

# Freedom of Religion or Belief: The Right to Wear the Hijab in Public Spaces<sup>1</sup>

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Wearing the hijab is a religious command and obligation prescribed by Islamic law. It is not merely a religious or political symbol, as portrayed by those advocating for its ban. For Muslim women, wearing the hijab is a significant aspect of practicing the rules and teachings of their faith. This commitment is not conditioned by any specific public place, as the nature of Islamic teaching does not recognize the separation or division of the life of Muslims who practice their faith. This is a fact on which Islamic scholars have agreed both in the past and present, and it has been confirmed by Muslim experts across all parts of the world.<sup>2</sup>

## Abstract

Despite the achievements of Western civilisation and regulations requiring gender and religious equality, Europe still exhibits a low tolerance for Muslim dress practices. France may be considered a leader in this, as, after banning the hijab in institutions, it has also prohibited face coverings in public. The United Kingdom (UK) stands as a traditional European opponent to the French model of laicism. In the UK, wearing the hijab is allowed in public schools and at the workplace. Meanwhile, authoritarian states in the Muslim world impose conservative dress

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- 1 This article is written in memory of Professor Fikret Karčić, to whom I owe knowledge and gratitude.
  - 2 Declaration of the European Council for Fatwa and Research. For more details, see: W. Shadid and P.S. van Koningsveld, "Muslimanska odjeća u Evropi: debate oko mahrame", Hamida Karčić (trans.), *Novi Muallim*, 3 (2006), 33; and Nedim Begović, *Vjerska sloboda i muslimanske manjine u Evropi* (Sarajevo: El-Kalem, 2015), p. 145.

codes on women, the most radical of which have been enacted by the Kingdom of Saudi Arabia and the Islamic Republic of Iran. Bosnia and Herzegovina, a country with an indigenous Muslim population, is trying to find its own path. Between secularism and religiosity, certain legislative solutions in Bosnia and Herzegovina lean toward a form of secularism.

**Key words:** manifestation of religion, expression of religion, religious dress, religious symbols, hijab, European Convention on Human Rights, laicism, multiculturalism

## Introduction

The Strasbourg bodies hesitated for a long time before confirming that wearing the hijab was a religious practice, and that states must justify its restriction if they are to avoid violating Article 9 of the European Convention. This hesitation can be explained by the fact that the Court, whose members are largely from countries where the Christian faith dominates, is reluctant to acknowledge the importance of religious practices that are not present or do not hold particular significance in Christianity.<sup>3</sup>

While Muslim women perceive the hijab as a strict religious obligation, most Western countries, including the judiciary of Bosnia and Herzegovina, view it as a religious symbol.

These views are groundless, as it is well known that Islam has no official symbols prescribed by the primary sources of Sharia law. The two most commonly used symbols associated with Islam are the crescent and star, which were symbols of the Ottoman Empire, and the Shahada, which is a symbol of the Kingdom of Saudi Arabia. The historical significance of the Ottoman Empire, which for centuries was the most powerful Muslim country and the centre of the Caliphate, meant that both Muslims and non-Muslims began to acknowledge the Ottoman symbol as a symbol of Islam. This is evidenced by numerous books from the 20<sup>th</sup> and early 21<sup>st</sup> centuries that discuss the cross and crescent as opposing symbols.<sup>4</sup> Although there is no ambiguity when it comes to the symbolism of the cross, the European Court applies double standards in its interpretation of Article 9 of the Convention. Not only does the cross represent “a principle and value that forms the foundation of democracy and Western civilization”,<sup>5</sup> but it is also a discreet

3 Nedin Begović, *Vjerska sloboda i muslimanske manjine u Evropi*, p. 146.

4 Fikret Karčić, “Pravosuđe i vjerska obilježja”, in *Kroz prizmu historije* (Sarajevo: Centar za napredne studije, 2017), p. 198.

5 *Lautsi v. Italy*, <https://www.hrlc.org.au/human-rights-case-summaries/lautsi-ors-v-italy-2011-echr-application-no-3081406-18-march-2011>, accessed 22 September 2022.

way of expressing faith. The prohibition of a visibly worn cross is therefore a violation of the right to freedom of religion.<sup>6</sup>

At the end of 2015 in Bosnia and Herzegovina (BiH) – following the adoption of a Conclusion by the country’s High Judicial and Prosecutorial Council (HJPC)<sup>7</sup> – the question arose as to what constituted a religious or national symbol, given BiH’s cultural and religious diversity. Perhaps the most complex question in this regard is whether the hijab is always and in every situation a religious symbol, or whether it can be considered part of the everyday clothing of Muslim women. While the HJPC took the position that a “religious symbol” does not have a universal definition, the Islamic Community claimed that the hijab was not a religious symbol, but a clothing practice and an obligation for Muslim women. In its rulings, the Constitutional Court of BiH<sup>8</sup> makes it clear that the hijab represents a manifestation of faith. In certain situations, however, the hijab can be considered a fashion accessory or part of traditional clothing, and can therefore reflect cultural heritage.<sup>9</sup>

The complexity of this issue, including the abuses, the double standards of courts, and the tendency to ban Islamic dress practices are contributing factors to the author’s decision – as a Muslim woman who wears the hijab, an academic, and someone who has experienced discrimination for wearing a head covering by personal choice – to write this article. Although I am a graduate of the Faculty of Law, I was denied the opportunity to work in the judiciary because I practice my religion. To prevent this trend from spilling over into other segments of public life, and to demystify the illogical nature of such bans and similar prohibitions, in this article I identify the differing perceptions of the principles of secularism and the concept of respecting human rights, particularly the right to freedom of religion.

At the end of 2023, the European Court of Justice issued a ruling<sup>10</sup> stating that public authorities had the ability to restrict the wearing of the hijab in the workplace.<sup>11</sup> It noted that such bans were permissible to establish a “completely

6 For more, see: *Eweida and Others v. the United Kingdom*, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-7391%22%5D%7D>, accessed 20 September 2022.

7 The Conclusion on the ban of wearing religious symbols, and practicing religion during working hours in judicial institutions.

8 Ap 2190-13, AP 3947-12

9 Branko Perić, “Šta predstavlja vjerski simbol”, in *Vjerski simboli u sudovima*, Edin Šarčević (ed.) (Sarajevo: Center for Public Law, 2016), p. 62.

10 For more, see: Case C 148/22, *OP v. Commune d’Ans*, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=273313&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3078169>, accessed 2 January 2024.

11 Although the regulation restricting the wearing of religious clothing in the local municipality of Ans (Liège Province) was enacted only after an employee was prohibited from coming to work wearing a hijab, the European Court considers such action justified. In his statement, Mayor Grégory Phillipin stated that it was a positive decision, as it was “the first ruling concerning public administration”. For more, see: “European Court permits headscarf ban for public servants”, Ciara Carolan, <https://www.>

neutral administrative environment". This ruling highlights the trend of banning the hijab in public, thereby narrowing the scope of activities for Muslim women, and creating economic dependence on male family members.

It is possible that a similar practice will be adopted in Bosnia and Herzegovina: the reasoning in the European Court of Justice's ruling could serve as an excuse to ban the hijab in schools, municipalities, and other public places, not only in judicial institutions and the armed forces.

The first part of this article discusses the policies of the French Republic, which strictly adheres to the principle of laicism and views the hijab as a means of proselytism, a symbol of the subjugation of women, and a representation of a value incompatible with the European way of life. The second part addresses the multiculturalist approach towards minority religions in the United Kingdom (UK), including religious practices such as wearing the hijab. A traditional opponent of the French laic model, the UK has not experienced the European Court's "negative consequences" – which it uses in rulings to justify rigid positions – from allowing the hijab to be worn in schools and workplaces. Conversely, while women in the West face violations of their right to wear the hijab, some countries, such as the Kingdom of Saudi Arabia and the Islamic Republic of Iran, force their citizens to wear it. To highlight the harmfulness of such policies, it is important to identify the need for legislative change in these countries as well. The legal victory of women in Muslim countries is essential to provide traditional societies with the opportunity to initiate internal debates on models of reform and the redefinition of the socio-political space. In this way, much-needed answers can be found to pressing questions, thereby awakening new hope for the establishment of a just order, which is of great importance for the entire Muslim world, where authoritarian and patriarchal regimes control women's bodies.<sup>12</sup>

Finally, the article discusses the case of Bosnia and Herzegovina, a multi-ethnic and multireligious state that needs to choose its own path when it comes to state regulation and abstention from regulating the wearing of the hijab in public spaces.

This issue of the hijab in public spaces has been researched by both domestic and foreign authors, who have primarily focused on the limitations of this right in workplaces or educational institutions in countries such as France. Several studies have examined cases before the European Court of Human Rights regarding the

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brusselstimes.com/816905/european-court-permits-headscarf-ban-for-public-servants, accessed 2 January 2024. The European Union's highest court emphasised that such restrictions must be applied equally to all employees, and fit within the legal context of each member state. For more, see: Ashifa Kassam, "Government offices in EU can ban wearing of religious symbols, court rules", <https://www.theguardian.com/world/2023/nov/29/government-offices-in-eu-can-ban-wearing-of-religious-symbols-court-rules>, accessed 2 January 2024.

12 Ivan Ejub Kostić, "Protiv Moralne policije ili režima?", *Novi Magazin*, 598 (2022), 41.

violation of Article 9 of the ECHR, and others discuss religious freedoms, which include the perspectives of Islamic theology. This article takes a comprehensive and comparative approach, filling the gap in the literature by contrasting regulations and practices in countries that apply different approaches to the relationship between state and religion, and the right to enjoy freedom of the latter.

The literature used in the preparation of this article includes Professor Nedim Begović's *Religious Freedom and Muslim Minorities*,<sup>13</sup> which discusses the European Court's approach to the right to express religion; the fatwas of the European Council; Islamic rituals; and the practice of Islam. Chapters addressing the institutional aspect of expressing Islam and selected cases before the European Court of Human Rights are also covered.

Professor Silvio Ferrari writes about the freedom of religion in European public spaces.<sup>14</sup> His text discusses the place of religion on the Old Continent; the transformation of society; the understanding of public space; and the manifestation of religion. Assistant Professor Ehlimana Memišević addresses similar topics. Her article "Religion in Public Space: The Issue of Displaying Religious Symbols",<sup>15</sup> provides an overview of practices in countries that include France, Germany, Belgium, the United Kingdom, the United States, and Canada. These texts, however, focus solely on Western societies, and do not cover the issue of the hijab in the Middle East or Bosnia and Herzegovina.

The issue of the hijab in public spaces has been most extensively discussed in English, primarily in academic articles that question its right to be worn in particular countries. These texts include: Elaine R. Thomas' "Competing Visions of Citizenship and Integration in France's Headscarves Affair"; Britton D. Davis' "Lifting the Veil: France's New Crusade"; Stephen M. Croucher's "French-Muslim Reactions to the Law Banning Religious Symbols in Schools: A Mixed Methods Analysis"; and Jeremy Gunn's "Religious Freedom and Laicite: A Comparison of the United States and France".<sup>16</sup>

A large number of books and book chapters have been written about the status of women in the Middle East, specifically Saudi Arabia and Iran. These works discuss the obligation to wear the hijab, which will be addressed in this article.<sup>17</sup>

13 Nedim Begović, *Vjerska sloboda i muslimanske manjine u Evropi* (Sarajevo: El-Kalem, 2015).

14 Silvio Ferrari, "Religija u evropskim javnim prostorima: pravni pregled", *Context* 1:2 (2014).

15 Ehlimana Memišević, "Religija u javnom prostoru: Pitanje isticanja vjerskih obilježja", *Godišnjak Pravnog fakulteta u Sarajevu*, 59 (2016).

16 Elaine R. Thomas, "Competing Visions of Citizenship and Integration in France's Headscarves Affair", *Journal of European Area Studies*, 8:2 (2000); Britton D. Davis, "Lifting the Veil: France's New Crusade", *Boston College International & Comparative Law Review*, 34:1 (2011); and Stephen M. Croucher, "French-Muslim Reactions to the Law Banning Religious Symbols in Schools: A Mixed Methods Analysis", *Journal of International and Intercultural Communication*, 2:1 (2009).

17 Judith Colp Rubin, "Women in the Middle East", in *The Middle East: A Guide to Politics, Economics, Society and Culture*, Barry Rubin (ed.) (New York, London: M.E. Sharpe, 2012); Hamideh Sedghi, *Women and Politics in Iran: Veiling, Unveiling, and Reveiling* (Cambridge: Cambridge University Press,

Regulations and practices in Bosnia and Herzegovina will be analysed on the basis of Professor Fikret Karčić's texts: "The Application of the Law Banning the Wearing of the *Zar* and *Feredža* in BiH: A Research Note";<sup>18</sup> "The Views of the Leadership of the Islamic Community in Yugoslavia on the Ban on Wearing the *Zar* and *Feredža*";<sup>19</sup> and "Judiciary and Religious Symbols".<sup>20</sup> Since this area of research is relatively unexplored, the article will analyse domestic regulations such as the constitutions of BiH<sup>21</sup> and the entities<sup>22</sup>, the *Law on Courts*, the *Conclusion of the HJPC on the Prohibition of Wearing Religious Symbols*, and rulings by the Court of BiH and the Constitutional Court.

Through a comparative review of regulations in different legal systems, the article observes the model of the relationship between state and religion in the countries it researches, and ascertains whether the right to wear the hijab – as part of the freedom of religious expression – is restricted.

In this sense, the research demystifies the issue of Muslim women's dress practices, and highlights the advantages and disadvantages of the solutions adopted in the countries studied. To do so, it uses historical, dogmatic, normative, and comparative methods.

## In the Name of Laicism: The Hijab Affair in the French Republic

Within Europe, France is known for its low tolerance of Muslim women's religious dress practices. This deserves more attention because it is a form of double discrimination that affects women generally, and Muslim women specifically. In this regard, the article shows that France has failed to achieve gender equality despite its global reputation for upholding human rights and freedoms.

The French headscarf affair, or *l'affaire du foulard*, began with what initially appeared to be a trivial local problem.<sup>23</sup> In September 1989, three Muslim girls

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2009); and Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran* (Princeton, New Jersey: Princeton University Press, 1999).

18 Fikret Karčić, "Primjena zakona o zabrani nošenja zara i feredže u BiH: istraživačka bilješka", *Novi Muallim*, 16 (2013).

19 Fikret Karčić, "Stavovi vodstva Islamske zajednice u Jugoslaviji povodom zabrane nošenja zara i feredže" *Anali Gazi Husrev-begove biblioteke*, 42 (2013).

20 Fikret Karčić, "Pravosuđe i vjerska obilježja", in *Kroz prizmu historije* (Sarajevo: Centar za napredne studije, 2017).

21 *Constitution of Bosnia and Herzegovina*, [https://www.ustavnisud.ba/public/down/USTAV\\_BOSNE\\_I\\_HERCEGOVINE\\_bos.pdf](https://www.ustavnisud.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf), accessed 23 May 2022.

22 *Constitution of the Federation of BiH*, [https://parlamentfbih.gov.ba/dom\\_naroda/bos/parlament/o\\_parlamentu/ustavfbih.html](https://parlamentfbih.gov.ba/dom_naroda/bos/parlament/o_parlamentu/ustavfbih.html); *Constitution of Republika Srpska*, [https://www.narodnaskupstinars.net/sites/default/files/upload/dokumenti/ustav/lat/ustav\\_republike\\_srpske.pdf](https://www.narodnaskupstinars.net/sites/default/files/upload/dokumenti/ustav/lat/ustav_republike_srpske.pdf); *Constitution of Brčko District of BiH*, [http://www.ohr.int/ohr\\_archive/statut-brko-distrikta-bosne-i-hercegovine-2/](http://www.ohr.int/ohr_archive/statut-brko-distrikta-bosne-i-hercegovine-2/), accessed 23 May 2022.

23 Elaine R. Thomas, "Competing Visions of Citizenship and Integration in France's Headscarves Affair", p. 167.

from Creil were sent home from school for wearing the hijab during class.<sup>24</sup> Because of increasing government involvement, this local conflict escalated into a national issue, with the greatest responsibility falling on Minister of Education Lionel Jospin. Jospin initially insisted on negotiations, but when this approach did not yield results, he decided that the students would attend certain courses designed to discourage them from wearing the hijab. His policy triggered a strong reaction, particularly from women, which led him to refer the matter to the Council of State (*Conseil d'État*).<sup>25</sup>

The *Conseil d'État* soon concluded that wearing the hijab was not contrary to laicism,<sup>26</sup> as it promotes freedom of expression and the manifestation of religious beliefs.<sup>27</sup> The council emphasised that the wearing of religious symbols could only be restricted if their purpose was provocation, propaganda, proselytism, or the disruption of school activities or functionality of the public education system.<sup>28</sup> After this decision, five intellectuals published a manifesto titled "Profes, ne capitulons pas!" (Teachers, do not surrender!). The manifesto stated that allowing hijabs in schools was similar to surrendering to the Nazis in 1938.<sup>29</sup> French philosopher André Glucksmann called the hijab a "terrorist sign" stained with blood.<sup>30</sup>

Despite the small number of women who wore the hijab in France, this issue became central to political debate. Right-wing parties, such as Marine Le Pen's National Front, particularly focused on the hijab issue, with Le Pen repeatedly stating that foreigners must adapt to French customs and way of life. Le Pen emphasised that the girls from Creil showed a lack of respect for France and French people. She also claimed that the girls behaved as if they were on their own territory, suggesting that they were colonising France, and that foreigners should either respect French customs or return to their countries of origin. For Le Pen, incomplete assimilation is equivalent to invasion, as only cultural conformity signifies respect for the territorial rights of the host country.<sup>31</sup> Other politicians also expressed radical views. Charles Millon of the Union for French Democracy

24 Fikret Karčić, "Pravosuđe i vjerska obilježja", p. 200; Stephen M. Croucher, "French-Muslim Reactions to the Law Banning Religious Symbols in Schools: A Mixed Methods Analysis", p. 3.

25 Elaine R. Thomas, "Competing Visions of Citizenship and Integration in France's Headscarves Affair", p. 167.

26 Jeremy Gunn, "Religious Freedom and Laicity: A Comparison of the United States and France", *Brigham Young University Law Review*, 2 (2004), p. 455; Ramazan Kilić, *Alien Citizens: The State and Religious Minorities in Turkey and France* (Cambridge: Cambridge University Press, 2020), p. 3.

27 Britton D. Davis, "Lifting the Veil: France's New Crusade", *Boston College International & Comparative Law Review*, 34:1 (2011), p. 123.

28 Ehlmana Memišević, "Religija u javnom prostoru: Pitanje isticanja vjerskih obilježja", p. 254.

29 Akbar Ahmed, *Putovanje u Evropu – islam, imigracija i identitet* (Sarajevo: El-Kalem, 2020), p. 200.

30 Adrien Katherine Wing & Monica Nigh Smith, "Critical Race Feminism Lifts the Veil?: Muslim Women, France, and the Headscarf Ban", *UC Davis Law Review*, 39, 3, 2005, p. 772.

31 Elaine R. Thomas, "Competing Visions of Citizenship and Integration in France's Headscarves Affair", pp. 176-177.

(*Union pour la démocratie française* – UDF) argued that the hijab affair was a potential disaster. He called for an urgent debate on the issue, claiming that the “national community will break into fragments” and that France faced the threat of “Balkanization” and “tribalization”.<sup>32</sup>

In 1994, the new Minister of Education, François Bayrou, ordered all schools to ban any form of expression of religious affiliation.<sup>33</sup> In Lyon in 2002, teachers went on strike after the school administration refused to punish girls who came to school wearing the hijab. Public interest in this issue soon increased, and Jean-Louis Debré, President of the National Assembly, brought the discussion of religious symbols in schools to parliament. Following these events, the Levy sisters were expelled from a school in Aubervilliers in 2003 for refusing to remove their hijabs.<sup>34</sup>

In 2003, in light of the renewed attention being paid to this issue, Jacques Chirac established a committee known as the Stasi Commission.<sup>35</sup> The commission published a report stating that wearing overly conspicuous religious symbols violated the principle of secularism in the French school system,<sup>36</sup> with the general understanding that religious symbols referred to the hijab and the veil.<sup>37</sup> The Stasi Report strongly reaffirmed laicism as a principle of the French public service, and claimed that it should be enforced by public servants and respected by all users of public services.

At the same time, the need for greater respect for religious diversity in France was emphasised, and the Law on Secularism and Religious Symbols in Public Schools, based on the Stasi Report, was passed in 2004.<sup>38</sup> Although the proposed law purported to cover all religious symbols, in reality it restricted the wearing of the Islamic hijab, thereby constituting religious discrimination directed at Muslim women. The implementation of the law itself confirmed its discriminatory nature, as it primarily affected members of two religious minorities: Muslims and Sikhs.<sup>39</sup>

A short time later, French authorities enacted regulations on photographs for passports and identification documents, requiring that the head be visible

32 Elaine R. Thomas, “Competing Visions of Citizenship and Integration in France’s Headscarves Affair”, p. 177.

33 Hilal Elver, *The Headscarf Controversy: Secularism and Freedom of Religion* (New York: Oxford University Press, 2012), p. 116.

34 John R. Bowen, *Why the French Don’t Like Headscarves: Islam, the State and Public Space* (Princeton, Oxford: Princeton University Press, 2007), p. 236.

35 Ehlimana Memišević, “Religija u javnom prostoru: Pitanje isticanja vjerskih obilježja” p. 255.

36 Anne-Laure Zwillig, “Francuska”, in *Muslimani u Evropi*, Jorgen S. Nielsen, Samim Akgonul, Ahmet Alibašić, et al. (eds.) (Sarajevo: El-Kalem, Centar za napredne studije, 2011), p. 191.

37 Fikret Karčić, “Pravosuđe i vjerska obilježja”, p. 200.

38 This law prohibits the wearing of the hijab, yarmulke, and large crosses in public schools. See: Stephen M. Croucher, “French-Muslim Reactions to the Law Banning Religious Symbols in Schools: A Mixed Methods Analysis”, pp. 3-4; and Ramazan Kiliniç, *Alien Citizens: The State and Religious Minorities in Turkey and France*, p. 4.

39 Nedim Begović, *Vjerska sloboda i muslimanske manjine u Evropi*, p. 145.

without any covering, ornament, or scarf. Protests followed, during which demonstrators tried to explain that a woman who wears the hijab cannot appear in public without it.<sup>40</sup>

The principals of some schools even advocated banning hijab-wearing mothers from entering school premises, while others were not content with banning halal meat in school cafeterias, but also advocated that Muslim children should eat non-halal meat. The Deputy Mayor of Dreux, responsible for education, stated that children who refused to eat the meat would be expelled from the cafeteria, but the mayor quickly rejected his deputy's initiative.<sup>41</sup>

Several Muslim women and two Sikhs who were excluded from the educational process after the law was passed appealed to the European Court of Human Rights. They sought to examine the law's compliance with European guarantees of freedom of religion. The Court reiterated its earlier position, stating that the protection of the principle of laicism was in line with the values of the European Convention. The Court held that claims of a violation of Article 14 of the Convention were groundless, because the law was neutral and applied to all religious symbols. The truth, however, is that the primary goal of the law was to ban the wearing of the hijab in public schools. The European Council for Fatwas shares this opinion, stating that the ban constitutes religious discrimination aimed at Muslims. The practice itself has proven the discriminatory nature of the law, as its implementation has primarily affected members of two religious minorities.<sup>42</sup>

In the *Dogru* case, one reason cited for the student's expulsion from school – which was imposed as a sanction for her refusal to remove the hijab during physical education classes – was the protection of other students' health and safety.<sup>43</sup> The European Court referred to the opinion of the Council of State from 27 November 1989, which stated that the expression of religion in schools must not jeopardise the health and safety of students. The circumstances of this case demonstrate the extent to which justifications for the ban on wearing the hijab can be trivial and unconvincing. The physical education teacher required the student to remove her hijab for safety reasons, and she, as a compromise, suggested wearing a cap instead. The teacher rejected this, and when asked by the disciplinary committee how the student's safety was compromised by wearing a cap, the teacher refused to provide an answer. Despite this, the European Court accepted the argument,<sup>44</sup> and although the petitioners were denied the

40 Anne-Laure Zwillig, "Francuska", pp. 191-192.

41 Olivier Roy, *Sekularizam u suočavanju sa islamom*, E. Mušinić (trans.) (Sarajevo: Centar za napredne studije, El-Kalem, 2012), p. 57.

42 Nedim Begović, *Vjerska sloboda i muslimanske manjine u Evropi*, p. 145.

43 *Dogru v. France* (application no. 27058/05), [https://hudoc.echr.coe.int/eng-press#{"itemid": \["003-2569490-2781270"\]}](https://hudoc.echr.coe.int/eng-press#{), accessed 2 September 2022.

44 Nedim Begović, *Vjerska sloboda i muslimanske manjine u Evropi*, pp. 154-155.

opportunity to attend a public school, the court held that there was no need to consider their claims that the French authorities violated their right to education under Article 2 of Protocol 1.<sup>45</sup>

Face coverings became a subject of debate in France in 2008. Reflecting the government's hardline stance, the Minister of Immigration launched what became known as the "great debate" in 2009, on banning the burqa and asking whether the French identity was under threat.<sup>46</sup> Specifically, the issue of the burqa was raised in the assembly in reference to a text by communist MP André Gerin, which was signed by 58 French representatives from various political factions. Gerin stated that the burqa represented an attack on individual freedoms and femininity, and called it a "walking prison".<sup>47</sup> He was then appointed the issue's chief investigator in parliament, and the outcome was predictable from day one. The investigation lasted six months, during which 221 professionals were heard, including legal and gender studies experts, religious leaders, and academics.<sup>48</sup>

Gerin's investigation culminated in a 658-page report, which focussed on the symbolism of the burqa, and paid particular attention to how non-Muslims perceived it in everyday life.<sup>49</sup> At the beginning of 2016, the French Minister for Women's Affairs Laurence Rossignol compared women who wore the burqa to "American blacks who supported slavery", and criticised companies that sold hijabs as socially irresponsible.<sup>50</sup> Later the same year, the wearing of the burkini, a swimsuit for Muslim women, was also banned.

It remains unclear why this issue has garnered so much attention, given the small number of women in France who wear face coverings. Some studies estimate the number to be around 367, while others suggests around 2,000.<sup>51</sup> The final ban on wearing the burqa or niqab was formalised in 2011, with the passing of a law.<sup>52</sup> Interestingly, the Constitutional Court cited security concerns and the preservation of women's dignity as reasons for passing the law, without asking the women who wear Islamic clothing for their opinion. The court stated that even women who voluntarily wore the burqa were in a state of subordination and inferiority, which is incompatible with the constitutional principles of freedom

45 Nedim Begović, *Vjerska sloboda i muslimanske manjine u Evropi*, p. 144.

46 Akbar Ahmed, *Putovanje u Evropu – islam, imigracija i identitet*, p. 200.

47 Chloe Patton, "Defacing Levinas: Vision, Veiling and the Ethics of Republican Citizenship in France", *Social Identities*, 20: 2-3 (2014), p. 187.

48 Patton, "Defacing Levinas: Vision, Veiling and the Ethics of Republican Citizenship in France", p. 187

49 Chloe Patton, "Defacing Levinas: Vision, Veiling and the Ethics of Republican Citizenship in France", p. 187.

50 Akbar Ahmed, *Putovanje u Evropu – islam, imigracija i identitet*, p. 200.

51 Anne-Laure Zwillig, "Francuska", pp. 191-192.

52 Fikret Karčić, "Pravosuđe i vjerska obilježja", p. 201., LOI n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public, <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000022234691/>, accessed 12 November 2024.

and equality.<sup>53</sup> “Behind this assertion is the belief that if national identity must be built on the idea of secularism, then it is ‘the role of the state to create secular citizens,’ by educating them on the values of secularism and protecting them from rival values conveyed by religions.”<sup>54</sup>

In *S.A.S. v. France* from 2014,<sup>55</sup> the European Court of Human Rights accepted the French Government’s argument that covering one’s face in public could affect coexistence, and emphasised that the face played a crucial role in human interaction. The Court also accepted the view that covering the face creates a social barrier, thereby infringing on others’ rights to live in a social environment that facilitates coexistence. Although the Court recognised that the contested ban affected certain Muslim women, it noted that any other clothing could be worn in public as long as it did not cover the face.<sup>56</sup> The new principle of *living together* was therefore wholeheartedly embraced by the European Court, with the aim of limiting the freedom of religion.

Even before French authorities banned the wearing of the abaya in schools in August 2023, there were instances in which they banned long skirts. In 2016, a school principal in eastern Paris told a 16-year-old Muslim girl that the length of her skirt was a “conspicuous religious symbol.”<sup>57</sup> When the girl continued to wear long skirts, it was decided that such clothing violated the rules of secularism in the education system. The Supreme Administrative Court upheld this decision, rejecting claims that it was discriminatory or could incite hatred.<sup>58</sup> Given the fact that any form of body covering is seen as a threat to secularism and a trend subordinate to traditional Islam, the question arises: what are Muslim women, especially girls, allowed to wear to express their loyalty to the French Republic?

French laws that ban the wearing of the hijab in schools or the burqa in public spaces restrict both freedom of religion and individual freedom of expression, and primarily impact the daily lives of women. Political authorities are obliged to ensure that the wearing of the burqa or niqab is a matter of personal choice, rather than something imposed by family or religious communities, but they should not go beyond that. Once individual freedoms and public interest are

53 Decision no. 2010-613 DC of 7 October 2010, <https://www.conseil-constitutionnel.fr/en/decision/2010/2010613DC.htm>, accessed 22 September 2022.

54 Silvio Ferrari, “Religija u evropskim javnim prostorima: pravni pregled”, *Context*, 1 (2), p. 7-8.

55 For more, see: *Case of S.A.S v. France* (Application no. 43835/11), <https://hudoc.echr.coe.int/eng>, accessed 22 September 2022.

56 “Review of the Practice of the European Court of Human Rights,” [uredzastupnika.gov.hr](http://uredzastupnika.gov.hr), accessed 2 September 2022, p. 21.

57 John Lichfield, “Muslim girl sent home by school in France over long skirt”, <https://www.independent.co.uk/news/world/europe/muslim-girl-sent-home-by-school-in-france-over-long-skirt-a7019706.html>, accessed 16 September 2024.

58 Angélique Chrisafis, “French court upholds ban on girls wearing abayas in schools”, <https://www.theguardian.com/world/2023/sep/07/french-court-upholds-ban-on-girls-wearing-abayas-in-schools>, accessed 2 January 2024.

protected, wearing clothing that expresses one's religious and cultural beliefs should not be restricted in shared public spaces. Wearing a cross, yarmulke, or turban can convey a message about a person's beliefs, even when they are simply buying bread and butter, but the same message can be conveyed by a hairstyle, an earring, or a tattoo, so there is no reason why the wearing of religious symbols should be more restrictively regulated than other symbols.<sup>59</sup>

## Inclusive Multiculturalism in the United Kingdom

The United Kingdom is the European country that has advanced furthest in seeking a comprehensive, multicultural organisation of society. Although two churches (Anglican and Scottish) are considered state churches,<sup>60</sup> there is a high degree of accommodation for minority religions.<sup>61</sup>

In the mid-1960s, this former colonial power saw a rise in the population of ethnic others. To prevent conflicts, Britain quickly adopted anti-discrimination laws and policies,<sup>62</sup> primarily through the Race Relations Act of 1976. This law did not fully protect Muslims, however, as it did not address discrimination based on religion but rather ethnicity, as recognised for Jews and Sikhs.<sup>63</sup> Accordingly, the law viewed the yarmulke or turban not as religious clothing, but as an integral part of ethnic identity. Conversely, Islamic women's dress practices are seen as a symbol of pure religiosity.<sup>64</sup>

Like in France, the UK's headscarf affair began in an all-girls high school, where sisters Aisha and Fatima Alevi were told they could not attend school while wearing the hijab. The school principal insisted that the hijab, aside from violating the dress code, would disrupt discipline, breach the school's uniform colour rules (traditionally navy blue), and pose hygiene and safety concerns (during scientific experiments and gymnastics).<sup>65</sup>

Media coverage of this incident and the ensuing public debate focused on the individual right to religious freedom, and the hijab as part of religious identity.

59 Silvio Ferrari, "Religija u evropskim javnim prostorima: pravni pregled", p. 16.

60 Anthony Bradney, "Religion and the Secular State in the United Kingdom", in *Religion and the Secular State: National Reports*, W. Cole Durham and J. Martinez-Torron (eds.) (International Center for Law and Religions Studies, Brigham Young University, 2010), p. 739.

61 Ehlimana Memišević, "Religija u javnom prostoru: Pitanje isticanja vjerskih obilježja", p. 259.

62 Tarik Modood, "The Place of Muslims in British Secular Multiculturalism," in *Muslim Europe or Euro-Islam: Politics, Culture, and Citizenship in the Age of Globalization*, Nezar Al Sazzad (ed.) (Lanham, Boulder, New York: Lexington Books, 2002), pp. 113-114.

63 Tahir Abbas, *Muslim Britain: Communities under Pressure* (London, New York: Zed Books, 2005), p. 40.

64 Sevgi Kiliç, "The British Veil Wars", *Social Politics: International Studies in Gender, State & Society*, 15:4 (2008), p. 440.

65 Sevgi Kiliç, "The British Veil Wars", p. 440.

Contrary to the views that frame it as a symbol of female subjugation, an obstacle to assimilation, and an incompatibility with democratic principles, the British public recognised the hijab as a sign of religious devotion and female modesty, and the decision was overturned.

Since this incident, no disputes regarding the wearing of the hijab by girls in state schools have been reported. Additionally, the Department for Children, Schools, and Families issued guidelines on school uniform policies, which state that schools must consider their obligations according to anti-discrimination laws and the Human Rights Act of 1998 when making such decisions. This means schools are required to ensure that their uniform policies do not interfere with the individual's right to manifest religion or beliefs. The restriction of religious freedoms is justified only in cases that concern the protection of health, safety, or the rights and freedoms of others.<sup>66</sup>

Wearing the hijab is also permitted for officials in other public institutions. Raffia Arsha was appointed deputy district judge in the Midlands in 2020. In an interview with *Vogue*, she said that this was not only a personal success but a victory for all women, especially Muslim women. The 40-year-old mother of three hopes her appointment will inspire Muslims to pursue their dreams in all professions.<sup>67</sup>

In addition, the military and police in Britain have approved versions of the hijab for Muslim women, and after the burkini ban in France some municipal pools began to offer special swimming times for Muslim women, and in some cases imposed an Islamic dress code on all swimmers.<sup>68</sup>

At one point, then Prime Minister Theresa May greatly impressed the Muslim public. In response to the increasing headscarf controversies across Europe, she stated: "It is every woman's right to freely choose her clothing, and we have no intention of passing laws on this matter [...] it is not for the government to tell women what they can or cannot wear, and we want to continue the tradition of freedom of expression."<sup>69</sup>

Subsequently, schools, local authorities, and employers regularly lost court cases for imposing dress codes that discriminated against individuals based on race or ethnicity. The House of Lords' 2006 ruling against Shabina Begum, a student who wished to wear a jilbab instead of the school uniform, however, illustrates that such cases had reached their limits.<sup>70</sup>

66 Sevgi Kiliç, "The British Veil Wars", p. 444

67 Naheed Iftiqar, "This Muslim Woman Just Became UK's First Hijab-Wearing Judge", <https://en.vogue.me/culture/raffia-arshad-uk-first-hijab-wearing-judge/>, accessed 22 September 2022.

68 Seán McLoughlin and Tahir Abbas, "Velika Britanija", in *Muslimani u Evropi*, Jorgen S. Nielsen, Samim Akgonul, Ahmet Alibašić (eds.) (Sarajevo: El-Kalem, Centar za napredne studije, 2011), p. 567.

69 Seán McLoughlin and Tahir Abbas, "Velika Britanija", pp. 683-684.

70 Seán McLoughlin and Tahir Abbas, "Velika Britanija", p. 567.

In 2002, Shabina Begum sued Denbigh High School in Luton. Almost 80 percent of the student population at this high school was of Muslim origin,<sup>71</sup> and the school's uniform policy accommodated South Asian dress customs, which included the shalwar kameez (trousers and shirt) and the hijab.<sup>72</sup> Shabina wore this uniform for two years, but in 2002 she decided she wanted to wear a jilbab, a long dress that covers the entire body except the face and hands.<sup>73</sup> The school administration rejected her request, and insisted that she continued to wear the approved school uniform for students of South Asian origin. Begum offered to compromise by wearing a jilbab in the school colours, but the school administration dismissed her suggestion, claiming it could lead to divisions.

The Judicial Committee of the House of Lords ruled in favour of the school,<sup>74</sup> which had formulated its uniform policy in consultation with students and their parents, and imams from three local mosques, to include the shalwar kameez and hijab.<sup>75</sup> This restriction did not constitute a violation of human rights under Article 9 of the European Convention, especially given that Begum could have attended one of several other schools that did permit the jilbab.

In their speeches, several lords commented on the balance they had achieved, considering the facts of the case and the specific concerns of the school authorities, including evidence of fears expressed by other students. Lord Bingham noted that “the school made considerable efforts to design a uniform policy that respects Muslim beliefs, but did so in an inclusive, benign, and non-competitive way”. Other schools throughout the United Kingdom allow the jilbab as part of their school uniform.<sup>76</sup>

In several cases, courts ruled in favour of schools that prohibited face coverings.<sup>77</sup> Following a student's lawsuit, in 2007, the Supreme Court ruled that the banning policy of a girls' high school in Buckinghamshire was acceptable.<sup>78</sup>

Debates about face coverings have also been held in spaces other than schools. In 2006, former Foreign Secretary Jack Straw stated in his *Guardian* column that the practice made him uncomfortable. He described an encounter with a pleasant and educated British woman who wore a niqab, when she visited his office to consult about voting rights. Although it was not the first time he had spoken

71 Mohammad Mazher Idriss, “The Defeat of Shabina Begum in the House of Lords”, *Liverpool Law Review*, 27 (2016), p. 417.

72 Sevgi Kiliç, “The British Veil Wars”, p. 445.

73 Mohammad Mazher Idriss, “The Defeat of Shabina Begum in the House of Lords”, p. 418.

74 For more, see: *R (on the application of Begum (by her litigation friend, Rahman)) (Respondent) v. Headteacher and Governors of Denbigh High School (Appellants)*, <https://publications.parliament.uk/pa/ld200506/ldjudgmt/jd060322/begum.pdf>, accessed 22 September 2022.

75 Mohammad Mazher Idriss, “The Defeat of Shabina Begum in the House of Lords”, p. 424.

76 Sevgi Kiliç, “The British Veil Wars”, pp. 445-446.

77 Ehlmana Memišević, “Religija u javnom prostoru: Pitanje isticanja vjerskih obilježja”, p. 260.

78 “Schoolgirl loses niqab veil case”, <https://www.asianimage.co.uk/news/1209113.schoolgirl-loses-niqab-veil-case/>, accessed 19 August 2022.

to a woman whose face was completely covered, and despite the pleasantness of the conversation, Straw noted that he felt uncomfortable in her company.<sup>79</sup> He claimed that the niqab was a “visible demonstration of separation that pushes white and Asian communities into ‘parallel lives’”, and suggested in later media interviews that he would like to see a ban on face coverings. He argued that banning the niqab would almost certainly reduce the wearing of the hijab, which is a significant and growing part of British Muslim women’s fashion.<sup>80</sup>

Some members of the Conservative Party also saw an opportunity to gain populist support. In 2010, Phillip Hollobone announced the introduction of a bill to ban face coverings, calling the niqab the most ridiculous piece of clothing anyone could wear.<sup>81</sup> He argued that it was not a religious requirement, as most Muslim women do not cover their faces, and he expected that after the French ban, other European countries would follow suit. A complaint was filed against Hollobone after he stated that wearing the niqab was the “religious equivalent of a paper bag with two holes for eyes”.<sup>82</sup> The British public reacted strongly, and the proposal was never submitted for further consideration.

## Mandatory Covering: The Kingdom of Saudi Arabia and the Islamic Republic of Iran

The law of Saudi Arabia does not guarantee gender equality. On the contrary, gender inequality is embedded in governmental and social structures and is an integral part of the state’s interpretation of Islam, which stems from a literal reading of the Quran and Sunnah.<sup>83</sup> According to this religious interpretation, women should not hold public roles, and covering the face is recommended. The country’s ulema (religious scholars) have responded extremely cautiously to any attempt to reform regarding women’s rights.

The first such attempts emerged in 1990, when a group of entrepreneurs, academics, and journalists submitted a petition that called for the formation of a new Advisory Council, equality for all citizens, more freedom for journalists,

79 Jack Straw, “I felt uneasy talking to someone I couldn’t see”, <https://www.theguardian.com/commentisfree/2006/oct/06/politics.uk>, accessed 17 August 2022.

80 Sevgi Kiliç, “The British Veil Wars”, pp. 433-434.

81 Ralph Grillo and Prakash Shah, “Reasons to Ban? The Anti-Burqa Movement in Western Europe”, [https://www.mmh.mpg.de/59760/WP\\_12-05\\_Grillo\\_Reasons-to-Ban.pdf](https://www.mmh.mpg.de/59760/WP_12-05_Grillo_Reasons-to-Ban.pdf), accessed 22 September 2022. p. 22.

82 Helen Pidd, “Niqab-ban Tory MP told he is breaking the law”, <https://www.theguardian.com/global/2010/jul/25/niqab-ban-mp-philip-hollobone>, accessed 22 September 2022.

83 Eleanor Abdella Doumato, “Saudi Arabia”, in *Women’s Rights in the Middle East and North Africa*, Sanja Kelly and Julia Breslin (eds.) (New York: Rowman & Littlefield, 2010), p. 425.

and the improvement of women's rights. Later that year, on 6 November, 40 women drove cars through the streets of Riyadh to protest the customary ban on women driving. The protest, however, had the opposite effect; not only did the government punish the protesters, but it formalised the law banning women from driving cars.<sup>84</sup> This law followed a fatwa issued by the country's leading religious scholar, stating that women driving cars was contrary to Islamic tradition.<sup>85</sup>

On the other side of the societal spectrum, traditionalists called for stricter adherence to Sharia law, and a greater role for the ulema in decision-making processes. Certain segments of society, especially young Saudis, argued that the regime had failed to uphold Islamic principles. They accused the government of corruption and incompetence, and claimed it was increasingly influenced by Western values.<sup>86</sup> The situation was further inflamed by a statement from the Grand Mufti, Bin Baz, who said: "Removing a woman from the home, which is her kingdom, means removing her from her natural state and what her character demands."<sup>87</sup>

Despite this opposition, the calls for reform did not cease and the religious establishment accepted a role for women outside the household, on the condition that they remained hidden from the male gaze. Women were required to have separate spaces, and if this was not possible they had to wear an abaya, hijab, and niqab to prevent sexual promiscuity, which was becoming prevalent in society. These conditions did not diminish the increasing visibility of women, who, in accordance with the extant code, pursued education and employment.<sup>88</sup>

Quranic commands on modesty require women to wear loose, opaque clothing that covers the entire body, concealing its contours and any expression of sexuality.<sup>89</sup> In 2001, to prevent the hijab entering the realm of fashion, the Saudi authorities enacted a regulation banning the sale of embroidered and designed hijabs and abayas. Soon, local newspapers reported attacks on stores selling modern scarves, detailing the destruction of all "offensive" content. Sheikh Ibn 'Uthaymeen later issued a fatwa warning against the anti-Islamic campaign that

84 Esther van Eijk, "Sharia and National Law in Saudi Arabia", in *Sharia Incorporated, A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, J. M. Otto (ed.) (Leiden: Leiden University Press, 2010), p. 151.

85 Judith Colp Rubin, "Women in the Middle East", p. 615.

86 William L. Cleveland, *A History of the Modern Middle East* (Boulder: Westview Press, 2000), pp. 477-478.

87 For more, see: "Fatwas of Ibn Baz", <http://www.alifta.net/Fatawa/FatawaSubjects.aspx?language=en&View=Page&HajjEntryID=0&HajjEntryName=&RamadanEntryID=0&RamadanEntryName=&NodeID=4660&PageID=75&SectionID=14&SubjectPageTitlesID=21173&MarkIndex=1&0>, accessed 22 September 2022.

88 Muddassir Quamar, "Sociology of the Veil in Saudi Arabia: Dress Code, Individual Choices, and Questions on Women's Empowerment", *Domes: Digest of Middle East Studies*, 2016, p. 9.

89 C.A. DeCoursey, "Attitudes of Professional Muslim Women in Saudi Arabia regarding Wearing the Abaya", *Asian Culture and History*, 9:2 (2017), p. 18.

promoted embroidered, designer-style abayas and hijabs, which he held could lead to the spread of *fitna* (temptation)<sup>90</sup> in society.<sup>91</sup>

In one widely reported incident, religious scholar Ahmed al-Ghamdi, then an official of the religious police in Mecca, tweeted that wearing the niqab was a matter of choice, not a strict religious obligation. His views sparked major debates on social media, and he reiterated his opinions on television alongside his wife, who did not cover her face. This enraged many, and some called for his punishment and removal from the religious police board. Eventually, the Grand Mufti Abdulaziz bin Abdullah al-Sheikh responded, stating that al-Ghamdi's views were personal and misleading, and calling on him to retract his statements and repent.<sup>92</sup>

This shows that despite the absence of a law mandating face covering, the practice is strongly encouraged by the Saudi government. It is rare to see a young Saudi woman, married or unmarried, without a niqab, and it is almost impossible, even in liberal and cosmopolitan Jeddah, to find a woman without a hijab.

There are, however, cases in which educated, accomplished women express support for covering the face. Nora al-Fayez, the Minister for Girls' Education, stated in an interview that she would not like her photograph to appear in newspapers, and that she preferred to wear the niqab as it was both a social custom and a religious duty. There are also examples of the opposite, including scientist Khawla al-Kuraya, who was awarded the King Abdulaziz Medal in 2009 for her outstanding research contributions, and received the award without covering her face. Not only did the King meet this woman, he awarded and shook hands with her, and the photographs were published in daily newspapers.<sup>93</sup>

As previously mentioned, the then Crown Prince Mohammad bin Salman stated in a March 2018 interview that women no longer had to wear the black abaya or hijab, as long as their clothing was respectful and modest.<sup>94</sup> This statement, however, did not change the kingdom overnight. Today, women who choose to abandon the abaya still face condemnation and discrimination in public places, and some – like Mashaal al-Jaloud, a 33-year-old Saudi woman who shared her experience on social media – are still forced to cover their hair at

90 "Fitna (lit. rebellion, conflict, disorder). Any rebellion against a fair and honorable ruler is considered fitna. The spread of fitna is one of the traditional signs of the Day of Judgment". Cyril Glassé, *Encyclopedia of Islam* (Sarajevo: Libris, 2010), p. 165. The term is often used in the context of testing believers.

91 Maha A. Z. Yamani, *Polygamy and Law in Contemporary Saudi Arabia* (UK: Ithaca Press, 2008), p. 154.

92 Muddassir Quamar, "Sociology of the Veil in Saudi Arabia: Dress Code, Individual Choices, and Questions on Women's Empowerment", p. 15.

93 Muddassir Quamar, "Sociology of the Veil in Saudi Arabia: Dress Code, Individual Choices, and Questions on Women's Empowerment", p. 15.

94 "Women in Saudi Arabia Do Not Need to Wear Head Cover, Says Crown Prince", <https://www.irishtimes.com/news/world/middle-east/women-in-saudi-arabia-do-not-need-to-wear-head-cover-says-crown-prince-1.3433096>, accessed 2 September 2019.

work. Al-Jaloud explains that not wearing the hijab puts her in uncomfortable situations; she is subject to disapproving looks, and one shopping mall barred her from entry because it deemed her improperly dressed.<sup>95</sup> Although many citizens are aware of Mohammad bin Salman's views, the absence of an official decree means that the practice of wearing the niqab has not significantly changed.

Based on conversations with Saudi women, it can be concluded that most do not think dress codes hinder them in pursuing education or employment, or enjoying their leisure time. Instead, Saudi women see the hijab as a part of their lives, a protection from unwanted male attention, and a means by which they can enjoy being in public without feeling insecure. It is true, however, that for some wearing the hijab or niqab is not a choice, but something imposed by societal customs and state regulations.<sup>96</sup>

The now Islamic Republic of Iran followed a diametrically opposite policy on women's covering with the rise of the Pahlavi regime in 1925 (then the Imperial State of Iran), under which efforts were made to minimise the role of religious authorities. Sharia law was replaced by secular law, and civil matters were placed under the jurisdiction of secular courts.<sup>97</sup>

The reforms did not stop there, however: one of Pahlavi's most radical moves was the unveiling policy (*kashf-e hejab*), which banned women from appearing in public in the traditional Iranian chador. This extreme secularising measure was intended to send a strong public message about the abolition of laws and practices rooted in religion.<sup>98</sup>

The ban began with a grand ceremony held at the Teachers' College in Tehran on 7 January 1936, known as *Hefda-be Dey* or *Rooz-e Azadi-ye Zan* (Women's Emancipation Day). An earlier order had been issued for the wives of ministers, senior military officers, and government officials to appear in European clothing and hats, rather than chadors. Before the ceremony, the Shah told his family that the decision to enforce unveiling was the hardest thing he had to do. He then asked his wife and daughters to attend the ceremony unveiled to serve as an example for other Persian women.<sup>99</sup> Pahlavi urged all women to "discard the veils, symbols of inequality and shame, into the fire of oblivion."<sup>100</sup> The implementation of the

95 "Rebel Saudi women appear in public without hijab, abaya; onlookers stunned," <https://www.nst.com.my/world/2019/09/521602/rebel-saudi-women-appear-public-without-hijab-abaya-onlookers-stunned>, accessed 26 September 2022.

96 Muddassar Quamar, "Sociology of the Veil in Saudi Arabia: Dress Code, Individual Choices, and Questions on Women's Empowerment", p. 16.

97 Hamideh Sedghi, *Women and Politics in Iran: Veiling, Unveiling, and Reveiling* (Cambridge: Cambridge University Press, 2009), p. 85.

98 Ziba Mir-Hosseini, "Sharia and National Law in Iran", in *Sharia Incorporated, A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, Jan Michiel Otto (ed.) (Leiden: Leiden University Press, 2010), pp. 327-328.

99 Ziba Mir-Hosseini, "Sharia and National Law in Iran", p. 86.

100 Judith Colp Rubin, "Religion in the Middle East", p. 598.

new policy was ruthless. High-ranking officials whose wives appeared in public wearing chadors were immediately dismissed, while lower-ranking government employees were generally punished.

Police stopped women on the streets to tear their chadors off, and there were even reports of them entering private homes and arresting women. Women who refused to remove their chadors stopped leaving their homes, visiting friends, going to public baths, and attending other gatherings.<sup>101</sup>

The late 1970s were marked by events that led to the Iranian Revolution. A sudden increase in crude oil prices enriched Iran, and created a large division within society: the wealthy led lavish lifestyles with access to resources, while the poor struggled to survive. Lower- and middle-income families, who were generally more devout and traditional, were angered by these rapid changes. During this historical moment, various (anti-monarchist) ideologies among the religious class and the ulema, along with those of other dissatisfied factions (such as socialists), became popular not only among the poor, but also among college-educated individuals.<sup>102</sup> At that time, many traditional women returned to wearing the chador.

Women played a significant role during the revolution, a fact of which Khomeini was well aware,<sup>103</sup> and he stated that women were obliged to join the protests, even without the permission of their fathers or husbands.<sup>104</sup> In return, Khomeini promised freedom and equality for women within the framework of the Islamic state.<sup>105</sup> Many women therefore showed a willingness to embrace the Islamic regime, a return to Sharia law, and the wearing of Islamic clothing.<sup>106</sup> Suddenly, the hijab, once seen as a symbol of oppression, became a symbol of revolution.<sup>107</sup>

The proposed post-revolution mandatory wearing of the hijab caused discontent among some women, leading to demonstrations on March 8 (International Women's Day), and this opposition from secular and liberal citizens forced the authorities to delay the implementation of the mandatory covering law. By July 1980, however, the law was partially enforced. The wearing of the hijab was introduced in all government institutions, and by 1981, a decree was issued requiring covering in public. The decree officially came into full effect

101 Judith Colp Rubin, "Religion in the Middle East", p. 598.

102 Faegheh Shirazi, "The Veiling Issue in 20th Century Iran in Fashion and Society, Religion, and Government", *Religions*, 10 (2019), p. 11.

103 Homa Hoodfar, Shadi Sadr, "Islamic Politics and Women's Quest for Gender Equality in Iran", *Third World Quarterly*, 31:6 (2010), p. 893.

104 Delaram Farzaneh, "One Step Forward, Two Steps Back: A Brief History of Legal Discriminations against Women in Iran and the Violations of International Human Rights", *Annual Survey of International and Comparative Law*, 20:1 (2014), p. 217.

105 Judith Colp Rubin, "Women in the Middle East", p. 599.

106 Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran*, p. 7.

107 Judith Colp Rubin, "Women in the Middle East", p. 599.

in 1983, with legal penalties prescribed for non-compliance. Since then, the issue of the mandatory hijab in Iranian society has been the subject of numerous public debates.<sup>108</sup>

Dissatisfaction with this policy has become particularly vocal in recent years. Some believers argue that compulsion in religion is strictly forbidden, and therefore that such a measure is not religiously justified, while the Morality Police claim that wearing the hijab is part of the Muslim duty to “enjoin good and forbid evil”. The actions of this police force, known in Persian as *Ershad*, inspired an anonymous team of Iranian developers to create an app based on this name.<sup>109</sup> The app uses user data to identify where the mobile checkpoints of these police – who are responsible for sanctioning those who do not wear the hijab – are located at any given time.<sup>110</sup>

In recent years, women have shown more courage in their opposition to the religious police, and have started to dress more freely, with the hijab barely covering part of their hair. Those who genuinely wish to wear the hijab as prescribed by their religion have remained faithful to their style.

The first campaign led by Iranian women was called One Million Signatures to End Discriminatory Laws. This campaign began in 2006 at a conference attended by prominent members of society, but as authorities intervened, the campaign moved to the streets. Members of the campaign were soon arrested, and were monitored after their release, which prevented them reaching their goal of one million signatures. The campaign left its mark, however, and some laws were soon reformed in favour of women.

In a 2013 interview with the Huffington Post, then President of Iran Hassan Rouhani criticised the actions of the police, and stated that the majority of women who did not follow the dress code were still moral. Rouhani emphasised that the focus should be on values rather than outward appearances. Reactions quickly followed, and a year later the president said that the police’s duty was to enforce the law, not religion, and that “you can’t send people to heaven with a whip”. Ayatollah Khamenei opposed his views.<sup>111</sup>

In 2014, the My Stealthy Freedom movement emerged, aiming to achieve the right to choose. This movement was the brainchild of Iranian activist Masih Alinejad. In an interview with *Al Arabiya*, the 40-year-old activist, who currently resides in New York, said that it all started when she posted a photo of herself

108 Ivan Ejub Kostić, “Protiv Moralne policije ili režima?”, pp. 39-40.

109 The Iranian Morality Police are called *Ershad* in Farsi; the name of the app translates as “avoiding *Ershad*”.

110 Faegheh Shirazi, “The Veiling Issue in 20th Century Iran in Fashion and Society, Religion, and Government”, p. 16.

111 Faegheh Shirazi, “The Veiling Issue in 20th Century Iran in Fashion and Society, Religion, and Government”, p. 17.

without a hijab.<sup>112</sup> In protest, a large number of women across the country took photos of themselves without hijabs, and posted them on social media.<sup>113</sup>

Alinejad's 2022 meeting with U.S. Secretary of State Mike Pompeo<sup>114</sup> sparked debates on social media. While some defended her, others claimed she was a U.S. government agent trying to influence Iran's internal politics by manipulating women.

Nevertheless, the campaign continued. As a form of protest, some women shaved their heads, claiming that they no longer needed to wear the hijab because of their lack of hair. Men also showed solidarity by appearing in public wearing head coverings. These acts of protest were posted on the My Stealthy Freedom Facebook page.<sup>115</sup>

This unrest led to a new campaign called White Wednesday. The goal of this movement was the same: to end the law requiring the mandatory wearing of the hijab in Iran and give women the freedom to choose. As Masih Alinejad explained, white scarves symbolised the protest, and soon, women began to appear in public with their hair fully uncovered. The turning point, which led to the hashtag #GirlsOfRevolutionStreet, occurred when Vida Movahedi waved her white scarf like a flag on Revolution Street.<sup>116</sup> Vida was arrested just a few hours later, but her photograph went viral. Since Facebook is banned in Iran, Alinejad continues to receive photos daily from women with white scarves or without hijabs, and she posts them on the platform. Today, My Stealthy Freedom and White Wednesday have more than 2.3 million followers combined.

Many Iranian officials and high-ranking functionaries look upon the women's choice movement with disdain. General Naghdi on the occasion of "media day in Iran" spoke about the dangers of using foreign terminology in the country's media. He stated that "those prostitutes" (in reference to women protesting mandatory covering in public) "[...] use the term 'mandatory hijab', like our enemies; it's a calculated choice of words ...".<sup>117</sup>

112 "Woman behind ripple of change in Iran starts with campaign against hijab mandate", <https://english.alarabiya.net/features/2018/03/09/Iranian-activist-who-started-White-Wednesday-movement-says>, accessed 30 September 2022.

113 Annual Report 2019, International Religious Freedom, <https://www.uscirf.gov/sites/default/files/2019USCIRFAnnualReport.pdf>, 30. 9. 2020, p. 55.

114 "Secretary Pompeo's Meeting With Iranian Women's Rights Activist Masih Alinejad", <https://ir.usembassy.gov/secretary-pompeos-meeting-with-iranian-womens-rights-activist-masih-alinejad/>, accessed 30 September 2022.

115 Faegheh Shirazi, "The Veiling Issue in 20th Century Iran in Fashion and Society, Religion, and Government", p. 18.

116 "Woman behind ripple of change in Iran starts with campaign against hijab mandate", <https://english.alarabiya.net/features/2018/03/09/Iranian-activist-who-started-White-Wednesday-movement-says>, accessed 30 September 2022.

117 Faegheh Shirazi, "The Veiling Issue in 20th Century Iran in Fashion and Society, Religion, and Government", p. 2.

In 2022, Iran was again shaken by protests following the death of 22-year-old Mahsa Amini. According to initial media reports, Amini was killed by the Morality Police immediately after being arrested for wearing inappropriate clothing and taken to a police station.<sup>118</sup> It was soon clarified that Amini was not killed at the time, but died three days later in hospital after collapsing in police custody. After conducting an autopsy, Iranian authorities denied the use of physical violence against Amini, and claimed her cause of death was a heart attack. Her family, on the other hand, claims that Amini received several blows to the head while in custody.<sup>119</sup>

Amini's death sparked a wave of protests in Iranian cities, and around the world. Conservative factions viewed them solely as an attempt to overthrow the regime, which aligns with claims and reports from Western media. Further, the extensive solidarity expressed by people from the West toward the "women of Iran" via social media is often seen as hypocritical. This is because such concern and solidarity are permanently absent when it comes to advocating for the lifting of sanctions, which prevent Iranian citizens from securing basic necessities, such as adequate medical care.<sup>120</sup>

When discussing the status of women in Iran since the Iranian Revolution, it becomes clear that men have dictated whether women should cover or uncover themselves, and the hijab has been synonymous with the regime in power. During Pahlavi's reign, all women had to remove their chadors, even those who did not want to. When the new regime rose in 1979, all women were required to cover their hair. Both legal mandates represented the same form of violence against women, as every woman should have the right to decide whether or not to wear Islamic clothing, without male intervention or dominance. Forced veiling, just like forced unveiling, is a crime against the women of Iran.

## Between Secularism and Religiosity: Bosnia and Herzegovina

Between the two world wars in Bosnia and Herzegovina, an intense debate emerged among the ulama and intellectuals regarding the obligation of women to cover their faces.<sup>121</sup> Mehmed Džemaludin Čaušević, an interpreter of religious law, expressed the opinion that Islamic law did not oppose the uncovering of

118 Monir Ghaedi, "Who are Iran's 'morality police'?", <https://www.dw.com/en/irans-morality-police-what-do-they-enforce/a-63200711>, accessed 21 October 2022.

119 Ivan Ejub Kostić, "Protiv Moralne policije ili režima?", p. 39.

120 Ivan Ejub Kostić, "Protiv Moralne policije ili režima?", p. 39.

121 Fikret Karčić, "Zašto ne treba zakonom zabraniti nikab", <https://www.islamskazajednica.ba/component/content/article?id=9294&catid=207>, accessed 30 September 2022.

women's faces. His views sparked sharp reactions.<sup>122</sup>

After World War II and the socialist revolution, Muslim women's clothing was characterised as an obstacle to their emancipation. The campaign to abolish this attire began with the Women's Antifascist Front in 1947.<sup>123</sup> As the campaign was only partially successful, a law was enacted on 27 September 1950, prohibiting the wearing of the *zar* and *feredža* (traditional veils).<sup>124</sup> The law had four objectives: the abolition of the *zar* as a centuries-old symbol of subjugation and cultural backwardness; achieving gender equality; the fulfilment of constitutional rights; and the participation of women in the social, cultural, and economic life of the state.<sup>125</sup> The law prescribed a penalty of up to 3 months in prison or a fine of up to 20,000 dinars for wearing the *zar* or *feredža*, as well as for anyone demanding that this attire be worn. For forcing a woman to wear such clothing, a penalty of up to 2 years of forced labour or a fine of up to 50,000 dinars was imposed.<sup>126</sup> The law and its enforcement left deep traumas among many Muslim women who had been raised to wear this traditional clothing.<sup>127</sup>

The practice of face-covering in Bosnia and Herzegovina resurfaced after the 1990s. Under the pretext of addressing the "Muslim question", the practices in European states, and security concerns, the parliamentary caucus of the Alliance of Independent Social Democrats proposed the enactment of a law prohibiting the wearing of clothing that prevented identification.<sup>128</sup>

After the draft law was not adopted, the issue of the niqab was no longer addressed. The focus shifted to headscarves (*mahrime*) in public spaces in two contexts: within the Armed Forces of Bosnia and Herzegovina; and after the High Judicial and Prosecutorial Council of BiH's decision banning religious symbols and the practice of faith during working hours in judicial institutions was issued.

Emela Mujanović's struggle has been ongoing for more than ten years. After being admitted to the Armed Forces of BiH in 2008, Mujanović went to Greece for military training as a non-commissioned officer. During her studies, she decided to wear the headscarf, without significantly altering her appearance. She continued to wear her uniform to work, with the olive-coloured headscarf discreetly incorporated, making it almost unnoticeable. Despite this, Emela

122 Fikret Karčić, *Društveno-pravni aspekt islamskog reformizma: pokret za reformu šerijatskog prava i njegov odjek u Jugoslaviji u prvoj polovini XX vijeka* (Sarajevo: Islamski teološki fakultet, 1990), p. 216.

123 Fikret Karčić, "Primjena zakona o zabrani nošenja zara i feredže u BiH", p. 51.

124 *Official Gazette of the People's Republic of Bosnia and Herzegovina*, no. 32 (5/10/1950)

125 Marko Božić, "The Law Unveiled: On Burka Ban, Kanzelparagraph and Militant Secularism in the Socialist Yugoslavia", *Pravni zapisi*, 12:2 (2021), pp. 422-423.

126 Fikret Karčić, "Primjena zakona o zabrani nošenja zara i feredže u BiH", p. 51.

127 Fikret Karčić, "Zašto ne treba zakonom zabraniti nikab".

128 Significantly, this proposal came from a party that questions the statehood and historical continuity of this country, and considers its history to have begun with the Dayton Peace Agreement. Despite this, the party was willing to accept that the 1950 Law on the Prohibition of the *zar* and *feredža* remains valid. See: Fikret Karčić, "Zašto ne treba zakonom zabraniti nikab".

was prevented from performing her duties and tasks in accordance with her employment contract. As a result, two lawsuits were initiated: in 2012<sup>129</sup> and 2020.<sup>130</sup> After the case was conclusively resolved, an appeal was filed with the Constitutional Court of Bosnia and Herzegovina. In the first-instance ruling from 2012, the court rejected the claim, stating that the plaintiff was returned to work and transferred to another barracks in Ustikolina, where she was allowed to wear the headscarf for a certain period of time. The transfer itself, however, did not resolve the issue of wearing the headscarf, and in 2019 Mujanović was reprimanded for violating regulations regarding the military uniform, soldierly appearance, and personal hygiene, which prompted the second lawsuit.

In the 2021 lawsuit, the plaintiff requested the Court of Bosnia and Herzegovina to rule that the Ministry of Defense of BiH violated her right to freedom of thought, conscience, and religion under Article 9 of the European Convention on Human Rights (ECHR), and that the defendant had discriminated against her by not allowing her to wear a headscarf for religious reasons. The lawsuit included a claim that the defendant be ordered to amend the Armed Forces of BiH Uniform Regulations to allow women to wear headscarves for religious reasons. The claim was declared inadmissible, since it could not be the subject of civil litigation.

The plaintiff argued that she had been placed in an unequal position because of her gender. Specifically, Mujanović stated that male members of the Armed Forces of BiH who served as religious officers were allowed to express their faith by wearing beards; and professional soldiers of other faiths were permitted to wear religious bracelets. The plaintiff's claim was dismissed in its entirety, and the Court of Bosnia and Herzegovina referred to the European Court of Human Rights' decision in *Dahlab v. Switzerland*. One of the European Court's arguments in this case was the strong influence that teachers have on their students, and that the headscarf in this case could be interpreted as a tool of proselytism. It is therefore inappropriate to compare these two cases, given that Mujanović works in an environment with fully-formed adults, eliminating the possibility that her headscarf would in any way encourage others to change their religion.

According to the understanding of the Court of Bosnia and Herzegovina, the neutrality required of teachers in public schools is far more restrictive when applied to matters of national security and the armed forces. The plaintiff's argumentation, both in the lawsuit and during proceedings, was not accepted by the Court. The comparison group the plaintiff referred to (male religious officers)

129 *First-Instance Judgement of the Court of BiH no. S1 3 P 008767 12 P 2*, dated 29 November 2012; *Second-Instance Judgement of the Court of BiH no. S1 3 P 008767 13 Gž*, dated 22 March 2013.

130 *First-Instance Judgement of the Court of BiH no. S1 3 P 035228 20 P*, dated 23 February 2021; *Second-Instance Judgement of the Court of BiH no. S1 3 P 035228 21 Gž*, dated 19 April 2021.

was not factually comparable or relevant to her position, because religious officers are under religious rather than state authority, and are perceived as such by the public. On the other hand, according to the Court's understanding, soldiers in the armed forces represent the state, and in this sense, it is reasonable to expect neutrality. This neutrality is grounded in the state's approach to the public expression of religious beliefs in Bosnian society, which is particularly sensitive to these issues. In the second comparison group (professional soldiers of other faiths), the Court concluded that the plaintiff did not provide the name of any member of the Armed Forces of BiH who wore religious symbols (such as a bracelet) during service, nor did she demonstrate that the defendant allowed this practice.

For the Court, witness testimonies were not sufficient to prove the aforementioned fact, but a statement by the defendant's legal representative was considered enough to conclude that the restriction of the plaintiff's religious rights had a legitimate aim: it was necessary for the preservation of public safety, protection of public order, and protection of the rights and freedoms of others, as well as for the unified functioning of the defence system. The representative stated during the Court hearing that the headscarf issue had been discussed within the Armed Forces of BiH, and that its wearing was bothersome to members of the other two ethnic groups. Implementing regulations allowing the headscarf to be worn would therefore disrupt the unity of the Armed Forces of BiH, which could jeopardise public order in BiH.<sup>131</sup> It is not clear why the Court did not consider it necessary to name the individuals in the Armed Forces of BiH who were allegedly bothered or offended by the wearing of the headscarf, yet did deem it essential for the plaintiff to identify who wore religious bracelets. The defendant's legal representative made several conclusions in his testimony, which the Court accepted as its own, even though a witness is not allowed to present conclusions during testimony; their role is limited to testifying about their knowledge of certain matters, not giving opinions. It is clear that the evidence provided by the parties in this case was not treated equally, which constitutes a violation of the right to a fair trial, an issue the Constitutional Court of BiH did not address when resolving the plaintiff's appeal.

On 11 July 2024, the Constitutional Court issued a ruling stating that the prohibition of displaying religious symbols in the Armed Forces of BiH did not violate the appellant's right to manifest her religion. In light of the case law of the European Court of Human Rights, the Constitutional Court deemed that the ban on wearing the hijab was a necessary measure in a democratic society, and that the

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131 *First-Instance Judgement of the Court of Bosnia and Herzegovina No. SI 3 P 035228 20 P*, dated 23 February 2021.

appellant was not discriminated against on any grounds.<sup>132</sup> Judge Mirsad Ćeman voted against this decision, and in his dissenting opinion emphasised that such a measure was not necessary in Bosnian society, given its specific characteristics. He noted that there should have been more understanding in this context, partly because the undercap, which is already part of the uniform, closely resembles a headscarf, and especially since neither the regular courts nor the Constitutional Court proved how the wearing of a headscarf could infringe on the rights of others. Judge Ćeman stated, “Due to the wrong premise they started from, they ultimately made the decision they did”.<sup>133</sup>

Regarding the controversial Conclusion on the prohibition of wearing religious symbols, the HJPC referred to legal provisions that regulate this matter. In the Federation of Bosnia and Herzegovina, this is Article 13 of the Law on Courts in the Federation of Bosnia and Herzegovina, which states:

Judges and court officials are not permitted to display any religious, political, national, or other affiliation while performing their official duties. Symbols of religious, political, national, or other affiliation must not be displayed on court buildings or within court premises.<sup>134</sup>

The Conclusion authorises courts to assess and decide in each individual case whether it is necessary to limit the right to freedom of manifesting religion, concerning parties and third parties.<sup>135</sup> This stance towards third parties has already been ruled discriminatory, in *Hamidović v. Bosnia and Herzegovina*.<sup>136</sup>

After the Conclusion was forwarded to the courts and prosecutor’s offices, they were requested to provide information by 6 January 2016, on whether there “had been any instances of wearing religious symbols by judicial function holders or other employees in the institutions, and what specific measures had been taken to ensure compliance with positive regulations and the council’s guidelines”.<sup>137</sup>

The Islamic Community recognised the ban as a strike against wearing the hijab and raised an objection, citing discrimination. The subsequent debate focused media attention on the status of Muslim women. The HJPC’s Conclusion was interpreted, both by the authority of political functions and the authority of academic titles and institutions where they are employed, as a violation of the

132 *Constitutional Court of Bosnia and Herzegovina*, <https://www.ustavnisud.ba/bs/146-plenarna-sjednica-drugi-dio-saopcenja-za-javnost>, accessed 16 September 2024.

133 *Dissenting opinion of Judge Mirsad Ćeman, Case No. AP-1795/21*.

134 *Official Gazette of the Federation of BiH*, no. 38.

135 Sevima Sali Terzić, “Manifestacija vjerskih uvjerenja u pravosuđu: legitimno ograničenje ili diskriminacija”, in *Vjerski simboli u sudovima*, p. 25.

136 For more, see: Amila Svraka-Imamović, “Hamidović v. Bosnia and Herzegovina”, *Godišnjak Pravnog fakulteta u Sarajevu*, 62 (2019), pp. 231-25.

137 Fikret Karčić, “Pravosuđe i vjerska obilježja”, p. 197.

right to religious expression, and discrimination against women who wear the hijab.<sup>138</sup>

Edin Šarčević explains that the issue of religious symbols is still unresolved, but refers to the fatwa of the Council of Muftis on the obligation of wearing the hijab.<sup>139</sup> From the perspective of believers, the fatwa establishes that a Muslim woman wearing a hijab does not symbolise Islam, but is merely a believer performing a religious ritual and adhering to religious rules as fundamental principles of her life, decisions, and views. In this regard, Šarčević states that the general public, which includes court staff, parties in various types of disputes, witnesses, visitors, and law enforcement officers, sees the hijab as a sign of belonging to Islam. Their reading of visual messages will not, nor must it, correspond to the meaning that the hijab holds for the Council of Muftis, the Islamic Community, or the individual Muslim woman. Šarčević argues, however, that the opinion held by the general public is the only one that is relevant.<sup>140</sup>

In Bosnia and Herzegovina there are other factors that can suggest the religious and/or ethnic affiliation of a judge or other personnel within a judicial institution. This includes given names and surnames, which may imply whether the judge belongs to the same religious group as the prosecutor or defendant. This could potentially provoke concerns, particularly in the Court of Bosnia and Herzegovina's War Crimes Department. Further, this frequently used argument fails to consider gender differences. At the very start of my career, I had to abandon any attempt at employment or professional development within the courts or prosecution offices, while my husband could perform the same duties, even though we share the same religious beliefs. What is critical for evaluating objective impartiality is therefore not necessarily what the judge personally

138 Edin Šarčević, "O temi i povodu", in *Vjerski simboli u sudovima*, p. 7.

139 "The hijab, or headscarf worn by Muslim women, is both a religious and clothing practice prescribed by the primary sources of Islam, the Qur'an, Sunnah, and Ijma (consensus of Islamic scholars). In a narrower sense, the term 'hijab' is used as a synonym for covering the head with a headscarf, while in a broader sense, it refers to a specific style of dressing in accordance with Islamic norms. According to international codifications of human rights, the hijab falls under the domain of religious expression. The hijab, or headscarf in Islamic tradition, is not considered a distinct religious symbol or emblem, just as other garments covering different parts of the body, which are also part of the Muslim woman's dress code, are not treated as religious symbols. Therefore, they cannot be included under the legal provision banning the display of religious symbols and emblems in judicial institutions. While generally supporting the legal provision on the prohibition of displaying religious symbols and emblems in judicial institutions, as well as the principle of separation between religious institutions and the state, and considering that the headscarf worn by Muslim women does not represent a symbol or emblem of Islam, the Council of Muftis believes that banning Muslim women from wearing the headscarf in judicial and other institutions would represent a flagrant form of discrimination and a violation of their religious and human rights.", <https://www.islamskazajednica.ba/index.php/vijesti/vijecje-muftija/25665-fetva-vijeca-muftija-o-obaveznosti-nosenja-hidzaba>, accessed 30 September 2022.

140 Edin Šarčević, "O temi i povodu" pp. 9-10.

believes, but how the public or the parties in proceedings perceive them.<sup>141</sup> Such perceptions, as mentioned, can also be shaped by an individual's name.

Among the arguments in the literature that support the HJPC's decisions, it is noted that "Judges and prosecutors are in no way prohibited or restricted from participating in other activities related to their religious beliefs, but only from manifesting those religious beliefs in the courtroom. Furthermore, anyone applying for the position of judge or prosecutor knows the requirements set by the public authority in this regard, and by applying for such positions, they agree to fully comply with the requirements of the public authority. Therefore, such a measure is necessary in a democratic society".<sup>142</sup> This argumentation, however, does not take into account that this approach excludes from judicial institutions members of religious communities who wear religiously prescribed clothing.

There have been no recorded cases of judges violating the ban on wearing religious symbols, with the exception of one media-reported instance involving a judge from the Municipal Court in Sarajevo who wore a headscarf. In this regard, the HJPC had information that the wearing of the headscarf was more common among administrative staff and in prosecutorial institutions than in courtrooms.<sup>143</sup> For this reason, even those employees in judicial institutions who support the Conclusion, such as Judge Branko Perić, have questioned the justification for extending this ban to employees who are not in communication with the court, and are not necessarily involved in judicial procedures.

## Similarities and Differences

The issue of the hijab in public spaces depends largely on the model adopted for the relationship between religion and the state, and on the state's approach to minority religions. In the Republic of France, the cradle of laicism, the hijab in public spaces is defined in an authoritarian manner. The issue of religious attire emerged in the early 1990s, amid intolerance toward immigrants, particularly those from former French colonies. Statements from politicians and academics exerted pressure on legislative bodies, and led to the eventual prohibition of wearing the hijab in educational institutions and in photographs on official documents, and of covering the face in public spaces.

141 Sevima Sali Terzić, "Manifestacija vjerskih uvjerenja u pravosuđu: legitimno ograničenje ili diskriminacija?" in *Vjerski simboli u sudovima*, pp. 32-33.

142 Sevima Sali Terzić, "Manifestacija vjerskih uvjerenja u pravosuđu: legitimno ograničenje ili diskriminacija?" pp. 37-38.

143 Branko Perić, "Šta predstavlja vjerski simbol", in *Vjerski simboli u sudovima*, p. 60.

The UK has a state religion model that includes a high degree of accommodation for minority religions. The country's cultural pluralism encourages ethnic minorities to practice their religious traditions;<sup>144</sup> unlike the French assimilation model, the UK practices "inclusive multiculturalism".<sup>145</sup> Wearing the hijab is permitted in all public places, and it exists in approved versions for particular workplaces, without the need for religious evaluation.

A third category is states where covering the hair is legally mandated. Saudi Arabia has implemented certain reforms in recent years, enforcing mandatory covering only in the holy cities of Mecca and Medina. In other (particularly urban) centres like Jeddah, it is now possible to see women without the hijab, though they still wear modest clothing. The Islamic Republic of Iran remains loyal to its policy of mandatory covering, despite protests across the country caused by the actions of the Morality Police. The need for reforms in these Muslim countries runs deeply, and is not limited to a woman's right to choose her clothing. More rights are required in the areas of marriage, child custody, and inheritance. Interestingly, international support for a woman's right to choose manifests almost exclusively when the right not to wear the hijab is in question; it does not apply to the decision to wear it in non-Muslim countries. This creates the impression that Islam, particularly its visible practice, is undesirable, and leads to the conclusion that France, Saudi Arabia, and Iran have commonalities. All these countries prescribe either the obligation to wear or the prohibition of wearing the hijab, in an authoritarian manner.

Bosnia and Herzegovina's policy has certain similarities with that of the UK. In general, there is no regulation addressing the wearing of the hijab in public spaces. With the exception of the Armed Forces and judicial institutions, women can declaratively be employed in public and private institutions, regardless of whether they wear the hijab or not. Those two exceptions, however, imply that Bosnia and Herzegovina has not yet resolved the crucial question of the path it wants to take. Do we want the French model of laicism with legal solutions that have been abandoned in other countries, or the British model, which emphasises freedom of religion? While this question remains to be answered, it is telling that the issue of the hijab has become so significant in recent years. There is a growing number of young, educated women in BiH's public sphere who do not wish to confine religion to the private domain.

144 Ehlmana Memišević, "Religija u javnom prostoru: Pitanje isticanja vjerskih obilježja", p. 259.

145 Susanna Mancini, "The Power of Symbols and Symbols as Power: Secularism and Religion as Guarantors of Cultural Convergence", *Cardozo Law Review* 6:11 (2009), p. 2642.

## Conclusion

Wearing the headscarf in public spaces is integral to the right to freedom of religion. This right is seriously threatened in several European countries, with the Republic of France leading the charge. By interpreting the headscarf as an element of religious indoctrination and a practice difficult to reconcile with principles of gender equality, tolerance, and European values, legislators have prohibited many Muslim women from attending educational institutions. Conversely, the opinions of the European Council for Fatwas, which assert that “wearing the headscarf should be based on personal conviction and understanding, otherwise it loses its value”, have been entirely disregarded.

The UK is evidence that the arguments presented by France and other European countries, which have been supported by rulings from the European Court of Human Rights, lack a foundation in practice. Muslim women in Britain conscientiously perform their educational and work duties while wearing the headscarf. For the British, it doesn't matter what colour the cat is, as long as it catches mice.

Some Muslim countries also pursue harmful and ineffective policies. By forcing women to wear the hijab, these governments violate the religious principle that there is no compulsion in religion. In addition, countries like Saudi Arabia and the Islamic Republic of Iran must reform women's rights and recognise their demands for visibility in public spaces, because human rights cannot be chosen at will. In this way, Middle Eastern countries will limit the involvement of international actors, who are often accused of undermining and attempting to overthrow governments.

Bosnia and Herzegovina has not yet chosen its path. The silence of the public, aside from a few political points that representatives of certain parties have attempted to score, is tacit approval for the current tendency to restrict the right to wear the headscarf. Expanding such a ban would significantly affect the daily lives of women. Negative values, judgements, or prejudices regarding the headscarf, as the HJPC expressed in its imposition of the de facto ban on headscarves, formed the justification for its Conclusion.

The correct policy would ensure that wearing the headscarf is a matter of personal choice, not a requirement imposed by families or religious communities, but it should not go further than that. Once individual freedoms and the public interest are protected, there should be no restriction on wearing clothing that manifests an individual's religious and cultural beliefs in public spaces.<sup>146</sup> Such practice would send the message that the system is tolerant, pluralistic, and

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146 Silvio Ferrari, “Religija u evropskim javnim prostorima: pravni pregled”, p. 16.

respects everyone equally. Banning or excluding visible manifestations of faith in the workplace can be interpreted as the state promoting or favouring non-religious (agnostic or atheistic) beliefs, or excluding members of religious communities whose faith requires specific clothing.<sup>147</sup>

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147 Bahja G. Tahzib-Lie, "Disidentkinje, religija ili uvjerenje i država: Suvremeni izazovi", in: *Sloboda vjere ili uvjerenja: Priručnik*, Tore Lindholm, W. Cole Durham, Bahla G. Tahzib-Lie (ur.), trans. Nedim Begović, Azra Mulović (Sarajevo: Centar za napredne studije, 2015), p. 421.

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# Sloboda vjere ili uvjerenja: Pravo na nošenje mahrame u javnom prostoru

## Sažetak

Unatoč propisima kojima se zahtijeva rodna i vjerska ravnopravnost, te dostignućima zapadne civilizacije Evropa i dalje iskazuje nisku stopu tolerancije prema muslimanskoj odjevnoj praksi. U ovom pitanju svakako prednjači Francuska koja je nakon zabrane nošenja mahrame u institucijama zabranila i pokrivanje lica u javnosti. S druge strane, Velika Britanija predstavlja evropski, tradicionalni oponent francuskom modelu laicizma. Dozvoljeno je nošenje mahrame u javnim školama kao i na radnom mjestu. Istovremeno, autoritarne države u muslimanskom svijetu ženama nameću obavezu konzervativnog odijevanja. Najradikalnije propise donijele su Kraljevina Saudijska Arabija i Islamska Republika Iran. Svoj put pokušava pronaći i Bosna i Hercegovina, država sa autohtonim muslimanskim stanovništvom. Između sekularnosti i religioznosti, određenim zakonodavnim rješenjima, Bosna i Hercegovina naginje svojevrsnoj formi laicizma.

**Ključne riječi:** manifestiranje religije, iskazivanje religije, vjerska odjeća, vjerska obilježja, mahrama, Evropska konvencija o ljudskim pravima, laicizam, multikulturalnost