmony, the Court considers that, in the circumstances of the case and taking into account, above all, the age of the children for which the applicant was responsible exceeded their discretion and that the measure they had taken was therefore not unreasonable. In the light of the above considerations and those established by the Federal Court in its judgment of 12 November 1997, the Court notes that the impugned measure may be considered justified in principle and proportionate bearing in mind the aims to protect the rights and freedoms of others, public order and public safety. Accordingly, the Court emphasizes that the measure that prohibited the applicant from wearing a headscarf during the lecture was necessary in a democratic society. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention(Dahlab v. Switzerland).

With regard to the applicant's complaints that there had been a violation of Article 14 in conjunction with Article 9 of the Convention, the Court notes that the promotion of gender equality is today a major goal in the member States of the Council of Europe. This means that very important reasons should be given for the difference in treatment based on sex, to those acts will be considered as compatible with the Convention (Abdulaziz, Cabales and Balkandali v. the United Kingdom,

§ 78, Schuler-Zgraggen v. Switzerland, § 67). The Court notes that, in the present case, the measure that prohibited the applicant from wearing the Islamic headscarf, exclusively in the context of her professional duties, was not aimed at her as a woman, but pursued a legitimate aim of ensuring the neutrality of the state primary education system. Such a measure could also be applied to a man who in similar circumstances wore clothes that clearly identified him as a member of another religion. Accordingly, the Court concludes that there was no discrimination on grounds of sex in this case. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention (Dahlab v. Switzerland).

Observing the problems that arose in the mentioned case, a comparative analysis was made with the current situation in Switzerland. The pursuit of religious neutrality has become imperative throughout Europe and the mentioned country is no exception. Progress can be seen both in newest court decisions regarding the wearing of headscarves in private companies, which is also an exception and deviation from the rules after 25 years of the opposite attitude,[3] and also when it comes to state affairs. Namely, it is indisputable that in Switzerland, in terms of religious freedom, the teachers in schools were mostly the subject of restrictions. It is unequivocal that religious neutrality should be pursued in every field, therefore also in schools, and that in this domain a particularly high level of protection must be provided (Tribunal Fédéral, ATF 116 Ia 252 (Switzerland)). Building on these allegations, the courts in Switzerland emphasized that it is necessary to deny teachers the possibility of wearing a headscarf/hijab in order to protect religious peace in the school and respect the religious beliefs of students and their parents, as already shown in the above-mentioned judgment Dahlab v. Switzerland. However, precisely for the sake of achieving religious neutrality, it was necessary to adopt the newly rule that provide the right of every individual to express his religion, in the way he feels it, and also the opinion that "wearing a headscarf makes one neither rude nor undisciplined," as said Federal Judge Florence Aubry Girardin.[4] If we are talking about the neutralism that we strive for, we must first of all point out that the law allows students to express their faith in schools, including the permission for students to wear the hijab while in class. In accordance with the above, the question arises as to how religious neutrality is pursued with such an example if one permit violates another. In fact, allowing students to wear the hijab (which is an indisputable right of every individual) goes against the prohibition of female teachers to exercise the same right, with the reasoning that this kind of a rule ensures peace in the school. By depriving the teacher of the mention right, it prevents the individual from having complete freedom, which, according to all international agreements, belongs to every person. In this way, an individual who

[3] Retrieved 18, July 2022 from: https://www.swissinfo.ch/eng/religious-discrimination_swiss-court-you-can-t-be-fired-for-wearing-a-headscarf/42537420

[4] Retrieved 20, July 2022 from: https://www.swissinfo.ch/eng/religious-freedom_federal-court-rejects-school-headscarf-ban/41833638

is at his workplace does not fully transmit his personality and attitude, which is why it is assumed that the person is employed, with the appropriate professional degree (Lindemann, A, 2021: 9-13). This kind of illogicality led to the fact that children, who chose to wear the hijab, were victims of ridicule and rejection by members of other religions, without the possibility of providing protection from teachers. Also, the non-Muslim teachers themselves looked at the Muslim children differently. Accordingly, as the law does not set a clear limit that religious neutrality can be achieved precisely in such a way that each individual have the right to express their religion, with the imposition of an obligation on everyone to respect the expression of another person's religion, there is an imbalance in rights and obligations of people throughout Switzerland. Today, in Switzerland, there are centers funded by the state to support victims of racism and to record the racist incidents that are reported to trained staff and there are also Muslim associations that provide support to their members if they experience discrimination (Lindemann, A, 2021: 1).

The next case, which will be the subject of analysis, is Kurtulmuş v. Turkey. The case concerned a ban on a university professor wearing an Islamic headscarf in the exercise of her functions. At the time of the event, the applicant was an associate professor at Istanbul University. She stated that she received her doctorate in 1992 and passed the competitive exam for higher teaching positions in 1996, while wearing the Islamic headscarf. In 1998, she was subject to a disciplinary investigation under the applicable rules relating the dress code of civil servants, which resulted with warning her and a two-year ban on promotion for non-compliance with the rules. As she continued to wear the headscarf while performing her duties, she received a reprimand and was considered to have resigned. After the hearing, the Administrative Court rejected her request for the abolition of the last of these sentences. She then appealed to the Supreme Administrative Court against the severity of the sentence. Before the Supreme Administrative Court could investigate the case, a new law came into force, whose provisions amnestied civil servants who were subject to disciplinary measures and erased the effects of such measures. After the applicant requested that her case continue to be conducted despite the amnesty, the Supreme Administrative Court upheld the first-instance judgment, without holding a hearing. According to the information available to the Court, it appears that the applicant did not seek reinstatement. She claimed that her ban on wearing a headscarf during the lecture violated her rights guaranteed by Article 9 of the Convention.

Despite the amnesty and the fact that she did not request to return to work, the Court considered that it's a necessity to continue examining her complaints, which was essentially an allegation that her right to practice her religion had been violated as a result of the dress code imposed on civil servants. The Court acted on the grounds that the disputed rules constituted interference with the exercise of the right in question.

The interference could be considered to have pursued legitimate aims - to protect the rights and freedoms of others and to prevent disorder. As to whether this was necessary, Article 9 of the Convention does not give to individuals, who have chosen to behave in a certain way on the basis of their religious beliefs, the right to disregard with the rules that have been proved as justified. This principle was also applied to civil servants. The Court therefore had to consider whether, in this case, existed a fair balance between an individual's fundamental right to freedom of religion and the legitimate interest of a democratic state to ensure that his civil service adequately achieves the purposes listed in the Article 9 § 2. In a certain context of the relation between the state and religions, the role of the domestic policy maker should have been given special weight. In a democratic society, the state had the right to restrict the wearing of Islamic headscarves if the practice would conflict with the goal of protecting the rights and freedoms of others. In this case, the applicant chose to become a civil servant. The tolerance shown by the authorities, relied on by the applicant, did not make the rule at issue less legally binding. The code of conduct in question, which applied without distinction to all members of the civil service, aimed to support the principles of secularism and neutrality of the civil service, and in particular public education. Furthermore, the scope of such measures and the arrangements for their implementation must inevitably be left to the State concerned. Accordingly, given the freedom of assessment enjoyed by the Contracting States in this matter, the interference in question was justified in principle and proportionate to the aim pursued, leading to the conclusion that the applicant request was manifestly ill-founded (Kurtulmuş v. Turkey).

If we compare this kind of ECtHR decision with generally accepted standards, we can see that religious neutrality and impartiality can be achieved in this way. Namely, in this domain, the ECtHR has a firm position, and since the establishment of the court until today, there have been no deviations in terms of making final decisions. This means that a general rule was established from which there were no deviations - considering that civil servants represent the state when performing their duties, their appearance need to be neutral in order to preserve the principle of secularism and its corollary, the principle of a neutral public service, which the European Court just repeated in the case in question. Neutrality is achieved precisely in the way that the aforementioned rule applies to all religious clothing, and not exclusively to members of the Muslim faith. Although in this way one of the basic human rights is encroached upon, there is a legitimate goal on the part of the state, and accordingly, there is no violation of the established right. Impartiality and neutrality are achieved precisely in such a way that, by using a legitimate goal, it is possible for all employed civil servants to be equal to each other when representing the state, as well as vice versa - to avoid any form of discrimination or any other form of prohibited behavior when working with a civil servant, based on belonging to a certain religion, in such a way that the question of what religion a specific person manifests remains under the

veil. It is important to note that such a rule does not mean a ban on an individual to publicly profess his religion, but only a restriction in the public interest concerning wear religious clothing in the workplace for the sake of achieving a higher goal.

The next case is Leyla Şahin v. Turkey. The applicant, Leyla Şahin, is a Turkish nationality, born in 1973. She has lived in Vienna since 1999, when she left Istanbul to study medicine at the Medical Faculty of the University of Vienna. She comes from a traditional Muslim family and considers as their religious duty to wear the Islamic headscarf. At the time, she was a fifth-year student at the Medical Faculty of Istanbul University. On February 23, 1998, the Vice Dean of the University issued a circular order denying bearded students and students wearing Islamic headscarves access to lectures, courses and exams. In March 1998, the applicant was denied to access to a written examination in one of the subjects because she wore an Islamic headscarf. After that, the university authorities refused to enroll her in the course or to take her to various lectures and a written exam on the same grounds. The faculty also issued her a warning for violating university dress codes and suspended her from the university for a semester for participating in an unauthorized assembly that gathered to protest against them. All disciplinary sanctions imposed on the applicant were revoked by the Amnesty Act.

The applicant complained under Article 9 of the Convention, stating that she was prohibited from wearing the Islamic headscarf at the university, and that this principles were unjustified interference with her right to education, within the meaning of Article 2 of Protocol No. 1. Also, she stated, that on the same background, there was cumulatively violation of Article 14 in conjunction with Article 9, arguing that the prohibition on wearing the Islamic headscarf obliged students to choose between education and religion and discrimination against those kind of a believers. Finally, she alleged a violation of Articles 8 and 10 of the Convention.

The Court concluded that there had been no violation of Article 9 of the Convention. Namely, the Court concluded that there is a legal basis in Turkish law for interfering with the applicant's right to express her faith, as previously ruled by the Turkish Constitutional Court that wearing a headscarf at universities was unconstitutional. Therefore, it should be clear to the applicant from the moment she entered the university that there are restrictions on wearing Islamic religious symbols, and that she will be denied to access to lectures and exams if she continues to wear them. Taking into account the margin of discretion of States in this matter, the Court further considered that interference could be considered necessary in a democratic society for the purposes of Article 9 § 2 of the Convention. In other words, the Court held that the impugned interference primarily had legitimate aims to protect the rights and freedoms of others and to protect public order. As to whether the interference was necessary, the Court noted that it was based in particular on the principles of secularism and equality. According to the case law of the Constitutional Court, secularism, as a guarantor of democratic values, was a meeting place of freedom and

equality. The principle prevented the state from showing a preference for a particular religion or belief; thus he led the state in its role of an impartial arbiter and necessarily implied freedom of religion and conscience. It also served to protect the individual not only from arbitrary interference by the state but also from external pressure from extremist movements. The Constitutional Court added that the freedom to manifest one's own religion may be restricted in order to defend those values and principles. Like the Chamber, the Grand Chamber considered that the notion of secularism was in line with the values of the Convention. Supporting this principle could be considered necessary to protect the democratic system in Turkey. The Court also noted that in the Turkish constitutional system protection of women's rights is even more pronounced. Gender equality - recognized by the European Court as one of the key principles underlying the Convention and a goal to be achieved by Council of Europe member states - has also been established by the Turkish Constitutional Court as a principle that implies values underlying the Constitution.

Contrary to the Chamber's decision, the Grand Chamber considered that, taking into account the particular circumstances of the case, the fundamental importance of the right to education and the position of the parties, the appeal under Article 2 of Protocol No. 1 could be considered separate from the appeal under Article 9 of the Convention. Therefore, a separate examination is necessary. Bearing in ming the applicability of Article 2 of Protocol No. 1, the Court reiterated that it is crucial that the Convention is interpreted and applies in a way that makes its rights practical and effective, and not theoretical and illusory. Moreover, the Convention was a living instrument that had to be interpreted in the light of today's conditions. Although the first sentence of Article 2 basically established access to primary and secondary education, there was no "watertight" division that would separate higher education from other forms of education. In a series of recently adopted instruments, the Council of Europe emphasized the key role and importance of higher education in promoting human rights and fundamental freedoms and strengthening democracy. Consequently, it would be difficult to imagine that the higher education institutions, that existed at the time, were not covered by the first sentence of Article 2 of Protocol No. 1. Although this article did not impose a duty on Contracting States in such institutions, any State that adopted this rule was obliged to grant to citizens an effective right of access. In a democratic society, the right to education, which was necessary for the promotion of human rights, played such a fundamental role that a restrictive interpretation of the first sentence of Article 2 of Protocol No. 1. would not be in line with the aim or objective of that provision. Accordingly, the Court considered that any higher education institutions that existed at the time, fell within the scope of the first sentence of Article 2 of Protocol No. 1, given that the right of access to such institutions was an integral part of the right specified in that provision. In its case, analogous to the reasoning of the interference with Article 9, the Court accepted that the regulations that denying the applicant access to various lectures and examinations

for wearing an Islamic headscarf constituted a restriction on her right to education, despite the fact that she had access to university and that she could read the subject of her choice in accordance with the results she achieved at the university entrance exam. As with Article 9, the restriction was predictable and pursued legitimate aims, and the used means were proportionate. The measures in question obviously did not hinder the students in performing the duties imposed by the usual forms of religious respect. Second, the decision-making process for the application of internal regulations met, as far as possible, the requirement to weigh the various interests at stake. University authorities have reasonably sought a means by which they can avoid rejecting headscarves while respecting their obligation to protect the rights of others and the interests of the education system. Finally, the process appears to have been accompanied by safeguards - a rule requiring compliance with the statute and judicial review - that were able to protect students' interests. Furthermore, the applicant could reasonably have foreseen that she risked being denied to access to lectures and examinations if, as later happened, she continued to wear the Islamic headscarf after 23 February 1998. In these circumstances, the ban on wearing the Islamic headscarf did not violate the very essence of the applicant's right to education and nor did it conflict with other rights contained in the Convention or its protocols. The Court therefore finds that there has been no violation of Article 2 of Protocol No. 1 (Leyla Şahin v. Turkey).

The aspiration of neutrality and impartiality is most clearly reflected in the above mention case, in the way that has already been described in this paper. When passing the law, Turkey did not prevent members of a certain religion from accessing higher education, but for the sake of protection in a democratic society, it decided on a dress code when visiting higher education institutions. In support of the state's claims that there was no discrimination against members of the Muslim faith, and that the state strives exclusively for neutrality, is the fact that the specific rule is applied to students of any religious orientation shows.Of such a legal text, the rule of Turkey concerning compulsory attendance of religion classes is more worrying. Only students who marked "Christian" or "Jewish" on their national identity cards may apply for an exemption from religion classes. Atheists, agnostics, Alevis or other non-Sunni Muslims, Baha'is, Yezidis, or those who left the religion section blank on their national identity card are not exempt from the classes.[5] However, bearing in mind the fact that in regard to this problem, Turkey's top court made a decision on the violation of human rights, there is hope for the correct action in the future, that is for the abolition of compulsory attendance at religion classes.

On the other hand, Turkey's aspiration to achieve religious neutrality within the country's borders is reflected in the fact that Labor Law of Turkey prescribed that private and public sector employers may not discriminate against employees based on religion. Also, new national identity cards contain no specific section to identify

[5] Retrieved 18, July 2022, from: https://www.state.gov/wp-content/uploads/2019/05/TURKEY-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf, 6.

religious affiliation, while the old national identity cards included numerous religious identities such as: Muslim, Greek Orthodox, non-Orthodox Christian, Jewish, Hindu, Zoroastrian, Confucian, Taoist, Buddhist, No Religion, or Other.[6] In this way, the shortcomings of the previous legal text have been corrected, which shows the desire for neutral treatment towards all persons, regardless of their religion.

Similar situation was in the case of Köse and Others v. Turkey. Namely, students from public high schools, who were religiously oriented, had a ban to wear the Islamic headscarf during classes. The applicants claimed that they had been allowed to attend school wearing Islamic headscarves until 26 February 2002, after which student who wear headscarves was no longer allowed to enter schools. The measure was based on a directive from the Istanbul Governor's Office of 12 February 2002, which required head teachers and teaching staff to ensure rigorous compliance with the applicable rules on student dress. Anyone who fail with this rule, will be punished.

Relying on Article 9 of the Convention, the applicants complained, in particular, that the ban on wearing the Islamic headscarf in the schools in question constituted an unjustified violation of their right to freedom of religion and their right to practice their religion. It was also alleged that the measures violated the rights under Article 2 of Protocol No. 1. Parents have enrolled their children in schools in the belief that they will receive an education that is in line with their religious beliefs. However, the measures imposed since February 2002 denied them that right.

The Court declared the applicants' submission inadmissible. The dress code imposed on students was a general measure that applied to all students regardless of their religious beliefs. Accordingly, even assuming that there had been an interference with the applicants right to profess their religion, there had been no violation of Article 9 of the Convention. Further more, as regards to the applicants' complaints under Article 2 of Protocol No. 1.of the Convention, the Court found, on the one hand, that the restriction at issue was based on clear principles and aimed proportionately at preventing disorder and protecting the rights and freedoms of others, and also to preserving the neutrality of secondary education. On the other hand, the Court stat that the dress code imposed in this case and related measures did not violate the right set in the second sentence of Article 2 of Protocol No. 1. In other words, the Court noted that the institutions in question, although their main task was to train future religious officials, aren't denominational schools and were not exempt from the principle of secularism. As a result, the state that established these institutions, must continue to fulfill its role of impartial arbitrator and must ensure that the expression of students religious beliefs in schools does not take on the nature of a boastful act that could be a source of pressure and exclusion. In this case, both students and their parents were informed about the consequences that would result from non-compliance with the applicable rules, and the refusal of students with headscarves to enter the school premises was not accompanied by disciplinary measures. Furthermore, the disputed rules did not deprive parents of the opportunity to lead their children in a direction

[6] *Ibid*, 6.

consistent with their own religious or philosophical beliefs. Accordingly, the dress code imposed in this case and related measures did not violate the right set out in the second sentence of Article 2 of Protocol No. 1, which leads us to the conclusion that the request in this case was obviously ill-founded (Köse and Others v. Turkey).

Due to similarities, we will simultaneously analyze two cases of Dogru v. France and Kervanci v. France. Namely, the applicants, Belgin Dogru and Esma-Nur Kervanci, are French nationals born in 1987 and 1986. In both cases, the applicants were expelled from school as a result of their refusal to take off their headscarves during physical education and sports classes. Ms. Dogru, eleven years old at that time, and Ms. Kervanci, twelve years old at that time, both Muslims, were enrolled in the first year of Flers State High School for the 1998/1999 school year. year. On many occasions, in January 1999, the applicants went to physical education and sports classes wearing headscarves and refused to take them off, despite multiple requests from a teacher who explained that wearing a headscarf was incompatible with physical education classes. In February 1999, the school disciplinary commission decided to expel the applicants from the school because they did not actively participate in physical education and sports classes. In March 1999, the director of education, supported the school's disciplinary board's decision, after obtaining the opinion of the Appeals Chamber. The commission justified the ban on wearing a headscarf during physical education classes based on respect for internal school rules, such as those governing safety, health and dexterity. On 5 October 1999 the Administrative Court rejected the complaints lodged by the applicants' parents seeking the annulment of the decision of the Director of Education. The Court concluded that, by attending physical education and sports classes in clothing that did not allow them to participate in the classes in question, the applicants had failed to fulfill their obligation to attend classes; that their attitude created an atmosphere of tension in the school and that based on all the factors involved, their expulsion from school was justified, regardless of the proposal they made at the end of January to wear a hat instead of a headscarf. The Nantes Administrative Court of Appeal subsequently upheld those judgments, noting that the applicants had exceeded the limits on their right to express and manifest their religious beliefs on school premises. Finally, the State Board declared inadmissible the appeal on points of law lodged by the applicants' parents. The applicants stated that after their expulsion they had continued their schooling in part-time classes.

Relying on Article 9 of the Convention, the applicants complained of a violation of their right to religion. They also claimed that they had been deprived of their right to education within the meaning of Article 2 of Protocol No. 1.

The Court noted that the purpose of restricting the applicants' right to express their religious beliefs, was to comply with the requirements of secularism in public schools. Based on the decisions of the competent state bodies on this issue, the Court noted that wearing religious signs is not essentially incompatible with the principle of secularism in schools, but it eventually became, according to the circumstances

from which they wore and the consequences that wearing a sign could have. In this regard, the Court referred to earlier judgments in which it considered that national authorities had a duty to ensure that, in accordance with the principle of respect for pluralism and freedom of others, students who practiced their religious beliefs in school premises shouldn't be a source of pressure and exclusion. In the Court's view, it seems that the French secular model has indeed responded to this concern. In the applicants' cases, the Court considered that the conclusion of the national authority that wearing a veil, such as an Islamic headscarf, was incompatible with sports lessons for health or safety reasons was not unreasonable. The Court accepted that the imposed sentence was merely a consequence of the applicants' refusal to comply with the rules applicable on the school premises - of which they had been duly informed - and not of their religious beliefs, as they claimed. The Court also noted that the disciplinary proceedings against the applicants had fully fulfilled their duty to strike a balance between the various interests at stake and had been accompanied by protective measures capable of protecting the interests of the students. With regard to the choice of the most severe punishment, the Court reiterated that, when it comes to ways and means of ensuring compliance with internal rules, it is not the Court's role to replace its own vision with the vision of disciplinary bodies, which were, since direct and continuous contacts, with in the best position to assess the local needs and conditions or requirements of a particular training. The Court therefore considered that the penalty of expulsion did not appear disproportionate and noted that the applicants had been able to continue their education in part-time hours. It was clear that the applicants' religious beliefs had been fully taken into account in relation to the requirements of the protection of the rights and freedoms of others and public order. It was also clear that the appeal decision was based on these claims and not on any objections to the applicants' religious beliefs. Accordingly, the Court concludes that the interference in question was justified in principle and proportionate to the aim pursued and therefore there has been no violation of Article 9 of the Convention. The Court concludes that no special issue had been raised under Article 2 of Protocol No. 1, because the relevant circumstances were the same as for the appeal already examined under Article 9 of the Convention (Dogru v. France;Kervanci v. France).

We had similar situations in the Aktas v. France, Bayrak v. France,Gamaleddyn v. France, Ghazal v. France, J. Singh v. France and R. Singh v. France. These cases involved the expulsion of six students from school for wearing conspicuous religious symbols. The girls Aktas, Bairak, Gamaleddyn and Ghazal, as well as the boys Jasvir Singh and Ranjit Singh were enrolled in various public schools in 2004/2005. On the first day of school, the girls wore Muslim headscarves, while the boys wore turbans. As they refused to remove religious symbols, they were barred from entering to the classroom and were expelled from school after a period of dialogue with their families for violating education laws. They complained before the Court of a violation of the Article 9 of the Convention.

In all these cases, the ban on wearing religious symbols restricted the applicants' freedom of religion. This restriction is provided for by the law which came into force on 15 March 2004 (and repeated in Article L. 141-5-1 of the Education Code), with the legitimate aim to protect the rights and freedoms of others and public order. The Court pointed out that the measure of expulsion from school can be explained by the requirements of protection of the rights and freedoms of others and public order, and not by any objections to the religious beliefs of students. The Court reiterated the importance of the role of the state as a neutral and impartial organizer of the exercise of different religions, faiths and beliefs. The Court also reiterated that a spirit of compromise among individuals is necessary to maintain the values of a democratic society. The prohibition of all conspicuous religious symbols in all classes of public schools was based on the constitutional principle of secularism, which was in line with the values protected by the Convention and the case law of the Court.

The Court agreed with the opinion of the French authorities that the permanent wearing of a headscarf is also a manifestation of religious affiliation. Accordingly, the Court pointed out that the law from 2004 had to be applied to the appearance of new religious symbols, as well as to potential attempts to circumvent the law. As for the penalty of expulsion, it was not disproportionate, because the students still had the opportunity to continue their education through correspondence courses. The government's interference in the students' freedom to profess their faith was justified and proportionate to the goal pursued. Accordingly, their appeals apropos Article 9 had to be dismissed as manifestly ill-founded.

Regarding the complaints of the Gamaledin parents, against the procedure that the school conducted due to the expulsion of their daughter, the Court point out that the school authorities, in accordance with the valid rules, provided the girl with pedagogical supervision during the legal period of dialogue. Therefore, such a transitional period was neither illegal nor arbitrary. Therefore, this part of the application in the Gamaledin case was manifestly ill-founded and had to be rejected. The Court also dismissed as manifestly ill-founded the applications of Gazal Aktas and Jasvir and Ranjit Singh, regarding Article 14 in conjunction with Article 9 of the Convention, because the law in question applied to all conspicuous religious symbols.

Bearing in mind the complaints lodged by Gazal and Aktas, Bairak, Jasvir Singh and Ranjit Singh concerning Article 2 of Protocol No. 1, the Court considered that no special issue was raised under this heading and that it should not have examined these appeals. As to the complaint of Gamaleddin parents, under Article 4 of Protocol No. 7, that their daughter had been punished twice for the same act, the Court rejected this part of the application on the grounds that this article applied only to criminal offenses. The Court therefore found that all six applications had to be rejected (Aktas v. France; Bayrak v. France; Gamaleddyn v. France; Ghazal v. France; J. Singh v. France; R. Singh v. France).

Bearing in mind the fact that numerous previous cases concern precisely the legal framework of France, at the very end we can give an account that concerns only that specific country. France was the first country to ban it in 2011 to wear a face covering veil or other masks in public spaces. However, veils, scarves and other headwear that do not cover the face are unaffected by this law.[7] If we interpret the ban extensively, as it apparently happens on the territory of France, it was pointed out that the ban "reduces the secondary educational attainment of Muslim girls" as well as reducing the "social integration of Muslim women into French society" (Abdelgadir, A; Fouka, V (2020: 707–723). According to this rule, the question clearly arises whether the ECtHR has correctly made its decisions in the mentioned cases. Namely, there is a clear difference between full face coverage versus partial face coverage. As it is clearly indicated that it is not illegal to cover some parts of the face, the question arises whether schools or universities, that disciplined students, removed them from classes or even expelled them from school or lectures, were actually obliged to adopt less restrictive rules, which would allow the wearing of those religious clothes that leave the face partially open. We are especially led to this opinion by the stance of the European Commission against Racism and Intolerance, who underlines that "that combating denigration and negative religious stereotyping of persons through education is the best way of addressing anti-Muslim stereotypes" and that "teaching about anti-Muslim racism and discrimination needs to be integrated into the school curriculum as part of broader lessons on citizenship, human rights, tolerance and the fight against racism" (Council of Europe, 2022: 19). Accordingly, it would be necessary to make a clear distinction between, say, a headscarf versus a hijab.

3. Conclusion

Members of the Islamic faith are often confronted with various prejudices. They are embodied in everyday life. Wearing symbols of their denomination, they attract the attention not only of ordinary citizens, but also of the state. Some countries across Europe have decided to ban the wearing of religious symbols in certain situations. In this regard, Muslims believe that certain rights and freedoms prescribed in the Convention are being abridge. In several cases, they appealed to the Court, arguing that the States had denied them the right to freedom of religion as well as the right to education provided in Article 2 of Protocol No. 1 of the Convention. The Court did not find a violation of Article 9, since the States has explained that the prohibition of certain religious freedoms was prohibited by the reasons set out in Article 9 § 2 of the Convention. Bearing in mind this conclusion by the Court, the same decision was taken for the right to education.

A comparative analysis of the mention countries - France, Turkey and Switzerland, leads us to somewhat similar conclusions. Each of the mentioned countries is fighting for religious neutralism and impartiality, especially bearing in mind the fact that they are signatories to numerous international documents which

[7] Retrieved 22, July 2022, from: https://en.wikipedia.org/wiki/French_ban_on_face_covering

guarantee the right of individuals to confess and manifest their religion. However, as a contracting state, states use their margin of discretion when enacting legal texts concerning the wearing of religious clothing in public places or at work. Although it is indisputable that in numerous cases the actions of the mentioned countries did represent interference, but which was in accordance with the law and had a legitimate goal, we can conclude that, according to all the given facts, members of certain religions feel that they are deprived and unequal compared to members of others faith, and precisely in the way that the forced request not to wear religious clothes grossly increases their religious commitment. In fact, how would a member of the non-Muslim faith act if the obligation to wear hijab were imposed on him? In order to express dissatisfaction in this regard as well, we can conclude that the space should be left for an individual to wear religious clothing in accordance with his belief to the extent that it does not grossly insult an individual of another faith. The neutrality of the state would be reflected in the fact that the treatment of each individual would be identical, regardless of religious customs, and in such a way that everyone would have the same access to education and employment under equal conditions (which are not restrictive on religious grounds).

There are good reasons to expect new cases in front of the Court in the future, in which members of the Islamic faith claim to have been denied theirs right under Article 9 of the Convention. However, it can be expected that in some similar cases, potential applicants will be discouraged from approaching the Court in view of the established practice.

Literature

1. Abdelgadir, Aala; Fouka, Vasiliki (2020). *Political Secularism and Muslim Integration in the West: Assessing the Effects of the French Headscarf Ban.* American Political Science Review. 114 (3): 707–723;
2. Abdulaziz, Cabales and Balkandali v. the United Kingdom, app. no. 9214/80, 9473/81 and9474/81, ECHR;
3. Aktas v. France, app. no. 43563/08, ECHR;
4. Alghamdi, A. (2019). *Transformations of the Liminal Self: Configurations of Home and Identity for Muslim Characters in British Postcolonial Fiction*. Bloomington: iUniverse Publishing;
5. Bayrak v. France, app. no. 14308/08, ECHR;
6. Council of Europe. (2022) *ECRI General Policy Recommendation No. 5 (revised) on preventing and combating anti-Muslims racism and discrimination*. European Commission against the Racism and Intolerance (ECRI);
7. Dahlab v. Switzerland, app. no. 42393/98, ECHR;
8. Dogru v. France, app. no. 27058/05, ECHR;
9. Gamaleddyn v. France, app. no. 18527/08, ECHR;
10. Ghazal v. France, app. no. 29134/08, ECHR;

11. J. Singh v. France, app. no. 25463/08, ECHR;
12. Kervanci v. France, app. no. 31645/04, ECHR;
13. Kokkinakis v. Greece, app. no. 14307/88, ECHR;
14. Köse and Others v. Turkey (dec.), app. no. 26625/02, ECHR;
15. Kurtulmuş v. Turkey, app. no. 65500/01, ECHR;
16. Leyla Şahin v. Turkey, app. no. 44774/98, ECHR;
17. Lindemann, A. (2021). *Discrimination against Veiled Muslim Women in Switzerland: Insights from Field Experts*. Religions 12;
18. Otto-Preminger-Institut v. Austria, app. no. 13470/87, ECHR;
19. R. Singh v. France, app. no. 27561/08, ECHR;
20. Retrieved 11, May 2018, from:http://www.searcct.gov.my/publications/our-publications?id=41;
21. Retrieved 18, July 2022 from: https://www.swissinfo.ch/eng/religious-discrimination_swiss-court-you-can-t-be-fired-for-wearing-a-headscarf/42537420;
22. Retrieved 20, July 2022 from: https://www.swissinfo.ch/eng/religious-freedom_federal-court-rejects-school-headscarf-ban/41833638;
23. Retrieved 22, July 2022, from: https://en.wikipedia.org/wiki/French_ban_on_face_covering;
24. Retrieved 18, July 2022, from: https://www.state.gov/wp-content/uploads/2019/05/TURKEY-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf;
25. Schuler-Zgraggen v. Switzerland, app. no. 14518/89, ECHR;
26. Syed, M.H, Syed, S.A, Usmani, B, 2011: 11
27. Syed, M. H., Syed S. A., Usmani, B. (2011). *A Concise History of Islam*. New Delhi: Vij Books India;
28. The Sunday Times v. the United Kingdom, app. no. 6538/74 ECHR;
29. Tribunal Fédéral, ATF 116 Ia 252 (Switzerland).