CONTEXT

Časopis za interdisciplinarne studije
13:1 (2026), 125-146
Pregledni naučni rad - Review Article
DOI: 10.55425/23036966.2026.13.1.125
Primljen / Received: 14.01.2026.
Prihvaćen / Accepted: 15.03.2026.

Between Neutrality and Control: Secularism, the Veil, and Muslim Women in Bosnia and Herzegovina

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Abstract

This paper examines how secularism in Bosnia and Herzegovina (BiH) selectively regulates religious presence in public institutions, with a focus on women who wear the hijab. It analyses legal and institutional responses to religious visibility in the judiciary and armed forces, based on the theories of Charles Taylor, Talal Asad, and Saba Mahmood. The paper argues that secular 'neutrality' is applied asymmetrically, resulting in unequal treatment of Muslim women who publicly express their faith. The hijab is not merely a symbol, but a lived religious practice, and its exclusion from public space reflects deeper norms of visibility and desirability. In a context where ethnic quotas are institutionalised, secularism has become a tool for suppressing religious identity, while other forms of identity are tolerated or even embedded in the system. This paper questions whether secularism in BiH genuinely promotes equality or instead reproduces systemic exclusion and normative bias.

Key words: secularism, religious visibility, hijab, institutional neutrality, Bosnia and Herzegovina, Muslim women

Introduction

In many secular countries, the visibility of Muslim women's religious identity – most often associated with the hijab – has become a focal point of socio-political debates, and revealed the limits of proclaimed state neutrality. Although secularism claims it does not aim to erase religion from the public space but rather to neutralise it, in practice it is increasingly a system that filters and limits the public manifestation of religious affiliation. The first target in such situations are women, especially Muslims, who express their religious affiliation through their clothing. With their 'speaking bodies', these women defy the social tension and politics that seek to silence them.

The Constitution of Bosnia and Herzegovina declares the country a secular state, which, although it has no official state religion, upholds freedom of thought, conscience, and religion in its legal structure. The relationship between religion and the state in Bosnia and Herzegovina (BiH), however, cannot be fully understood through a straightforward model of strict separation, given the persistent historical, social, and political visibility of religion in public life. This tension between formal secularism and the ongoing public presence of religion makes BiH an ideal setting for investigating how neutrality claims are interpreted and applied in institutional practice. It would be rational to think that in this national context we would not need a dialogue on the hijab in public space, as its presence is commonplace, and has strong historical roots. The right to wear the hijab in public institutions, however, is a different issue. As a post-socialist and post-conflict country, BiH is a unique setting for analysing how secularism is operationalised in practice, because its institutions are shaped by ongoing negotiations between ethnic representation, religious freedom, and claims of institutional neutrality. This reveals a specific space for analysing how secularism is operationalised in practice, and for investigating its neutrality, its functionality in certain institutional mechanisms, and its effects on different social groups.

Contemporary disputes about veiling in BiH have not emerged in a legal vacuum. A Yugoslav-era statute adopted in 1950 prohibits the wearing of the *zar* and *feredža*; when referenced in contemporary debate, this legal artefact captures the gap between formal legality and lived institutional practice. In 2010, while admitting that the ban had not been applied for some time, Igor Radojičić explained that it was still part of the formal legal order, as it was "probably never repealed".[1] That distinction matters for the argument advanced in this paper: What appears on paper as a neutral or settled legal framework often becomes

1 "U BiH zakonom zabranjeno nošenje feredže?", *Nezavisne novine*, 28 May 2010, https://www.nezavisne.com/novosti/bih/U-BiH-zakonom-zabranjeno-nosenje-feredze/60836, accessed 9 April 2026.

reactivated – or rhetorically mobilised – precisely when Muslim women's visible religious practice is politically problematised. The Alliance of Independent Social Democrats' (SNSD) 2010 initiative to prohibit clothing that "prevents identification" illustrates this dynamic: framed by the language of security, the proposal targets the most visible and publicly legible form of religiosity: full-face veiling.

Restrictions on wearing and displaying religious symbols in the judiciary, army and police force in BiH almost always end in a hijab ban, which is presented as preserving professional neutrality and institutional impartiality. Such prohibitions do not affect all religious identities in the same way, however, nor do all religious symbols provoke the same legal and social reaction. It is this inequality that reflects the main thesis of this paper: Secularism, although nominally neutral, is in practice a selective form of regulation that most often affects visible Muslim women, making them the subject of institutional control and exclusion. To address this, the paper cites authors who do not define secularism solely as the separation of religion and state, but examine the broader picture to see it as an institutional practice that produces certain norms of visibility and acceptability. The analysis begins with, and relies heavily upon, Charles Taylor's secularity of the third sense, or Secularity 3[2] theory, which focuses on the pluralism and conditions of belief. Talal Asad's understanding of secularism as a specific form of power that defines what can be considered religion and where and how it can be present[3] is also of exceptional importance to this paper. Finally, Saba Mahmood's intersectional analysis of secularity through the prism of the female body shows how secular regimes most often focus on women's religious practice because it is visible, politically charged, and often incomprehensible to secular understandings of autonomy and liberation.[4] [5]

In discussions about BiH, the presence of veiled Muslim women in public institutions should not be confined to cultural and religious debates, but should also be considered in legal terms. Examples of the country's hijab bans, especially in the past decade, in institutions such as courts, schools, and the security sector demonstrate that secularity and professionalism are used as a legitimising framework for disciplining and excluding women whose religious identity falls outside the acceptable norm. The basis for such restrictions can be found in the

2 See: Charles Taylor, *A Secular Age* (Cambridge, MA: Harvard University Press, 2007).

3 See: Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003).

4 See: Saba Mahmood, *Religious Difference in a Secular Age: A Minority Report* (Princeton: Princeton University Press, 2016).

5 See: Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton: Princeton University Press, 2005).

Western model of secularity, which normatively excludes collective religious practices such as the hijab.

This paper draws on legal documents, institutional decisions, and the theoretical framework of critical secularism theory to analyse how secularism in BiH is used as a tool to regulate religion, and how this affects Muslim women who express their identity through the hijab.

The main research question that this paper will answer is:

How does secularism in Bosnia and Herzegovina operate as a form of regulation that disproportionately affects Muslim women who wear the hijab?

To answer this it, the paper examines the constitutional and statutory framework (the Constitution of Bosnia and Herzegovina[6]; the Law on Freedom of Religion and Legal Status of Churches and Religious Communities [hereinafter: the Law on Freedom of Religion];[7] and the Law on Prohibition of Discrimination[8]), sub-legal regulations and institutional acts (the High Judicial and Prosecutorial Council (HJPC); and internal regulations of the Armed Forces), as well as selected domestic and international jurisprudence and human-rights materials, including the case law of the Constitutional Court of Bosnia and Herzegovina, judgements by the European Court of Human Rights, and materials from the Institution of Human Rights Ombudsman of BiH, alongside theoretical perspectives that offer a critical view of secularism as a form of structuring power and social order.

Importantly, the paper does not seek to label secularism as 'bad', or as a system that targets Muslims and Islam, but rather starts from a hypothesis that imposes itself: there is an asymmetry in secularism's application that hinders its realisation of equal rights for all citizens, especially those whose identities are simultaneously religious, gendered, and politically visible.

Theoretical Background

Contemporary secularism cannot be explained solely as the separation of church and state; it is a much more complex form of social regulation, subject to transformations through historical and cultural contexts. This paper approaches secularism through the prism of critical theory, viewing it as a discursive and institutional mechanism that shapes the boundaries of religious visibility, especially

6 "Constitution of Bosnia and Herzegovina", Annex IV, *General Framework Agreement for Peace in Bosnia and Herzegovina* (Dayton Agreement) (1995).

7 "Zakon o slobodi vjere i pravnom položaju crkava i vjerskih zajednica u Bosni i Hercegovini [Law on Freedom of Religion and Legal Status of Churches and Religious Communities]", *Official Gazette of Bosnia and Herzegovina*, 5/04 (2004).

8 "Zakon o zabrani diskriminacije [Law on Prohibition of Discrimination]", Official Gazette of Bosnia and Herzegovina, 59/09 and 66/16 (2009 and 2016).

in relation to Muslim women who wear the hijab. Using analytical concepts from Charles Taylor, Talal Assad, and Saba Mahmood, the paper positions secularism not as a neutral framework, but as an active actor in the creation of social forms and hierarchies of power.

Charles Taylor: *Secularity 3* and the Conditions of Belief

In his seminal work *A Secular Age*, Charles Taylor identifies three types of secularities, the third of which (Secularity 3) is crucial for understanding contemporary social relations between religion and state. Taylor defines the separation of church and state in his first form of secularity (Secularity 1), which is followed by the decline of religious practice in Secularity 2. Secularity 3 involves a change in the conditions of belief and life in general; humans are now at the centre of everything (exclusive humanism) and faith is no longer a social norm, but one option among many. This leads to a pluralism of meaning – transcendence is no longer self-evident, and the immanent framework comes into focus. In the context of BiH and Muslim women wearing the hijab, another of Taylor's concepts emerges: 'cross pressures', or conflicting sources of meaning. This is crucial, as it makes space in which to understand the battles Muslim women fight – not only internally, but outside too, in spaces where their faith is no longer understood as a norm but perceived as deviation.[9]

Talal Assad: Secularism as a Productive Power

For Asad, secularism is not a neutral framework but a concrete form of political power, which produces its own norms and definitions of religion and how it should be expressed in the public sphere. This goes further than Taylor's historical genealogy of secularism, as Asad believes that the phenomenon not only separates religion and politics, but actively creates the boundaries of permissible religious expression. This is directly applicable to public sector hijab restrictions in BiH, Europe, and the rest of the world, because when the state imposes such rules it is expressing its power rather than indicating neutrality. Because the state positions itself as having the right to define what constitutes 'legitimate' religious practice, Asad sees secularism as neither universal nor consistent, but situated within specific political and cultural contexts.[10]

9 Taylor, *A Secular Age,* pp. 594-600.

10 Asad, *Formations of the Secular: Christianity, Islam, Modernity*, pp. 200-201.

Saba Mahmood: Female Bodies and Secular Norms

Among Saba Mahmood's works, those most salient to this paper are *Politics of Piety* and *Religious Difference in a Secular Age*. In these texts, Mahmood introduces the gender dimension to the discussion of secularism, and claims that the secular state specifically targets women's religious expression. In most cases this means the hijab, which is not only a symbol of religion, but a form of piety and identity.[11] Mahmood sharply criticizes the liberal-secular understanding of emancipation, which is associated with the abandonment of religious norms and the 'liberation' of women.[12] She demonstrates that secularism has little to do with neutrality, and much more with paternalistic ideas: women are not liberated in this way, they are simply offered a secular version of autonomy that does not recognise other forms of freedom. When it bans the hijab, the state shows that it prefers ways of life that are compatible with secular notions of self-determination. This has nothing to do with neutrality, because any form of otherness is declared problematic.[13]

The Hijab as a Practice, not a Symbol

The discussion of public religious presence often relates to religious symbols or objects – such as the cross, the Star of David, Buddhist beads, and the Islamic crescent moon – all of which indicate a religious affiliation, and can be classified as regulatory elements within the norms of secular institutional behaviour. Conflating the hijab with such symbols[14] reduces its meaning to a static sign that can be removed and banned, and ignores its deeper meaning, which lies not in a symbolic representation of religion, but in its embodiment.

For many Muslim women, the hijab is not a symbol in the secular sense of the term, but a reflection of piety, identity and a way of being in the world. As Saba Mahmood points out, the hijab is not a sign pointing to something outside it – it is a form of ethical self-discipline, through which a woman builds her relationship with God and her community.[15] In this sense, removing the hijab is not a neutral act, but a direct encroachment on a woman's subjectivity, autonomy

11 Mahmood, *Politics of Piety*, pp. 73-74, 157-159, 194.
12 See: Mahmood, *Religious Difference in a Secular Age*, pp. 21-23.
13 See: Mahmood, *Religious Difference in a Secular Age*, p. 170.
14 See: Visoko sudsko i tužilačko vijeće Bosne i Hercegovine, "Memorandum 'Nošenje vjerskih obilježja u pravosudnim institucijama – Analiza" [Memorandum "Wearing Religious Symbols in Judicial Institutions - Analysis"], 19 February 2016; European Court of Human Rights, *Dahlab v. Switzerland*, no. 42393/98, decision, 15 February 2001; European Court of Human Rights, *Leyla Şahin v. Turkey*, no. 44774/98, Grand Chamber Judgment, 10 November 2005.
15 Mahmood, *Politics of Piety*, pp. 50-51, 157-159.

and spiritual integrity. Banning the hijab not only removes an external sign or symbol, but violates the daily life and religious integrity of Muslim women. This indicates the degree of misunderstanding in the distinction between religious symbols and religious practices, and shows an absence of awareness about gender-specific ways of living faith.

This treatment of the hijab as an object that can be temporarily removed ultimately leads to the exclusion of Muslim women from the public sphere. Through bans on wearing the hijab in the judiciary, schools and other public institutions, women are forced to make a false choice: abandon the practice, or leave the profession. This is how neutrality becomes normative coercion, where only religious practices and affiliations that are invisible, inconspicuous and politically sterile are allowed and desired.

To analyse institutions and policies in BiH, it is therefore necessary to start from an understanding of the hijab not as a symbol but as a lived practice, to avoid superficial or normatively incorrect interpretations of secularity, rights, and religious freedom.

This distinction is supported by divergent approaches in international human rights law. While the European Court of Human Rights has at times described the hijab as a "powerful religious symbol", especially in its earlier case law, that characterisation should not be treated as conceptually exhaustive.[16] The hijab is not solely an outward signifier of belief; for many Muslim women, it is part of the observance and practice of religion itself, i.e., an embodied act of piety.[17] This broader understanding is reflected more clearly in the approach of the United Nations Human Rights Committee, which expressly states that the manifestation of religion may include the wearing of distinctive clothing or head coverings,[18] and which in *Yaker v. France*[19] and *Hebbadj v. France*[20] treated Islamic dress not simply as symbolism, but as a protected form of religious observance and practice. In that sense, reducing the hijab to a symbol risks reproducing precisely the kind of flattening interpretation this paper questions.

16 See: European Court of Human Rights, *Dahlab v. Switzerland*.
17 See: Mahmood, *Politics of Piety*, pp. 157-159.
18 See: Human Rights Committee, *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, CCPR/C/21/Rev.1/Add.4, 30 July 1993, para. 4.
19 See: Human Rights Committee, *Sonia Yaker v. France*, CCPR/C/123/D/2747/2016, 17 July 2018.
20 See: Human Rights Committee, *Miriana Hebbadj v. France*, CCPR/C/123/D/2807/2016, 17 July 2018.

Secularism and Institutional Practices: The Case of Bosnia and Herzegovina

The Constitution of Bosnia and Herzegovina guarantees freedom of religion and conscience, and formally imposes a secular constitutional order. When public institutions regulate what women may or may not wear, however, secularism ceases to guarantee neutrality and becomes a mechanism for prescribing acceptable forms of religious visibility. What is presented as neutrality risks becoming the imposition of a particular normative interpretation of public life. These practices highlight the struggles that take place in the public space between different meanings of 'acceptable', 'neutral' and 'professional', and what is considered too religious, biased or conflicting. This section of the paper analyses the judiciary, the education system and the armed forces, as their institutions have been most publicly prominent in the past decade, as a result of regulations that have limited the display of religious symbols. Through this analysis, the paper shows that secularism in BiH does not function as a neutral framework, but as a system of normative regulation of religious (in)visibility, which particularly affects Muslim women who wear the hijab.

Legal framework: Secularity on Paper

Secularity and Freedom of Religion are one of the foundations of the formal legal structure of BiH.[21] The country's constitution guarantees freedom of thought, conscience and religion within a broader constitutional human-rights framework.[22] Article II/1 obliges BiH and its entities to secure the highest level of internationally recognised human rights and fundamental freedoms; Article II/2 gives the European Convention on Human Rights and its Protocols direct applicability and priority over all other law; Article II/4 prohibits discrimination, including on grounds of religion; and Annex I incorporates additional international human-rights agreements applicable in BiH, including the International Covenant on Civil and Political Rights.[23] Within this framework, Article 9 of the European

21 See: "Constitution of Bosnia and Herzegovina", Annex IV, General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) (1995), arts. II/2, II/3(g), II/4 and Annex I; "Zakon o slobodi vjere i pravnom položaju crkava i vjerskih zajednica u Bosni i Hercegovini [Law on Freedom of Religion and Legal Status of Churches and Religious Communities in Bosnia and Herzegovina]", Official Gazette of Bosnia and Herzegovina, 5/04 (2004); "Zakon o zabrani diskriminacije [Law on Prohibition of Discrimination]", Official Gazette of Bosnia and Herzegovina, 59/09 and 66/16 (2009 and 2016).

22 See: "Constitution of Bosnia and Herzegovina", Annex IV, General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) (1995), arts. II/1, II/2, II/4 and Annex I.

23 See: International Covenant on Civil and Political Rights, art. 18.

Convention on Human Rights is central to understanding the right to manifest religion.[24] In addition, the Law on Freedom of Religion and the Legal Status of Churches and Religious Communities from 2004 recognises the right of every individual to profess their faith, privately and publicly; and the Law on Prohibition of Discrimination explicitly protects citizens from unequal treatment based on religious affiliation.[25]

The broader church-state framework in BiH requires a more precise formulation. Although, as Pagotto and Išerić note, the Constitution is silent on the relationship between the two, the constitutional order, the case law of the Constitutional Court of Bosnia and Herzegovina, and the later Law on Freedom of Religion together define BiH as a secular state. This secularism does not rigidly exclude religion from public life, but operates within a separation-with-cooperation framework, in which the state is expected to remain neutral and impartial, but cooperate with religious communities in areas of common concern.[26] This is important for the present argument, because it shows that BiH's legal order does not start from a principle of erasing religion from public space; the real issue is how neutrality is later invoked in ways that narrow the visibility of some religious practices more than others.

Although BiH has an impressive set of legal regulations that are fully aligned with international standards,[27] religious visibility in its public institutions contain deep inconsistencies. Concerning the hijab, legal norms remain unclear and subject to various interpretations, which leads to a selective application of neutrality. This is where the idea of neutrality and the prohibition of religious symbols become problematic, because they create space for institutional practices that go beyond the spirit of the law, while technically remaining legal. In these instances, secularism is used to justify the control and limitation of religious

24 See: European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 9

25 See: "Zakon o slobodi vjere i pravnom položaju crkava i vjerskih zajednica u Bosni i Hercegovini [Law on Freedom of Religion and Legal Status of Churches and Religious Communities in Bosnia and Herzegovina]", Official Gazette of Bosnia and Herzegovina, 5/04 (2004); "Zakon o zabrani diskriminacije [Law on Prohibition of Discrimination]", Official Gazette of Bosnia and Herzegovina, 59/09 and 66/16 (2009 and 2016).

26 See: Tania Pagotto and Harun Išerić, "Religious Symbols in Bosnia and Herzegovina's Courtrooms: Between Domestic Law and ECHR System", *Stato, Chiese e pluralismo confessionale. Rivista telematica*, no. 3 (2026), pp. 134-137.

27 See: "Constitution of Bosnia and Herzegovina", Annex IV, General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) (1995), arts. II/1, II/2, II/4 and Annex I; "European Convention for the Protection of Human Rights and Fundamental Freedoms [European Convention on Human Rights]" (1950), art. 9; "International Covenant on Civil and Political Rights [ICCPR]" (1966), art. 18; "Zakon o slobodi vjere i pravnom položaju crkava i vjerskih zajednica u Bosni i Hercegovini [Law on Freedom of Religion and Legal Status of Churches and Religious Communities in Bosnia and Herzegovina]", Official Gazette of Bosnia and Herzegovina, 5/04 (2004); "Zakon o zabrani diskriminacije [Law on Prohibition of Discrimination]", Official Gazette of Bosnia and Herzegovina, 59/09 and 66/16 (2009 and 2016).

visibility, when it should guarantee freedom of religion and equal treatment of all beliefs.

This legal landscape is further shaped by the broader but often ambiguous language of European standards, which may reinforce rights protections but can also legitimise restrictions framed as neutrality requirements. In EU employment law, Council Directive 2000/78/EC is an explicit anti-discrimination instrument, which establishes a framework for equal treatment in employment and occupation on grounds including religion or belief.[28] Yet EU jurisprudence has also become a site where neutrality is articulated as an institutional aim: in *Achbita v. Belgium*, the Court of Justice held that a general internal rule banning visible political, philosophical, or religious signs is not necessarily direct discrimination within the directive's meaning, but left national courts to assess indirect discrimination and proportionality.[29] In BiH – where EU-alignment discourse is frequently treated as a benchmark – this kind of legal framing can be politically mobilised as shorthand for harmonisation, even when the practical effect is a selective limitation of visible religiosity in workplaces and public institutions.

Education and the Limits of Institutional Neutrality

Education provides an important institutional perspective for understanding the limits of proclaimed neutrality in BiH. In formal law, the framework governing primary and secondary education is grounded in non-discrimination, equal access, and respect for human rights, including freedom of conscience and religion.[30] Yet education in BiH also demonstrates that public institutions are never neutral in any abstract or empty sense; they are structured by historically sedimented decisions about which identities, memories, and forms of belonging are considered normal, legitimate, and publicly unproblematic.

This is visible in long-standing controversies surrounding school names, symbols, and public manifestations, and in the continued reality of 'two schools under one roof'. Reporting by the Organization for Security and Co-operation in

28 Council of the European Union, "Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation", Official Journal of the European Communities, L 303/16 (2 December 2000), https://eur-lex.europa.eu/eli/dir/2000/78/oj/eng, accessed 9 April 2026.

29 Court of Justice of the European Union, "Judgment of the Court (Grand Chamber), Case C-157/15, Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV", 14 March 2017, https://curia.europa.eu/juris/document/document.jsf?docid=179082&doclang=en, accessed 9 April 2026.

30 See: "Okvirni zakon o osnovnom i srednjem obrazovanju u Bosni i Hercegovini [Framework Law on Primary and Secondary Education in Bosnia and Herzegovina]", Official Gazette of Bosnia and Herzegovina, 18/03 and 88/07.

Europe (OSCE) has shown that these practices continue to produce exclusionary effects, and signal that some students and communities belong more fully than others to the public educational space.[31] Although this paper does not examine a specific hijab-related education case in the same doctrinal detail as it does for the judiciary and the armed forces, education in BiH exposes the inconsistency at the heart of neutrality claims: the problem is not public identity or visibility as such, but the selective regulation of those forms of visibility that are coded as excessive, politically troubling, or insufficiently compatible with dominant institutional norms. Unlike the judiciary and the armed forces, neither the educational framework discussed here nor the broader civil service is governed by a comparable general prohibition on religious symbols, which further underscores the selective and institution-specific character of such neutrality claims.[32] In that sense, education functions here as a comparative site that helps illuminate the paper's broader argument.

Judicial Sector: The High Judicial and Prosecutorial Council and the Policy of Neutrality

Pagotto and Išerić show that the issue of religious symbols in the judiciary was first raised in the HJPC in 2004. In 2005, the entity laws on courts introduced parallel provisions that prohibited judges and judicial officials from displaying signs of religious, political, national, or other affiliations in the performance of official duties. The issue resurfaced in 2011, when the president of Travnik's Municipal Court informed the HJPC that a female Muslim typist had begun coming to work wearing a hijab, and again in 2014, when the HJPC requested a legal analysis on religious clothing in judicial institutions.[33] This chronology is significant, because it shows that the eventual public controversy around the hijab was not accidental, but developed through a series of institutional encounters in which visible Muslim religiosity gradually became a judicial governance issue.

At the end of 2015, the HJPC sent a letter to all judicial institutions recalling the applicable court laws in the Federation of Bosnia and Herzegovina and Republika Srpska, which were understood and enforced as prohibiting the wearing of religious symbols by certain judicial office-holders in the performance

31 See: OSCE Mission to Bosnia and Herzegovina, *School names, symbols and manifestations at primary and secondary schools in Bosnia and Herzegovina: A status update with recommendations*, 27 December 2021; OSCE Mission to Bosnia and Herzegovina, *"Two Schools Under One Roof" - The Most Visible Example of Discrimination in Education in Bosnia and Herzegovina*, 3 December 2018.

32 See: Amila Svraka-Imamović, "Freedom of Religion or Belief: The Right to Wear the Hijab in Public Spaces", *Context: Journal of Interdisciplinary Studies* 11:2 (2024), pp. 71-107.

33 See: Pagotto and Išerić, "Religious Symbols in Bosnia and Herzegovina's Courtrooms", pp. 141-143.

of official duties. This is one of BiH's best known cases involving restrictions on the wearing of religious symbols, and almost automatically became a hijab ban. This triggered a number of public debates, protests, and reactions from the Islamic Community and various human rights organisations. The Islamic Community clearly demarcated that the hijab is not and cannot be considered a religious symbol, by issuing a fatwa on the issue.[34] The HJPC has remained consistent in its position that the ban is a measure to ensure professional neutrality, and that the decision does not refer to any specific religion, but to any religious symbols.[35] In practice, however, the public controversy and practical effects of the measure overwhelmingly affected the hijab, indicating the selective and unequal application of the HJPC's neutrality rationale.[36]

This disproportionate effect was both visible in public debate and explicitly recognised by institutions and rights-based actors who reacted to the HJPC's conclusions. As Pagotto and Išerić note, the Agency for Gender Equality of Bosnia and Herzegovina considered the conclusions discriminatory on the basis of gender in labour and labour relations, while the Ombudsperson indicated that the ban amounted to the indirect discrimination of women of the Islamic faith. Human-rights and women's organisations similarly criticised the conclusions as indirectly discriminatory, and the Islamic Community responded in its fatwa that the hijab should be understood as a religious obligation, and an integral practice of Muslim women.[37] These reactions are important because they show that the dispute was not abstract or symbolic, but had concrete and unequal consequences for Muslim women.

Analysed through these theoretical insights, it is clear that restricting the hijab is not a legal issue, but a secular production of norms about what is permissible, desirable and neutral in public space. According to Mahmood, women's bodies are often the place where this normative struggle takes place, because embodied,

34 Husein-ef. Kavazović [Ra'is al-'ulama'], "Fetva o obaveznosti nošenja hidžaba [Fatwa on the obligation to wear the hijab]", https://islamskazajednica.ba/index.php/fetve-i-rezolucije/26104-fetva-o-obaveznosti-nosenja-hidzaba, accessed 23 November 2025.

35 "VSTV: Ostaje na snazi zabrana nošenja vjerskih obilježja [High Judicial and Prosecutorial Council of BiH: Ban on wearing religious symbols remains in force]", *Radio Free Europe*, https://www.slobodnaevropa.org/a/27544748.html, accessed 28 November 2025.

36 See: "VSTV: Ostaje na snazi zabrana nošenja vjerskih obilježja [High Judicial and Prosecutorial Council of BiH: Ban on wearing religious symbols remains in force]", *Radio Free Europe*, 11 February 2016, https://www.slobodnaevropa.org/a/27544748.html, accessed 15 April 2026; "VSTV neće mijenjati odluke o hidžabu [HJPC will not change decisions on the hijab]", *Al Jazeera Balkans*, 10 February 2016, https://balkans.aljazeera.net/news/balkan/2016/2/10/vstv-nece-mijenjati-odluke-o-hidzabu, accessed 15 April 2026; "VSTV BiH: Zabrana vjerskih obilježja [HJPC BiH: Ban on religious symbols]", *Al Jazeera Balkans*, 21 January 2016, https://balkans.aljazeera.net/news/balkan/2016/1/21/vstv-bih-zabrana-vjerskih-obiljezja, accessed 15 April 2026.

37 See: Pagotto and Išerić, "Religious Symbols in Bosnia and Herzegovina's Courtrooms", pp. 145-146.

everyday and inalienable religious affiliation goes beyond the framework tolerated by secular institutions.[38]

In the case of the HJPC, the practical application of neutrality centred overwhelmingly on women wearing the hijab; i.e., the burden of institutional neutrality fell selectively on visibly Muslim females.[39] Such a practice leads to the de facto exclusion of hijab-wearing women from judicial institutions, and creates a professional space in which only religions that are invisible, culturally normed and systemically unproblematic are considered neutral. Instead of defending equality, this produces asymmetry. Additionally, recruitment and appointments are still often based on ethnicity in courts and prosecutors' offices. The institutional structure of the state is formally based on the principle of ethnic balance, meaning that institutional neutrality does not exclude all forms of identity – it targets religious expressions such as the hijab, while institutionalising ethnic identities. This opens space for a deeper inconsistency. In the BiH context, religious affiliation has historically functioned as a key marker through which ethnonational identities are distinguished and politically organised. Restrictions directed at visible Muslim religiosity therefore do not operate as religion narrowly understood; they also affect access to positions in an institutional order structured by ethnic representation. In that sense, measures that burden hijab-wearing Muslim woman have the indirect effect of reducing the pool of Bosniak women able to participate in institutions whose composition is otherwise justified through the language of ethnic balance.[40]

The reach of this neutrality logic is not limited to professional guidance from judicial governance bodies. It also appears in legislative proposals that would formalise and extend restrictions through statutory language and delegated rulemaking. In June 2025, a draft Law on the Court of Bosnia and Herzegovina introduced Article 14 on "signs of affiliation" (*oznake pripadnosti*), prohibiting judges from displaying religious, political, national, or other signs, and further authorising court leadership to regulate behaviour and dress for employees and court users through internal rulebooks. Commentators noted that the clause relied on undefined categories ("religious signs"; "religious gestures or expressions") and shifted key restrictions from the law itself to sub-legal acts. It consequently created

38 Mahmood, *Politics of Piety*, pp. 15-20.

39 See: Komisija za slobodu vjere Rijaseta Islamske zajednice u Bosni i Hercegovini, "Komisija za slobodu vjere: Alarmantna pojava vjerske diskriminacije u Općinskom sudu u Tuzli", 1 December 2025, https://islamskazajednica.ba/index.php/vijesti/aktuelno/32410-komisija-za-slobodu-vjere-alarmantna-pojava-vjerske-diskriminacije-u-opcinskom-sudu-u-tuzli, accessed 15 April 2026.

40 See: Svraka-Imamović, "Freedom of Religion or Belief: The Right to Wear the Hijab in Public Spaces", 71-107; and Đermana Kurić and Amila Svraka-Imamović, "Courts and Headscarves in Bosnia and Herzegovina: The Importance of Article ١٤", *Irish Centre for Human Rights Blog*, 10 December 2025, https://ichrgalway.org/2025/12/10/courts-and-headscarves-in-bosnia-and-herzegovina-the-importa nce-of-article-14/, accessed 15 April 2026.

a discretionary space in which the neutrality of the courtroom could become a mechanism of exclusion, particularly for women whose religiosity is anchored in visible everyday practice, such as the hijab. Parliamentary debate records and subsequent reporting show that questions were raised explicitly about whether women would need to remove the hijab to access the court, with the proposer suggesting that the matter would be dealt with by internal regulations; the draft ultimately failed in the first reading. Importantly, the dispute was also narrated through the EU-integration register, and included public claims (reported in the media) that the clause reflected EU expectations – claims that function politically, regardless of whether they can be independently verified as EU policy.[41]

The later treatment of Article 14 further confirms how the language of neutrality can travel through different legal and institutional registers. Pagotto and Išerić show that the Venice Commission accepted in 2013 that a prohibition on judges displaying signs of religious affiliation could be compatible with European standards, and that in 2023 it reviewed a draft provision extending prohibitions not only to religious signs, but also to religious prayers, gestures, and expressions, while allowing further regulation of dress and conduct through special ordinances. They note that the prohibition was reportedly approved within the EU-integration framework, in a way that encouraged extending it to all employees of the Court and its Appellate Division.[42] This is significant because it supports the point already made in this paper: the register of European standards does not operate neutrally, but can become a vehicle through which increasingly expansive restrictions on visible religiosity are normalised.

Uniformity and Visibility: (In)Tolerance of Religious Practices in the Armed Forces

The presence of women wearing the hijab in the defence sector is systematically discouraged and prohibited. The most famous case is that of soldier Emela Mujanović,[43] a member of the Armed Forces of Bosnia and Herzegovina suspended for wearing the hijab, who has been fighting for its inclusion in the army's dress code for more than a decade. Although Mujanović's actions did not disrupt the

41 Đermana Kurić and Amila Svraka-Imamović, "Hidžab i sudstvo: Je li vrijeme za promjenu zakona? [Hijab and the judiciary: Is it time to change the law?]", 3 July 2025, https://balkans.aljazeera.net/teme/2025/7/3/hidzab-i-sudstvo-je-li-vrijeme-za-promjenu-zakona, accessed 9 April 2026.

42 See: Pagotto and Išerić, "Religious Symbols in Bosnia and Herzegovina's Courtrooms", p. 148.

43 "Emela Mujanović: Tražili su mi da prije ulaska u kasarnu odstranim višak, a to je bio moj hidžab [Emela Mujanović: They asked me to remove the excess before entering the barracks, and that was my hijab]", *Klix.ba*, https://www.klix.ba/vijesti/bih/emela-mujanovic-trazili-su-mi-da-prije-ulaska-u-kasarnu-odstranim-visak-a-to-je-bio-moj-hidzab/240528060, accessed 10 November 2025.

functionality or hierarchical structure of the army, the ban was justified by its uniform regulations, which require secular neutrality in the visual representation of members.[44]

Charles Taylor explains this institutional position through the prism of secular modernity, which functions not by openly prohibiting religion, but through an "immanent frame(work)".[45] This means that religious affiliation is perceived as private and undesirable in the sphere of rational public action, in which the body of a woman wearing the hijab becomes 'too religious', and therefore fundamentally problematic in systems that require neutrality. In such situations, institutions most often defend themselves by saying that it is not a matter of banning religion, but simply the need for a unique visual identity. This confirms Taylor's thesis that the modern secular order is not a neutral platform, because it shapes the boundaries of what is acceptable, normal and professional, often to the detriment of those who bring different meanings to the public sphere.[46]

Conclusion

The analysis in this paper suggests that, in the institutional domains it examines, secularism operates less as a neutral guarantee of freedom of religion and equality than as a form of institutional regulation whose restrictive effects fall most visibly on Muslim women who wear the hijab. Although BiH is legally a secular country, which should guarantee freedom of religion, analysis of various institutional practices shows that secularism in this country is not an abstract principle, but a regime of standardising religious visibility, with a focus on women who express their affiliation though their clothing. In this context, secularism defines the borders of what is a desirable, acceptable and neutral identity.

Key to understanding this dynamic is recognising that the hijab cannot be reduced to a religious symbol alone, but must also be understood as an everyday practice and deeply rooted form of self-recognition and identity for Muslim women. While other religious markers, such as the cross, Star of David, or crescent may carry lived devotional meaning, in this paper the hijab is approached as an

44 See: Constitutional Court of Bosnia and Herzegovina, AP-1795/21, Decision on Admissibility and Merits, 11 July 2024; Constitutional Court of Bosnia and Herzegovina, U-21/22, Decision on Admissibility and Merits, 18 January 2024; "Pravila o uniformama Oružanih snaga Bosne i Hercegovine [Rules on Uniforms of the Armed Forces of Bosnia and Herzegovina]", 24 April 2017.

45 Taylor, *A Secular Age*, pp. 552-558.

46 See: Đermana Kurić, "Blaming Muslim Women: Intersectionality and the Headscarf in the Army of Bosnia and Herzegovina", *Context: Journal of Interdisciplinary Studies* 10:1 (2023), pp. 25–51; and Taylor, *A Secular Age*, pp. 185-186, 189-190, 555.

embodied religious practice whose significance goes beyond the symbolic. It is precisely its bodily and visual dimension that is perceived as a threat to secular neutrality, revealing that this notion is not universal or equally applicable.

The BiH judiciary provides a particularly clear example of selective secularity. Although its restrictions are grounded in applicable entity court laws, the HJPC has played an important role in their enforcement and public articulation, and the attendant controversy has centred overwhelmingly on the hijab. While the language in the HJPC's conclusions does not formally discriminate against a specific religious group, it affects Muslim women wearing the hijab in almost all cases. The asymmetry of this is reinforced by judicial dress itself: the judicial robe may conceal certain religious items worn underneath it, whereas forms of visibly embodied religiosity worn on the head remain exposed. In that sense, the practical burden of neutrality falls unevenly on practices such as the hijab.

Similar occurrences have been noted in the armed forces, where professionalism and uniformity are interpreted as incompatible with visible religious practices, even though the hijab is not prohibited by law. The case of Emela Mujanović, dismissed from the service for her commitment to wearing the hijab, confirms how secularism can filter out those who do not satisfy dominant cultural perceptions of neutrality and loyalty to the state.

The paradox of neutrality is additionally emphasised by the fact that institutions like the judiciary and armed forces still follow the principal of ethnic representation in their appointments, which is a direct result of the post-Dayton political order. In the BiH context, religious affiliation has historically functioned as a marker that distinguishes and politically organises ethnonational identities. Restrictions directed at visible Muslim religiosity do not only reflect a narrow understanding; they may also indirectly reduce the participation of Bosniak women in institutions whose composition is otherwise determined by the principle of ethnic representation. On an individual level, the hijab as a personal and private practice has become the target of institutionalised censorship. This shows that neutrality is not a categorical value, but a selective tool that purposefully shapes the social space.

This paper's analysis of secularism as a form of regulation is based on the theoretical views of authors Charles Taylor, Talal Asad and Saba Mahmood, whose insights demonstrate that secularism is far from being neutral and universal. Taylor's exclusive humanism shows how the secular world view is grounded in a specific cultural-historical context, while Asad and Mahmood see secularism as a discursive and institutional project that shapes subjectivities, regulates religious practices, and produces hierarchies of power. It is this theoretical perspective that

allows for an analysis of secularism in BiH to be analysed not as a normatively neutral system, but as a complex configuration of power, culture and identity.

Finally, the paper explains how those perceived as different are often controlled by mechanisms hidden beneath the notion of protecting secularity and neutrality. In practice, this means that women who wear the hijab are not being excluded because their religion represents a threat, but because their presence unveils the limits of contemporary secular inclusiveness. Consequently, their bodily and visual presence becomes a political act that challenges established norms, and opens space for critical reflection.

If secularism in BiH is to be a credible framework for freedom and equality, it is necessary for it to question its own limitations, implicit assumptions, and modes of selective application. Only then it will be possible to establish an inclusive society, in which neutrality does not mean rendering differences invisible, but accepting and respecting them in their multiple manifestations.

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Između neutralnosti i kontrole: sekularizam, hidžab i muslimanke u Bosni i Hercegovini

Sažetak

Ovaj rad ispituje kako sekularizam u Bosni i Hercegovini (BiH) selektivno reguliše prisustvo religije u javnim institucijama, s fokusom na žene koje nose hidžab. Analizira pravne i institucionalne odgovore na vidljivost religije u pravosuđu i oružanim snagama, oslanjajući se na teorije Charlesa Taylora, Talala Asada i Sabe Mahmood. Rad tvrdi da se sekularna „neutralnost" primjenjuje asimetrično, što rezultira nejednakim tretmanom muslimanki koje javno izražavaju svoju vjeru. Hidžab nije samo simbol, već oblik prakticiranja vjere, a njegovo isključivanje iz javnog prostora odražava dublje norme vidljivosti i poželjnosti. U kontekstu u kojem su etničke kvote institucionalizirane, sekularizam je postao alat za potiskivanje religijskog identiteta, dok se drugi oblici identiteta toleriraju ili čak ugrađuju u sistem. Ovaj rad propituje da li sekularizam u BiH istinski promoviše jednakost ili umjesto toga reproducira sistemsko isključivanje i normativnu pristrasnost.

Ključne riječi: sekularizam, vidljivost religije, hidžab, institucionalna neutralnost, Bosna i Hercegovina, muslimanke