

Cumhuriyet İlahiyat Dergisi - Cumhuriyet Theology Journal

ISSN: 2528-9861 e-ISSN: 2528-987X

CUID, December 2017, 21 (2): 793-825

The Legality of Religious Symbols in European Schools*

Avrupa Okullarında Dini Simgelerin Yasallığı

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Makale Bilgisi / Article Information

Makale Türü / Article Types: Araştırma Makalesi / Research Article

Geliş Tarihi / Received: 22 Kasım/November 2017

Kabul Tarihi / Accepted: 06 Aralık/December 2017

Yayın Tarihi / Published: 15 Aralık/December 2017

Yayın Sezonu / Pub Date Season: Aralık/December

Cilt / Volume: 21 **Sayı – Issue:** 2 **Sayfa / Pages:** 793-825

DOI: <https://doi.org/10.18505/cuid.356795>

* This article has been published previously in Turkish: Baltacı, Ali. "Avrupa Okullarında Dini Simgelerin Yasallığı". *Cumhuriyet İlahiyat Dergisi-Cumhuriyet Theology Journal* 21, no. 1 (June 2017): 45-80. doi: 10.18505/cuid.286581.

* I would like to express my gratitude to Prof. Ali BALCI and Dr. Tuncer FİDAN for their valuable contribution in the process of shaping this study.

Atıf/Cite as: Baltacı, Ali. "The Legality of Religious Symbols in European Schools". *Cumhuriyet İlahiyat Dergisi-Cumhuriyet Theology Journal* 21, no. 2 (Aralık 2017): 793-825. doi: 10.18505/cuid.356795.

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The Legality of Religious Symbols in European Schools

Abstract: European Court of Human Rights, established in 1959 as the unit of the Council of Europe, is the judicial authority that resolves individual, legal personality and international problems within the scope of fundamental rights defined in the 'European Convention on Human Rights' and other protocols. Historically, the European Court of Human Rights has taken various decisions that are considered within the scope of freedom of thought, conscience, and religion. The Court defines in its decision, and in particular, what it can be judged within the context of the religious symbol, from a secular point of view. The court recognized the right to freedom of belief and religion, on the other hand, described this right as a declaration of belief in public. The study was designed with a 'conceptual screening model' approaching religious symbols on the basis of freedom of religion and belief. Although this study seems to be in essence a literature review, conceptual screening differs from the literature review method in that it examines the different aspects of a concept within the scope of different science and disciplines. The purpose of this study is to determine the attitude of the European Court of Human Rights to the religious symbols of schools. As a consequence of this work, the nature and scope of local and forbidden legal initiatives against the growing religious symbolism in European schools over the last years have been determined. However, the place of religion in European educational systems and the "church-state relationship" within the social system is another consequence of this study. This study also specifies that the decisions of the courts should be shaped to express religious beliefs and traditions freely in the public sphere.

Keywords: European court of human rights, Freedom of religion, Freedom of belief, Secularism, Religious symbolism.

Avrupa Okullarında Dini Simgelerin Yasallığı

Öz: 1959 yılında Avrupa Konseyine bağlı olarak kurulan Avrupa İnsan Hakları Mahkemesi, Avrupa İnsan Hakları Sözleşmesi ve diğer protokollerle belirlenmiş temel haklar kapsamında birey, tüzel kişilik ve devletlerarasındaki sorunları çözümleyen yargı merciidir. Tarihsel olarak Avrupa İnsan Hakları Mahkemesi: düşünce, vicdan ve din özgürlüğü kapsamında değerlendirilen çeşitli kararlar almıştır. Mahkeme

söz konusu kararlarında ve özellikle nelerin dini simge kapsamında değerlendirilebileceğini laik bir bakış açısıyla tanımlamaktadır. Mahkeme, bir taraftan dini inanca sahip olma hakkını tasdik etmekte, bir taraftan da bu hakkı kamusal alanda inancı beyan etme hakkı olarak nitelemektedir. Çalışma dini simgelere, din ve inanç özgürlüğü temelinde yaklaşan kavramsal tarama modeliyle desenlenmiştir. Bu çalışma özünde alanyazın taraması gibi görülse de alanyazın tarama yönteminde farklı olarak kavramsal tarama, bir kavramın farklı yönlerini değişik bilim ve disiplinlerin çalışma alanları kapsamında incelemektir. Bu çalışmanın amacı, Avrupa İnsan Hakları Mahkemesinin, okullarda bulunan dini simgelere karşı tutumunu belirlemektir. Bu çalışmanın bir sonucu olarak, son yıllarda Avrupa okullarında giderek artan dini simgeciliğe karşı yürütülen yerel ve yasakçı yasal girişimlerin doğası ve kapsamı belirlenmiştir. Bununla birlikte, Avrupa eğitim sistemlerinde dinin yeri ve sosyal sistem içinde “kilise – devlet ilişkisi” bu çalışmanın başka bir sonucudur. Ayrıca çalışma, mahkemelerin kararlarını, dini inanç ve geleneklerin kamusal alanda özgürce beyan edilmesi yönünde şekillendirmeleri gerekliliğini de belirlemektedir.

Anahtar Kelimeler: Avrupa İnsan Hakları Mahkemesi, Din özgürlüğü, İnanç özgürlüğü, Laiklik, Dini Simgecilik.

SUMMARY

From the European reconstruction era, the presence of religious symbols, in many cases Islamic symbols, has increasingly become a problem in modern Europe, especially in public sphere and especially in public schools. This has led to a large-scale debate and social distinctions about the limits of the concept of religious freedom. At the same time, the fact that the constitutional courts of the countries have declared that the symbols specific to certain cultures can be freely represented by the society have caused new debates. This study is mainly focused on the view of the European legal systems, and in particular the European Court of Human Rights (ECHR), on the basis of the religious symbolism and freedom of religion and belief. This study gives places to discussions regarding the use of crosses and other religious symbols in schools in Germany, Italy, and Romania. Moreover, the ambivalent attitude of the local courts and the ECHR against the religious symbols are discussed in the study.

In Europe has a historically shaped state, public and religious institutions. The European States has legislative, executive and judicial institutions evolving over the Greek and Roman Civilizations. Additionally, the nations connected to each other by the concept of common religion and culture constitute European public opinion in general. In Europe, religious institutions have adopted a belief system traditionally shaped in Roman times. Although there are sectarian differences across Europe, the Christianity has generally been adopted. The Catholic Church (Vatican), which has played a very dominant role in all social areas since the Middle Ages, has lost this power since the age of illumination. Along with the Enlightenment, European states have begun to adopt the traditional view of secularism, which separates religion and state relations and reduces the influence of religion on state organs. Thus, the dominant religious power over the states has weakened and the church has continued its life in society and the public sphere.

The ECHR, established in 1959 as an organ of the Council of Europe, is tasked with resolving disputes between individuals and legal entities, and between themselves, and with the states, in the exercise of the fundamental rights of various contracts. The ECHR lays down the depletion of domestic legal channels primarily as a condition for application because of the high nature of the court. Plus, the ECHR has adopted a compromise approach to solving the problems. The ECHR clearly states that citizens freely express their freedom of religion, conscience, and belief, while its provisions depend on secularism as well. Some ECHR verdicts reshape the definition of the public sphere in accordance with the principle of 'secularity' instead of the 'neutrality'.

According to Decision 1804 of the Parliamentary Assembly of the Council of Europe concerning the state, religion, secularism and human rights, religion is regarded as an important place in European history, but in the practice, requires the separation of church and state. Despite this decision, the Council and the Court have not succeeded in recognizing the different views of the member states in matters such as the role of religion in schools. There is a dominant view that the secular states in which the public decision-making processes are based solely on secular debates in the ECHR are in accordance with the principles of liberal European democracy. In the decisions of local courts in Europe, human rights are increasingly being taken into account. In doing so, the courts are failing to determine

the ideological nature of secularism. The judgments of the courts result in the suppression of the religious views of individuals by liberal values.

From all the discussions that have been made, it can be determined that the ECHR and, indeed, the local courts and the society are historically more biased towards non-Christian religions and cultures, despite adopting a secular understanding. Besides, it is noteworthy that in many of the countries' public sphere, Islamic religious symbols are mostly restricted. The main reason for these restrictions is thought to be Islamophobia and xenophobia. In European societies and in western societies in general, religious symbols are seen as belonging, and along with the growing Islamophobia and far-right trends, especially Christian symbols are used extensively in public spheres. In addition, it is also possible to ban the use of symbols identified in particular in Islam (such as headscarves) in public sphere and even punish those who use them, in various countries, including France and Austria. Besides, the use of religious symbols in schools should not be regarded as a cultural value alone. Religious symbols are an important part of a religion and concrete indications of its existence in a society. It would be more accurate to see the symbols of Christianity in schools as a means of assimilation rather than as a means of culture.

INTRODUCTION

It is known that Europe, whose political, social and industrial systems, and especially civilization were mostly damaged in World War II, met its need for labor force in the development and reconstruction process from their previous colonies or from highly populated countries including Turkey. Starting from the reconstruction periods, the existence of religious symbols, especially Islamic symbols, in public sphere and especially in public schools, has become a problem in modern Europe and the led to large-scale discussions on the limits of religious freedom concept and to social differentiation. Besides, the constitutional courts of countries have made statements that symbols of certain cultures can be freely represented in the society, which has also lead to new discussions.

This study, which focuses on the points of views of European legal systems and especially on the European Court of Human Rights (ECHR) on religion and freedom of religion, uses screening model. Conceptual screening is an analysis study which examines different points of views on a concept. The fundamental aim of

this study is to determine the approach of the ECHR about religious symbols in schools. This study attempts to determine the nature, reasons, and scope of ever-increasing local and prohibitive legal interventions in the use of religious symbols in public schools based on growing xenophobia and Islamophobia. Moreover, the place of religion in European education systems and “church-state relation” in a social system are the other topics of the study. Further, the necessity of shaping the judgments of the courts in the way that religious beliefs and traditions are freely declared in the public domain, and to determine national courts’ discriminative attitudes between Christianity and other religions constitute another aspect of this study. In the following sections, the state of religious symbols in Europe will be discussed with a variety of analyses.

1. THE CURRENT STATUS of RELIGIOUS BELIEFS IN EUROPE

Europe has stated, public and religious institutions, which have been formed in the course of history. The European States regards legislative, execution and jurisdiction institutions, which have evolved based on ancient Greece and the Roman Empires, as the foundation of their institutionalization. Besides, nations that are linked to each other with a common religion and culture make up the European public opinion. Traditionally, the institution of religion in Europe has adopted the belief system that was shaped in the Roman period. Although there are denominational differences between countries in Europe, Christianity is the most common religion on the continent. The Catholic Church (Vatican), which played a dominant role in all social spheres since the middle ages, has lost its power after the enlightenment age. With enlightenment age, European states have started to adopt a traditional secularism view, which divides religion and state affairs and which decreases the influence of religion on state organs. Thus, the church institution whose power in states has decreased continued to exist in social life.

In Europe, religion represents a lifestyle that requires people to lead their lives according to a certain order. Religion, which is regarded as an important factor that connects people to each other, is one of the basic values that people feel attached. Also, in European societies where a secular lifestyle is adopted, religion is regarded as a dogmatic and metaphysical set of beliefs. With the introduction of Islam and other religions in the 1960s through immigration, the use of religious symbols has become a topic of discussion in the public. Additionally, while most

people thought that immigrants, who had different religions, would leave Europe in time, societies started to admit people of different religions. Especially with increasing Islamophobia in the period after 2001, using religious symbols of every kind in public spheres was forbidden in many European countries. Although it is denied that this prohibition is against Islam, it is interesting that particularly Islamic symbols are restricted in public spheres. On the other hand, symbols of other religions are not restricted and can be used freely in public spheres. However, freedom of religion and belief is among the fundamental human rights.

Rights that are determined legally are not neutral as they are based on cultural and moral points of views.¹ However, in its operations, the ECHR increasingly uses neutral and abstract values that are adopted from the European Convention on Human Rights and that is in conflict with cultural and religious concepts and applications.² In spite of this discrimination, it is seen that the ECHR addresses religious and cultural issues with meticulous neutrality which is supported by a set of “universal values”. In fact, the idea of human rights in Europe finds its place in all spheres of the social system, especially in education.³ In modern European social life, there is a very small area where human rights are not observed. In line with Christian beliefs, human rights violations in some church practices, monasteries and in orphanages affiliated with churches are ignored.⁴ At this point, the following questions are of importance: “Can any legal arrangement compromise the institution of religion, which has penetrated deep in the society, with the system?” or “How can a common justice understanding be put into practice in a society where different communities increasingly voice their different demands?”

Recently with increasing far-right movements, xenophobia and immigrant problems in Europe, ensuring that people practice their religions freely and establishing the tender balance between the interests of righteous individuals and other

¹ Zachary R. Calo, “Secularism and the European Court of Human Rights”, *Journal of Law and Religion*, 26, sy.01(2010):263.

² Wendy J. Gordon, “A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property.” *The Yale Law Journal*, 102, no. 7 (1993): 1533.

³ Jocelyne Cesari, *When Islam and democracy meet: Muslims in Europe and in the United States* (New York: Springer, 2004), 18; Shahid Javed Burki, “The Rise of Extremist Islam.” *Rising Powers and Global Governance* in Shahid Javed Burki, 139-159 (Maryland: Palgrave Macmillan US, 2017), 139.

⁴ David Martin, *The future of Christianity: Reflections on violence and democracy, religion and secularization* (New York: Routledge, 2016), 45.

individuals emerge as a challenging duty for justice institution.⁵ This study also emphasizes the importance of courts, act on what is considered to be religious and cultural symbolism in the public arena, approaching beliefs and traditions that respect fundamental human rights and adopt a differentiated understanding.

Europe, which is shaped with Ancient Greece and Roman cultures, is indisputably the product of a Christian legacy. This reality is also seen in the celebration of some festivals in which Christian inheritance of Europe is recognized and celebrated and also in public holiday.⁶ The specific relation between the church and state in Europe is extremely complex. There is a conflict between them because of their different policies about religious symbols at schools and different views on what things count as religious symbols.⁷ In its public practices, the state makes various comments on what are religious or cultural symbols. This is shaped by the national and political culture of the relevant state. Principally, each state's approach towards religion is a political issue rather than a social issue. Commonly it is patterned by the traditions and social conditions of the states. Furthermore, the perception of religion and human rights also changed and started to have various associations all over Europe. Although states adopt a secular understanding, they also respect religious faith approved by the society in general. Although legislation, executive power, and jurisdiction institutions are definitely separated, it can be seen that when socially approved religious faiths come up, these institutions adopt an attitude in favor of the dominant religious faith.

Christian churches in Europe can play an important role in the state, or the church and cultural and religious symbols can be of both consolidative and divisive characteristic.⁸ When any symbol is presented to a member of a society who does not have any feeling of belonging, the symbols that have different meanings can come to have a divisive role. Women who wear the veil as a requirement of Islamic lifestyle are found odd and ostracized. Those who do not adopt this faith can see it

⁵ Emma Jones, "Fair Access versus Religious Freedom: A Difficult Balance." *Oxford Journal of Law and Religion* 5, no.2 (2016): 359.

⁶ Philip Jenkins, *The Next Christendom: The Coming of Global Christianity* (Oxford: Oxford University Press, 2011), 23.

⁷ Jill Marshall. "Conditions for freedom?: European human rights law and the Islamic headscarf debate." *Human Rights Quarterly* 30, no.3 (2008): 632.

⁸ Peter O'Brein, *The Muslim Question in Europe: Political Controversies and Public Philosophies* (Philadelphia: Temple University Press, 2016): 113.

as an example of this divisive role of faith. There is now an increasing *prejudice* against the use of symbols in public sphere in Europe. In cases in local courts and in the ECHR, there are various discussions and different definitions and assumptions about cultural and religious symbols. Inconsistency between intercultural and local courts in defining cultural and religious symbols leads to an apparent uncertainty. This uncertainty also exerts itself in legal regulations determining what is appropriate for public schools.

Attitude of the European Courts of Human Rights

The ECHR, which was established in 1959 as an organ of the European Council, is responsible for finding a solution for problems both between individuals and between individuals and legal entities in using their basic contractual rights. As a higher court, the ECHR, which conditions that local remedies be exhausted, has adopted a reconciliatory approach in solving problems.⁹ Turkey, together with other members of the European Council, is subject to international standards of the ECHR. Turkey has recognized the ECHR by enacting the European Human Rights Law dated 1998, which requires local courts to take decrees of Strasbourg into consideration. The article 9 (1) of European Convention on Human Rights covers the following decrees:

Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observance.

These rights are not limited and the second clause of the same article brings about some limitations:

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The ECHR has allowed states to have judicial discretion to balance freedom of religion of a religious group against another group.¹⁰ As it can be seen in the

⁹ Tom Lewis, "What not to wear: religious rights, the European Court, and the margin of appreciation." *International and Comparative Law Quarterly* 56, no.02 (2007): 395.

¹⁰ Fabienne Bretscher, *The Swiss Judiciary and International Human Rights Bodies: A Closer Look at Muslim Religious Practices in Public Schools* (Zurich: University of Zurich, 2016), 13.

802 | Baltacı, Ali. The Legality of Religious Symbols in European Schools

decreed made by the Court in the case of Turkey against Leyla Şahin, in principle national authorities are regarded to have a better position in assessing local requirements and conditions compared to international courts. Judicial discretion means that while national authorities play a primary role in assessing local requirements and conditions, the ECHR will play a secondary role. Thus, judgments made by local authorities are seen essential; however, the necessity that these decrees be compatible with European Convention on Human Rights makes it subject to the ECHR custody.¹¹

The ECHR particularly accepts the need for a fair balance between the interests of all parties.¹² However, as the policies developed on this issue show differences based on national traditions and as there is no consensus on how to or whether to protect others' rights and freedom, judicial discretion comes up in the discussions on religious symbols in the education system. Besides, it can be seen that the ECHR adopts a policy of minimum intervention and approval of states' intolerances.

On the one hand, the ECHR clearly states that individuals have freedom of religion and conscience and freedom of declaration of religion; on the other hand, it sticks to secularism principle in its decrees. Some decrees by the ECHR redefined public sphere based on secularism other than on impartiality. In a case heard by the ECHR, which can be seen as a turning point, the Court approved that secularism is a requisite for democracy and supported Turkish Government's closure of the Islamic Party.¹³ In another judgment¹⁴, the Court decided that secularism principle is compatible with Item-2 of the Protocol-1¹⁵ on education at schools.

In the Advisory Decree number 1804 by the Parliamentary Assembly of the Council of Europe about the state, religion, secularism and human rights, it is accepted that religion has an important place in European history, but it is stated that the division between church and state should be continued in the political

¹¹ Ali Ulusoy, "Avrupa İnsan Hakları Mahkemesi'nin Üniversitelerde Türban Yasağına İlişkin Kararları Üzerine Notlar." AÜHFD, 53(2004): 128.

¹² Paul M. Taylor, *Freedom of religion: UN and European human rights law and practice* (Cambridge University Press, 2005), 53.

¹³ Case of Leyla Şahin vs. Turkey Case, ECHR Application no: 44774/98, 29.6.2004.

¹⁴ Case of Hasan and Eylem Zengin vs. Turkey Case, ECHR Application no: 1448/04, 09.10.2007

¹⁵ No one can be denied their right to education. State must respect the right of parents' religious and philosophical convictions in respect of education and teaching.

processes.¹⁶ In spite of this judgment, the Council and the Court could not positive in recognizing different views of member states about the role of religion in public education institutions.¹⁷ The ECHR dominantly adopts the view that secular states in which public judgment making processes are based only on secular discussions are compatible with the principles of liberal European Democracy (Turkey vs Leyla Şahin). In parallel with this, local courts increasingly consider human rights in their judgments. When doing so, courts fail to allow for ideological nature of secularism. The judgments made by the courts cause religious beliefs, tolerance, and culture of diversity of families to be pressurized by liberal values. Secularism, as an ideology, inseminates the ostracization of religious concepts from public life and increasingly influences the judgments made by the ECHR. In spite of all these developments, only a few countries in Europe define themselves as secular. While anti-Islamic practices in European countries, which define themselves as secular, are based on the principle of secularism, the attitudes of the very same countries towards other religions create contradictions. As the ECHR is a higher court, it observes the judgments made by local courts in such cases of contradictions. While the ECHR gives importance to local courts' judgments, it does not show the same attitudes towards judgments made by Turkish courts. It is thought-provoking that while the ECHR observes the principle of secularism to a full extent in its judgments about Turkey, it makes rather different judgments about other countries. Besides, it is also seen that the ECHR has capitulated from its pro-secularist attitude in some special cases related to the church.

2. THE PLACE of RELIGIOUS SYMBOLS in EUROPEAN LAW

The symbol is a behavior or an object, which does not have to mean on its own but substitutes another phenomenon and depicts it. Symbols are the concrete

¹⁶ Alicia Cebada Romero, "The European Court of Human Rights and Religion: Between Christian Neutrality and the Fear of Islam." *NZJPIL* 11 (2013): 75.

¹⁷ Tariq Modood, "State-Religion Connections and Multicultural Citizenship." *Religion, Secularism, and Constitutional Democracy* in Jean L. Cohen and Cecile Laborde, 182-203 (New York: Columbia University Press, 2016), 183.

and apparent signal used to remind or to make cultural, religious and ethnic concepts, which are mostly abstract, concrete and apparent.¹⁸ The symbols adopted by societies can come to have more comprehensive meanings in the course of history and thus can have different or more complex meanings than their original meanings. Symbolism means simplifying very comprehensive knowledge and facts and intentionally using them in daily life by means of concrete objects.

Almost all religions all over the world use symbols very intensively. Rather than being a simple means of communication or relation indicators, religious symbols most of the time reflect historical development and philosophy of religions and are used for centuries without change.¹⁹ Religious symbols also have a spiritual meaning as they reflect the common culture, history, and lifestyle of the believers of a religion. An important feature of religious symbols, which distinguishes them from other symbols, is that they are unchangeable.²⁰ Besides, being an important part of people's life, religious symbols are often carried to other spheres of the social system. Depending on the level of the importance they attach to them, people carry them to public spheres.

2.1. Law and Religious Symbolism

Using religious symbols like cross, fish and prayer beads in public spheres including state schools has a very long history in Europe. These religious symbols are mostly Christian symbols and include a wide range of Christian images like crucifix, cross, Virgin Mary images, icons of the Jesus and Saints.²¹ Many people believe that these Christian symbols have a function in forming the spirit, character and aesthetic tendencies of European people and that there is a rich interaction between cultural and religious symbolism. Religious symbols create a rich tradition which reflects the values of society and has a supportive role in engendering solidarity.

¹⁸ Susanne K. Langer, *Philosophy in a new key: A study in the symbolism of reason, rite, and art* (London: Harvard University Press, 2009): 48.

¹⁹ Mircea Eliade, *Patterns in comparative religion* (Lincoln: University of Nebraska, 1996), 46.

²⁰ Michel Weber, "Symbolism, Its Meaning and Effect: The Universal Algebra of Culture." *Cosmos and History: The Journal of Natural and Social Philosophy* 12, no.1 (2016): 353-354.; Knight Dunlap, *Religion: Its function in human life: A study of religion from the point of view of psychology* (New York: McGraw-Hill publications, 1946), 113.

²¹ Gladys Âmânda Reichard, *Navaho religion: a study of symbolism* (New Jersey: Princeton University Press, 2014), 43.

When the current discussions are taken into consideration, reducing religious symbols to the cultural heritage of the past would be an oversimplification. The first act about the prohibition of religious symbols in state schools in Europe was passed in 2004.²² This act prohibited students' wearing symbols or clothes that obviously indicate a religious faith. The French act was applied to symbols of all religions but discussions mostly focused on Muslim girls. Thinking that banning Islamic veil would lead to discrimination and social reactions, large symbols of Christianity were also banned at schools. Some German states and Swiss cantons banned teachers at schools from wearing religious symbols including the veil. However, the priest and priestess have left out of the scope this ban. In European countries, positive religious discrimination towards Christianity is discussed by the public. On the other hand, banning symbols of Islam and other religions at schools was seen as a success in public and church circles.

Local laws can vary significantly based on local historical conditions. Another feature of these laws is that they significantly favor dominant Christian culture.²³ This case also brings about criticism about state's intolerance stemming from discriminative attitudes of local courts. Because of increasing far-right, xenophobia, Islamophobia and immigrant problem, banning religious symbols, in particular, Islamic symbols, in public spheres and especially at schools is regarded to be right in European public opinion. Although church attendance is decreasing in Europe, there is an important increase in the number of people who define themselves as Christian. Increasing pro-religious view in the society is also influential in state organs and especially in the courts. This situation causes an axial shift in public opinion from liberal and secular values to church values. It is argued that the religious differentiation underlies the discriminative attitudes of local courts.

When a religious symbol is used as the language of state's authority in states schools, hospitals, courts or other public buildings, secular and ideological tensions escalate.²⁴ The main aim of the French act banning teachers and students

²² Tariq Modood, "2011 Paul Hanly Furfey Lecture Is There a Crisis of Secularism in Western Europe?" *Sociology of Religion* 73, no.2 (2012): 132.

²³ Javier García Oliva. "Religious Dress Codes in the United Kingdom." *Religion in Public Spaces: A European Perspective* in Silvio Ferrari and Sabrina Pastorelli, 217 (London: Routledge, 2016), 218.

²⁴ Henry J. Steiner, Philip Alston and Ryan Goodman. *International human rights in context: law, politics, morals: text and materials* (New York: Oxford University Press, 2008), 142-146.

from wearing religious symbols at schools is to ban Muslim girls from wearing a veil. On the other hand, this act allowed small religious symbols at schools. In this context, there are many phenomena in public schools that we can call "crucifixions" about the prohibition of religious identity markings.

Two different categories can be thought in terms of religious symbolism at schools. The first category includes Christian schools which are widespread and which are founded and financed by the state. As in the examples of Scotland and the Netherlands, the support can include full financial support by the state. Yet, in England and Germany funds are partial. Even French, which prioritizes its secular identity, subsidizes Catholic schools.²⁵ Although religious symbolism in these schools has not yet been taken to the court, it is seen that there is an increasing discussion on it in the society. Besides, even in Catholic schools which are fully funded by the state, religious symbolism is not seen as a part of state's public discourse. The second category related to the religious symbol used in schools is the state schools. Because of compulsory attendance, individuals are dependent on these schools, thus children cannot avoid from seeing "cross" symbol. The issue brought up in courts is a cross sign. The category discussed in this article is the second category and three cases in local courts will be handled, one of which has already been taken to the ECHR.

2.2. The Case of the Cross Symbol in Bavaria

In Germany, states like Baden-Wurtemberg, North Ren Westphalia, Hesse, Rhineland Palatinate, Saarland, and Thuringia etc. allow cross signs to be put on the walls. States like Brandenburg, Mecklenburg, Western Pommery and Hamburg etc. banned cross signs at schools. The Only state of Bavaria obliged crosses to be put on the walls in every class.²⁶ In 1991, Chinese-German couple, who are the followers of Rudolf Steiner mystical teachings, opened a case against the school their

²⁵ Benjamin J. Kaplan, *Divided by faith: Religious conflict and the practice of toleration in early modern Europe* (Boston: Harvard University Press, 2009), 112-114; Christian Joppke, "Pluralism vs. Pluralism." *Religion, Secularism, and Constitutional Democracy* in Jean L. Cohen and Cecile Laborde, 89-112 (New York: Columbia University Press, 2016), 92; Tobias Lock. "Of Crucifixes and Headscarves: Religious Symbols in German Schools." *Law, Religious Freedoms and Education in Europe* in Myriam Hunter-Henin, 347-369 (Farham England: Ashgate Pub. Co. 2011), 351.

²⁶ Joseph H.H. Weiler, "Lautsi: crucifix in the classroom redux.", *European journal of international law= Journal europeen de droit international* 21, no.1 (2010): 1; Howard Caygill and Alan Scott, "The basic

children attend. They opened a case against the school's administration as they wanted to bring up their children ideologically impartial school and objected to the cross at school. The case was taken to Regensburg Administrative Court and the couple's demand was rejected. On 10 August 2010, the couple applied to the Federal Constitutional Court in Karlsruhe. The court expressed the opinion that existence of the sign of the cross in classrooms is a violation of the German Constitution. The court based its judgment on negative religious freedom, in other words, rejection of religious or ideological persuasion process. The judgment, which defined putting up the sign of the cross in classrooms as a violation of the limits of schools' religious and ideological inducement, was accepted with 5 votes against 3 votes. It is necessary to point out here that Federal Constitutional Court found the obligation to have crosses at classrooms but not the existence of cross in classrooms against German Institution.

There were very strong social and political reactions against the court's judgments. Candle lighting meetings, silent protest marches and finally large-scale demonstrations with the participation of three hundred thousand people were organized. Bavarians regard cross as a symbol of their culture and widespread values.²⁷ Upon this judgment, the state's government put a new law into effect. According to the new law, the crosses in the schools are protected. However, when reasonable, faith or philosophy based complaints about the religious symbols at schools come from parents, arbitration is necessary between the school administration and parents. In cases when the problem cannot be solved, the final judgment is to be made by courts.²⁸ The German Constitutional Court decided that the cross is to be removed when a parent or student objects to it. The new state act mostly takes society's sensitivity to the issue. According to common political view in Bavaria, religious minorities should not intervene with the society but be free in their religious practices. Political parties in Germany took the amendment in

law versus the basic norm? The case of the Bavarian crucifix order." *Political Studies* 44, no.3 (1996): 508.

²⁷ Carla M. Zoethout, "Religious symbols in the public school classroom: a new way to tackle a knotty problem." *Religion and Human Rights* 6, no. 3 (2011): 287; Leora Auslander, "Bavarian Crucifixes and French Headscarves Religious Signs and the Postmodern European State." *Cultural Dynamics* 12, no.3 (2000): 283-309.

²⁸ Emma E. Rowe, "Politics, religion and morals: the symbolism of public schooling for the urban middle-class identity." *International Studies in Sociology of Education* (2016): 9.

the law to the Bavarian State Constitutional Court. In addition to them, a parent who has already protested against crosses at schools were also included in the case. However, their efforts were futile and in 1997 the Bavarian State Constitutional Court decided that the mentioned amendment was suitable to the constitution. In the same year, the Federal Administrative Court also made a similar judgment supporting this judgment.

The Administrative Court rejected the parent's request on the grounds that cross is a valuable and important symbol of the Western Christian tradition. When the case was first heard before the Constitutional Court, the Court decided that putting up a cross on the walls at school did not comply with the constitution. The important point that is clearly stated in this judgment is that it is not necessary to remove crosses and to prevent their being put up on the walls in the future. Since 1997, there have been other efforts to remove the sign of the cross from Bavarian schools. In 2006, a teacher, who had already received priest education and who later converted to atheism, had the cross in its classroom removed on the grounds that the sign of cross bore a psychological burden on him. After this incidence, Augsburg Court decided that the cross is to be put up on the wall again.²⁹

2.3. Icon Case in Romania

In 1989 after the collapse of communism, Christianity regained some of the public spheres it had lost in Eastern Europe and Russia. One of the signs of this return is that icons were put up at state schools as a result of local social attempts.³⁰ However, in 2005 a family complained about icons and other religious symbols at their child's school. Emil Moise, who is a philosophy teacher in Bazau town in Romania, applied to the local court to get religious symbols to be removed from all state schools including her own child's school. Moise argued that displaying these symbols at schools is discrimination against atheists and those who follow other sects of Christianity and that this violates the Church and State division principle. On 27 March 2005, the Buzau Court decided that "Putting up religious symbols on the walls of the schools do not violate freedom of religion, conscience and thought

²⁹ Anat Scolnicov, "On a Wing and a Prayer: Indirect Religious Discrimination in the European Court of Human Rights." *Oxford Journal of Law and Religion* 5, no.1 (2016): 159.

³⁰ Gizela Horváth ve Rozalia Bako. "Religious icons in Romanian schools: text and context." *Journal for the Study of Religions and Ideologies* 8, no. 24 (2009): 195; Ștefan Dorondel, "Orthodoxy, nationalism, and local identities: a Romanian case study." *Ethnologia Balkanica*, no.06 (2002): 133.

and it does not have a discriminative quality against the petitioner's child". Upon this judgment, Moise applied to the Supreme Court in 2006 but the Supreme Court endorsed local court's judgment. Moise, who could not reach any conclusion as a result of exhausting internal authorities, applied to National Commission of Fight against Discrimination. This commission founded in 2001 was appointed by the Romanian government to put Romania and European laws against discrimination into effect.

The commission advised the Ministry of Education to respect the secular character of the state and religious symbols are to be given place only in religious education courses or in spaces designed for religious education.³¹ The judgment of the commission was strongly reacted by the society, press, and politicians who were not pleased with this judgment. The Romanian Ministry of Education issued a guideline requiring local communities to develop their own rules with regard to displaying religious symbols at schools and defended displaying crosses at school under the cover of pluralism. The Ministry also started a legal fight against the advisory judgment of the Discrimination Council in February 2007. The Romanian Supreme Court declared the judgment of the Discrimination Council as illegal with its judgment numbered 2393/2008 on the grounds that the Council's judgment envisaged state intervention to private issues that should be decided by teachers, students and parents only. However, the Discrimination Council took its judgment, which is declared illegal by the Supreme Court, based on European Convention on Human Rights.

The Romanian Ministry of Education argues that the icons in the schools are placed with non-governmental organizations' attempt not with the order of the Ministry. This idea is based on the argument that "Roman people are Orthodox, Christian and religious."³² This assumption was also accepted by the non-governmental organization without discussion. On this issue, the State Ministry Responsible for Religion Affairs presented the argument to the Discrimination Commission that as symbols of freedom, these icons are strong national symbols because

³¹ Gizela Horváth ve Rozalia Bako. "Religious icons in Romanian schools", 197; Ștefan Dorondel, "Orthodoxy, nationalism, and local identities", 136.

³² Peter Schreiner, "Religious education in the European context." *Crossings and Crosses: Borders, Educations, and Religions in Northern Europe* in Jenny Berglund and Peter Thomas Lundén, 139-154 (Boston: CPI Books GmbH, 2015), 142.

they express spiritual and cultural heritage of Romania but not objects for respecting religion. The judgment by the Romanian Supreme Court on 11 June 2008 endorsed that displaying religious symbols at Romanian schools is a right.

2.4. Crucifix Case in Italy (Lautsi vs Italy)

Crucifix and regular cross are among the complementary components of Italian culture and tradition. In Italy, it is compulsory to have crossed in classes since the 1920s. Cross was also widely used in public sphere and especially in classes before that date. Cross is an office stock in many state offices, courts and hospitals.³³ The first legal struggle with regard to displaying a cross in Italian State schools was in 2003 when a Scottish born Muslim convert Adel Smith personally applied to the court. Adel Smith, who is the leader of “An Italian Muslim” and “Italian Muslims Union”, regarded cross as an important religious symbol rather than defining it as two sticks on which a small body is placed. He applied to the administration of their children’s school to put the symbol of Quran in addition to the cross in their class. Upon being rejected, he applied to L’Aquila Court in middle Italy. Although the court initially took an interlocutory injunction to remove the cross, Adel Smith lost the case.

The main legal struggle against putting up a cross at schools is known as “Lausti vs Italy: Italian Cross Case”.³⁴ This case stemmed from the request of Finnish Italian citizen Soile Lautsi from the school administration in Abano Terme town to remove the crosses in her child’s class. As a basis for her request from the school administration, she stated the Italian Supreme Court’s judgment that presence of the cross in voting booths is against religious impartiality of Italian State. Lautsi thinks that presence of a cross at school is contrary to the secularism principle according to which she wanted to raise his/her child. The school administration decided not to remove the cross from classes and the Ministry of Education also issued guidelines that require the practice to be continued. Upon this, Lautsi applied to Vento Local Administrative Court on the grounds that the directive issued

³³ Paolo Ronchi, “Crucifixes, margin of appreciation and consensus: the Grand Chamber ruling in *Lautsi v Italy*.” *Ecclesiastical Law Journal* 13, no. 03 (2011): 289.

³⁴ Malcolm D. Evans, “From cartoons to crucifixes: current controversies concerning the freedom of religion and the freedom of expression before the European Court of Human Rights.” *Journal of Law and Religion* 26, no.1 (2010): 352.

by the Ministry in July 2002 violated the impartiality principle in favor of the public. The court supported the views of the State institutions that cross is not a religious symbol but it is a symbol of the identity and history of the country. Later on, the case was taken to the Constitutional Court, which decided that presence of cross is an impartial practice by putting forward the argument that cross is not a religious symbol but the symbol of Italian Senate and Italian identity as defined by the government in the constitution.

In February 2006, the court rejected Lautsi's request by arguing that cross had become one of the secular values of Italian constitution and represented the values of civilian life. Upon this development, Lautsi took the case to the ECHR in July 2006. The court decided that cross could be easily understood by students as a religious symbol and they would be trained according to the characteristics of the religion (Catholic) presented to them. According to the court, the judgment can be disturbing for some students (atheists and religious minorities). Basically, the freedom of belief (assured by the Convention as part of the freedom of religion) includes practices and symbols that express beliefs that cannot be limited only by the absence of religious services or religious education.³⁵ The common opinion in European Countries about this judgment is that Italian State should avoid imposing faith in public spheres where individuals are dependent upon and conform to religious impartiality.

The judgment by the ECHR is important in that it indicates that compulsory presence of a symbol in schools is contrary to parents' right to raise their children in line with their beliefs. Besides, this judgment is also perceived as a limitation on children's freedom to believe or not to believe.³⁶ Observation of pluralism in education is mandatory for the protection of democratic society. The court unanimously decided that Italy violated the article 9 of the European Convention on Human Rights together with the right to receive an education (Article 2 of Protocol Number 1).³⁷ The court insists that children can see the cross as a religious symbol. Italy cannot ignore this judgment unless it withdraws from the European Council and the Convention. Italy has to inform European Council of Ministers the reasons why it will not implement the judgment. Italy indicated that it will act according

³⁵ Paolo Ronchi, "Crucifixes, margin of appreciation and consensus", 291.

³⁶ Henry J. Steiner, Philip Alston and Ryan Goodman. *International human rights*, 122.

³⁷ Paolo Ronchi, "Crucifixes, margin of appreciation and consensus", 293.

to the judgment. However, it can also make national legal regulations just as in the case of Bavaria. The court preferred to do the trial itself rather than leaving it to the member states. With regard to the state schools that ignore different educational traditions and systems in Europe, the ECHR's attitude suggests that it will spread the French style in terms of separating religion and state affairs. The ECHR did not let Italian courts to handle this issue and ignored local court's judgments. The only support of the ECHR's judgment came from CGIL Scuola (the largest Italian teacher syndicate) which uttered that crosses are to be removed from classrooms.

3. DISCUSSION

The studies on the judgments of local courts and the ECHR on use of religious symbols in state schools lead to a discussion based on *two groups*. The first discussion is focused on the fact that in the face of legal processes, some local courts and lawmakers tend to secularize religious symbols and thus regard them as cultural elements, not religious symbols. The second discussion is based on the denial of secularism principle which seems to be giving direction to the ECHR's thoughts and interpretation as in Italian cross case.³⁸ This is also seen in the judgment that "one's freedom to declare his/her religion can be limited to bringing public order to defend the principle of secularism".³⁹ The similar logic is also seen in *Lautsi vs. Italy* case in which the judges could not see how using cross can help protect democratic society. In defending the presence of a cross at schools, the Italian government argues that cross serves to the majority of people in education. However, the judges stated that not just the rights of most of the society but the whole society's rights are to be observed. Following from the Italian example, it is interesting that in Europe, the debate over the religion adopted by the majority of the society ignores secularism and equality, and even debate the nature of the concept of justice.

³⁸ Wasif Shadid and P. Sjoerd Van Koningsveld, "Muslim dress in Europe: debates on the headscarf." *Journal of Islamic Studies* 16, no.1 (2005): 35-40.

³⁹ Ali Ulusoy, "Avrupa İnsan Hakları Mahkemesi'nin Üniversitelerde Türban Yasağına İlişkin Kararları Üzerine Notlar", 128-129.

As it can be seen in the first group of discussion topics, although some local courts and politicians emphasize the cultural characteristic of the cross or the Jesus as *national heritage*, the ECHR emphasizes that the cross has a religious character.⁴⁰ In European public opinion, Christian faith is linked with the traditions of any nation.⁴¹ This argument stems from the idea that dominant religious beliefs, values, and practices are rooted in its long cultural tradition and history. According to this opinion, when people accept and perform Christianity, religious traditions shape people's values and practices.

Asad argues that Western Europe has an exceptional condition because secularism changes from country to country and generally causes the church to continuously regress.⁴² On the contrary, although church attendance is low, Italian society has a sense of belonging to Catholic culture and other Christian traditions. Italian public opinion wholly declares that it has a Catholic religious value system just as other European countries. These values are not only passed on by the Church but also by the education system and media, which are important parts of the social system. Although they have a secular state system, the symbolic heritage of the Catholic Church has left profound traces on these societies. Religious symbols that have been used traditionally legitimize the use of symbols of other religions or beliefs. The widespread attitude which tends to use traditional Christian symbols and ban the use of symbols of other religions and faiths leads to a substantial double standard with regard to freedom to live religious beliefs.

Religions can use certain symbols with the aims of creating connected balanced social life. With the active use of the symbols, religions can invoke emotional reaction or social membership feelings in individuals about the presence of religion in public sphere.⁴³ Sharing a faith and collective activities can bring people together by forming a community. Religions also handle ethical and social issues

⁴⁰ Siebren Miedema, "Contexts, debates and perspectives of religion in education in Europe." *Contexts, deReligion and Education in Europe: Developments, contexts and debates* in eds: Robert Jackson, Siebren Miedema, Wolfram Weisse and Jean-Paul Willaime, 267-283 (München: Waxmann, 2007), 268.

⁴¹ Nezar AlSayyad and Manuel Castells, *Muslim Europe or Euro-Islam: politics, culture, and citizenship in the age of globalization* (Lanham: Lexington Books, 2002), 162.

⁴² Talal Asad, *Genealogies of religion: Discipline and reasons of power in Christianity and Islam* (London: JHU Press, 2009), 113.

⁴³ Edward W. Said, *Covering Islam: How the media and the experts determine how we see the rest of the world (Fully revised edition)* (London: Random House, 2008), 62.

and form a roof and system that gives meaning to them. Martin argues that religions profoundly penetrate to communities' identity as they have very apparent social characteristics.⁴⁴ *Religion* is as much social undertaking as an individual one. Individuals having a common religious belief lead to a certain feeling of membership and in this regard, they fulfill the function of social cement. It can be seen meaningful to show tolerance for religions which have large groups of believers in the public sphere. However, today public spheres are not structures composed of one religion and belief. On the contrary, modern public spheres require more than one religion and worldview to live together.

With regard to developing a certain public policy about using religious symbols in public spheres, the ECHR tends not to recognize any political or cultural compromise. However, the cross and other religious symbols like icons are still seen in schools. There are differences between the presentation of a religious symbol with the judgment of public authority and students' using them willingly. Most countries in Europe do not seemingly show tolerance to individuals' religious symbols. However, state organs leave the principle of secularism aside when an attitude which supports the use of religious symbols is adopted in public opinion, and use the same language as the public.⁴⁵ In addition to them, in countries where secularism is considered to be the foundation of the state, a separate relationship between religion and constitutional identity is seen.⁴⁶ While religion emphasizes a doctrine as faith, it emphasizes being the member of a group as an identity.⁴⁷ Religion, which is viewed as an identity in many countries in Europe, emphasizes shared theological beliefs less and mostly emphasizes history, culture, and traditions. In Europe, various secular groups and individuals who have non-Christian beliefs regard the ban on the displaying or using Islamic religious symbols but the freedom to use Christian symbols in public spheres as a kind of discrimination. However, local courts and lawmakers try not to contradict with the prevalent religious faiths in the society in court cases about the use of religious symbols in

⁴⁴ Mircea Eliade, "Patterns in comparative religion", 3-5; Knight Dunlap, "Religion: Its function in human life", 13.

⁴⁵ Jocelyne Cesari, "When Islam and democracy meet", 106-112.

⁴⁶ Stefan Dorondel, "Orthodoxy, nationalism, and local identities", 122.

⁴⁷ Philip Jenkins, "The Next Christendom", 63-66.

public spheres. Adopting such an attitude, courts sacrifice secularism for the common religious and cultural values of the society. According to this point of view, the symbols of Christianity do not pose a threat to the fundamental principles of the state because they are cultural rather than being religious.

The discussions on the second group focus on the ECHR's adoption of a secular point of view to preserve its impartiality by not regarding religious symbols simply as historical and cultural symbols. According to the ECHR's judgment, the aim of the education is to develop students' critical thinking skills.⁴⁸ In the context of public education, Italian State is to observe its religious impartiality. Martin makes the following comment on this issue:⁴⁹

The secular characteristics of the normative system, which is embodied in the doctrine of human rights, is a necessity in the comprehension of this system. All the predictions, values, concepts and purposes of this system are related to the human-centered world and it's metaphysical predictive and secular methods of secular authority. As a result, the development of the doctrine of human rights is linked to the secularization process of the Western world.

According to this point of view, human rights are not free from values and have a strong emphasis which ensures focusing on freedom rather than tradition and which enlarges the sphere of individual choice. Religion is regarded as a voluntary activity and thus people's right to choose and change religion comes up to a central position. In this context, the need to count religion among the components of culture that make up the identity of the individual decreases. This brings up the idea that "the more you can change or abandon something, the less mandatory it is for your life". In its judgments, the ECHR adopts the view that religion is an individual choice. Approaching religion as an individual choice means that an individual can change his/her religion with decisions s/he could make in the future. Yet, religion is a part of individual's identity and it cannot be changed easily.

Another issue is that the ECHR does not provide guidance with regard to what is meant by developing children's critical thinking skill. The court regards

⁴⁸ Emma Jones, "Fair Access versus Religious Freedom", 361.

⁴⁹ David Martin, "The future of Christianity", 54.

816 | Baltacı, Ali. The Legality of Religious Symbols in European Schools

that secular education can help children develop their critical thinking skill. However, it is also debatable how secular education will socialize children through a set of impartial political assumptions, tendencies, and practices. Through such education, secular methods and processes are learned by children. For example, teachers can interpret the ECHR judgment to mean removing religion from class and inducing secular education to children for the sake of critical thinking and ignoring religious interpretations of the world.

In societies which regard secularism as a division of religion and state affairs, the main aim is to prevent *Religion* from influencing state institutions. Similarly, in societies where secularism has become a principle, compulsory education was used to decrease the influence of Christian communities. Historically with such a method, interest in religion is undermined and secular belief systems or disbelief is emphasized. It seems that the mistake of modern secularism is not that it approves political division between the church and state, but that it takes the effort to physiologically separate daily life and education from religion. Secularism does not only separate religion from social life but it abolishes the social function of religion in educational institutions. In its extreme cases, secularism turns into a militant ideology and tries to replace religion by arguing that “We do not need God”. While seculars argue that they are not against individuals having religious beliefs, they rarely maintain this understanding in educational spheres. Raising children as seculars through state schools which are financed by public sources can cause children to spend a large part of their time and energy for learning topics like consumption, pragmatic decision making and relativist thinking, which contradict with their identities.

Contrary to widespread belief, Jaspers argues that secular individuals can also have religious faiths. However, he also argues that secularism is not a distinction between pious and secular or *believer* and *nonbeliever*.⁵⁰ *Secular belief* is the absolute reality of material life.⁵¹ This is a *faith* in the distinguished power of materialist observation to determine what is correct or incorrect. This *belief* is “scientism”, which argues that “*what cannot be measured or observed is not real*”. As a result,

⁵⁰ Karl Jaspers, *Felsefeye Giriş*, translated by Mehmet Akalın (İstanbul: Dergâh yayınları, 1981), 113.

⁵¹ Benjamin J. Kaplan, “Divided by faith”, 152-154; Siebren Miedema, “Contexts, debates and perspectives of religion”, 280.

secular *belief* would assume that public sphere in a democracy is a ‘*tabula rasa*’⁵². On the contrary, this brings up the question of “Can a society with its own history, assumptions, and norms that go beyond rational tradition be a “*tabula rasa*?” The judges in the ECHR intentionally or unintentionally aim to create secular public conscious. The aim of education, according to the ECHR, is to help children reach a level of autonomy that encourages them to think critically and to make rational choices between beliefs. In recognizing children’s right to be autonomous, the ECHR limits the rights of pious families. The ECHR judgment also ignores child’s experiences in the pre-school period. It also supports individual against the society. A religious belief which is perceived as an individual choice by the ECHR is regarded as an indispensable component of individual’s identity.

In addition to these discussions, it is also assumed that religious symbols violate children’s rights by limiting their freedom. It can be said that the ECHR adopted a point of view that presence of a cross symbol in state schools is potentially pressurizing and a source of social division. There is not apparent evidence about the real effect of cross or icon; however, the lack of evidence is not seen as a problem by the ECHR judges.⁵³ There is very limited information about the effects of religious symbols on children’s development. In Bavarian case, for Ernst Seller, the symbol of the cross represents religious pressure as it will harm her girl’s conscious. The German Constitutional Court accepts that families have the right to protect their children against the things that they think are harmful or incorrect, and in parallel with this, the ECHR ruled that cross is not a historical or cultural symbol. The German Constitutional Court believes that such symbols do not directly have an influence on teaching anything, but affects children indirectly. While the German Constitutional Court adopts the view that cross affects children’s spiritual and emotional development, but it does not explain how this happens. The real concern of the German Constitutional Court in this judgment is to protect children from thoughts and practices of the society. In addition to this, national and international courts are to care about commonly accepted faiths in the society. Accordingly, since respecting the faiths of society requires examples in practice, it can lead to conflicts in terms of individual rights. The ECHR clearly

⁵² Tabula rasa or tabula rasa refers to the “empty tablet” concept proposed by John Locke. It argues that human brain is like an empty tablet at birth.

⁵³ Tobias Lock, “Of Crucifixes and Headscarves”, 360-365; Tom Lewis. “What not to wear”, 402.

does not regard the cross symbol as a social means in state schools but as a threat to freedom in democratic society.

These judgments, especially the judgment about the case in Italy, on religious symbols in schools all over Europe can have widespread effects.⁵⁴ Other religious symbols especially the cross is frequently seen in state cemeteries, war memorials, tombs, hospitals, state offices, municipal councils, courthouses and even in taxis. It is very common that cross symbol and public sphere intermingle. Therefore, whether members of society see the cross as a religious or cultural symbol or not, they do not have a chance avoid it. Millions of people in Europe have been educated under the symbol of the cross. Such a positive attitude towards the cross is not shown against the religious symbols of other religions in the European community and public sphere.

It is clearly seen that there is a tension between rights and interests of individuals and the use of religious symbols in Europe.⁵⁵ As the observation that “Children are to learn a certain language, certain culture and certain belief at a certain home” indicates, it is clear that children cannot have an objective point of view.⁵⁶ Although the ECHR is regarded as an individual choice, it is interesting that children are deprived of the right to choose their religions freely. Besides, it should also be born in mind that children influenced by their parents and their identities develop as a result of this influence. By influencing their children’s religious choices, parents in a way guarantee that the widespread belief or their own belief is maintained in the society. As a result of such a natural request, parents want an environment which is compatible with their beliefs to be created in the schools where their children are educated. States and the church consciously put these symbols in public schools to meet parents’ requests. This attitude is not only exerted in the use of religious symbols but also in the Christian morning prayers recited at schools in many countries. Many non-Christian children who attend public schools compulsorily attend these prayer rituals. This is not merely a cultural transmission or an individual choice but a clear case of assimilation.

⁵⁴ Theresa Squatrito, “Domestic legislatures”, 551-553; Carla M. Zoethout, “Religious symbols”, 287.

⁵⁵ Ali Baltacı, “A Comparison of Syrian Migrant Students in Turkey and Germany: Entrepreneurial Tendencies and Career Expectations.” *European Journal of Educational Research* 6, 1 (2014): 17.

⁵⁶ Zachary R. Calo, “Secularism”, 89-91; Christian Joppke, “Pluralism vs. Pluralism”, 110; Jill Marshall. “Conditions for freedom?”, 650-652; Peter O'Brien, “The Muslim Question in Europe”, 155-157.

As a reaction to Italian crucifix case, the lower house of Polish parliament decided that a nation with a widespread Catholic faith has the right to put the symbol of the cross in schools. The Greek Orthodox Church has called on all Christians in Europe to act together in the face of crucifix ban in classes in Italy. The Greek Orthodox Church is anxious that Italian crucifix ban can set a precedent and influence the current cases in local courts against the presence of the cross in taxis and public buildings. European public opinion discusses how arrangements about the presence of cross can affect other religious rituals like Easter, Noel and other rituals and Christian decorations.

CONCLUSION

Christian churches, which have speeded up their missionary activities in the colonial period, were generally mentioned as the supporters of human rights. However, churches have shown different attitudes and behaviors when they face with cases which directly affect them or which they regard as a threat for their existence. Such a dilemma experienced by the church, which aims to spread the principle of “consistency and balance”, which is believed to be the values of Christianity, to all spheres in social life, actually damages the concepts of “consistency and balance”. Besides, it also indicates another complex case related to “consistent and balanced” relation between the church and state. The ECHR imposes certain restrictions on the nature of the tolerable relation between the church and state. The ECHR indirectly arranges the types of tolerable relations between the church and state by referring to religious freedom. The court is increasingly making open-ended definitions of the public sphere and defines religion as it is practiced at home or in the mind of the individual. This is defined by the words “apparent” and “hidden” in legal texts. In these definitions, religion is degraded to private areas and thus becomes hidden. Defining the cross as a religious symbol means removing it from sight and schools and other public spheres. This attitude adopted by the ECHR poses a threat to the existence of the church, and thus many judgments are criticized by the church. This critical partiality is in contradiction with the traditional role the church assumes- “*dauntless advocate of human rights*”.

The ECHR traditionally adopts the principles of secularism. This secular attitude also necessitates an apparent consistency in its all judgments. It was also

820 | Baltacı, Ali. The Legality of Religious Symbols in European Schools

seen that the ECHR, which handles the conflicts that stem from state's appropriations with a secular point of view, adopts an attitude against widespread religious beliefs. Thus, it can be argued that the ECHR concluded that secular sphere is more appropriate for state schools in Europe. In Europe, many states are not secular but impartial. This impartiality means that state respects individuals' religious beliefs and does not restrict them. However, rather than being impartial, secularism aims to remove religion concept from the public sphere and from daily life. States approach their citizens' religious preferences impartially rather than adopting principles of secularism and banning religious elements in spite of the society. Even such an impartial attitude European states adopt is criticized. Critics state that local courts and the ECHR should leave an area where a religious idea can sustain its vitality and establish a balance between individual rights and the need to protect common cultures and traditions. However, it was seen that this idea of balance is to do only with Christianity and few eastern religions, but does not aim to create a public sphere of Islam.

Politics interpret freedom of religion and individual rights with a more reconciliatory point of view compared to the ECHR and local courts. It seems that the European States follow a policy of secularization against Islam, a policy which is not adopted against Christianity. Although this opposing attitude is not overtly declared, it essentially aims to remove the effects of Islam from the public sphere by adopting secular values. The fact that the ECHR declares secularism as the assurance of democratic values can be shown as the rationale behind this argument. However, the ECHR is doubtful about the fact that some countries like Italy accept religious symbols as historical elements that are part of their identity and culture. The court stated what can be counted as religious symbols in detail and declared that presence of this type of symbols in government estates would be seen as an overt support for religion. The existence of such a support for a religion which is widely accepted by the society leads to discussions. However, a state which has internalized democratic values should treat their citizens equally. This equality does not mean that individuals cannot have the freedom of religion and faith in the public sphere in line with their preferences. The ECHR handles this issue of religious and cultural symbolism as a matter of "all-or-nothing". Such a traditional secular logic contradicts with the values of democratic society. Besides, it is also necessary to respect the sensitivity of majority who support the values of equality,

justice, and freedom on which modern Europe is founded and who adopt the idea that “both are possible”. The reconciliatory logic posits that using religious symbols in public spheres is individual’s free choice and people can practice religion as they please. This second point of view is not supported by the church although it does not contradict with the views of church that support human rights. European churches want religion other than Christianity to be isolated from public spheres and means and want the followers of other religions to exercise their freedom in isolated areas. Such an attitude contradicts with Europe’s foundational principles and democratic and libertarian values accepted by the societies.

In addition to this, the factors that evoke suitors for opening a case for the removal of the symbol of a cross from state schools were not examined by the Court. According to the ECHR, national governments should at least be impartial in religion and against religions; in other words, local Christian cultures should not be regarded superior to other historical religions and new cultures that come with increasing migrations. The ECHR adopted the right to have religious faith in privacy; however, it restricted the freedom to declare this faith to protect others’ rights and freedoms. One results of isolating religion completely from state schools would be an ironic increase in the number of the private schools supported by the state. Although it is now just a possibility that the judgment made in *Lautsi vs Italy* case can have an impact beyond classes, it has shown that the symbol of the cross is a point of contention in modern Europe. Besides, enlargement of freedom of religion and faith in favor of Christianity in public sphere in Europe will create *neighborhood pressure* on individuals who adopt secular values or who are the members of different religions. Such a discriminative attitude will narrow down public sphere and will prevent people from overtly enjoying their freedom of religion and faith.

When new secular movements emerging in Europe are examined based on the secular state experience that Turkey has had for a long period of time, it seems that there are restrictions with regard to the use of religious symbols especially in countries like French, Belgium, and England, which have a high Muslim population. These restrictions are not limited to schools but also include beaches, libraries, and hospitals. Secularism has always been practiced like a ban, which contradicts with the principles that the concept itself involves. It is not fair to favor the religion (and its symbols) widely accepted in the society in public spheres and to

ban the symbols of other religions as if it were a requirement of secularism. Although such an attitude emphasizes Europe's colonist, invasive and oppressive past, which has historically embodied with the crusade mentality, it contradicts with a modern European theme. It can be noted that "prohibitive" practices against religious symbols and freedom of practicing religion in public sphere that receive a reaction from the community and world public opinion are far from reflecting European states' dreams of Europe based on equality, justice, and freedom.

Following from the above discussions, it can be seen that although both the ECHR and local courts and social circles adopt a secular understanding, they are prejudiced against religions and cultures other than Christianity. Besides, it is remarkable that there is an increase in the number of people who view that Islamophobia and xenophobia underlie the precautions many countries take to limit religious symbols in public spheres. In Western societies and in particular in European society, religious symbols are seen as a matter of belonging, and symbols of Christianity are intensively used in public spheres in the face of increasing Islamophobia, xenophobia and far-right movements. In some countries including France and Hungary, using symbols of Islam (like veil etc.) in public spheres is forbidden and those who use them are punished. However, using religious symbols at schools should not be simply seen as a cultural matter. Religious symbols are important parts of religions and are concrete indicators of religion is kept alive. Rather than regarding religious symbols at school as means of culture, considering religious symbols as means of assimilation would be more accurate.

It is important that in addition to this study, awareness of different disciplines should be raised in order for religious symbols to be assessed both within our society and in western societies within the scope of freedom of religion and belief. This study has some limitations. First of all, the study examines a certain number of court decisions and focuses on the use of religious symbols at schools. The topic of the study which is discussed together with court decisions can be the topic of many qualitative and quantitative studies and conceptual analyses from different disciplines. Comparative studies of societies with regard to their views about the use of religious symbols can carry out. Besides, social and economic changes, unexpected situations in legal and education system can cause changes

in people's views about religious symbols, which can cause this study to lose its currency. Therefore, further studies can examine the issue more comprehensively by involving different social realities and different periods.

REFERENCES

- AlSayyad, Nezar, and Manuel Castells. *Muslim Europe or Euro-Islam: politics, culture, and citizenship in the age of globalization*. Lanham: Lexington Books, 2002.
- Asad, Talal. *Genealogies of religion: Discipline and reasons of power in Christianity and Islam*. London: JHU Press, 2009.
- Auslander, Leora. "Bavarian Crucifixes and French Headscarves Religious Signs and the Postmodern European State." *Cultural Dynamics* 12, no. 3 (2000): 283-309.
- Baltacı, Ali. "A Comparison of Syrian Migrant Students in Turkey and Germany: Entrepreneurial Tendencies and Career Expectations." *European Journal of Educational Research* 6, no. 1 (2014): 15-27.
- Baltacı, Ali and Ali Balcı. "Complexity Leadership: A Theoretical Perspective" *International Journal of Educational Leadership and Management* 6, no. 1 (2017): 30-58.
- Bretschler, Fabienne. *The Swiss Judiciary and International Human Rights Bodies: A Closer Look at Muslim Religious Practices in Public Schools*. Zurich: University of Zurich, 2016.
- Burki, Shahid Javed. "The Rise of Extremist Islam." *Rising Powers and Global Governance in* Shahid Javed Burki, 139-159. Maryland: Palgrave Macmillan US, 2017.
- Calo, Zachary R. "Secularism and the European Court of Human Rights." *Journal of Law and Religion* 26, no. 1 (2010): 261-280.
- Caygill, Howard and Alan Scott. "The basic law versus the basic norm? The case of the Bavarian crucifix order." *Political Studies* 44, no.3 (1996): 505-516.
- Cesari, Jocelyne. *When Islam and democracy meet: Muslims in Europe and in the United States*. New York: Springer, 2004.
- Dorondel, Ștefan. "Orthodoxy, nationalism, and local identities: a Romanian case study." *Ethnologia Balkanica* 06 (2002): 117-144.
- Dunlap, Knight. *Religion: Its function in human life: A study of religion from the point of view of psychology*. New York: McGraw-Hill publications, 1946.
- Eliade, Mircea. *Patterns in comparative religion*. Lincoln: University of Nebraska, 1996.
- Evans, Malcolm D. "From cartoons to crucifixes: current controversies concerning the freedom of religion and the freedom of expression before the European Court of Human Rights." *Journal of Law and Religion* 26, no. 1 (2010): 345-370.
- Fidan, Tuncer and İnci Öztürk. "The relationship of the creativity of public and private school teachers to their intrinsic motivation and the school climate for innovation." *Procedia-Social and Behavioral Sciences* 195 (2015): 905-914.

824 | Baltacı, Ali. The Legality of Religious Symbols in European Schools

- Gordon, Wendy J. "A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property." *The Yale Law Journal* 102, no. 7 (1993): 1533-1609.
- Horváth, Gizela, and Rozalia Bako. "Religious icons in Romanian schools: text and context." *Journal of the Study of Religions and Ideologies* 8 no. 24 (2009): 189-205.
- Jaspers, Karl. *Felsefeye Giriş*, translated by Mehmet Akalın, İstanbul: Dergâh Pub., 1981.
- Jenkins, Philip. *The Next Christendom: The Coming of Global Christianity*. Oxford: Oxford University Press., 2011.
- Jones, Emma. "Fair Access versus Religious Freedom: A Difficult Balance." *Oxford Journal of Law and Religion* 5, no.2 (2016): 359-364.
- Joppke, Christian. "Pluralism vs. Pluralism." *Religion, Secularism, and Constitutional Democracy* in Jean L. Cohen and Cecile Laborde, 89-112. New York: Columbia University Press, 2016.
- Kaplan, Benjamin J. *Divided by faith: Religious conflict and the practice of toleration in early modern Europe*. Boston: Harvard University Press, 2009.
- Langer, Susanne K. *Philosophy in a new key: A study in the symbolism of reason, rite, and art*. London: Harvard University Press, 2009.
- Lewis, Tom. "What not to wear: religious rights, the European Court, and the margin of appreciation." *International and Comparative Law Quarterly* 56, no. 2 (2007): 395-414.
- Lock, Tobias. "Of Crucifixes and Headscarves: Religious Symbols in German Schools." *Law, Religious Freedoms, and Education in Europe*, in Myriam Hunter-Henin, 347-369. Farnham England: Ashgate Pub., 2011.
- Marshall, Jill. "Conditions for freedom? European human rights law and the Islamic headscarf debate." *Human Rights Quarterly* 30, no. 3 (2008): 631-654.
- Martin, David. *The future of Christianity: Reflections on violence and democracy, religion, and secularization*. New York: Routledge, 2016.
- Miedema, Siebren. "Contexts, debates, and perspectives of religion in education in Europe." *Contexts, de Religion and Education in Europe: Developments, contexts, and debates*, in Robert Jackson, Siebren Miedema, Wolfram Weisse and Jean-Paul Willaime, 267-283. München: Waxmann, 2007.
- Modood, Tariq. "2011 Paul Hanly Furfey Lecture: Is There a Crisis of Secularism in Western Europe?" *Sociology of Religion* 73, no. 2 (2012): 130-149.
- Modood, Tariq. "State-Religion Connections and Multicultural Citizenship." *Religion, Secularism, and Constitutional Democracy*, in Jean L. Cohen, and Cecile Laborde, 182-203. New York: Columbia University Press, 2016.
- O'Brien, Peter. *The Muslim Question in Europe: Political Controversies and Public Philosophies*. Philadelphia: Temple University Press, 2016.

- Oliva, Javier García. "Religious Dress Codes in the United Kingdom." *Religion in Public Spaces: A European Perspective in Silvio Ferrari and Sabrina Pastorelli*, 217. London: Routledge, 2016.
- Reichard, Gladys Amanda. *Navaho religion: a study of symbolism*. New Jersey: Princeton University Press, 2014.
- Romero, Alicia Cebada. "The European Court of Human Rights and Religion: Between Christian Neutrality and the Fear of Islam." *NZJPIL* 11 (2013): 75.
- Ronchi, Paolo. "Crucifixes, the margin of appreciation and consensus: the Grand Chamber ruling in *Lautsi v Italy*." *Ecclesiastical Law Journal* 13, no. 03 (2011): 287-297.
- Rowe, Emma E. "Politics, religion and morals: the symbolism of public schooling for the urban middle-class identity." *International Studies in Sociology of Education*, 2016: 1-15.
- Said, Edward W. *Covering Islam: How the media and the experts determine how we see the rest of the world (Fully revised edition)*. London: Random House, 2008.
- Schreiner, Peter. "Religious education in the European context." *Crossings and Crosses: Borders, Educations, and Religions in Northern Europe*, in Jenny Berglund, and Peter Thomas Lundén, 139-154. Boston: CPI Books GmbH, 2015.
- Scolnicov, Anat. "On a Wing and a Prayer: Indirect Religious Discrimination in the European Court of Human Rights." *Oxford Journal of Law and Religion* 5, no. 1 (2016): 158-161.
- Shadid, Wasif, and P. Sjoerd Van Koningsveld. "Muslim dress in Europe: debates on the headscarf." *Journal of Islamic Studies* 16, no.1 (2005): 35-61.
- Squadrito, Theresa. "Domestic legislatures and international human rights law: Legislating on religious symbols in Europe." *Journal of Human Rights* 15, no. 4 (2016): 550-570.
- Steiner, Henry J., Philip Alston and Ryan Goodman. *International human rights in context: law, politics, morals: text and materials*. New York: Oxford University Press, 2008.
- Taylor, Paul M. *Freedom of religion: UN and European human rights law and practice*. London: Cambridge University Press, 2005.
- Ulusoy, Ali. "Avrupa İnsan Hakları Mahkemesi'nin Üniversitelerde Türban Yasağına İlişkin Kararları Üzerine Notlar." *AUHFD*, 53, No: 3 (2004): 125-134.
- Weber, Michel. "Symbolism, Its Meaning, and Effect: The Universal Algebra of Culture" *Cosmos and History: The Journal of Natural and Social Philosophy* 12, no.1 (2016): 350-377.
- Weiler, Joseph HH. "Lautsi: a crucifix in the classroom redux." *European journal of international law Journal European de Droit international* 21, no. 1 (2010): 1-6.
- Zoethout, Carla M. "Religious symbols in the public school classroom: a new way to tackle a knotty problem." *Religion and Human Rights* 6, no. 3 (2011): 285-290.