Anayasa Yargısı, Cilt: 38, Sayı: 2, (2021), s. 177–220.

Limitations on Religious Headdress and Two Different Viewpoints: Inferences from Findings of the European Court of Human Rights and the United Nations Human Rights Committee

Başın Dini Gerekçeyle Örtülmesine Yönelik Kısıtlamalar ve İki Farklı Bakış Açısı: İnsan Hakları Avrupa Mahkemesinin ve Birleşmiş Milletler İnsan Hakları Komitesinin Kararlarından Çıkarımlar

Dr. Emre AKBULUT[*]

ABSTRACT

Wearing religious headdress, as a way of manifestation of religion or belief, is protected under the freedom of religion or belief in international human rights law. In their respective articles, the European Convention on Human Rights and the United Nations International Covenant on Civil and Political Rights prescribed nearly the same limitation regime for external dimension of the freedom of religion or belief, namely the right to manifest religion or belief. However, it has been observed in the past few decades that supervisory bodies of these two treaties, the European Court of Human Rights and the United Nations Human Rights Committee, have reached different outcomes in very similar disputes concerning wearing religious headdresses. Departing from this fact, this study aims at seeking an answer to the question of '*why and in what way the case-law of the European Court of Human Rights and the United Nations Human Rights Committee on the right to manifest religion or belief differs from each other in the religious headdress cases*'. To this end, after examining several samples from judgments of the European Court of Human Rights and views of the United Nations Human Rights Committee that are most capable of illustrating the divergence in their case-law, it will be tried to find out some possible reasons and consequences of the divergence between the two institutions' rulings on the same matter. In this context, the study will specifically dwell on the two bodies' approaches to the legitimate aim

[*] Administrative Judge, Senior (Legal) Advisor to the Chairperson of the Grand National Assembly of Turkey, dr.emreakbulut@gmail.com, ORCID: 0000-0002-7031-4166. This paper is based on MSt dissertation (01.10.2020, University of Oxford).

Geliş Tarihi: 4/10/2021 ✦ Kabul Tarihi: 3/12/2021 *Araştırma Makalesi*

criterion, the principle of secularism and states' margin of appreciation in limiting the right to manifest religion or belief.

Keywords: The right to manifest religion or belief, religious headdress, the European Court of Human Rights, the United Nations Human Rights Committee, the principle of secularism.

ÖZ

Uluslararası insan hakları hukukunda başı örten dini giysiler, dinin veya inancın açığa vurulma biçimlerinden biri olarak, din ve inanç özgürlüğü kapsamında koruma altına alınmıştır. İnsan Hakları Avrupa Sözleşmesi ile Birleşmiş Milletler Medeni ve Siyasi Haklar Sözleşmesi, kendi ilgili maddelerinde, din ve inanç özgürlüğünün dışa dönük veçhesi olan din veya inancını açığa vurma özgürlüğü açısından neredeyse aynı sınırlandırma rejimini öngörmüştür. Ne var ki son birkaç on yıl içinde bu iki sözleşmenin denetim birimi olan organların, yani İnsan Hakları Avrupa Mahkemesi ile Birleşmiş Milletler İnsan Hakları Komitesinin, dini gerekçelerle baş örtülmesi konusunda birbirine çok benzer uyuşmazlıklarda farklı sonuçlara ulaştıkları gözlemlenmektedir. Bu olgudan hareketle iş bu çalışma, "*dini gerekçelerle baş örtülmesinden kaynaklanan davalarda İnsan Hakları Avrupa Mahkemesinin ve Birleşmiş Milletler İnsan Hakları Komitesinin din veya inancı açığa vurma özgürlüğüne ilişkin içtihatları birbirlerinden niçin ve hangi yönlerden farklılaşmaktadır*" sorusuna cevap aramayı amaçlamaktadır. Bu amaçla, içtihatları arasındaki çelişkiyi gösterebilmek noktasında en elverişli İnsan Hakları Avrupa Mahkemesi hükümlerinden ve Birleşmiş Milletler İnsan Hakları Komitesi görüşlerinden çeşitli örnekler incelendikten sonra, iki kurumun aynı konudaki kararları arasında var olan çelişkinin bazı muhtemel sebepleri ve sonuçları tespit edilmeye çalışılacaktır. Bu bağlamda çalışma özellikle, din veya inancın açığa vurulması özgürlüğü sınırlandırılırken her iki kurumun meşru amaç ölçütüne, sekülerizm prensibine ve devletlerin takdir marjı konularına yaklaşımı üzerinde yoğunlaşacaktır.

Anahtar Kelimeler: Din veya inancını açığa vurma özgürlüğü, dini baş giysisi (başın dini gerekçeyle örtülmesi), İnsan Hakları Avrupa Mahkemesi, Birleşmiş Milletler İnsan Hakları Komitesi, sekülerizm prensibi.

INTRODUCTION

There has been a trend in the past few decades to restrict or at least to discuss restricting some religious symbols and especially religious headdresses such as headscarves, turbans, helmets, niqab and burka in public, in different parts of the world but especially in Europe. To illustrate, during 1990s female students in Turkey could not continue their higher education in universities while wearing a headscarf[1]; in several European countries (for example Switzerland[2], France[3], Germany[4] and Norway[5]) some employees had to face the threat of losing their job because of their religious headdress; France, Belgium and Denmark criminalised wearing apparels covering the face in public in 2010[6], 2011[7] and 2018[8] respectively; also in France providing identity photographs showing right-holders (either women or men) bareheaded became compulsory for residence permits[9] or passports[10]; the Austrian Parliament has adopted a law prohibiting primary school girls from covering their head for religious reasons in 2019[11]; and in Uzbekistan, there have been obstacles for female students wearing hijab to pursue their education in universities[12].

This trend, which is still on the agenda in some countries, has drawn attention to the matter of wearing religious headdresses in international

1 *Leyla Şahin/Turkey*, App. No: 44774/98, 10/11/2005.

2 *Dahlab/Switzerland*, App. No: 42393/98, 15/2/2001.

3 See *Ebrahimian/France*, App. No: 64846/11, 26/11/2015.

4 See 'Palestinian intern fired for wearing headscarf to work in Germany', 25/8/2016, www.express.co.uk/news/world/703873/Palestinian-intern-fired-wearing-headscarf-work-Germany (Date of Access: 5/3/2021).

5 See 'Muslim woman offered job on condition that she remove her hijab', 23/9/2016, www.independent.co.uk/news/world/europe/woman-told-she-has-to-remove-her-hijab-to-get-a-job-a7324666.html (Date of Access: 5/3/2021).

6 See UNHRC, *Sonia Yaker/France*, App. No: 2747/16, 17/07/2018. See UNHRC, *Miriana Hebbadj/France*, App. No: 2807/2016, 17/7/2018.

7 *Dakir/Belgium*, App. No: 4619/12, 11/7/2017.

8 See 'Denmark's burka ban will send Muslim women further underground', 4/6/2018, www.abc.net.au/news/2018-06-04/denmark-burka-ban-niqab-muslim-europe-security-threats/9830848 (Date of Access: 5/3/2021).

9 See UNHRC, *Ranjit Singh/France*, App. No: 1876/2000, 22/7/2011.

10 See UNHRC, *Shingara Mann Sikh/France*, App. No: 1928/2010, 19/7/2013.

11 See 'Austria approves headscarf ban in primary schools', 16/5/2019, www.theguardian.com/world/2019/may/16/austria-approves-headscarf-ban-in-primary-schools (Date of Access: 5/3/2021).

12 See 'Islamic University in Uzbekistan Expels Student for Hijab', 28/5/2019, www.moroccoworldnews.com/2019/05/274356/university-uzbekistan-student-hijab/ (Date of Access: 5/3/2021)

human rights law (IHRL)[13]. In the meantime, individuals started to apply to IHRL complaint mechanisms and these applications revealed the fact that IHRL institutions might reach different conclusions in respect of the same limitations imposed on the wearing of religious headdress.

The foreseeability and the coherence are amongst the most crucial values that any legal system, including the IHRL, should have engendered. Therefore, a divergence between two legal authorities' conclusions on the same matter is capable of jeopardising those values and deserving to be examined in detail.

In this regard, it has been observed that the European Court of Human Rights (ECtHR), a regional human rights court, and the United Nations Human Rights Committee (UNHRC), an international human rights treaty body, have rendered diverging rulings in very similar disputes stemmed from restrictions on the religious headdress. What is surprising that these institutions departed from almost the same legal criteria when taking different positions in those disputes. Actually, these two institutions examined the religious headdress cases from the standpoint of the freedom of religion or belief (FoRB) as protected by the IHRL treaties implemented by them, namely the Convention for the Protection of Human Rights and Fundamental Freedoms (known as the European Convention on Human Rights - ECHR) and the International Covenant on Civil and Political Rights (ICCPR) which have envisaged almost the same limitation regimes in order for their State Parties to interfere with the right to manifest religion or belief (RMRoB), a specific dimension of the FoRB.

The purpose of this article, therefore, is to find out some possible reasons and consequences of the divergence between judgments of the ECtHR and views of the UNHRC rendered in comparable cases concerning restrictions on wearing religious headdresses. While doing this, only the judicial reasoning as captured in the case-law of these bodies will be taken into consideration and an answer will be sought for the question

[13] For example, in March 2021, voters have approved a ban on face coverings in public, in a binding referendum held in Switzerland. See 'Swiss agree to outlaw facial coverings in 'burqa ban' vote', 7/3/2021, https://www.reuters.com/article/us-swiss-burqaban-idUSKBN2AZ07N (Date of Access: 18/3/2021). Also in France, according to Law on Reinforcing Republican Principles (*loi du 24 août 2021 confortant le respect des principes de la République*) which has been promulgated on 24 August 2021, all employees participating in the execution of public services, including those employed by private law organisations, have to refrain from manifesting their religious opinions. See https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043964778 (Date of Access: 17/9/2021).

of in what way the case-law of the ECtHR and the UNHRC concerning the RMRoB differs from each other in religious headdress cases. To this end, the article is structured into three main sections. In this regard, the position of wearing religious headdresses in IHRL, as a manifestation of religion or belief, and the limitation regimes envisaged for the RMRoB in both the ICCPR and the ECHR are first examined in section one. Decisions of the aforementioned two IHRL bodies that have been adopted in similar disputes resulting from restrictions on the religious headdress are the subject matter of the second section. And in section three, legal reasoning lying behind the difference between decisions of two bodies on the same matter, and also the possible implications of that difference are analysed.

I. RELIGIOUS HEADDRESS AND INTERNATIONAL HUMAN RIGHTS LAW: THE NORMATIVE FRAMEWORK

A. THE RELIGIOUS HEADDRESS AS A MANIFESTATION OF RELIGION OR BELIEF

In 1948, the FoRB was regulated in the Universal Declaration of Human Rights (UDHR) with the following formulae which would later inspire the ICCPR[14] and the ECHR[15]: "*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 teaching, practice, worship and observance*[16]."

As stated in the UDHR, the FoRB has two dimensions: one is internal, namely 'the right to freedom of thought, conscience and religion', and the other is external, that is to say, 'the freedom, either alone or in community with others and in public or private, to manifest religion or belief in teaching, practice, worship and observance'. The former dimension, known as "*forum internum*", is related to the inner realm of individuals and protects their freedom to adopt, maintain, reject or change a religion

[14] Bielefeldt, H., Ghanea, N., Wiener, M. (2017). *Freedom of Religion or Belief*, Oxford: Oxford University Press, pp. 22-23, 94.

[15] Taylor, P. (2005). *Freedom of Religion - UN and European Human Rights Law and Practice*, Cambridge: Cambridge University Press, p. 7.

[16] Article 18 of the Universal Declaration of Human Rights (adopted on 10 December 1948) UNGA Res 217 A(III). For historical development of the FoRB and the inclusion of individual right to free exercise religion in the FoRB see Sajó, A. and Uitz, R. (2012). Freedom of Religion, in Rosenfeld, M. and Sajó, A. (Eds.), *The Oxford Handbook of Comparative Constitutional Law* (pp. 909-928). Oxford: Oxford University Press, pp. 909-912.

or belief[17]. Whereas the latter, which is called as "*forum externum*", is about the external expressions of thoughts, religions and beliefs through teaching, practice, worship and observance[18].

The separation between internal and external dimensions of the FoRB was made also by the ECHR in 1950 and by the ICCPR in 1966. In this regard, Article 9 of the ECHR and Article 18 of the ICCPR guaranteed both 'the freedom of thought, conscience and religion' and 'the freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.' Additionally, these treaties attached legal consequences to this separation, in that they both recognised the *forum internum* of the FoRB as an absolute right which cannot be restricted for any reason[19], whereas they allowed states to limit the *forum externum* of the same right [20], namely the RMRoB, subject to certain conditions.

In this context, the question of whether the wearing of religious headdress is protected under the FoRB and if so, under which dimension of it, needs to be addressed in order to understand the place of religious headdresses in IHRL. To this end, benefitting from characteristics used by *Tillich*, it should first be said that religious headdresses, as items which have a figurative character capable of representing a religion or of conveying a special meaning concerning a religious belief[21], constitute a special form of religious symbols[22].

Individuals may prefer to wear a religious headdress since they believe that it is an obligatory duty prescribed by divine rules of their faith, or for

17 Bielefeldt, H., Ghanea, N., Wiener, M. (2017). p. 76; Vermeulen, B.P. (2010). The Freedom of Religion in Article 9 of the ECHR: Historical Roots and Today's Dilemmas, in Van de Beek, A., Van der Borght, E.A.J.G. and Vermeulen, B. P. (Eds.), *Freedom of Religion* (pp. 7-29). Leiden: Brill, pp. 12-13.

18 Bielefeldt, H., Ghanea, N., Wiener, M. (2017). p. 76; Vermeulen, B. P. (2010). p. 12.

19 Bielefeldt, H., Ghanea, N., Wiener, M. (2017). p. 22; Stenlund, M. and Slotte, P. (2018). "Forum Internum Revisited: Considering the Absolute Core of Freedom of Belief and Opinion in Terms of Negative Liberty, Authenticity, and Capability", *Human Rights Review*, Vol. 19, Is. 4, pp. 425-426; Taylor, P. (2005). p. 115.

20 Bielefeldt, H., Ghanea, N., Wiener, M. (2017). p. 22; Lerner, N. (2012). *Religion, Secular Beliefs and Human Rights - 25 Years After the 1981 Declaration*, Leiden: Brill/Nijhoff, p. 21.

21 Tillich, P. (1958). "The Religious Symbol", *Daedalus*, Vol. 87, No. 3, pp. 3-5.

22 For instance, the ECtHR held that the Islamic headscarf is a religious symbol. see *Dahlab/Switzerland*. The Court has later defined the 'religious symbol' as "*practices and symbols expressing, in particular or in general, a belief, a religion or atheism*". *Lautsi/Italy*, App. No: 30814/06, 3/11/2009, § 55.

promoting their religion, or simply because they wish to show the fact that they are devotees. Whatever the rationale behind it, the wearing of religious headdress, like the use of other religious symbols, is commonly accepted as a manifestation of religious beliefs and thus as a subject matter of the *forum externum* of the FoRB. For example, the UNHRC has stated in its General Comment no. 22 that "*the freedom to manifest religion or belief … encompasses a broad range of acts. The concept of worship extends to … various practices … including … the use of ritual formulae and objects, the display of symbols … The observance and practice of religion or belief may include not only ceremonial acts but also … the wearing of distinctive clothing or head coverings …*[23]"

Similarly, the ECtHR accepts that wearing religious symbols, including clothing and head-coverings, are manifestations of religion or belief, and thus protected by the Convention[24].

Consequently, it can be said that wearing of a religious headdress is a manifestation of religion or belief and remains within the ambit of the *forum externum* of the FoRB. This means that it falls under the protection of both Article 9 of the ECHR and Article 18 of the ICCPR, but at the same time, it can be restricted by states subject to certain conditions which will be examined below[25].

---

23 UNHRC 'General Comment No. 22 on Article 18 (Freedom of Thought, Conscience or Religion)', (1993) UN Document: CCPR/C/21/Rev.1/Add.4 [4].

24 Guide on Article 9 of the ECHR. (2020). Strasbourg: Council of Europe, www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf (Date of Access: 2/3/2021); Murdoch, J. (2012). *Protecting the right to freedom of thought, conscience and religion under the ECHR*, Strasbourg: Council of Europe, pp. 14 and 49-50; Doe, N. (2012). *Law and Religion in Europe - A Comparative Introduction*, Oxford: Oxford University Press, p. 50.

25 It should be stressed that in addition to the FoRB, limitations imposed on wearing religious headdress may raise problems in respect of the principle of non-discrimination, as well. In this regard a limitation imposed on religious headdress may amount to discrimination based on religion if it is considered as '*any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.*' Furthermore, limitations on women's wearing of religious headdress have the potential of resulting in discrimination not only on the ground of religion, but also on the ground of sex. Likewise, limitations on wearing religious headdress may have a deteriorating effect on the disadvantageous situation of a minority group within the society and/or may further adversely affect a vulnerable group of people belonging to that minority group. Thus, it is obvious that the matter of limitations imposed on religious headdress should also be analysed in detail from the standpoint of the principle of non-discrimination. However, since this would go far beyond the scope of this article, limitations on religious headdress will be examined in this study only in respect of the RMRoB. See Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25/11/1981, UN General Assembly Resolution 36/55, § 2.2 and UNHRC, 'General Comment No. 28: The Equality of Rights Between Men and Women (art. 3)', 29/3/2000 UN Document: CCPR/C/21/Rev.1/Add.10. See also Weichselbaumer, D. (2020). "Multiple Discrimination Against Female

B. LEGAL REGIME OF LIMITATION OF THE RIGHT TO MANIFEST RELIGION OR BELIEF

Article 9/2 of the ECHR and Article 18/2 of the ICCPR required states to meet the same conditions when imposing limitations on the *forum externum* of the FoRB, namely the RMRoB. According to these articles, any interference with the RMRoB, including restrictions on the religious headdress, must be prescribed by law, must pursue one of the legitimate aims of 'public safety, public order, public health, public morals or the fundamental rights and freedoms of others', and must be necessary in a democratic society for realisation of the legitimate aim pursued. Therefore, once an interference with the RMRoB is established, any complaint of a violation is required to be examined according to these three criteria, namely "the legality", "the legitimate aim" and "the necessity (proportionality)" tests, in applications lodged before either the ECtHR or the UNHRC.

A crucial principle that should be born in mind when implementing these criteria is that they must be strictly interpreted in concrete disputes. In this regard, the enjoyment of the FoRB should be the rule and restrictions imposed on the RMRoB should be the exception, in respect of both the ECHR and the ICPPR[26].

Another important point that deserves to be highlighted here is that the limitation regimes prescribed by both treaties for the RMRoB should be implemented regardless of the state-religion relationship adopted by the relevant state. In other words, the state-religion relationship in member states does not change the limitation regime of the RMRoB. The rationale behind this is the fact that as a result of differing importance of religion in each society, the state-religion relationship varies across the world depending on social, cultural, historical and traditional background, political system, religious demography and several other factors of each

Immigrants Wearing Headscarves", *The Industrial and Labor Relations Review*, Vol. 73, Is. 3, p. 600. Intersectional discrimination suffered by Muslim women who wear head coverings has recently been pointed out in the UN report of the Special Rapporteur on freedom of religion or belief. see United Nations Human Rights Council, 'Countering Islamophobia/ Anti-Muslim Hatred to Eliminate Discrimination and Intolerance Based on Religion or Belief', Report of the Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed (2021), UN Document: A/HRC/46/30, §§ 26, 32, 49, 54 and 75.

[26] UNHRC General Comment No. 22 on Article 18. (1993), § 8; *Jehovah's Witnesses of Moscow and others/Russia*, App. No: 302/02, 10/6/2010, § 108; *S.A.S./France*, App. No: 43835/11, 1/7/2014, § 113.

country[27]. Taking into consideration the diversity amongst their State Parties about the position of the religion in their respective legal orders, neither the ECHR nor the ICCPR determined a particular type of state-religion relationship for their member states[28].

However, as exposed by the UNHRC, the existence of a state religion or a state ideology carries the risk of impairment in the enjoyment of the FoRB[29]. This risk which is of course valid for the implementation of not only the ICCPR but also the ECHR, has become apparent when some restrictions on the wearing religious headdress were put into force in some European countries (mentioned above) based on their state ideology or the state-religion relationship they had. However, this does not mean that the state-religion relationship should have an effect on the way of implementation of limitation regimes prescribed by the ECHR and the ICCPR for the RMRoB. The legality, the legitimate aim and the necessity tests should be implemented in the same manner by the ECtHR and the UNHRC, notwithstanding the state-religion relationship adopted by the state interfering with the RMRoB.

C. THE MARGIN OF APPRECIATION DOCTRINE

One of the determinative factors in the way of implementation of the limitation clauses of the RMRoB is the matter of whether states should enjoy a certain margin of appreciation (MoA) in limiting the RMRoB. Interestingly, this factor has been almost absent in case-law of the UNHRC, whereas it has been constantly applied and has become a doctrine in the jurisprudence of the ECtHR.

In this context, the MoA, a judge-made doctrine[30] which is mostly used

---

27 Durham, W. C. (2011). Patterns of Religion State Relations, in Witte, John and Green, M. Christian (Eds.), *Religion and Human Rights: An Introduction* (pp. 360-378), Oxford: Oxford University Press, p. 360.

28 Bielefeldt, H., Ghanea, N., Wiener, M. (2017). p. 340; Temperman, J. (2017-2018). "The Right to Neutral Governance, Religion, the State & the Question of Human Rights Compliance", *The Journal of Human Rights*, Vol. 12, No. 2, Is. 24, pp. 17-18. This approach is also in line with the need of responding to cultural relativist critique of IHRL's universality. For cultural relativist critique see Dembour, M. B. (2018). Critiques, in Moeckli, D., Shah, S. and Sivakumaran, S. (Eds.), *International Human Rights Law* (pp. 41-59), Oxford: Oxford University Press, pp. 50-53.

29 UNHRC General Comment No. 22 on Article 18 (1993), §§ 9-10.

30 Letsas, G. (2009). *A Theory of Interpretation of the European Convention on Human Rights*, Oxford: Oxford University Press, p. 80. For understanding how it became a doctrine in the ECtHR's jurisprudence, see Hutchinson, M. R. (1999). "The Margin of Appreciation Doctrine in the ECtHR", *The International & Comparative Law Quarterly*, Vol. 48, Is. 3, p. 638; Spielmann, D. (2014). "Whither the Margin of Appreciation", *Current Legal Problems*, Vol. 67,

by the ECtHR since the 1960s[31], indicates a room for manoeuvre that allows member states to enjoy a certain degree of discretion[32] when limiting the Convention rights, especially those enunciated in Articles 8, 9, 10 and 11 of the ECHR[33], including the RMRoB. This room for manoeuvre enjoyed by states encompasses deciding on whether or not a specific legitimate aim should be pursued by state authorities and whether the legitimate aim pursued should prevail over individual rights when local needs and particularities are born in mind[34].

Case-law of the ECtHR reveals that the rationale behind the MoA is the principle of subsidiarity[35] and the national authorities' position which is better than that of an international court to evaluate needs and conditions of their society[36]. However, the degree of the MoA left to states in concrete disputes is not always the same. There are some factors according to which the margin left to states by the Court widens or narrows such as subject-

Is. 1, p. 49. It should also be mentioned that following entry into force of the Protocol No.15 to the ECHR, the MoA has been added to the preamble of the Convention and has thus had also a positive-law basis since 1/8/2021. For emergence process of Protocol No.15 see Cram, I. (2018). "Protocol 15 and Articles 10 and 11 ECHR-The Partial Triumph of Political Incumbency Post-Brighton?", *The International & Comparative Law Quarterly*, Vol. 67, Is. 3, pp. 480-484.

31 For chronological emergence and development of the MoA doctrine, see Yourow, H.C. (1988). "The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence", *Connecticut Journal of International Law*, Vol. 3, Is. 1, pp. 118-121.

32 For having a better understanding of what the abstract notion of 'discretion' means, see Dworkin, R. (1963). "Judicial Discretion", *The Journal of Philosophy*, Vol. 61, No. 21, pp. 624-625; Hoffmaster, B. (1982). "Understanding Judicial Discretion", *Law and Philosophy*, Vol. 1, No. 1, pp. 22-25; Levin, R.M. (1986). "Administrative Discretion, Judicial Review, and the Gloomy World of Judge Smith", *Duke Law Journal*, Vol. 1986, No. 2, p. 258; Hart, H.L.A. (2013). "Discretion", *Harvard Law Review*, Vol. 127, No. 2, p. 657.

33 Articles in which it is prescribed that a Convention right may be restricted for reaching specific legitimate aims. see Hutchinson, M. R. (1999). p. 640; Spielmann, D. (2014). p. 53.

34 '*… general features of the MoA doctrine seem appropriate and useful to the difficult task suggested by the Vienna Declaration: advancing universal rights while simultaneously respecting cultural diversity, self-governance and autonomy*.' Donoho, D. L. (2001). "Autonomy, Self-Governance, and the Margin of Appreciation: Developing a Jurisprudence of Diversity Within Universal Human Rights", *Emory International Law Review*, Vol. 15, Is. 2, p. 462; McGoldrick, D. (2017). Religious Rights and the Margin of Appreciation, in Agha, P. (Ed.), *Human Rights Between Law and Politics The Margin of Appreciation in Post-National Contexts* (pp. 145-168), Oxford: Hart Publications, p. 168; McGoldrick, D. (2016). "A Defence of the Margin of Appreciation and an Argument for Its Application by the Human Rights Committee", *The International & Comparative Law Quarterly*, Vol. 65, Is. 1, pp. 40-41.

35 Sweeney, J. A. (2005). "Margins of Appreciation: Cultural Relativity and the ECtHR in the Post-Cold War Era", *The International & Comparative Law Quarterly*, Vol. 54, Is. 2, p. 467.

36 *Correia de Matos/Portugal*, App. No: 56402/12, 4/4/2018, § 116; *Handyside/UK*, App. No: 5493/72, 7/12/1976, § 48.

matter of the right[37], existence of uniformity or consensus in law and practice among State Parties in a given subject[38] or whether a balancing test between competing interests has been duly conducted by domestic authorities[39]. But of course, in any case, the final word will be with the Court to determine whether states have complied with the Convention standards[40].

It should be noted that the MoA doctrine and the way of its application by the Court, have attracted lots of criticisms from both legal scholars and judges of the Court itself. In this regard, the criticisms against the doctrine can be summarised that it has been almost automatically[41] and sometimes superfluously[42] referred to by the Court, that it has been so far inconsistently applied leading to unpredictability[43], that the doctrine has sometimes resulted in lack of sufficient scrutiny[44] and that once a wide MoA was granted to a state, the Court has rarely found a violation of the Convention[45]. Whether, and to what extent, these criticisms are applicable to religious headdress cases will be examined below.

37 Lewis, T. (2007). "What Not to Wear: Religious Rights, the European Court, and the MoA", *The International & Comparative Law Quarterly*, Vol. 56, Is. 2, p. 398.

38 Yourow, H. C. (1988). p. 159; O'Donnell, T. A. (1982). "The Margin of Appreciation Doctrine: Standards in the Jurisprudence of the ECtHR", *Human Rights Quarterly*, Vol. 4, No. 4, p. 479; *Ternovszky/Hungary*, App. No: 67545/09, 14/12/2010, § 16.

39 *Von Hannover/Germany (no. 2)*, App. No: 40660/08, 7/2/2012.

40 *Leyla Şahin/Turkey*, § 110; *Janowski/Poland*, App. No: 25716/94, 21/1/1999, § 30. See Arai-Takahashi, Y. (2002). *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the European Court of Human Rights*, Antwerp: Intersentia, p. 14.

41 See concurring opinion of Judge *Rozakis* in *Egeland and Hanseid/Norway*, App. No: 34438/04, 16/4/2009.

42 Kratochvíl, J. (2011). "The Inflation of the Margin of Appreciation By the ECtHR", *Netherlands Quarterly of Human Rights*, Vol. 29, Is. 3, p. 336.

43 Ibid. pp. 351-352. *Letsas* argues that the reason behind this inconsistency is the Court's failure to distinguish between the 'substantive' and the 'structural' concepts of the MoA in its case-law. Letsas, G. (2009). p. 81; Letsas, G. (2006). "Two Concepts of the Margin of Appreciation", *Oxford Journal of Legal Studies*, Vol. 26, Is. 4, p. 706.

44 Berry, S. E. (2019). Avoiding Scrutiny? The Margin of Appreciation and Religious Freedom, in Temperman, J., Gunn, T. J. and Evans, M. D. (Eds.), *The European Court of Human Rights and the Freedom of Religion or Belief (The 25 Years since Kokkinakis)* (pp. 103-127), Leiden; Boston: Brill/Nijhoff; p.104. See also dissenting opinion of Judge *Tulkens* in *Leyla Sahin/Turkey*.

45 Henrard, K. (2011). "Shifting Visions About Indoctrination and the Margin of Appreciation Left to States", *Religion and Human Rights*, Vol. 6, Is. 3, p. 245.

II. EXAMINATION OF CASES ABOUT RESTRICTIONS ON THE RELIGIOUS HEADDRESS: FINDINGS OF THE ECtHR AND THE UNHRC

The ECtHR and the UNHRC dealt with many cases concerning restrictions on the wearing of religious headdress. These cases were about religious headdresses worn by students, teachers, employees or even ordinary citizens. Interestingly, a quick view of its decisions shows that, in almost all cases[46] examined before it, the UNHRC concluded that the contested interferences with the RMRoB had not complied with Article 18 of the ICCPR. Nonetheless, differently from the UNHRC, the ECtHR has almost always found those restrictions compatible with Article 9 of the ECHR[47].

Before starting to examine concrete disputes, it should be mentioned that the decisions of two institutions handled here are illustrative and not exhaustive. In this regard, given the scope of the study, only cases which are considered most appropriate to compare these two bodies' divergent findings in respect of adjudication of the RMRoB in religious headdress cases are analysed.

Furthermore, when referring to cases, they will be grouped according to the status of applicants and places where contested restrictions imposed, and an order, going from less restrictive measures to more restrictive ones, will be followed. Accordingly, first, cases concerning religious headdresses in the workplace which resulted in limiting certain rights of employees will be examined. Then, disputes affecting students' right to education in a negative way because of wearing religious headdresses will be analysed. And finally, the focus will be on the most restrictive measure on the wearing of religious headdress which impedes individuals regardless of their status from going out in their daily lives.

[46] One exception, where the UNHRC found no violation of the author's RMRoB was the case of *Bhinder*. See UNHRC, *Karnel Singh Bhinder/Canada*, App. No: 208/1986, 9/11/1989.

[47] However, this does not mean that there was no exception to this finding. See *Hamidović/ Bosnia and Herzegovina*, App. No: 57792/15, 5/12/2017. In *Hamidović* expulsion of a witness from the courtroom for not removing his religious headdress was found in violation of Article 9.

A. RELIGIOUS HEADDRESSES WORN BY EMPLOYEES IN THE WORKPLACE

One of the earliest decisions of the ECtHR about limitations imposed on religious headdresses in the workplace was delivered in the case of *Dahlab* v *Switzerland* in 2001. In this case, the Court declared inadmissible the applicant's complaint that prohibiting her from wearing headscarf when performing her duties as a primary school teacher had breached her RMRoB[48].

The Court found that the interference in *Dahlab* could be regarded as prescribed by law since it was envisaged by the Swiss law prescribing that '*the State education system had to respect the religious beliefs of pupils and parents*' and that '*civil servants had to be lay persons*[49].' It further accepted that the interference pursued legitimate aims under Article 9/2 of the Convention, that is to say, the protection of the rights and freedoms of others, public safety and public order[50]. Finally, in respect of the necessity of the interference, it took into account the facts that states had a certain MoA in '*assessing the existence and extent of the need for interference*', that the applicant, as a state-run primary school teacher, was a representative of the state and responsible for teaching pupils aged between four and eight, that wearing a powerful religious symbol such as an Islamic headscarf might have a proselytising effect on very young children and thus might adversely affect their FoRB, and that wearing a headscarf could hardly be reconciled with the principles of gender equality, tolerance and respect for others[51]. In the light of these considerations, the ECtHR stated that the interference was necessary in a democratic society and that the respondent state did not overstep its MoA[52]. It, therefore, declared the applicant's complaint manifestly ill-founded[53].

48 *Dahlab/Switzerland*.

49 Ibid.

50 Ibid.

51 Ibid.

52 Ibid.

53 Ibid. Article 35 of the Convention stipulates that the Court shall declare inadmissible any individual application, if it considers that the application is manifestly ill-founded. The condition of not being "*manifestly ill-founded*" is considered as an admissibility criterion denoting "*the extent of the evidence applicants have to back up their applications.*" Mowbray, A. (2012). *Cases, Materials, and Commentary on the European Convention on Human Rights*, Oxford: Oxford University Press, p. 37.

In *Dahlab* case, it is observed that the restriction was imposed on the applicant's religious headdress because civil servants had to be lay (*laïc*) persons according to Swiss law and that the ECtHR assumed that wearing a headscarf by a public servant (and especially by a teacher) would be contrary to the duties of a lay public servant[54]. This can be inferred from the following part of the Court's reasoning: "*… wearing of a headscarf … is hard to square with the principle of gender equality. It therefore appears difficult to reconcile the wearing of an Islamic headscarf with the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society must convey to their pupils*[55]."

In 2006, the ECtHR further elaborated this last point concerning the relationship between public servants, secularism, the duty of neutrality and religious headdresses by stating that, "*as public servants act as representatives of the State when they perform their duties, the rules require their appearance to be neutral in order to preserve the principle of secularism and its corollary, the principle of a neutral public service. The rules on dress require public servants to refrain from wearing a head-covering on work premises*[56]."

More recently, in 2015, the ECtHR examined another restriction imposed on wearing of a religious headdress in the workplace. In *Ebrahimian* v *France* case, the Court found the non-renewal of the employment contract of the applicant who was working as a social worker in a public hospital and refused to remove her veil, in compliance with Article 9 of the Convention[57].

In its judgment, having regard to an opinion of the *Conseil d'État* prescribing that the secularism required public officials to not manifest their religious beliefs while carrying out their duties, the ECtHR first held that the contested measure had been prescribed by law[58]. The Court then concluded that the contested restriction had pursued the legitimate aim of the protection of the rights and freedoms of others, as it had designed to guarantee the equality in treatment of patients without any distinction on the ground of their religions and the neutrality of the public service[59].

54 *Dahlab/Switzerland*.
55 Ibid.
56 *Kurtulmuş/Turkey*, App. No: 65500/01, 24/1/2006.
57 *Ebrahimian/France*.
58 Ibid. §§ 48-51.
59 Ibid. §§ 51-53.

In respect of the necessity test, the Court was of the view that France, when giving precedence to the neutrality and impartiality of public service stemming from the principle of secularism and to patients' right to equal treatment over the applicant's RMRoB, had not overstepped its wide MoA in questions concerning the state-religion relationship and there had thus been no violation[60]. For reaching this conclusion, besides the importance of the public employees' duty of neutrality and of the principle of secularism, it also referred to the facts that the national authorities had warned the applicant of possible consequences of covering her head and tried to convince her to not do so, that the applicant had been in direct contact with fragile patients, that the rationale behind the interference had been patients' rights (including the right to not be exposed to proselytism), that the applicant's veil had been an ostentatious religious symbol, and that the applicant had not taken part in a new recruitment test which she had been offered following the non-renewal of her contract[61].

In the judgment the Court, referring to its earlier case-law, reiterated that "*[s]tates may rely on the principles of State secularism and neutrality to justify restrictions on the wearing of religious symbols by civil servants*[62]." It then established a causal relationship between the secularism and the neutrality on the one hand, and between the neutrality and the duty incumbent on civil servants to not manifest their religious beliefs when carrying out their jobs on the other[63]. According to the Court, in order to ensure respect for all beliefs, the principle of secularism requires states to be neutral and impartial towards all religious convictions when performing public services and the principles of neutrality and impartiality require public employees, who are representatives of the state, to not wear a religious symbol in the course of their professional duties[64]. However, there was not any factual evidence in the judgment which supported such a general assessment.

Furthermore in *Ebrahimian*, even though the Court, by referring to its judgment delivered in *Eweida*[65], highlighted at the outset the requirement for seeking an overall balance between competing interests when deciding on the restriction's proportionality,[66] this balancing test seems absent in

60 Ibid. §§ 54-72.

61 Ibid. §§ 54-72.

62 Ibid. § 64.

63 Ibid. § 64.

64 Ibid. § 64.

65 *Eweida and Others/UK*, App. No: 48420/10, 15/1/2013, § 78.

66 *Ebrahimian/France*, § 59.

the judgment[67]. However, the MoA, the principle of secularism and the duty of neutrality played a prevalent role for reaching the conclusion. As it has been put by judge *O'Leary* in his separate opinion that the Court should have conducted a more rigorous and concrete assessment of proportionality, as France relied on abstract principles of secularism and neutrality to justify the restriction[68].

In 2018, the UNHRC also examined a case concerning a ban on employees' wearing of religious headdress in the workplace. In the case of *F.A./France*, the author was a Muslim female educator who was dismissed from a private childcare centre because of refusing to remove her headscarf and thus of violating the centre's internal regulations designed to protect the principles of secularism and neutrality[69].

Before the Committee, France argued that the author's dismissal pursued the legitimate aim of the protection of the rights and freedoms of others, namely the FoRB of children attending the centre and their parents[70]. In this connection, it referred to the ECtHR's finding that the Islamic headscarf is a powerful external symbol[71] and indicated that the centre had been established to provide a warm welcome and social stability for children vulnerable to the expression of religion by their educators[72]. However, the UNHRC did not accept these arguments as sufficient justifications and sought a plausible explanation from France on how an educator's veil could have posed a threat to the rights of others benefitting from the childcare centre[73]. The Committee was of the view that, in the case of *F.A.*, France could not explain in what way an educator with a headscarf would violate the FoRB of children and/or their parents attending the centre[74].

---

67 Ferri, M. (2017). "The freedom to wear religious clothing in the case law of the European Court of Human Rights: an appraisal in the light of states' positive obligations", *Religion, State and Society*, Vol. 45, Is. 3-4, pp. 190-192.

68 *Ebrahimian/France*, separate opinion of judge *O'Leary*. Also in his dissenting opinion judge *de Gaetano* criticised the majority in the following way: '*The judgment… rests on the false … premise … that the users of public services cannot be guaranteed an impartial service if the public official serving them manifests in the slightest way his or her religious affiliation.*'

69 UNHRC, *F.A./France*, App. No: 2662/2015, 16/7/2018, §§ 2.1-2.6.

70 Ibid. § 8.2.

71 See Leyla Şahin/Turkey, § 111; *Dogru/France*, App. No: 27058/05, 4/12/2008, § 64.

72 UNHRC, *F.A./France*, § 4.7.

73 Ibid. § 8.8.

74 Ibid. § 8.8.

As to the proportionality of the interference, the State Party defended that it should have enjoyed a certain MoA when determining the necessity of measures used for realising the legitimate aim sought[75]. However, the Committee did not give weight to this argument. Pointing out the facts that the author had already been wearing a headscarf for fourteen years before her dismissal, even at the centre, that the reason of the author's dismissal was committing a serious misconduct which deprived her of receiving severance payment and that wearing a headscarf could not be regarded as a type of proselytism or as contrary to the centre's objectives, it decided that the dismissal of the author did not meet the criteria laid down in Article 18/3 of the ICCPR[76]. Departing from those findings, it can thus be said that the UNHRC conducted a more rigorous examination in respect of the legitimate aim and the necessity (proportionality) requirements. It dealt with, in this regard, the question of whether the State Party met these requirements in the light of factual circumstances of the case and not of abstract legal notions, such as secularism, neutrality or the MoA.

B. RELIGIOUS HEADDRESSES WORN BY STUDENTS IN THE SCHOOL

In recent decades, limitations were also imposed on students' RMRoB because of religious headdresses they wore in schools. These limitations were observed especially in secular countries such as France and Turkey, and they were challenged by applicants before both the ECtHR and the UNHRC. Under this heading, decisions of the two institutions concerning the religious headdress in schools will be examined, in respect of first high school students, and then, university students.

1. Religious Headdresses in High Schools

On 15 March 2004, in application of the principle of secularism[77], a law was put into force in France which prohibited students of public high schools from wearing of conspicuous religious clothing or symbols. As a result of the aforementioned law, the ECtHR and the UNHRC had to examine applications lodged by pupils who were expelled from their schools due to religious headdresses they had worn. Thus the matter

75 Ibid. §§ 4.8, 8.9.

76 Ibid. § 8.9.

77 See 'Secularism and religious freedom', www.gouvernement.fr/en/secularism-and-religious-freedom (Date of Access: 10/3/2021).

of wearing religious headdress in high schools offers an important opportunity to make a comparison between approaches of two institutions on the same matter.

The ECtHR examined six applications stemming from the aforementioned law, and in all of them declared the complaints concerning the RMRoB inadmissible as being manifestly ill-founded based on similar grounds[78]. To illustrate, in cases of *Jasvir Singh* and *Ranjit Singh*, two Sikh students complained about their expulsion from their public high schools because of wearing *keski*[79]. The Court accepted in both cases that the restriction pursued the legitimate aim of the protection of the rights and freedoms of others and public order[80].

In respect of restrictions' necessity and proportionality, the ECtHR highlighted that the prohibition of wearing visible religious clothes in public schools was motivated by safeguarding the secularism, a principle which was in line with underlying principles of the ECHR[81]. It further stressed that states should have enjoyed a MoA in the establishment of the delicate relationship between the state and the religion[82]. Additionally, it considered the dialogue procedure which took place between school authorities and students and also the fact that the applicants had opportunities for continuing their education, such as private schools or distance education[83]. Having regard to all those factors the Court concluded that restrictions imposed on the applicants' RMRoB were proportionate to the legitimate aim sought[84].

However, in the communication of *Bikramjit Singh/France*, the UNHRC took a different position from the ECtHR[85]. In 2012, it examined a Sikh

78 *Aktas/France*, App. No: 43563/08, 30/6/2009; *Bayrak/France*, App. No: 14308/08, 30/6/2009; *Gamaleddyn/France*, App. No: 18527/08, 30/6/2009; *Ghazal/France*, App. No: 29134/08, 30/6/2009; *Jasvir Singh/France*, App. No: 25463/08, 30/6/2009; *Ranjit Singh/France*, App. No: 27561/08, 30/6/2009.

79 *Jasvir Singh/France*, § 78; *Ranjit Singh/France*, § 78.

80 Ibid.

81 Ibid.

82 Ibid.

83 Ibid.

84 Ibid. For other decisions where the Court declared secondary or high school students' complaints concerning restrictions on their wearing of religious headdress inadmissible or found no violation of Article 9, based on the secularism and the MoA, see *Köse and 93 others/Turkey*, App. No: 26625/02, 24/1/2006; *Kervanci/France*, App. No: 31645/04, 4/12/2008; *Dogru/France*.

85 UNHRC, *Bikramjit Singh/France*, App. No: 1852/2008, 1/11/2012.

student's complaint of a violation of the FoRB in that, as a result of the French law of 15 March 2004, he was expelled from his high school because of covering his head with a *keski* and had to continue his education via distance learning[86].

France invoked the principles of secularism and neutrality in public education, and also the need for ensuring the order in schools for pluralism and the freedom of others as legitimate aims of the interference[87]. The UNHRC highlighted the importance of the secularism by describing it as '*a means by which a State party may seek to protect the religious freedom of all its population*[88].' It, nevertheless, found the State Party's explanations unsatisfactory on how wearing a *keski* could have posed a threat to the freedoms of other students or the school's order[89].

It was also claimed by France that the interference was necessary and proportionate to the legitimate aim pursued given that, among others, its MoA was upheld by the ECtHR on the same matter[90]. However, the Committee, likewise in other cases concerning religious headdresses, kept silent on the argument concerning the MoA. The Committee stated that "*… the penalty of the pupil's permanent expulsion from the public school … led to serious effects on the education to which the author, like any person of his age, was entitled in the State party*" and that "*the State party imposed this harmful sanction on the author, not because his personal conduct created any concrete risk, but solely because of his inclusion in a broad category of persons defined by their religious conduct*[91]."

It, therefore, ruled that the expulsion of the author from his public high school because of his religious headdress had been neither necessary nor proportionate, and thus in violation of Article 18 of the ICCPR[92].

Accordingly, a comparison with decisions of the ECtHR delivered in the cases of *Jasvir Singh* and *Ranjit Singh*, and the view of the UNHRC adopted in the communication of *Bikramjit Singh* reveals that the Court gave considerable weight to the principle of secularism and also respondent

86 Ibid. §§ 2.1-2.8.
87 Ibid. § 5.8.
88 Ibid. § 8.6.
89 Ibid. § 8.7.
90 Ibid. §§ 5.5-5.9.
91 Ibid. § 8.7.
92 Ibid. § 8.7.

state's MoA in organising the state-religion relationship, in a manner that made them main determinative factors for reaching a conclusion. On the other hand, even the same factors were invoked by the state, the UNHRC gave no importance to the secularism and the MoA. It preferred to reach a conclusion based on specific circumstances of the case, such as the actual effect of the author's headdress on the rights of other individuals and also on the public order and harms caused by the restriction in the detriment of the author.

2. Religious Headdresses in Universities

In 2005, the Grand Chamber[93] of the ECtHR examined a restriction on university students' wearing of religious headdress. In the case of *Leyla Şahin/Turkey*, the applicant was a university student who was wearing a headscarf for religious reasons and had to give up her tertiary education due to an administrative circular which prohibited students from covering their heads within the university[94].

The Court first examined in *Leyla Şahin*, whether the restriction had been prescribed by law. It accepted that the administrative circular, provision of the relevant code on which the circular had been based, and decisions of the national courts about wearing a headscarf in universities could altogether be accepted as the legal basis of the interference in Turkish law, capable of ensuring foreseeability for the applicant[95]. Concerning the second criterion, namely the legitimate aim, the ECtHR admitted that the interference had pursued the legitimate aims of the protection of the rights and freedoms of others and of protecting the public order, simply referring to the fact that there had been no dispute between the parties on this matter[96].

Finally, the ECtHR assessed the necessity of the interference in a democratic society and its proportionality. While doing this, the Court first set out that the respondent state had a MoA in regulating the wearing of religious symbols in educational institutions due to the non-existence of a

93 For cases examined by the Grand Chamber, see ECHR, articles 30 and 43. The Grand Chamber has the '*function of ensuring overall coherence and consistency of the Court's case law.*' See Harris, D., O'Boyle, M., Bates, E., Buckley, C. (2014). *Harris, O'Boyle & Warbrick: Law of the European Convention on Human Rights*, Oxford: Oxford University Press, p. 123.

94 *Leyla Sahin/Turkey*, §§ 14-28.

95 Ibid. §§ 84-98.

96 Ibid. § 99.

uniform standard on the public expression of religious symbols in society throughout Europe[97]. Then, it highlighted the paramount importance of the principle of secularism in Turkish law, which had constituted the main basis of the interference[98]. The Court stressed in this regard that the principle was consistent with underpinning values of the Convention and necessary for the continuation of the democratic system in Turkey, and that any attitude failing to respect the principle of secularism would not necessarily be accepted as being covered by the RMRoB[99].

Besides the importance of the principle of secularism for Turkey's democratic system, the Court further took into account numerous other factors such as the facts that the ban was not peculiar to Islamic headscarf but involved also other religious symbols, that the university authorities were in continuous dialogue with students during the implementation process and reminded them of the reasons behind the ban, and that it was not for the ECtHR to determine how internal rules of an institution should be implemented[100]. In the light of all those factors and having regard to Turkey's MoA in this area, the Court found that the interference had been proportionate to the legitimate aim pursued and thus the applicant's RMRoB had not been violated[101].

It is seen that the principle of secularism and Turkey's MoA in regulating wearing religious clothing in universities constituted the main basis for the Grand Chamber's judgment. This fact implies that a balancing test, depending on factual evidence, between competing rights and interests of the applicant and the community was not sufficiently conducted by the Court in order to determine the proportionality of the contested interference. In fact, a member of the Court, Judge *Tulkens*, has highlighted this point in her dissenting opinion in the following way: "… *the European supervision … must accompany the margin of appreciation … However, other than in connection with Turkey's specific historical background, European supervision seems quite simply to be absent from the judgment. … the fact that the Grand Chamber recognised the force of the principle of secularism did not release it from its obligation to establish that the ban … was necessary*

97 Ibid. § 109.
98 Ibid. § 114.
99 Ibid. § 114.
100 Ibid. §§ 118-121.
101 Ibid. §§ 122-123.

to secure compliance with that principle and, therefore, met a 'pressing social need'[102]."

When it is looked at the UNHRC's views, there are only two cases where the Committee examined restrictions on university students' wearing of religious headdress and only one of them is suitable for making a comparison with the ECtHR's judgment[103]. In this regard, in the communication of *Seyma Türkan/Turkey*, the author was a Muslim female student and not allowed to be enrolled in a university due to the fact that she was wearing a wig to cover her head for religious reasons[104]. The author claimed before the Committee that the interference was not prescribed by law and did not pursue a permissible legitimate aim[105]. However, the UNHRC preferred to be silent on the question of whether the restriction on the author's religious headdress could be regarded as having been prescribed by law. Instead, having regard to the facts that the state party failed to put forward a legitimate aim which had been pursued by the restriction and that "*such a broad restriction, without a clear justification of its purpose, disproportionately affected the author*" by depriving her of higher education, the UNHRC found a violation of the author's RMRoB[106]. One important point that should be highlighted in the case of *Türkan* that, the UNHRC did not take into account the secular character of Turkey for reaching a conclusion, whereas the principle of secularism was amongst underlying reasons for the ban in domestic law and one of the Committee's member drew the majority's attention to the principle of secularism, in his concurring opinion[107].

C. RELIGIOUS HEADDRESSES WORN BY INDIVIDUALS IN PUBLIC PLACES

Taking into account its negative effects on the daily lives of ordinary citizens, the prohibition of wearing religious headdresses in public may be regarded as the most restrictive limitation under the scope of this study. In this context, the ECtHR and the UNHRC, both had to decide on violation

102 Ibid. See dissenting opinion of judge *Tulkens*.

103 In *Hudoyberganova*, the Committee did not need to pursue an in-depth analysis of the author's complaint in respect of the 'legitimate aim' and the 'necessity' criteria. UNHRC, *Hudoyberganova/Uzbekistan*, App. No: 931/2000, 5/11/2004.

104 UNHRC, *Seyma Türkan/Turkey*, App. No: 2274/2013, 17/7/2018.

105 Ibid. §§ 3.2, 7.3.

106 Ibid. § 7.6.

107 Ibid. See the concurring opinion of *de Frouville*.

complaints concerning the French Act of 11 October 2010 stipulating that "*[n]o one may, in a public space, wear any apparel intended to conceal the face*[108]."

Firstly, in 2014, in the case of *S.A.S./France*, the ECtHR examined the complaint of a Muslim woman who was wishing to wear burqa and niqab for religious reasons, but could not do so owing to the act of 11 October, as a potential victim[109]. In *S.A.S.*, concerning the legitimate aim requirement, France contented that the ban pursued the legitimate aims of public safety and the '*respect for the minimum set of values of an open and democratic society*[110].' Taking into account the need to identify individuals for preventing danger and combatting against identity fraud, the Court admitted that French authorities followed the aim of public safety when imposing a ban on face coverings[111]. It also found that the aim of ensuring the '*respect for the minimum set of values of an open and democratic society*', in other words, the respect for 'living together', could be considered as related to the legitimate aim of the protection of the rights and freedoms of others that was articulated in Article 9/2[112].

When it comes to the proportionality, or putting it differently, the necessity in a democratic society requirement, the ECtHR was not convinced that a blanket ban on the concealment of the face, instead of obliging individuals to show their faces when so required, could be regarded necessary in a democratic society for realisation of the legitimate aim of public safety[113]. However, in respect of the aim of making 'living together' easier and the protection of the rights and freedoms of others, the Court accepted that the respondent government, in choosing the appropriate means for the realisation of the aim sought, had a wide MoA[114]. While reaching this conclusion it took into account the facts that there had been no consensus between the member states as to the matter of imposing a blanket ban on the full-face garments in public places and that the ban was a matter of general policy that should have been determined by the national legislature[115].

---

108 UNHRC, *Sonia Yaker/France*, § 2.2; UNHRC, *Miriana Hebbadj/France*, § 2.2; *S.A.S./France*, § 28.

109 *S.A.S./France*, §§ 10-14.

110 Ibid. § 114.

111 Ibid. § 115.

112 "*the right of others to live in a space of socialisation which makes living together easier*.", ibid. §§ 116-122.

113 Ibid. § 139.

114 Ibid. §§ 153-158.

115 Ibid. §§ 153-158.

Once the existence of a wide MoA on the part of the state had been put by the Court, as a blanket ban, the excessive nature of the interference in response to a situation concerning just a few thousand people within the whole country[116] and the negative impacts of the ban on Muslim women wearing full-face veil such as isolating them from society[117] could not suffice for the Court to find a violation of the applicant's FoRB. Even though the ECtHR did also refer to other factors in support of not finding a violation, such as the lenient nature of the sanctions attached to the ban[118] and the fact that the ban was not peculiar to religious dress but concerned all types of dress concealing the face,[119] the judgment reveals that the main rationale behind the Court's conclusion as to the proportionality of the ban was the wide MoA enjoyed by France when enacting legislation for satisfying a social need[120]. According to the Court, it had "*a duty to exercise a degree of restraint in its review of Convention compliance*" in cases where the member states were granted a wide MoA[121].

However, in 2018, the UNHRC has adopted different views from that of the ECtHR in the communications of *Sonia Yaker* and *Miriana Hebbadj*, finding that a blanket ban on face coverings in public was in violation of the FoRB[122]. These two communications lodged by two Muslim women who were wearing *niqab* for religious reasons in France and both ordered to pay a fine of 150 euros for breaching the Act of 11 October 2010[123].

France, referring to its constitutional values, such as living together in an egalitarian and open society and also to its MoA on the matter, raised same arguments before the Committee as it did before the ECtHR[124]. Nonetheless, the Committee was not convinced that the legitimate aims of the protection of the rights and freedoms of others and the protection of public order were pertinent to an absolute ban on the face-covering. In this regard the Committee, while recognising the need for states to require

116 Ibid. § 145.

117 Ibid. § 146.

118 A fine of 150 euros and/or a citizenship course. Ibid. § 152.

119 Ibid. §§ 151-152.

120 Ibid. § 157.

121 Ibid. §§ 154-155. In 2017, the ECtHR has found a Belgian law which forbade the wearing of dress concealing the face in all public places compatible with the provisions of the ECHR, based almost on the same grounds as in *S.A.S*. See *Dakir/Belgium*; *Belcacemi and Oussar/Belgium*, App. No: 37798/13, 11/7/2017.

122 UNHRC, *Sonia Yaker/France*; UNHRC, *Miriana Hebbadj/France*.

123 UNHRC, *Sonia Yaker/France*, § 2.2; UNHRC, *Miriana Hebbadj/France*, § 2.2.

124 UNHRC, *Sonia Yaker/France*, §§ 7.1-7.11; UNHRC, *Miriana Hebbadj/France*, §§ 5.1-5.11.

individuals to show their faces in certain situations, has stressed the State party's inability to describe "*any context, or… example, in which there was a specific and significant threat to public order and safety that would justify… a blanket ban*[125]." It has further held that "*… the protection of the fundamental rights and freedoms of others requires identifying what specific fundamental rights are affected, and the persons so affected*" and that "*the State party has not identified any specific fundamental rights or freedoms of others that are affected by the fact that some people present in the public space have their face covered, including fully veiled women. … the right not to be disturbed by other people wearing the full-face veil are not protected by the Covenant and therefore cannot provide the basis for permissible restrictions within the meaning of article 18(3)*[126]."

In this way, the UNHRC conducted a more rigorous review of the legitimate aim criterion. It first held, in this regard, that only rights and freedoms protected by the ICCPR may constitute a basis for the legitimate aim of the protection of the rights and freedoms of others. It further required the State Party to identify which rights could have been affected by the author's enjoyment of the RMoRB and also to identify right-holders of those rights.

Following the aforementioned explanations about the legitimate aim criterion, the UNHRC stated that the contested ban could also not be regarded as meeting the proportionality requirement[127]. According to the Committee, "*Even assuming that the concept of living together could be considered a 'legitimate objective' in the sense of article 18 (3), … the State party has failed to demonstrate that the criminal ban on certain means of covering of the face in public… is proportionate to that aim, or that it is the least restrictive means that is protective of religion or belief*[128]."

Thereby, the Committee put the burden of proof on the state to show that the interference had been the least restrictive measure for reaching the legitimate aim and had thus been proportionate.

III. INFERENCES FROM DIFFERENT FINDINGS OF THE ECtHR AND THE UNHRC

As it was mentioned above, any restriction imposed on wearing religious headdress must be prescribed by law, pursue a permissible

125 UNHRC, *Sonia Yaker/France*, § 8.7; UNHRC, *Miriana Hebbadj/France*, § 7.7.
126 UNHRC, *Sonia Yaker/France*, § 8.10; UNHRC, *Miriana Hebbadj/France*, § 7.10.
127 UNHRC, *Sonia Yaker/France*, § 8.11; UNHRC, *Miriana Hebbadj/France*, § 7.11.
128 UNHRC, *Sonia Yaker/France*, § 8.11; UNHRC, *Miriana Hebbadj/France*, § 7.11.

legitimate aim and be necessary for and proportionate to the aim pursued. In this connection, decisions and judgments of the ECtHR and views of the UNHRC show that there was not a distinct difference between the two institution's approaches to determine whether a specific restriction on the religious headdress had been prescribed by law, whereas the two IHRL supervisory bodies interpreted and applied the 'legitimate aim' and the 'necessity/proportionality' criteria in a different way from each other. It seems that their approaches to the principle of secularism and states' MoA played a crucial role in the emergence of this difference. Therefore, implementation of the legitimate aim requirement by the two institutions and also places of the secularism and the MoA in their case-law will be analysed in this section.

It should be mentioned that there may also be so many other reasons in legal, social or even political sphere as why these two institutions have reached different conclusions on similar matters[129]. However, this broad range of reasons remain outside the scope of this study and only reasons that can be found in the judicial reasoning as captured in the case-law of these bodies will be taken into account here.

Finally, it is also of crucial importance to reiterate the institutional dissimilarities between the ECtHR and the UNHRC. In this regard, the ECtHR is a regional human rights court[130] which ensures judicial protection[131] for individuals by rendering binding decisions[132] for 47 member states of the Council of Europe[133]; whereas, the UNHRC is an IHRL treaty body[134] which forwards its non-binding views[135] to 116 State Parties[136] from diverse legal, sociological, economic and historical backgrounds. This may result, on the part of the ECtHR, for example, in affording states

[129] For example, see Elver, H. (2012). *The Headscarf Controversy*, Oxford: Oxford University Press, p. 76.

[130] Çalı, B. (2018). Regional Protection, in Moeckli, D., Shah, S. and Sivakumaran, S. (Eds.), *International Human Rights Law* (pp. 411-424), Oxford: Oxford University Press, p. 417.

[131] De Schutter, O. (2016). *International Human Rights Law*, Cambridge: Cambridge University Press, p. 981.

[132] ECHR, article 46/1.

[133] See www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures (Date of Access: 13/4/ 2021).

[134] Connors, J. (2018). United Nations, in Moeckli, D., Shah, S. and Sivakumaran, S. (Eds.), *International Human Rights Law* (pp. 369-410), Oxford: Oxford University Press, p. 387.

[135] Optional Protocol to the ICCPR, article 5/4; Connors, J. (2018). p. 395.

[136] Number of State Parties to the Optional Protocol, see indicators.ohchr.org/ (Date of Access: 14/4/2021).

a MoA where there was not a uniform standard between them in a given subject[137]. Therefore, bearing those institutional dissimilarities in mind will be useful to have a more comprehensive perception on the matter, when assessing inferences drawn from the findings of two institutions below.

A. DETERMINING THE EXISTENCE OF A LEGITIMATE AIM PURSUED BY THE RESTRICTION

The first point deserving to be highlighted under this heading is about the interpretation of one of the permissible legitimate aims, namely the 'protection of the rights and freedoms of others', by the ECtHR and the UNHRC. In this context, the ECtHR accepts protection of rights and freedoms which are not embodied in the ECHR as a permissible legitimate aim under Article 9/2 of the Convention. However, the UNHRC declared that the notions of 'rights' and 'freedoms' mentioned in Article 18/3 of the ICCPR denote only the rights and freedoms that are enshrined in the ICCPR. The Committee is of the view that the protection of any right or freedom which is not guaranteed by the ICCPR, even if it is protected by national law, cannot be considered as a legitimate aim under Article 18/3. This crucial difference can be observed in their findings concerning the legitimate aim of the French ban on face-covering veils in public, in the cases of *S.A.S.*[138], *Sonia Yaker*, and *Miriana Hebbadj*[139], respectively.

It should be mentioned that the ECtHR's aforementioned approach was criticised by both some scholars[140] and some judges of the Court. In this context, in the judgment of *S.A.S.*, judges *Nussberger* and *Jäderblom* stated, among others, that: " *… The very general concept of living together does not fall directly under any of the rights and freedoms guaranteed within the Convention … there is no right not to be shocked or provoked by different models of cultural or religious identity*[141]."

---

137 Berry, S. E. (2017). "A good faith interpretation of the right to manifest religion? The diverging approaches of the European Court of Human Rights and the UN Human Rights Committee", *Legal Studies*, Vol. 37, Is. 4, pp. 682-683.

138 *S.A.S./France*, §§ 121-122.

139 UNHRC, *Sonia Yaker/France*, § 8.10; UNHRC, *Miriana Hebbadj/France*, § 7.10.

140 See Berry, S. E. (2017). p. 677; Gunn, T. J. (2019). The Principle of Secularism and the European Court of Human Rights: A Shell Game, in Temperman, J., Gunn, T. J. and Evans, M. D. (Eds.), *The European Court of Human Rights and the Freedom of Religion or Belief (The 25 Years since Kokkinakis)* (pp. 465-573), Leiden- Boston: Brill/Nijhoff, p. 568; Chakim, M. L. (2020). "The margin of appreciation and freedom of religion: assessing standards of the ECtHR", *The International Journal of Human Rights*, Vol. 24, Is. 6, pp. 855-856. See also UN Human Rights Council, Report of the Special Rapporteur on Freedom of Religion or Belief (2021), § 52.

141 *S.A.S./France*, partly dissenting opinion.

Another difference between the two IHRL supervisory bodies' approaches to the legitimate aim requirement in the religious headdress cases is that the UNHRC has sought a concrete causal link between the legitimate aim pursued and means used for reaching that aim. In this regard, as it has been seen in views of *F.A.*[142] and *Bikramjit Singh*[143] above, the Committee is of the view that restrictions imposed on the wearing of religious headdress must be capable of realising the legitimate aim sought and this capability must be shown by the State Party in order for the legitimate aim criterion to be met.

Nonetheless, as its decisions and judgments reveal, the same burden of showing a causal link between the restriction and the legitimate aim pursued has not been imposed on states by the ECtHR. For example, without elaborating how the manifestation of a religious symbol threatens or harms others or interferes with their rights, the Court accepted that restrictions on that manifestation pursued the legitimate aim of the protection of the rights and freedoms of others[144].

B. THE IMPORTANCE GIVEN BY THE ECTHR TO THE PRINCIPLE OF SECULARISM

As it has been mentioned before, manifesting a religious symbol can only be limited subject to conditions specified in relevant articles of ECHR and ICCPR, regardless of the state-religion relationship that states adopted. However, it can be observed that some secular State Parties to the ECHR, namely Turkey and France, invoked the principle of secularism before the ECtHR to justify the restrictions they imposed on religious headdresses and the Court has, to a certain extent, given importance to the secular character of those states in its decisions/judgments. For example, on numerous occasions, the Court has usually praised the principle of secularism by stressing its consistency with the values underpinning the Convention[145].

142 UNHRC, *F.A./France*, § 8.8.

143 UNHRC, *Bikramjit Singh/France*, § 8.7.

144 For example, in cases of *Dahlab*, *Leyla Sahin*, *Jasvir Singh*, *Ranjit Singh*, examined above. See also McGoldrick, D. (2006). *Human Rights and Religion: The Islamic Headscarf Debate in Europe*, Oxford: Hart Publishing, p. 251. For a criticism of this approach see Bomhoff, J. (2007). 'The Rights and Freedoms of Others': The ECHR and Its Peculiar Category of Conflicts Between Individual Fundamental Rights', papers.ssrn.com/sol3/papers.cfm?abstract_id=1031682 (Date of Access: 5/5/2021).

145 *Leyla Şahin/Turkey*, § 114; *Ebrahimian/France*, § 53; *Dogru/France*, § 66; *Jasvir Singh/France*; *Ranjit Singh/France*.

The positive stance taken by the ECtHR towards the secularism is, however, not limited to appreciating its consistency with the Convention. What is of legal importance that the Court also made some assumptions in favour of the principle, without being supported by factual evidence. For instance, as it has been seen earlier, the Court's approach to the principle of secularism in *Ebrahimian* implies an assumption that wearing of a dress with a religious affiliation at work by public employees is capable of jeopardising the equality of treatment for individuals benefitting from public services[146]. However, there was not any factual element in the judgment supporting that assumption in respect of the applicant, in the specific circumstances of the case.

Another assumption about public officials' obligation of neutrality, the corollary of the secularism, was also made by the Court in its decision of *Dahlab*[147] which suggests that wearing a headscarf by a public servant (and especially by a teacher) will be contrary to the duties of a lay public servant, such as observing the prohibition of discrimination and the principle of tolerance and respect for others.

Furthermore, the Court's statement in *Leyla Şahin* indicating that the principle of secularism 'may be considered necessary to protect the democratic system in Turkey' is an assessment which is capable of rendering any measure taken for ensuring the compliance with the principle of secularism necessary in Turkey[148]. In the same judgment, the Court also found it reasonable for Turkey to consider wearing Islamic headscarf contrary to the secularism and also to the values of "pluralism", "respect for the rights of others" and "equality of men and women before the law[149]" and thus implied another assumption concerning the incompatibility of the Islamic headscarf with the principle of secularism.

146 *Ebrahimian/France*, § 64.

147 *Dahlab/Switzerland*.

148 For criticisms of the said assertion, see Lerner, N. (2005). "How Wide The Margin of Appreciation? The Turkish Headscarf Case, The Strasbourg Court, And Secularist Tolerance", *Willamette Journal of International Law and Dispute Resolution*, Vol. 13, Is. 1, p. 83; see also Cumper, P. and Lewis, T. (2008-2009), "Taking Religion Seriously? Human Rights and Hijab in Europe – Some Problems of Adjudication", *Journal of Law and Religion*, Vol. 24, Is. 2, pp. 611-612; Pimor, A. (2006). "The Interpretation and Protection of Article 9 ECHR: Overview of the Denbigh High School (UK) Case", *Journal of Social Welfare and Family Law*, Vol. 28, Is. 3-4, p. 333.

149 *Leyla Şahin/Turkey*, §§ 114, 116.

There is no doubt that the secularism, or at least some forms of it[150], is one of the ideal ways of regulating the state-religion relationship in states which undertook the protection of the FoRB as an IHRL obligation[151]. However, it should always be born in mind that both the secularism and also its corollary, the neutrality[152] are means and not ends directly protected by IHRL[153]. Accordingly, the secularism must not be prioritised in any case over individuals' FoRB[154].

From this perspective, the ECtHR's approach to the secularism may be found problematic in that the aforementioned assumptions in favour of the secularism may constitute a *prima facie* evidence of the existence of relevant and sufficient reasons[155] for justifying the necessity of restrictions on wearing religious headdresses, even though they were not supported by factual evidence in the light of specific circumstances of cases[156]. Those assumptions put applicants in a disadvantageous situation by making it difficult for them to prove that restrictions imposed on their religious headdresses for the sake of the secularism have been in violation of the Convention[157]. This is proved by the fact that, in almost all cases where the Court referred to it, the secularism served in finding that the impugned interference was in line with the Convention[158].

---

150 For example, as pointed out by *Bielefeldt*, *Ghanea* and *Wiener*, 'a secularity designed with the purpose of creating space in the interests of religious diversity.' Bielefeldt, H., Ghanea, N., Wiener, M. (2017). p. 358. Or as formulated by *Ahdar*, the benevolent secularism obliging '*the state to refrain from adopting and imposing any established beliefs … upon its citizens' and not the hostile secularism pursuing 'a policy of established unbelief.'* Ahdar, R. (2013). "Is secularism neutral?", *Ratio Juris*, Vol. 26, Is. 3, pp. 409-412.

151 Bielefeldt, H., Ghanea, N., Wiener, M. (2017). p. 359.

152 The notion 'neutral' used here also refers to inclusive neutrality and not to exclusive one suggesting that '*the manifestation of religion … is not supposed to be practised in the public arena.*' Henrard, K. (2012). "Duties of Reasonable Accommodation in Relation to Religion and the European Court of Human Rights: A Closer Look at the Prohibition of Discrimination, the Freedom of Religion and Related Duties of State Neutrality", *Erasmus Law Review*, Vol. 5, Is. 1, p. 75.

153 See Bielefeldt, H. (2013). "Misperceptions of Freedom of Religion or Belief", *Human Rights Quarterly*, Vol. 35, No. 1, pp. 53-56.

154 Berry, S. E. (2017). p. 686.

155 'Existence of relevant and sufficient reasons' for limiting a right, especially those enunciated in Articles 8-11 of the Convention, is one factor taken into consideration by the Court for determining the interference's necessity in a democratic society. See Gerards, J. (2013). "How to improve the necessity test of the European Court of Human Rights", *International Journal of Constitutional Law*, Vol. 11, Is. 2, p. 467.

156 Gunn, T. J. (2019). p. 573.

157 See Zucca, L. (2012). *A Secular Europe – Law and Religion in the European Constitutional Landscape*, Oxford: Oxford University Press, p. 104. This may also be considered as contrary to the UNHRC's General Comment no. 22, warning in its 10th paragraph that states' official ideologies should not impair the use of the FoRB.

158 Also in cases where the principle of secularism was invoked by individuals. See *Lautsi/Italy*.

Nonetheless, in views of the UNHRC concerning restrictions imposed on the religious headdress in secular states, there has almost been no reference to the principle of secularism, although it was adduced by states for justifying their restrictions. For instance, in communications of *Sonia Yaker* and *Miriana Hebbadj* which concerned a ban on face-covering in public spaces, the UNHRC gave no importance to the secularism, a constitutional principle of France, although the latter invoked it before the Committee and one of the Committee members referred to it in his dissenting opinions[159].

C. STATES' MARGIN OF APPRECIATION IN LIMITING THE RIGHT TO MANIFEST RELIGION OR BELIEF

In respect of restrictions imposed on the religious headdress, it has been observed that the ECtHR referred to the MoA doctrine in all cases examined in this study. In this regard, when determining the necessity and the proportionality of restrictions, the ECtHR first held in those cases that respondent states should have enjoyed a certain degree of MoA in assessing the existence and extent of the need for interference[160], in regulating the wearing of religious symbols in educational institutions[161] or workplaces[162], in regulating the delicate relationship between the state and the religion[163], and in matters of general policy such as the wearing of the full-face veil in public[164]. Once the existence of a MoA had been established, the Court then checked whether states had overstepped their margin in the specific circumstances of each case and found that the limits of permissible discretion had all been respected.

Another point that should be stressed is that, in none of the cases examined in this study, the MoA was the ECtHR's sole reason for concluding that the interference was proportionate to the legitimate aim pursued and thus necessary in a democratic society. In this context, the Court invoked also other reasons for finding no violation in the examined disputes, such as the principles of secularism and neutrality, as seen

159 Dissenting opinions of *Ben Achour* in UNHRC, *Sonia Yaker/France* and UNHRC, *Miriana Hebbadj/France*.

160 *Dahlab/Switzerland*.

161 *Leyla Şahin/Turkey*, § 109.

162 *Ebrahimian/France*, § 65.

163 *Dogru/France*, § 72; *Kervanci/France*, § 72; *Jasvir Singh/France*; *Ranjit Singh/France*.

164 *S.A.S./France*, §§ 154-156.

above, and status of the applicant[165], potential effects of the religious headdress on other individuals[166], nature and severity of the restriction[167] or the applicant's conduct[168].

It does not seem possible to make a general comment from its case-law about which factors were more decisive than others in specific cases for the ECtHR, as it always juxtaposes all factors that have been taken into consideration in a case without establishing a legal hierarchy between them. However, given that it has been constantly used by the Court and it played a central role in the ECtHR's reasoning in all cases examined in this study, the MoA can be regarded as one of the prevalent factors leading the Court to find no violation in cases concerning religious headdresses.

On the other side of the coin, however, it seems that the UNHRC has not been granting to states any discretion in the implementation of Article 18/3 of the ICCPR in the religious headdress cases[169]. In this connection, in respect of very similar type of restrictions regarding which the ECtHR found no violation of the RMRoB depending, to a certain extent, on the MoA doctrine, the UNHRC found a violation of the same right without giving any weight to states' MoA[170]. This was the case even though in most of the communications examined in this study the State Party invoked its MoA to justify the interference with the RMRoB[171]. In this regard, the Committee has always required the State party to demonstrate the necessity of the restriction on the basis of factual evidence without giving reference to their discretion.

It is obvious that each society may have different needs, preferences and legitimate aim considerations for imposing certain restrictions on individuals' wearing of religious headdresses. Therefore, it is understandable that the Court allows a room for manoeuvre for member

165 *Dahlab/Switzerland*; *Ebrahimian/France*, § 64.

166 *Dahlab/Switzerland*; *Ebrahimian/France*, § 61.

167 *S.A.S./France*, § 152.

168 *Ebrahimian/France*, § 70.

169 Taylor, P. (2005). p. 344. However, this does not mean that the UNHRC has never granted discretion to states in the application of provisions of the ICCPR. See Legg, A. (2012). *The Margin of Appreciation in International Human Rights Law: Deference and Proportionality*, Oxford: Oxford University Press, pp. 34-36.

170 The Committee has only stated in its views that it took note of the state party's allegations about the MoA. See UNHRC, *F.A./France*, § 8.9.

171 Ibid. 4.8; UNHRC, *Bikramjit Singh/France*, § 5.5; UNHRC, *Sonia Yaker/France*, § 7.9; UNHRC, *Miriana Hebbadj/France*, § 5.9.

states of the ECHR, in realising a permissible legitimate aim in their society. This, of course, should not mean that the MoA, which must go hand in hand with a European supervision[172], can weaken the applicable standard of review[173]. Even the national appreciation of the appropriate balance between competing individual and public interests should be given some weight[174], the ECtHR must duly evaluate specific factual circumstances of each case to find out whether such a balance has actually been established by the respondent state.

Nonetheless, the aforementioned cases imply that the ECtHR is more inclined to find for the respondent state where the latter has been granted a MoA, particularly a wide one, when imposing restrictions on the wearing of religious headdress[175]. This is not surprising, because the notion of MoA is reminiscent of an area which is either narrow or wide but anyway close to the Court's supervision and this inevitably ensures an advantage in favour of states in the overall assessment of proportionality.

Furthermore, the Court's case-law is far from ensuring foreseeability about boundaries of the margin left to the states[176]. There has not been a specific explanation in the judgments and decisions examined, which elaborates to what extent states could interfere with the RMRoB when they enjoyed a certain MoA. As it has been observed in the case of *S.A.S.* examined above, states can even impose a general blanket ban over a certain form of religious headdress owing to their MoA and thus isolate the right-holders from society[177] and also expose them to abuse and marginalization[178] for the sake of the society's choice in a matter of general policy[179]. In these circumstances, it seems very hard to delimit states' discretion in this sphere in a predictable manner and to say definitely what they cannot do depending on their MoA[180].

---

172 *Leyla Şahin/Turkey*, § 110; *Janowski/Poland*, § 30.

173 As it was put by O'Donnell, "*… the Court should not invoke vague general concepts without actual fact-finding.*" O'Donnell, T. A. (1982). p. 482.

174 McGoldrick, D. (2006). p. 28.

175 According to *Taylor* and *Berry*, this is valid also for other RMoRB cases. See Taylor, P. (2005). p. 344; Berry, S. E. (2019). p. 127.

176 See Knights, S. (2011). *Freedom of Religion, Minorities and the Law,* Oxford: Oxford University Press, p. 72.

177 *S.A.S./France*, § 146.

178 UNHRC, *Sonia Yaker/France*, § 8.14; UNHRC, *Miriana Hebbadj/France*, § 7.15.

179 *S.A.S./France*, §§ 153-154.

180 For a similar inference drawn in 2007, see Lewis, T. (2007). p. 413.

On the other hand, the UNHRC prefers to not use any doctrine referring to states' discretion when conducting its review in the religious headdress cases. This denotes the absence of an area in the implementation of the ICCPR which limited the Committee's monitoring in favour of the national decision-makers' power of discretion. Therefore, the UNHRC conducts its review of the necessity and the proportionality based on only factual evidence and not of theoretical notions. As a result, it becomes more difficult for states to satisfy the requirements for limiting the RMRoB before the Committee than before the ECtHR.

IV. CONCLUSION

In IHRL, wearing religious headdresses is considered as an aspect of the manifestation of religion or belief and thus as a matter falling under the scope of the FoRB. Respective articles of two leading IHRL treaties, namely the ECHR and the ICCPR, regulated the FoRB in their respective articles in an almost identical way. They both protected the *forum internum* of the FoRB, namely the freedom of thought, conscience and religion as an unqualified right which cannot be limited in any condition, whereas they allowed limitations for the *forum externum* of the FoRB, namely the RMRoB, subject to certain conditions. According to these conditions any limitation imposed on the RMRoB, including the use of religious headdresses, must be prescribed by law, pursue a permissible legitimate aim, and also be necessary for and proportionate to the legitimate aim pursued.

Despite the fact that they prescribed very similar limitation clauses for the RMRoB, implementation of the ECHR and the ICCPR led differing outcomes in analogous or even identical situations where states restricted individuals' wearing of religious headdress. This may not be surprising taken that the interpretation, an indispensable part of the adjudication, can result in different ways of implementation in respect of same rules, even in domestic law. Furthermore, supervisory bodies of those two treaties, that is to say, the ECtHR and the UNHRC have some important institutional dissimilarities which render their different findings in similar cases more predictable. However, these factors do not reduce the importance of finding out reasons for the divergence between rulings of an international human rights treaty body and a regional human rights court on the same matter. In this regard, it is obvious that understanding, at least to some extent, the rationale lying behind those institutions' findings will help to ensure foreseeability in respect of both lawyers and individuals who

have suffered or still suffer from restrictions imposed on their religious headdresses.

In the light of the foregoing explanations, the aim of this paper was to find out possible inferences that can be drawn from different findings of the ECtHR and the UNHRC about the adjudication of RMRoB, in cases concerning restrictions on the wearing of religious headdress. To this end, some decisions and judgments of the ECtHR and some views of the UNHRC which are most capable of illustrating the difference in their case-law have been examined in a comparative way.

Accordingly, departing from their findings in cases examined in this study, the first inference is that the words of 'rights' and 'freedoms' mentioned in the legitimate aim of "the protection of the rights and freedoms of others" have been interpreted by the UNHRC as denoting only the rights and freedoms enshrined in the ICCPR. Nonetheless, when assessing the existence of legitimate aim of the protection of the rights and freedoms of others, the ECtHR has accepted the protection of rights and freedoms that were not protected in the ECHR as a permissible legitimate aim, within the sense of Article 9/2 of the Convention. In connection with this first point, the UNHRC has sought State Parties to make a plausible explanation and show the fact that the contested restriction on the wearing of religious headdress was capable of realising the legitimate aim pursued, whereas the ECtHR has not put such a burden on states.

Secondly, in cases where the principle of secularism was a basis for imposing limitations on the religious headdress, the ECtHR has given weight, to a considerable extent, to the secularism in a way that is most likely to lead finding no violation. In this context, the Court, without being supported by factual evidence, has made some important assumptions in favour of the principle of secularism and also of its corollary, the principle of neutrality. The Court has then used those assumptions for supporting its position in finding impugned restrictions necessary, proportionate and thus in line with the Convention. Since secularism has the status of 'official constitutional ideology' in some State Parties to the ECHR, one can argue that the Court's position towards the secularism concerning wearing religious headdresses fell in contradiction with the UNHRC's General Comment No.22, which stipulated that "*if a set of beliefs is treated as official ideology in constitutions,*

statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 ...[181]."

Thirdly, in all cases examined in this study, the ECtHR has referred to states' MoA in regulating manifestation of religious symbols when determining whether the restriction could be considered necessary in a democratic society or proportionate to the legitimate aim pursued. However, implementation of the MoA doctrine by the Court has attracted some important and righteous criticisms from both scholars and judges in that, among others, the Court's jurisprudence on the MoA was far from ensuring foreseeability and legal certainty on the matter. Unfortunately, the prevalence of the MoA over factual circumstances in some religious headdress cases reminds two crucial warnings, made by *O'Donnell* in 1982[182] and by *Jahangir* in 2006[183].

As linked with second and third points, it has been observed that the UNHRC has given weight neither to the principle of secularism nor states' MoA when conducting its review in the religious headdress cases. In these cases, the Committee has conducted its review on the basis of only factual evidence and not of theoretical notions alien to the text of the ICCPR, even though the latter were persistently invoked by states. It can, therefore, be said that the UNHRC, when it is compared with the ECtHR, offers better protection for individuals who wish to exercise their RMRoB by wearing religious headdresses.

As a final word, as it has been put by Vienna World Conference on Human Rights in 1993, protecting and promoting all universal human rights and fundamental freedoms "*regardless of … (states') political, economic and cultural systems*" while at the same time bearing in mind "*the significance of national and regional particularities and various historical, cultural and religious backgrounds*" is one of the crucial aims of IHRL[184]. Reaching this aim, to a certain extent, depends on the coherence between IHRL monitoring bodies' approaches to similar human rights matters. At this

181 UNHRC General Comment No. 22 on Article 18 (1993), § 10.

182 "*…the* (European) *Court should not invoke vague general concepts without actual fact-finding*." O'Donnell, T. A. (1982). p. 482.

183 "*…a prohibition of wearing religious symbols… based on mere speculation or presumption rather than on demonstrable facts is regarded as a violation of the individual's religious freedom*'. United Nations Commission on Human Rights, Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir (2006), UN Document: E/CN.4/2006/5, § 53.

184 The World Conference on Human Rights, Vienna Declaration and Programme of Action (1993), UN Document: A/CONF.157/23, § 5.

point, cases concerning wearing religious headdresses constitute a matter of divergence between a regional human rights court and an international human rights treaty body, and thereby threaten the consistency of IHRL in a specific area. Moreover, in practice, once a dispute has arisen concerning a religious headdress, this divergence puts individuals within the jurisdiction of a state that is party to both the ECtHR and the UNHRC in a dilemma between the following two options: getting a binding decision from a regional court, which is likely to find no violation and getting a non-binding view from an international treaty body, which is likely to find a violation.

BIBLIOGRAPHY

AHDAR, Rex (2013). "Is secularism neutral?", *Ratio Juris*, Vol. 26, Is. 3, pp. 404-429.

ARAI-TAKAHASHI, Yutaka (2002). *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the European Court of Human Rights*, Antwerp: Intersentia.

BERRY, Stephanie E. (2017). "A good faith interpretation of the right to manifest religion? The diverging approaches of the European Court of Human Rights and the UN Human Rights Committee", *Legal Studies*, Vol. 37, Is. 4, pp. 672-694.

BERRY, Stephanie E. (2019). Avoiding Scrutiny? The Margin of Appreciation and Religious Freedom, in TEMPERMAN, Jeroen, GUNN, Thomas Jeremy and EVANS, Malcolm David (Eds.), *The European Court of Human Rights and the Freedom of Religion or Belief (The 25 Years since Kokkinakis)* (pp. 103-127), Leiden-Boston: Brill/Nijhoff.

BIELEFELDT, Heiner (2013). "Misperceptions of Freedom of Religion or Belief", *Human Rights Quarterly*, Vol. 35, No. 1, pp. 33-68.

BIELEFELDT, Heiner, GHANEA, Nazila, WIENER Michael (2017). *Freedom of Religion or Belief*, Oxford: Oxford University Press.

BOMHOFF, Jacco (2007). 'The Rights and Freedoms of Others': The ECHR and Its Peculiar Category of Conflicts Between Individual Fundamental Rights', < papers.ssrn.com/sol3/papers.cfm?abstract_id=1031682 > (Date of Access: 5/5/2021).

CHAKIM, M. Lutfi (2020). "The margin of appreciation and freedom of religion: assessing standards of the European Court of Human Rights", *The International Journal of Human Rights*, Vol. 24, Is. 6, pp. 850-867.

CONNORS, Jane (2018). United Nations, in MOECKLI, Daniel, SHAH, Sangeeta and SIVAKUMARAN, Sandesh (Eds.), *International Human Rights Law* (pp. 369-410), Oxford: Oxford University Press.

CRAM, Ian (2018). "Protocol 15 and Articles 10 and 11 ECHR-The Partial Triumph of Political Incumbency Post-Brighton?", *The International & Comparative Law Quarterly*, Vol. 67, Is. 3, pp. 477-503.

CUMPER, Peter and LEWIS, Tom (2008-2009). "Taking Religion Seriously? Human Rights and Hijab in Europe – Some Problems of Adjudication", *Journal of Law and Religion*, Vol. 24, Is. 2, pp. 599-627.

ÇALI, Başak (2018). Regional Protection, in MOECKLI, Daniel, SHAH, Sangeeta and SIVAKUMARAN, Sandesh (Eds.), *International Human Rights Law* (pp. 411-424), Oxford: Oxford University Press.

DE SCHUTTER, Olivier (2016). *International Human Rights Law*, Cambridge: Cambridge University Press.

DEMBOUR, Marie-Bénédicte (2018). Critiques in MOECKLI, Daniel, SHAH, Sangeeta and SIVAKUMARAN, Sandesh (Eds.), *International Human Rights Law* (pp. 41-59), Oxford: Oxford University Press.

DOE, Norman (2012). *Law and Religion in Europe - A Comparative Introduction*, Oxford: Oxford University Press.

DONOHO, Douglas Lee (2001). "Autonomy, Self-Governance, and the Margin of Appreciation: Developing a Jurisprudence of Diversity Within Universal Human Rights", *Emory International Law Review*, Vol. 15, Is. 2, pp. 391-466.

DURHAM, W. Cole (2011). Patterns of Religion State Relations in WITTE, John and GREEN, M. Christian (Eds.), *Religion and Human Rights: An Introduction* (pp. 360-378), Oxford: Oxford University Press.

DWORKIN, Ronald (1963). "Judicial Discretion", *The Journal of Philosophy*, Vol. 61, No. 21, pp. 624-638.

ELVER, Hilal (2012). *The Headscarf Controversy*, Oxford: Oxford University Press.

FERRI, Marcella (2017). "The freedom to wear religious clothing in the case law of the European Court of Human Rights: an appraisal in the light of states' positive obligations", *Religion, State and Society*, Vol. 45, Is. 3-4, pp. 186-202.

GERARDS, Janneke (2013). "How to improve the necessity test of the European Court of Human Rights", *International Journal of Constitutional Law*, Vol. 11, Is. 2, pp. 466-490.

Guide on Article 9 of the ECHR. (2020). Strasbourg: Council of Europe, <https://www.echr.coe.int/Documents/ Guide_Art_9_ENG.pdf > (Date of Access: 2/3/2021).

GUNN, Thomas Jeremy (2019). 'The Principle of Secularism and the European Court of Human Rights: A Shell Game', in TEMPERMAN, Jeroen, GUNN, Thomas Jeremy and EVANS, Malcolm David (Eds.), *The European Court of Human Rights and the Freedom of Religion or Belief (The 25 Years since Kokkinakis)* (pp. 465-573), Leiden; Boston: Brill/Nijhoff.

HARRIS, David, O'BOYLE, Michael, BATES, Ed, BUCKLEY, Carla (2014). *Harris, O'Boyle & Warbrick: Law of the European Convention on Human Rights*, Oxford: Oxford University Press.

HART, Herbert Lionel Adolphus (2013). "Discretion", *Harvard Law Review*, Vol. 127, No. 2, pp. 652-665.

HENRARD, Kristin (2012). "Duties of Reasonable Accommodation in Relation to Religion and the European Court of Human Rights: A Closer Look at the Prohibition of Discrimination, the Freedom of Religion and Related Duties of State Neutrality", *Erasmus Law Review*, Vol. 5, Is. 1, pp. 59-77.

HENRARD, Kristin (2011). "Shifting Visions About Indoctrination and the Margin of Appreciation Left to States", *Religion and Human Rights*, Vol. 6, Is. 3, pp. 245-251.

HOFFMASTER, Barry (1982). "Understanding Judicial Discretion", *Law and Philosophy*, Vol. 1, No. 1, pp. 21-25.

HUTCHINSON, Michael R. (1999). "The Margin of Appreciation Doctrine in the ECtHR", *The International & Comparative Law Quarterly*, Vol. 48, Is. 3, pp. 638-650.

KNIGHTS, Samantha (2011). *Freedom of Religion, Minorities and the Law*, Oxford: Oxford University Press.

KRATOCHVÍL, Jan (2011). "The Inflation of the Margin of Appreciation By the European Court of Human Rights", *Netherlands Quarterly of Human Rights*, Vol. 29, Is. 3, pp. 324-357.

LERNER, Natan (2005). "How Wide The Margin of Appreciation? The Turkish Headscarf Case, The Strasbourg Court, And Secularist Tolerance", *Willamette Journal of International Law and Dispute Resolution*, Vol. 13, Is. 1, pp. 65-85.

LERNER, Natan (2012). *Religion, Secular Beliefs and Human Rights – 25 Years After the 1981 Declaration*, Leiden: Brill/Nijhoff.

LEVIN, Ronald M. (1986). "Administrative Discretion, Judicial Review, and the Gloomy World of Judge Smith", *Duke Law Journal*, Vol. 1986, No. 2, pp. 258-275.

LEGG, Andrew (2012). *The Margin of Appreciation in International Human Rights Law: Deference and Proportionality*, Oxford: Oxford University Press.

LETSAS, George (2009). *A Theory of Interpretation of the European Convention on Human Rights*, Oxford: Oxford University Press.

LETSAS, George (2006). "Two Concepts of the Margin of Appreciation", *Oxford Journal of Legal Studies*, Vol. 26, Is. 4, pp. 705-732.

LEWIS, Tom (2007). "What Not to Wear: Religious Rights, the European Court, and the Margin of Appreciation", *The International & Comparative Law Quarterly*, Vol. 56, Is. 2, pp. 395-414.

MCGOLDRICK, Dominic (2016). "A Defence of the Margin of Appreciation and an Argument for Its Application by the Human Rights Committee", *The International & Comparative Law Quarterly*, Vol. 65, Is. 1, pp. 21-60.

MCGOLDRICK, Dominic (2006). *Human Rights and Religion: The Islamic Headscarf Debate in Europe*, Oxford: Hart Publishing.

MCGOLDRICK, Dominic (2017). Religious Rights and the Margin of Appreciation, in AGHA, Petr (Eds.), *Human Rights Between Law and Politics The Margin of Appreciation in Post-National Contexts* (pp. 145-168), Oxford: Hart Publications.

MURDOCH, Jim (2012). *Protecting the right to freedom of thought, conscience and religion under the European Convention on Human Rights*, Strasbourg: Council of Europe.

MOWBRAY, Alastair (2012). *Cases, Materials, and Commentary on the European Convention on Human Rights*, Oxford: Oxford University Press.

O'DONNELL, Thomas A. (1982). "The Margin of Appreciation Doctrine: Standards in the Jurisprudence of the European Court of Human Rights", *Human Rights Quarterly*, Vol. 4, No. 4, pp. 474-496.

PIMOR, Alexandra (2006). "The Interpretation and Protection of Article 9 ECHR: Overview of the Denbigh High School (UK) Case", *Journal of Social Welfare and Family Law*, Vol. 28, Is. 3-4, pp. 323-345.

SAJÓ, András and UITZ, Renáta (2012). Freedom of Religion in ROSENFELD, Michel and SAJÓ, András (Eds.), *The Oxford Handbook of Comparative Constitutional Law* (pp. 909-928). Oxford: Oxford University Press.

STENLUND, Mari and SLOTTE, Pamela (2018). "Forum Internum Revisited: Considering the Absolute Core of Freedom of Belief and Opinion in Terms of Negative Liberty, Authenticity, and Capability", *Human Rights Review*, Vol. 19, Is. 4, pp. 425-446.

SPIELMANN, Dean (2014). "Whither the Margin of Appreciation", *Current Legal Problems*, Vol. 67, Is. 1, pp. 49-65.

SWEENEY, James A. (2005). "Margins of Appreciation: Cultural Relativity and the European Court of Human Rights in the Post-Cold War Era", *The International & Comparative Law Quarterly*, Vol. 54, Is. 2, pp. 459-474.

TAYLOR, Paul (2005). *Freedom of Religion - UN and European Human Rights Law and Practice*, Cambridge: Cambridge University Press.

TEMPERMAN, Jeroen (2017-2018). "The Right to Neutral Governance, Religion, the State & the Question of Human Rights Compliance", *The Journal of Human Rights*, Vol. 12, No. 2, Is. 24, pp. 17-38.

TILLICH, Paul. (1958). "The Religious Symbol", *Daedalus*, Vol. 87, No. 3, pp. 3-21.

WEICHSELBAUMER, Doris (2020). "Multiple Discrimination Against Female Immigrants Wearing Headscarves", *The Industrial and Labor Relations Review*, Vol. 73, Is. 3, pp. 600-627.

VERMEULEN, Bernardus Petrus (2010). The Freedom of Religion in Article 9 of the European Convention on Human Rights: Historical Roots and Today's Dilemmas in VAN de BEEK, Abraham, VAN der BORGHT, Eduardus and VERMEULEN, Bernardus Petrus (Eds.), *Freedom of Religion* (pp. 7-29), Leiden: Brill.

YOUROW, Howard Charles (1988). "The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence", *Connecticut Journal of International Law*, Vol. 3, Is. 1, pp. 111-159.

ZUCCA, Lorenzo (2012). *A Secular Europe – Law and Religion in the European Constitutional Landscape*, Oxford: Oxford University Press.

Judgments and Decisions of the European Court of Human Rights

Handyside/UK, App. No: 5493/72, 7/12/1976.

Janowski/Poland, App. No: 25716/94, 21/1/1999.

Dahlab/Switzerland, App. No: 42393/98, 15/2/2001.

Leyla Şahin/Turkey, App. No: 44774/98, 10/11/2005.

Kurtulmuş/Turkey, App. No: 65500/01, 24/1/2006.

Köse and 93 others/Turkey, App. No: 26625/02, 24/1/2006.

Kervanci/France, App. No: 31645/04, 4/12/2008.

Dogru/France, App. No: 27058/05, 4/12/2008.

Egeland and Hanseid/Norway, App. No: 34438/04, 16/4/2009.

Aktas/France, App. No: 43563/08, 30/6/2009.

Bayrak/France, App. No: 14308/08, 30/6/2009.

Gamaleddyn/France, App. No: 18527/08, 30/6/2009.

Ghazal/France, App. No: 29134/08, 30/6/2009.

Jasvir Singh/France, App. No: 25463/08, 30/6/2009.

Ranjit Singh/France, App. No: 27561/08, 30/6/2009.

Lautsi/Italy, App. No: 30814/06, 3/11/2009.

Jehovah's Witnesses of Moscow and others/Russia, App. No: 302/02, 10/6/2010.

Von Hannover/Germany (no.2), App. No: 40660/08, 7/2/2012.

Eweida and Others/UK, App. No: 48420/10, 15/1/2013.

S.A.S./France, App. No: 43835/11, 1/7/2014.

Ebrahimian/France, App. No: 64846/11, 26/11/2015.

Belcacemi and Oussar/Belgium, App. No: 37798/13, 11/7/2017.

Dakir/Belgium, App. No: 4619/12, 11/7/2017.

Hamidović/Bosnia and Herzegovina, App. No: 57792/15, 5/12/2017.

Correia de Matos/Portugal, App. No: 56402/12, 4/4/2018.

Views of the United Nations Human Rights Committee

Karnel Singh Bhinder/Canada, App. No: 208/1986, 9/11/1989.

Hudoyberganova/Uzbekistan, App. No: 931/2000, 5/11/2004.

Ranjit Singh/France, App. No: 1876/2000, 22/7/2011.

Bikramjit Singh/France, App. No: 1852/2008, 1/11/2012.

Shingara Mann Sikh/France, App. No: 1928/2010, 19/7/2013.

F.A./France, App. No: 2662/2015, 16/7/2018.

Sonia Yaker/France, App. No: 2747/16, 17/7/2018.

Miriana Hebbadj/France, App. No: 2807/2016, 17/7/2018.

Şeyma Türkan/Turkey, App. No: 2274/2013, 17/7/2018.

United Nations Documents

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25/11/1981, UN General Assembly Resolution 36/55.

UNHRC, 'General Comment No. 22 on Article 18 (Freedom of Thought, Conscience or Religion)', (1993) UN Document No: CCPR/C/21/Rev.1/Add.4.

The World Conference on Human Rights, Vienna Declaration and Programme of Action (1993), UN Document: A/CONF.157/23.

UNHRC, 'General Comment No. 28: The Equality of Rights Between Men and Women (art. 3)', (2000) UN Document No: CCPR/C/21/Rev.1/Add.10.

UN Commission on Human Rights, Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, (2006), UN Document: E/CN.4/2006/5.

UN Human Rights Council, 'Countering Islamophobia/Anti-Muslim Hatred to Eliminate Discrimination and Intolerance Based on Religion or Belief', Report of the Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed, (2021) UN Document No: A/HRC/46/30.