[ж] TO WHAT EXTENT DOES THE ECTHR PROMOTE AND PROTECT THE RIGHT TO FREEDOM OF RELIGION IN THE CONTEXT OF RELIGIOUS SYMBOLS AT EDUCATIONAL INSTITUTIONS?

(AİHM, EĞİTİM KURUMLARINDA DİNİ SEMBOLLER BAĞLAMINDA İNANÇ ÖZGÜRLÜĞÜ HAKKINI NE ÖLÇÜDE TANIMAKTA VE KORUMAKTADIR?)

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ÖZ

Bölgesel bir mahkeme olarak Avrupa İnsan Hakları Mahkemesi'nin (AİHM) temel hakların geliştirilmesine ve korunmasına katkısı yadsınamaz. Ancak bu makale, AİHM'nin eğitim kurumlarında dini semboller açısından inanç hakkını tanıma ve koruma konusunda ne ölçüde başarılı olduğunu araştırmayı amaçlamaktadır. Bu amaçla, belirli dini sembollere yönelik ve dönüm noktası niteliğinde olan birkaç dava üzerinde durulacaktır. Bu noktada akla bazı sorular gelmektedir. Örneğin, Mahkeme izleme ve denetleme rolünü yeterince üstlenebilmiş midir? Kamusal eğitimde, dini konularda devlet tarafsızlığı ne anlama gelmektedir? Mahkeme, farklı bağlamlarda, yani farklı kültür ve dinlerdeki sembollere ilişkin kararlarında tutarlı olmayı başarabilmiş midir? Mahkeme, çelişkili olduğu iddia edilen ve bu nedenle eleştirilen Şahin (başörtüsü) ve Lautsi (haç) kararlarını nasıl uzlaştırabilir?

Bu sorulara yanıt verebilmek için, kilometre taşı niteliğindeki bu davaların olgusal ve hukuki arka planına ve ilgili düzenleyici çerçeveye kısaca yer verilecektir. Ardından, Mahkeme'nin temel gerekçeleri -dini sembollerin öğrenciler üzerindeki dini yayma etkisi, cinsiyet eşitsizliği ve hoşgörü meseleleri- kapsamlı bir şekilde analiz edilecektir. Mahkemenin sorunlu yaklaşımlarına ve varsa tutarsız yorumlamalarına da aynı bölümde değinilecektir. Ayrıca, takdir yetkisi doktrini, laiklik ilkesi ve tarafsızlık gibi Mahkemenin kararlarında bolca atıf yaptığı bazı ilke ve doktrinler üzerinde durulacaktır.

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Anahtar Kelimeler: *başörtüsü ve haç, tutarsız yorumlar, din propagandası yapma, cinsiyet eşitliği, hoşgörü, laiklik.*

ABSTRACT

As a regional Court, the European Court of Human Rights' contribution to the development and protection of fundamental rights is undeniable. Yet, this article aims to explore whether and to what extent the European Court has succeeded in recognizing and protecting the right to belief in terms of religious symbols at educational institutions. To that end, a couple of milestone cases addressing certain religious symbols at schools will be elaborated on. At this point, pertinent questions arise; has the Court adequately fulfilled its monitoring role? What does state neutrality on religious matters in public education mean? Has the Court succeeded in being consistent in its decisions on religious symbols in different contexts, i.e., different cultures and religions? How can the Court reconcile its purported contradicting Sahin (headscarf) and Lautsi (crucifix) decisions?

To respond to these and further questions, the factual and legal backgrounds of the milestone cases and the relevant regulatory framework will be briefly provided. Then, the main reasonings of the Court, namely, proselytizing impact of the religious symbols on pupils, gender inequality, and tolerance will be thoroughly analyzed. The problematic approaches and inconsistent interpretations of the Court, if exist, will be touched upon under the same section. Additionally, certain principles and doctrines that the Court adopted such as the doctrine of margin of appreciation, the principle of secularism, and neutrality and impartiality will be elaborated.

Keywords: *headscarf and crucifix, inconsistent interpretations, proselytism, gender equality, tolerance, secularism*

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1. Introduction

There has been a significant number of cases before the European Court of Human Rights concerning the religious symbols in public spaces, including, among others, national rights to display a crucifix in public schools (Italy), right to wear a cross while working for a private airline company (UK), the proliferation of minarets (Switzerland) or right to wear the Islamic headscarf at public institutions (Turkey and Switzerland).[1]

[1] E. Fokas, 'Directions in Religious Pluralism in Europe: Mobilizations in the Shadow of European Court of Human Rights Religious Freedom Jurisprudence' (2015) 4(1) *Oxford Journal of Law and Religion* 54, at 55

However, in this study, I intentionally wish to elaborate on headscarves and crucifix cases to explore whether the ECtHR has managed to become consistent in dealing with issues about religious symbols in the context of two mainstream religions, Christianity and Islam. To achieve this aim, the most controversial cases were selected, namely, Dahlab v Switzerland[2], Sahin v Turkey[3] and Lautsi v Italy[4] [5]. While the former two cases are related to the headscarf ban in public schools, the latter addresses the mandatory presence of a crucifix on the classroom walls.

In its headscarf decisions, the Court found that the prohibition on the veil can be justified under Article 9(2) of the Convention. The Court referred to the rights and freedom of others and public order to justify the headscarf ban. Yet, in reaching that conclusion, the Court did not attempt to explore, i.e., how many would be affected, the reasons behind the preference of veil, the place of the headscarf in religions, and whether there exist any less restrictive alternative means to protect the freedoms of others, and to maintain public order. Instead, it endorsed a blanket ban implemented and supported by the authority in both Italy and Turkey.[6]

The rulings of the European Court have come across severe critiques and backlashes from various groups, including scholars, politicians, practitioners, and civil society organizations. They argue that the Court has failed to protect and promote the freedom of religion and belief in these specific contexts. Additionally, they accuse the Court of being inconsistent and having a double standard in interpreting the provisions of the Convention, particularly when it comes to Islam and Islamic rituals and practices. In the aftermath of the highly contentious Sahin decision, the prominent legal and political figures in Turkey criticised the decision, arguing that it is not incumbent upon the Court to determine who is entitled to wear what. The decision to cover someone's head should belong to the people themselves. Such a significant decision cannot be granted to the

[2] *Dahlab v. Switzerland*, App No. 42393/98, Decision of 15 February 2001 ECHR 2001 – V

[3] *Şahin v. Turkey*, Admissibility and Merits, App. No. 44774/98, Decision of 10 Nowember of 2005 44 Eur. HR Rep. 5, (Grand Chamber, 2005)

[4] *Lautsi v. Italy*, no. 30814/06, Decision of 3 November 2009. [Hereafter Lautsi 1.]

[5] *Lautsi and others v Italy*, Merits, App no 30814/06, Decision of 18 March 2011 IHRL 3688 (ECHR 2011), European Court of Human Rights [ECHR]; Grand Chamber [ECHR] [Hereafter Lautsi 2]

[6] T. Kayaoglu, 'Trying Islam: Muslims before the European Court of Human Rights' (2014) 34(4) *Journal of Muslim Minority Affairs* 345, at 355

Court which is not competent and qualified enough to make a decision in relation to the religious matters.[7]

Headscarf discussions have dominated Turkish politics for several years. The veil has been the main reason behind the escalation between two mainstream groups in Turkey; the conservatives and the seculars. Frey argues that Turkish politics are party politics.[8] Yet, one can amend this argument with that Turkish politics are headscarf politics for at least three decades. For that reason, the decision of the European Court, which upheld the headscarf ban in public schools, has gained great supports from the secular circles on the one hand and has faced severe critiques and backlashes from the conservatives and liberal groups on the other. The European Court justified the ban by claiming that the ban on certain religious symbols might be justified to protect others in countries like Turkey, where a particular religion is dominant and mainstream in defining and shaping the standards of life and society.

Even if this explanation might be considered reasonable, it is difficult to reconcile this understanding with the decision of Dahlab, where the Court upheld the headscarf ban on a Swiss teacher in public schools in Switzerland where the impact and power of the religion in question is minimal. In its ruling, the Court resorted to the argument that the veil might have proselytizing impact on pupils at vulnerable ages. Religious symbols might indeed influence pupils at very young ages. Therefore, the intention of the Court to protect the youngest brain of the society might be understandable. Yet, this time it is difficult to reconcile the proselytizing impact argument of the Court with another controversial verdict; Lautsi v Italy. In this case, the Grand Chamber overruled the decision of the Court of First Instance. It endorsed the argument of the Italian state that the existence of a crucifix on the classroom walls would not constitute a violation of the right to freedom of religion. Although potential victims -students- were at vulnerable ages, and the situation was almost the same as that of Dahlab, the Court ignored its proselytizing impact argument in the latter case.

More importantly, the Court seems to miss the point that the mandatory display of a religious symbol in the classrooms would restrict and violate the rights of children and their parents. In other words, the problem does not stem from the mere existence of a religious symbol on the classroom walls but the compulsory character of the crucifix. Indeed, the imposition of a

[7] Ibid, at 346
[8] F. W. Frey, *The Turkish Political Elite* (MIT Press 1965)

particular religious symbol and its mandatory presence in public schools would not be in line with the principle of neutrality that the state is obliged to respect.

To address the aforementioned issues, this study will first provide the regulatory framework at the international level in relation to the right to believe in the context of religious symbols. Then, the factual and legal backgrounds of the selected milestone cases will be briefly touched upon. The largest proportion of the article will be allocated to the legal justifications of the Court to endorse the headscarf ban and uphold the mandatory display of a specific religious symbol in the classrooms. In this context, proselytizing impacts of the religious symbols on pupils at vulnerable ages, gender inequality, and finally, prioritization of the principle of secularism over other doctrines and principles will be analyzed in a straightforward way. By doing so, it will be examined whether and to what extent the Court has consistently interpreted and implemented the principle of neutrality and impartiality together with the doctrine of margin of appreciation.

While touching upon these elements, principles, and doctrines, the section will simultaneously put forward the problematic understandings and interpretations of the Court and criticize the Court's reliance on stereotypes and generalizations about a particular religion. These two elements; (legal reasoning of the Court and controversial approaches of the Court) could have been addressed under separate sections. Yet, given that the reasonings of the Court and the contradictory strategies that the Court has adopted are closely intertwined, examining these issues under separate sections would have caused repetition. That is why the author decided to address these issues under the same heading.

2. Legal Framework

Right to belief has been regulated by the international human rights regime under several conventions, covenants, treaties, and comments. Yet, as this particular right has numerous elements, the focus of this study will be confined to the aspect of religious symbols. Article 9 of the European Convention and Human Rights (ECHR) in relation to freedom of religion stipulates that with no exception (9.1) ‘’*everyone has the right to freedom of thought, conscience, and religion; this right includes the freedom either alone or in community with others and in public or private, to manifest his*

religion or belief in worship, teaching, practice, and observance.''[9] The second paragraph of the article regulates the limitations. It states that (9.2) ''f*reedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.''*[10]

Article 18 of the International Covenant on Civil and Political Rights (ICCPR) has a similar provision which states that *"everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and 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."*[11] Unlike the ECtHR, the United Nations Human Rights Committee clarified the meaning of article 18. The Committee explicitly includes the distinctive religious attires 'as a protected form of religious practice.'[12], stating that ''the observance and practice of religion or belief may include not only ceremonial acts but also such customs as...the wearing of distinctive clothing or head coverings."[13] Article 19 of the Convention also seems to be applicable to the religious attire, which states that ''everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers."[14]

As this study focuses on the cases about the religious symbols at educational institutions, naturally, the second element of the topic has to do with the right to education. Article 13 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) sets forth the right to education. It aims to ensure equal access to higher education. Additionally, the Covenant holds state parties responsible for guaranteeing non-

[9] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Art 9.
[10] Ibid, Art 9(2)
[11] 1976, International Covenant on Civil and Political Rights 999 UNTS 171 (ICCPR) art 18(1)
[12] Human Rights Watch Briefing Paper, 'Memorandum to the Turkish Government on Human Rights Watch's Concerns with Regard to Academic Freedom in Higher Education, and Access to Higher Education for Women who Wear the Headscarf' (2004) 33.
[13] General Comment number 22 of the United Nations Human Rights Committee, adopted on July 20, 1993, Doc.CCPR/C/21/Rev.1/Add.4
[14] ICCPR Art 19

discrimination in the exercise of all the rights identified in the Covenant, explicitly ensuring that, among other parameters, "religion" and "political or other opinions" cannot be deemed as permissible grounds for distinctions.[15]

In short, the logic of the regulatory framework of the international human rights regime about the religious symbol is that prohibitions targeting those wearing religious attires, or disproportionately influencing them without adequate justifications, would not comply with the anti-discrimination provisions of international human rights law.[16] In the following sections, milestone cases concerning the existence of religious symbols at schools will focus on evaluating whether and to what extent the ECtHR has succeeded in protecting and promoting the right to belief.

3. Factual and Legal background of Milestone Cases

In this section, I will elaborate on milestone cases in different contexts concerning either wearing headscarf or display of the crucifix on the classrooms' walls. The reason why I chose these specific religious symbols -headscarf and crucifix- is manifold. First and foremost, the docket of cases at the European Court regarding religious symbols consists primarily of headgear. Secondly, as the aim of this study is to examine whether the Court has managed to protect and promote the right to belief, I decided to add the crucifix case to this study in order to both explore and question the problematic and inconsistent approaches of the Court, if exist, in the context of different countries, cultures, traditions, and religions. To that end, Dahlab v Switzerland and Sahin v Turkey will be elucidated under the topic of headscarf ban at schools, while Lautsi v Italy will be examined under the issue of the mandatory presence of the crucifix in the classrooms.

Another reason why I decided to elaborate on these certain cases is that the Court makes a lot of references to the concepts of such as 'Muslim dominated country,' 'distinction between performers and recipients of the public service', 'powerful external symbols', and 'imposition of certain religious practices by holly book' in specifically headscarf cases.[17] While the applicant in *Sahin case* is a student/recipient of the public service, the applicant in *Dahlab case* is a lecturer/performer of the public service. Similarly, while the former lived in a Muslim-dominated country (Turkey), the latter lived in a European state. Consequently, it will be an opportunity

[15] 1966, International Covenant on Economic, Social and Cultural Rights, United Nations, Treaty Series, vol. 993, p. 3, (ICESCR) Article 2(2)

[16] See, *Human Rights Watch Briefing Paper, supra* note 13, at 22.

[17] *See*, generally *Sahin v Turkey*, and *Dahlab v Switzerland* decisions of the ECtHR.

to interpret and compare the Court's language in these cases. Additionally, in the crucifix case the Court interestingly chose not to touch upon the aforementioned terms. It disregarded evaluating controversial aspects such as *mandatory* character of the existence of the religious symbols at educational institutions. These specific references -and lack of references- will be a benchmark to assess the credibility and consistency of the Court's verdicts in given contexts.

3.1. Dahlab v. Switzerland

In this case, Ms. Dahlab -a Swiss teacher- was not allowed to wear her headscarf in a primary school in the canton of Geneva.[18] She brought a case against the government of Switzerland on the ground that the Swiss authority had violated her right to belief and religion protected by Article 9 of the Convention.[19] Both the Court of the First Instance and Grand Chamber agreed with Swiss authority, arguing that the case is 'manifestly ill-founded' and therefore, it does not deserve to proceed to the merits phase.[20] In its reasoning, the Grand Chamber referred to three main elements.[21] The first one is that headscarf might have a proselytizing effect. The Chamber stated that the headscarf is a 'powerful external symbol' that might have an impact on the freedom of religion of very young children.[22] In this case, the applicant's pupils are at primary school age -between four and eight- at which they can be easily affected compared to older pupils. Under such a scenario, the Court asserted that the risk of proselytizing effect cannot be disregarded.

The second element of the reasoning is that wearing a headscarf is not compatible with gender equality. Yet, the Court did not give a further explanation to justify its argument beyond stating that 'it appears to be imposed on women by a precept which is laid down in the Koran'.[23] With the same logic, the Court formed its third element of the reasoning, pointing out that it is difficult to reconcile the headscarf with the principles of a democratic society, such as; the message of tolerance, equality and non-

[18] See *Dahlab v. Switzerland* case, *supra* note 3.

[19] A. C. Romero, 'The European court of human rights and religion: Between 'Christian' neutrality and the fear of Islam' (2013) 11 *New Zealand Centre for Public Law* 75, 22

[20] Article 35(3) of the ECHR

[21] See *Dahlab v. Switzerland* case, *supra* note 3. *See* also C. Evans, 'The 'Islamic Scarf' in the European Court of Human Rights' (2006) 7 *Melbourne Journal of International Law* 52, at 62

[22] See *Dahlab v. Switzerland* case, *supra* note 3, at 463.

[23] Ibid, at 463.

discrimination, and respect for others. Again, the Court preferred to jump to the conclusion rather than explaining why a religious outfit cannot be compatible with these principles.[24]

3.2. Sahin v. Turkey

Turkey witnessed a 'postmodern coup' in 1997.[25] The military came up with some 'advice', including, among other things, closure of religious schools and implementation of headscarf ban at tertiary education level across the country. The government had no choice but to either enforce the 'advice' of the military or resign. It chose the latter option. The Turkish Constitutional Court decided to close the political party in the aftermath of the coup and prevented its leaders from politics. Following this political ban, the Vice-Chancellor of the University of Istanbul issued the 1998 Circular[26] that implemented the headscarf ban at universities. This Circular was the legal document to which the ECtHR referred.[27]

The Circular instructed lecturers to prevent female students with headscarves from accessing the lectures, tutorials, and examinations. Yet, the Circular did not give any reasons why these measures have been taken.[28] Leyla Sahin was a fifth-year medical student who had studied at this university.[29] Ms. Sahin was not allowed to take the modules and sit for examinations because she refused to remove her headscarf. Her attempt to attend the lectures ended up with a warning by the school administration.[30] Then, she brought the case against the then Turkish government before the domestic courts. She basically argued that her right to belief and religion had been violated through the measure of expulsion from the university.[31] However, Turkish legal authorities did not agree with her.

After unsuccessfully exhausted all the required domestic remedies in the Turkish legal system, she brought the case before the ECtHR to argue that her rights to freedom of thought, conscience, and religion, which is guaranteed by Article 9 of the Convention, had been infringed by the

[24] See Evans, *supra* note 22, at 62.
[25] Coup plotters call their initiative a 'postmodern coup' because they managed to oust the legitimate government without resorting to blood spill. *See* generally, Hulki Cevizoglu, Generalin 28 Subat Itirafi Postmodern Darbe, Ceviz Kabugu Yayinlari, 2012.
[26] The Circular of Istanbul University, 23.02.1998, [1998]
[27] See Gunn, *supra* note 1, at 351.
[28] Ibid, at 341
[29] See Evans, *supra* note 22, at 60.
[30] Ibid, at 60.
[31] Ibid, at 61.

Turkish state. The Court held that the headscarf ban at the university level could be considered as interference of Article 9 of the European Convention. Yet, this intervention shall be justified by the second paragraph of Article 9, which stipulates that 'it was necessary in a democratic society to pursue the legitimate aims of protecting the public order and the rights and freedoms of others.'[32]

3.3. Lautsi v. Italy

An Italian citizen, Ms. Lautsi, brought the case before the Court by acting in her name and on behalf of her children.[33] The allegation was that the existence of a crucifix on the classroom walls infringed her children's right to belief and religious freedom, which is protected by Article 9 of the Convention and the right to education governed by Article 2 of Protocol 1. Additionally, the applicant claimed that the Italian administrations violated her own right to provide education with her children in accordance with her religious convictions.[34]

Initially, the Chamber of the ECtHR unanimously ruled in favor of the applicant on the ground that the display of the crucifix on the classroom walls 'amounted to an illicit imposition of religious beliefs on the applicants'[35] The Court continued that the educational facilities must be deemed sensitive areas in which school children at a young age, who do not have the critical capacity to keep their distance from the preferred stance of the state in religious issue, are exposed to the compelling power of the state.[36] In its decision, the Court drew attention to the mandatory nature of the existence of the crucifix at educational institutions. It concluded that it is the compulsory display of a religious symbol, particularly in the classrooms, that restricted and violated the right of parents to educate their children in accordance with their religious convictions along with that of children themselves to believe or not to believe.

Additionally, the reasoning highlighted the fact that the restrictions are not in line with the principle of neutrality that the state shall respect 'in the exercise of public authority, particularly in the field of education."[37] In consequence, the Court made it clear that the Italian government is under

[32] Article 9 of the ECHR
[33] See, *Lautsi v. Italy* case, *supra* note 5.
[34] D. Kyritsis and S. Tsakyrakis, 'Neutrality in the classroom' (2013) 11(1) *International Journal of Constitutional Law* 200, at 201.
[35] See, *Lautsi v. Italy* case, *supra* note 5.
[36] Ibid.
[37] Ibid, para 57.

the obligation to organize the school environment in a more pluralistic way.[38] Yet, the Grand Chamber subsequently reversed the ruling of the first Chamber by an overwhelming majority.[39] Although it admitted that the crucifix is a religious symbol of the Christian belief, it held that the Italian regulations which impose the obligation to display crucifixes on the classroom wall did not violate the relevant provisions of the European Convention. According to the Court, the Italian administration had stayed within the 'margin of appreciation.'[40]

4. Legal Reasonings of the Court and Its Controversial Approaches

In this section, I will examine the legal reasoning of the Court. To that end, I will start with the elements of the reasoning of the headscarf cases that the Court has put forward. These are proselytism, gender equality, and finally, tolerance. Indeed, the Court has made three assumptions that (a) the religious headscarf gives rise to proselytizing effect, (b) constitutes an obstacle to gender equality, and (c) cannot be compatible with tolerance and respect for others.[41] Then, the crucifix case examination will help us discuss the relevant doctrines and principles, i.e., the principle of secularism, neutrality and impartiality, and the doctrine of margin of appreciation. The alleged 'problematic' approaches such as simplistic, reductionist, and patriarchal understandings and interpretations of the Court, if exist, will be the focus of this section. This will help us explore whether and to what extent the Court has managed to protect and promote this specific right consistently in the context of religious symbols at educational institutions.

4.1. Proselytism

Proselytism is a well-chosen element because it has been at the center of the reasonings of the cases in question. In its decisions, the Court categorized religious headgears as a proselytizing act.[42] Indeed, it can be inferred from the reasoning of the Court that the mere existence of a headscarf seems to be considered as having proselytizing impacts on others. Yet, the focus of the Court varies from case to case. For example, in Sahin decision, the Court drew attention to the fact that wearing powerful religious symbols, which is perceived as a compulsory duty, might impact others who

[38] See Romero, *supra* note 20, at 11.
[39] See *Lautsi and others v Italy* case, *supra* note 6.
[40] See Kyritsis and Tsakyrakis, *supra* note 35, at 201.
[41] See Kayaoglu, *supra* note 7, at 356.
[42] See Kayaoglu, *supra* note 7, at 356-7.

choose not to wear them.[43] According to the Court, the imposition of this religious practice by the Quran is the decisive factor that might negatively impact others who decide not to follow the rules and orders of the holy book.

Yet, in Dahlab decision, the Court had a different perspective. It acknowledged that there was no concrete and confirmed evidence to prove that Islamic headscarf had negative impacts on pupils. However, the age of the pupils (between 4 and 8) and the powers of the religious symbol became the primary concern of the Court.[44] In other words, the matter of special protection of the pupils at early ages was prioritized by the Court to ensure that authority would not abuse and misuse their positions and powers.[45] These two factors -intellectually and emotionally vulnerability of children and the probability of abuse of the power and position of the authority- were present in *Dahlab case*.[46] Therefore, to some extent, these concerns are understandable when it comes to pupils at the primary school level.

However, the Court failed to consider that there was no evidence showing that children had been exposed to proselytizing behaviors or discourses by their teacher. According to Evans, the Court blurred the picture 'by creating the impression that the effects are unknown and unknowable' rather than accepting the truth that there has been no proof of concrete harm on pupils.[47] Same criticism can be applied to *Sahin case* because the Court failed to show any concrete evidence in relation to any negative impact or pressure on other female students who choose not to wear a headscarf. Additionally, given the significant difference in the profiles of the potential victims of *Sahin case* -studying at the university level- the argument that those who decide not to cover their heads at the tertiary education level might feel pressure, does not seem reasonable. The Court refused to go into detail to explain why these mature students might feel oppressed, nor did it discuss and consider alternative measures instead of endorsement of a blanket ban.

Interestingly, in its Lautsi decision, the Court did not consider proselytizing impacts of a crucifix on students at vulnerable ages. Compared to an individual choice, one can argue that the crucifix and the mandatory character of that display in the classrooms seem to have much more

[43] See, *Şahin v. Turkey* case, *supra* note 4.
[44] See Romero, *supra* note 20, at 23.
[45] See Evans, *supra* note 22, at 64.
[46] Ibid.
[47] Ibid, at 63.

proselytizing effects on pupils.[48] Indeed, the Court indirectly admitted that hanging a cross in the classrooms might impact 'young persons whose convictions are still in the process of being formed.'[49] Yet, it failed to take a precautionary approach.[50] Instead, it chose to come up with the argument that the applicant's allegations had a basis of a 'subjective perception'.[51] The problem with this argument is that it had an exclusionary focus on the right of parents, not those of pupils themselves. If the Court had favored a more precautionary approach, the focus would have been the rights of pupils governed and protected by Article 9 of the Convention.

Romero argued that this was one of the Court's biggest mistakes because if the Court had not turned a blind eye to the rights of pupils themselves, and if it had approached the case from their perspectives, a different conclusion might have been arrived.[52] This means that the influence of mandatory display of this powerful religious symbol on the classroom walls on students would have been the primary concern and focus of the Chambers.[53] *Dahlab and Lautsi cases* have common aspects in the sense that the rights of pupils at early ages are at stake. Therefore, it would be prudent to evaluate the credibility of the Court's approaches in these similar situations. Unlike the latter case, the Court decided to bring the delicateness of the pupils and fragility of the issue to the fore in *Dahlab case*, arguing that those at such an early age might be easily manipulated by their teachers.

Yet, the focus suddenly changes in Lautsi. The rights at stake would belong to the parents, not to the pupils themselves when it comes to the crucifix case.[54] Therefore, this would make it easy for the Court to conclude that the applicant's allegations are based on 'subjective perceptions' rather than a real stake. Additionally, these inconsistent approaches had led the Court to have a different interpretation about the burden of proof. Indeed, the Court reversed the burden of proof in crucifix cases, meaning that it is the responsibility of the applicants to be able to provide evidence that concrete harm actually 'occurred or at least is probable under the

[48] See Kayaoglu, *supra* note 7.
[49] See, *Lautsi and others v Italy* case, *supra* note 6, para 66.
[50] See Romero, *supra* note 20, at 16.
[51] See, *Lautsi and others v Italy* case, *supra* note 6.
[52] See Romero, *supra* note 20, at 16.
[53] Ibid, at 15.
[54] J. Temperman, "Lautsi II: A Lesson in Bringing Fundamental Children's Rights", 6 (3) *Religion and Human Rights*, 2011, at 279-283.

circumstances.'[55] If no evidence is provided then the applicant's claim cannot be taken into consideration. Kyritsis questions this stance by stating that the Court, interestingly, was not as demanding in Dahlab because it simply accepted that the mere existence of such a 'powerful external symbol' -headscarf- would be sufficient to claim that students at that age would be negatively affected.[56] On the other hand, in its Lautsi ruling the Grand Chamber asserted that

[t]here is no evidence before the Court that the display of a religious symbol on classroom walls may have an influence on pupils and so it cannot reasonably be asserted that it does or does not have an effect on young persons whose convictions are still in the process of being formed.[57]

Interestingly, the Court tried to justify its arguments in its Lautsi decision by resorting to irrelevant analogies. For instance, it drew attention to the 'noncompulsory' religious ceremonies, such as celebrating the beginning and end of *Ramadan* at schools.[58] Similarly, the provision of optional religious education is given as an alternative to the mandatory presence of a religious symbol on the walls.[59] Additionally, the Court referred to the decision of the Polish Constitutional Court, which held that the display of the crucifix would not contradict with freedom of religion nor the principle of secularism. Yet, the European Court did not pay attention to the difference that such display was not compulsory in the Polish scenario.[60]

The Court seems to be convinced that the mere presence of the religious symbol did not amount to the indoctrination of the Christian faith.[61] It believed that, despite its greater visibility, a cross would not trigger a process of indoctrination on the ground that the crucifix itself is a passive symbol.[62] Therefore, the Court distinguished the crucifix and headscarf in terms of being a passive or powerful symbol.[63] However, it did not explain why it qualifies the Islamic headscarf as a powerful religious symbol and why it does not follow the same logic when it comes to a crucifix. What is

[55] See Kyritsis and Tsakyrakis, *supra* note 35, at 214.
[56] Ibid, at 214.
[57] See, *Lautsi and others v Italy* case, *supra* note 6, para 66.
[58] See Kyritsis and Tsakyrakis, *supra* note 35, at 213.
[59] In fact, the Court compared apples with oranges by resorting to the juxtaposition of a compulsory practice with an optional activity.
[60] Judgment of 20 April 1993, nº U 12/32, quoted by the ECtHR, para. 28
[61] See Kyritsis and Tsakyrakis, *supra* note 35, at 213.
[62] See Romero, *supra* note 20, at 17.
[63] Ibid, at 20.

more, Ms. Dahlab's precautionary acts and statements show otherwise. When pupils asked their teacher questions about her headscarf, Ms. Dahlab responded to these questions by saying that she prefers to wear a headscarf just because it protects her ear from cold.

Another weakness of the reasoning of the Court is that it contradicts its previous decisions. Indeed, the Court held that acts and statements to convince others to convert their religions and beliefs to another are protected as a manifestation of religious freedom.[64] In *Kokkinanis v Greece*, a Jehovah's Witness couple was charged with a criminal offence just because they had knocked on the door of the Greek Orthodox Church and tried to convert them to their church.[65] In this case, the Court made it very clear that simply attempting to convince others to change their religions cannot qualify the breach of religious freedom. Thus, the Court set a high threshold. In the same ruling, it referred to a report written by the World Council of Churches that made a distinction between permissible and impermissible versions of proselytism.[66] By applying the same method and logic, the Court interestingly found itself competent to distinguish acceptable forms of proselytizing instruments from those of others.[67] For example, it used the term 'improper proselytism' to describe the practices of Jehovah's Witnesses. According to the Court, the proselytism of this group was a 'corrupted and deformed' form of 'Christian Witness' which was categorized as permissible by the Court.[68]

Even if this interpretation of the Court is considered reasonable, and even if it were accepted that wearing a headscarf was to have a proselytizing impact, this specific religious practice could still fall within the domain of protected and permissible practices.[69] With the same logic, even if students - through their acts or statements- fail to respect their fellows' beliefs, it is the authorities' responsibility, i.e., government and universities, to ensure that these students 'express any objections within the bounds of the law.'[70] In other words, it is not the responsibility of students who freely choose to

[64] See Evans, *supra* note 22, at 63.
[65] *Kokkinakis v. Greece*, App. No. 14307/88, 17 Eur. H.R. Rep. 397 [1993] para 397, 399
[66] See Kayaoglu, *supra* note 7. at 356.
[67] Ibid, at 345. Some argue that such a categorization would serve the best interests of major missionary religions such as Christianity and Islam compared to non-mainstream beliefs and religions. They -particularly indigenous religious traditions- have been struggling to survive.
[68] See *Kokkinakis v. Greece* case, *supra* note 66, para. 48.
[69] See Kayaoglu, *supra* note 7. at 356.
[70] See, *Human Rights Watch Briefing Paper*, *supra* note 13, at 35.

wear a headscarf to maintain harmony and order by keeping themselves out of the campus.[71]

The Court underlined that it is incumbent upon itself to balance the requirements of protecting the rights and liberties of others against the conduct of the applicants. Yet, the Court does not identify 'others'. According to Evans, it sets up a scenario to protect these 'mysterious and ill-defined others' against presumptive perpetrators.[72] Gunn draws our attention to the same point by arguing that if the Chamber genuinely was concerned about women's rights, they were expected to 'sympathize with the very real women who was standing before them seeking relief. Instead, their articulated concern is not with the real women who brought cases to the ECtHR, but with abstract women whom they never identify or quote'.[73] In other words, the Court gave up an existing genuine woman -seeking to protect her right before the Court- on the ground of protection of a potential victim which does not exist.[74] In a similar vein, Human Rights Watch criticizes the Court's reasoning, pointing out that the final justification aims to exclude headscarfed women entirely from their educational careers.[75] This is not a 'proportionate and reasonable' measure and nor a response to a 'future, hypothetical, threat of exclusion posed to women who leave their heads uncovered.'[76]

The Court resorted also to the 'public order' argument in its reasoning. Along with the peer pressure argument, the Court provided the public order justification to show that the headscarf might cause disorder at educational institutions. It asserted that 'many people in Turkey's secular society feel uncomfortable when seeing the headscarf at public institutions such as universities.'[77] Professor Gunn turns to analogies to show the peculiarity of this argument.[78] In a hypothetical situation, if the authorities had prohibited wearing miniskirts just because some other students might feel pressure to wear them or just because some people feel uncomfortable, would the Court agree with this reasoning? The author continues to argue that this reasoning

[71] Ibid.
[72] See Evans, *supra* note 22, at 61.
[73] See Gunn, *supra* note 1, at 359.
[74] Ibid, at 359.
[75] See, *Human Rights Watch Briefing Paper*, *supra* note 13, at 36.
[76] Ibid.
[77] See, *Şahin v. Turkey* case, *supra* note 4. For an excellent analysis about seculars' concerns, *See* W.C. Durham et al., *Islam Europe and Emerging Legal Issues* (2016), 354.
[78] See Gunn, *supra* note 1, at 362.

is so weak that the Chamber is not dealing with the problem instead, it is 'desperately searching to find a justification for suppressing something it does not like.'[79]

Similarly, Gunn draws an analogy to criticize Sahin decision. She argues that such flawed reasoning would amount to that if a Roman Catholic believed that baptism is the indispensable component of that belief, one administration might 'prohibit baptism because of the impacts of it on those who choose not to be baptized.'[80] Additionally, the Chamber's justifications do not seem to be in line with another important principle which the Court itself has frequently cited – it is unacceptable to restrict an expression just because it might "offend, shock, or disturb".[81] Does the Court attempt to justify the headscarf prohibition by calling this issue an exception to the abovementioned general rule? If it does not constitute an exception, then the Court must come up with a satisfactory explanation.[82] The problematic interpretation of the Court creates an interesting picture. A human rights tribunal acts in a more solicitous way by taking into account of sensibilities of those who are not happy to see certain religious symbols ('which is not guaranteed by the European Convention'). On the other hand, it does not see anything wrong with withholding its solicitousness from those who have the right to manifest their belief and religion ('which is guaranteed by the Convention').[83]

The argument that some students wearing headscarves in universities might create pressure on Muslim students who do not wear headscarves may be true in some cases. Yet, it is impossible to reconcile a blanket ban on a specific religious attire with universal values and principles.[84] In a similar vein, if the Court were to use the blanket prohibition, then how far should it go? Indeed, the headscarf is not the only tool that can create pressure on others. For instance, the *adhan* recitation from the mosques or even the existence of the mosques might put pressure on Muslims who do not pray.

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[79] Ibid, at 362.
[80] Ibid, at 340.
[81] *Handyside v United Kingdom*, Merits, App No 5493/72, Decision of 7 December 1976. A/24, [1976] ECHR 5, (1976) 1 EHRR 737, (1979) 1 EHRR 737, IHRL 14 (ECHR 1976).
[82] See Gunn, *supra* note 1, at 362.
[83] Ibid, at 355.
[84] A. Ulusoy, 'Avrupa İnsan Hakları Mahkemesi'nin Üniversitelerde Türban Yasağına İlişkin Kararları Üzerine Notlar' (2004) 53(4) *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 1, at 130

In that scenario, should it be prohibited to recite adhan and close the Mosques to protect the Muslims who do not pray?[85]

4.2. Gender Equality

The Court relied on the gender equality argument to justify the blanket prohibition on the headscarf. Gender (in)equality is a significant matter which deserves closer consideration.[86] Yet, the Court seems to fail to develop its reasoning with proper consideration. In both cases, it simply asserted that it is 'difficult to reconcile' wearing the headscarf with gender equality.[87] However, it did not spell out the reasoning behind this argument beyond pointing out that it appears to be 'imposed on women by a precept laid down in the Koran'.[88] Without elaborating the issue[89], the Court seems to use a loaded language by arguing that this religious practice appears to be imposed by the holy book. This simplistic approach disregarded other and perhaps more complex reasons why the applicants choose to wear a headscarf.[90] Yet, one can truly argue that this approach aims to safeguard the freedom of other Muslim women who choose not to cover their heads.

However, the Court's simplistic assumptions about Muslim women were questionable.[91] Both Ms. Dahlab and Sahin are well-educated, professional women. Additionally, they were well prepared to bring the case before the Courts at domestic and international levels to protect their violated rights. It is an ironic and paradoxical situation that those women, whose rights allegedly were protected by the Court through the endorsement of the decision of the authorities to prohibit the wearing of headscarves, had initiated the litigation process against those local authorities. In other words, the Court assumed that it protected and promoted the rights of those women with headscarves by upholding the administration's blanket prohibition on their religious attire.

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[85] Ibid.
[86] See Evans, *supra* note 22, at 65.
[87] See *Dahlab v. Switzerland* case, *supra* note 3, at 463.
[88] Ibid.
[89] Some believe that in these headscarf cases, the Court relied on popular western views – the tenets of Islam are oppressive to women. That is why there is no need to go into detail about this matter. Islam is an inherently problematic doctrine which makes it unnecessary for the Court to elaborate on this headscarf-related issues comprehensively. For further and insightful analysis, *See* C. Evans, "Islamic Scarf in the European Court of Human Rights", *Melbourne Journal of International Law*, Vol. 7, No. 1, 2006, at 66.
[90] See Kayaoglu, *supra* note 7. at 356.
[91] See Evans, *supra* note 22, at 66.

In the reasonings of the Court, there is no evidence to prove that the applicants consider themselves subordinate to men. During litigation processes, they unequivocally pointed out that they covered their heads voluntarily and through their free will.[92] In contrast to the allegations, they made it clear that the imposition did not result from their beliefs but that of the respective state authorities.[93] In this context, the Chambers failed to provide even one single reason to prove why headscarf prohibition at universities would lessen Islamist pressure on women.[94] According to Gunn, the Court accepted 'flimsy and anachronistic evidence' to support the ban without questioning the accuracy of the arguments.[95] Similarly, Evans claims that the Court has a patriarchal stance because these women are allegedly victims of a gender oppressive religion. Accordingly, they need to be protected from 'abusive, violent male relatives' because they are passive and unable to defend themselves in a society in which male dominance is prevalent.[96]

An alternative but marginal view is that although there was no evidence showing that these young ladies were forced to wear a headscarf, and accordingly it was evident that they decided to wear in a certain way with their own free will, the term 'false consciousness' might be applied to these situations.[97] According to this point of view, the choices of these women to wear certain religious symbols -irrespective of whether they are well educated or not- ''are not 'real' and not 'in the best interests of the women themselves.'''[98] In Shabina case, Lady Hale makes it very clear that it is very dangerous to adopt such a paternalistic approach, leading to distortion of women's autonomy for legal analysis in a liberal democracy.[99]

In *Dahlab case*, the applicant claimed that her right to non-discrimination, which is governed by article 14 of the European Convention, was infringed.[100] She basically argued that the headscarf ban would constitute both sex discrimination together with religious violations. The

[92] Ibid, at 66.
[93] Ibid.
[94] See Gunn, *supra* note 1, at 361.
[95] Ibid, at 361
[96] See Evans, *supra* note 22, at 71.
[97] M. Malik, 'Complex Equality: Muslim Women and the 'Headscarf'' (2008) n°68(1) *Droit et société* 127, at 147.
[98] Ibid.
[99] *Begum v The Headteacher and Governing Body of Denbigh High School* [2006] UKHL 15, House of Lords
[100] See *Dahlab v. Switzerland* case, *supra* note 3, 463.

Court did not accept that argument. Interestingly, it avoided touching upon the gender discrimination argument by considering the headscarf as a religious symbol rather than an attire that women can wear only.[101] Like the Turkish state, the Court seems to be volunteer to disapprove of the symbolic effect of the headscarf, and accordingly, it is willing to adopt 'punitive and illogical measures that are designed to suppress it'.[102] Malike observes that the Court ignored the fact that the headscarf ban at educational institutions is an example of 'indirect gender discrimination against women'.[103] To put it simply, this prohibition targets women explicitly because they are, not Muslim men, covering their heads and accordingly are being exposed to that blanket prohibition.

It is an unacceptable solution to exclude women from public spaces, including schools and colleges, to achieve gender equality. The measures proposed by the state authority – and supported by the Court- cause damage to women's educational and employment rights in the name of gender equality.[104] The Court failed to understand that if a female student is forced to take off her headscarf, she will likely give up her education instead of pursuing her career by removing her scarf.[105] This will ultimately consolidate gender inequality by enabling a severe educational and employment gap between the genders.

The main flaw of the Court's reasoning is that it did not provide a specific and customized solution to the problem. Instead, it chose to approve a blanket prohibition without discussing the genuine handicaps of the issue. For instance, it did not make any reference to the punishment of oppressive male relatives to protect women in the face of threats. Instead, it upheld the decisions of the state authorities, which use the girls as a 'battlefield for cultural control.'[106] It would be easier for the Court to implement a blanket restriction on every female student wearing a headscarf instead of identifying and punishing the real perpetrators.

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[101] See Malik, *supra* note 98, at 134.
[102] See Gunn, *supra* note 1, at 361.
[103] See Malik, *supra* note 98, at 134.
[104] See Evans, *supra* note 22, at 68.
[105] Unlike the ECtHR, the German Constitutional Court did not agree with the argument that wearing a headscarf would automatically constitute a practice of gender inequality on the ground that the veil might have several meanings. *See, Ludin BverfG*, 2 BvR 1436/02 (24 September 2004; decision of the German Federal Constitutional Court.)
[106] See Evans, *supra* note 22, at 73.

Suppose gender equality was the primary concern of the Court. In that case, it should not have been silent about the pressure put by Turkish authorities on female students to remove their headscarves.[107] In fact, the Court unintentionally admitted that there was factual and tangible proof that it was the Turkish government imposing substantial pressure on women not to wear specific apparels.[108] Indeed, the pressure is so intense that a female student at the tertiary education level faced the risk of expulsion from her college unless she agreed to comply with the administration's demand.

4.3. Principle of Secularism and Tolerance

The third element of the justification for the headscarf ban is that it allegedly does not comply with a "tolerant, secular society that respects the rights and freedoms of others".[109] Scholars have criticized this reductionist approach because neither Ms. Dahlab nor Ms. Sahin has encountered any accusation of resorting to any intolerant act or statement towards their students. There is no evidence that Ms. Dahlab abused her position and coerced her students' dress, actions, and beliefs in the way she did. Similarly, there is no proof that Ms. Sahin engaged in such behaviors to forcefully impact her peers' views. According to Kayaoglu, this reductionist understanding stems from the fact that Islam is conceptualized as intolerant by the Court.[110] For that reason, it appears that no matter how the adherents of that religion show tolerance and respect to others, this does not suffice to change the perception of the Court that the doctrines of this particular religion, by its very nature, promote intolerance.[111]

In contrast to Islam, the European Court seems to believe that Christian religions are tolerant and nondiscriminatory. The Court refers to the judgment of the Italian Administrative Court, claiming that "Christianity is the only religion committed to tolerance (…) the logical mechanism of exclusion of the unbeliever is inherent in any other religious conviction."[112] While Evans implicitly argues that the Commission and the Court have been unsympathetic to the claims coming from non-Christian religious[113], Gun

[107] See Gunn, *supra* note 1, at 366.
[108] Ibid, at 360.
[109] See Evans, *supra* note 22, at 69.
[110] See Kayaoglu, *supra* note 7. at 357.
[111] See Evans, *supra* note 22, at 69.
[112] See, *Lautsi and others v Italy* case, *supra* note 6., para. 15.
[113] C. Evans, *Freedom of Religion Under the European Convention on Human Rights*, Oxford: Oxford University Press, 2001, at 21–22

explicitly accuses the Court of having prejudices against non-European and non-mainstream religions.[114]

Once it is believed that Islam is inherently intolerant, it would be much easier for the Court to justify state involvement to settle the dispute between intolerant Islam and secular order by restricting religious practices, including limitation on certain attires in public spaces.[115] Normally, the ECtHR flexibly interprets the Convention in terms of the relationship between state and religion. The Court is very generous to grant a margin of appreciation to the states in the sense that they feel free to choose between secular and non-secular arrangements.[116] Yet, this flexible approach does not seem to apply to our cases. The Court believes that the principle of secularism has a significant role in protecting and guaranteeing Turkish democracy.[117] That is to say, the European Court decided to endorse the highly controversial decision of the Turkish Constitutional Court, which ruled that freedom of belief might have to be sacrificed to protect secularism.[118] By doing so, the Court accepts Turkey's interpretations about secularism and gender equality instead of questioning the legitimacy and reliability of the justifications of the authority in question.

Another problem with the argument that Islam is inherently intolerant towards 'others' is that the Court flagrantly contradicted another judgment in relation to secularism in Turkey. In that case, the Constitutional Court reversed the decision of local courts that prosecuted and convicted a man for, among others; explicitly criticizing secularism, aiming to undermine the secular order, create a non-secular state, and using highly offensive language for those born outside of wedlock.[119] According to the Court, the punishment of that person, who wishes to discard secular order and show no mercy and intolerance towards non-Muslims or secular Muslims, would violate his right to freedom of expression protected by Article 10 of the Convention. When it comes to the headscarf cases, the Court asserted that the punishment of a well-educated lecturer and medical student, who never aimed to even question the legitimacy of secular order, and who never

[114] J. Gunn, 'Adjudicating Rights of Conscience Under the European Convention on Human Rights' in J. D van der Vyver and J. Witte (eds), *Religious Human Rights in Global Perspective: Religious Perspectives* 305, at 330
[115] Ibid.
[116] See Romero, *supra* note 20, at 28.
[117] Ibid.
[118] See, *Şahin v. Turkey* case, *supra* note 4. para.114
[119] *Gunduz v Turkey* (2003) XI Eur Ct HR 259, 262–6; 41 EHRR 59, 61–5

showed intolerance towards her pupils or classmates, would not constitute a violation of rights protected by the Convention.[120]

The Grand Chamber approved Turkey's arguments by claiming that it was necessary for the Turkish state to implement headscarf prohibition in order to fight against extremism and pressure against women. Gunn truly asserts that this tautological argument basically says that a ban on head covering is necessary because the Turkish state, as a guarantor of secularism and equality, believes it is necessary.[121] The Court held that the Turkish Officials 'are in a better place than an international court to evaluate local needs and conditions or the requirements of a particular course.'[122] In fact, this 'better place argument' is against the logic of the very existence of the ECtHR, which has the duty to review the decisions of the local authorities.

One of the main weaknesses of the Court's reasoning is that it failed to prove that there is a relation between wearing a headscarf and fundamentalism. In her dissenting opinion, Judge Tulkens highlighted that although there is a virtual consensus on the argument that radicalism constitutes a real threat to democracy, there is no confirmed correlation between headscarf ban and protection of secularism.[123] Indeed, this understanding of Islam and its imposition to the adherents is counterproductive in the sense that those prohibited from satisfying their religious requirements and accordingly from attending their schools with their headscarves will be isolated from society. When they are forced to choose either to follow their religion's orders or to have access to education by removing their veils, they will highly likely feel alienated in the case of the latter choice.

Another problematic aspect of the Court's decisions is that the Court did not find anything wrong with prioritization of the principle of secularism over fundamental human rights protected by the Convention. The Court's espousal of the principle of secularism for the purpose of limitation of the freedom of the belief deserves proper attention.[124] The principle of secularism, which has been invoked as a tool to justify the restrictions on freedom of religions, is not located under Article 9 of the Convention.[125] This means that the Convention does not make any specific reference to that

[120] See Evans, *supra* note 22, at 71.
[121] See Gunn, *supra* note 1, at 344.
[122] See, *Şahin v. Turkey* case, *supra* note 4. para.121
[123] See, *Lautsi and others v Italy* case, *supra* note 6. (Dissenting Opinion, Judge Tulkens)
[124] See Kayaoglu, *supra* note 7. at 358.
[125] Art 9 of the ECHR

principle. Thus, protection of secularism cannot be a legitimate aim to form the basis of restrictions.

Yet, the Court does not seem to be convinced with that argument. The existence of 'real and immediate danger [and threat]' that the Islamists posed to secularism might per se justify the sacrifice of religious freedom.[126] In the Court's view, the sacrifice of the freedom of religion in order to combat extremists can be seen as a lesser evil option.[127] The Turkish Constitutional Court reflected the same logic through its highly contentious decision to dissolve the *Refah Partisi* (Pro Islamist Party) and to ban its leaders from taking part in politics for five years on the ground that "it has become a 'center' of activities contrary to the principles of secularism".[128] In fact, the Turkish Constitutional Court considered secularism a prerequisite for Turkey's democracy. Similar to Sahin decision, the ECtHR did not question the accuracy of the arguments that the domestic constitutional Court made in this highly contentious case.

Accordingly, the European Court did not assess whether the domestic Court is correct in its reasoning. Instead, it endorsed the Constitutional Court's decision without considering any determining factor that formed and shaped the decisions in question. According to the Turkish Constitutional Court, "secularism was one of the indispensable conditions of democracy [and therefore], intervention by the State to preserve the secular nature of the political regime had to be considered necessary in a democratic society".[129] This means that the Court made an exception within the human rights regime by claiming that secularism is the prerequisite for democracy and human rights.[130] The inevitable corollary of that argument is that measures taken to protect secularism would not constitute an infringement of human rights.

Judge Tulkens criticized this logic in her dissenting opinion. She argued that a democratic society needs to balance and harmonize the principle of secularism, equality, and liberty, 'not to weigh one against the other.'[131] Similar concerns were brought to the fore by judge Ann Power who claimed, in her concurring opinion, that secularism was in itself one

[126] See Kayaoglu, *supra* note 7. at 359.
[127] *Refah Partisi (the Welfare Party) and Others v. Turkey*, App. Nos. 41340/98, 41342/98, 41343/98 and 41344/98, 2003-II Eur. Ct. HR 267, judgment of 13 Feb. 2003, para 93.
[128] See *Refah Partisi (the welfare party) and Others v Turkey* case, *supra* note 129, para 95.
[129] Ibid, at para 96.
[130] See Kayaoglu, *supra* note 7. at 359.
[131] See, *Şahin v. Turkey* case, *supra* note 4, para 4. (judge Tulkens, Dissenting Opinion)

ideology among others. Therefore, the preference of secularism over other alternative world views -whether religious, philosophical, or otherwise- is not in line with the principle of neutrality with which the state is obliged to comply.[132]

At this stage, it is essential to note that there is not one single version of secularism. Soft and hard secular models exist in the Council of Europe member states.[133] Alternatively, they are identified as fundamentalist and liberal secularism.[134] Its soft version does not refuse the unique role of religion in society. On the contrary, it considers religion as an essential component of culture and tradition.[135] In a similar vein, the soft version of secularism, to a certain degree, acknowledges the necessity of co-operation between the state and religions.[136] On the other hand, there is also hard/assertive secularism in Europe, where Turkey and France might constitute a classic example of that interpretation. In its hard version, secularism requires the establishment of a constitutional order demanding a strict separation between two extreme points: the state and religions. In consequence, the latter must be prohibited from public spaces such as educational institutions.[137] Ozbudun pays attention to this contentious understanding of assertive secularism, arguing that there is no single interpretation of laicism. As an example of hardcore and assertive secularism, France and Turkey do not hesitate to alienate and isolate certain groups within society to ensure the superiority of secularism over every other conviction and ideology.[138]

At this point, one can wonder how such an important and indispensable principle has turned into a dogma. Professor Gunn observes that laicite and secularism emerged during the periods of conflict, confrontation, and intolerance. Initially, one of the primary aims of the principle of secularism during these confrontations periods was to end the violence against dissidents. However, despite the ostensible purpose of resolving conflicts, the doctrine of laicite and religious freedom continue to be applied in the

[132] See Kyritsis and Tsakyrakis, *supra* note 35, at 204.
[133] See Romero, *supra* note 20, at 5.
[134] I.T. Plesner, 'The European Court of Human Rights: Between Fundamentalist and Liberal Secularism' in R. Torfs and D. Cole (eds), *Islam, Europe and Emerging Legal Issues* (Routledge 2016) 63
[135] See Romero, *supra* note 20, at 5.
[136] Ibid.
[137] Ibid, at 8.
[138] Ergun Özbudun, *Contemporary Turkish Politics: Challenges to a Democratic Consolidation* -Lynne Rienner Publishers (2000), at 2.

way that they divide citizens and escalate the conflict between them.[139] In our cases, it turns out that the Court basically let the administration expel students from their school to ensure tolerance within society.[140] Putting aside plausibility of that reasoning, the Court seems to fail to realize how it contributed to the revival of the periods of escalation and confrontations between different groups in different contexts through its controversial interpretations.

4.4. The Doctrine of Margin of Appreciation

In its successive judgments, the ECtHR has interpreted the concept of margin of appreciation in a narrow way, particularly under Article 10 of the Convention.[141] As pointed out earlier, the Court made it very clear that freedom of expression should protect and guarantee not only the traditional forms of expression but also ‘’those that offend, shock or disturb the State or any sector of the population.”[142] Yet, the Court left this approach in cases about religious symbols. For example, the Grand Chamber of Lautsi heavily relied on the doctrine of margin of appreciation to dismiss the applicant's claims. It concluded that the intervention of the Italian state was within the scope of appreciation that European states would exercise so that they can evaluate whether they comply with the obligations under the Convention.[143] According to the Court, states are better positioned to make their decisions while trying to ascertain the best options to protect and promote rights and freedoms and maintain public order.[144]

Mancini explains the driving force behind the doctrine of margin of appreciation, claiming that the Court developed this doctrine to reconcile the 'tension between universality and subsidiarity.’[145] This doctrine allows states a margin to determine whether a restriction of a right is necessary. In consequence, it is argued that this doctrine is closely linked to the principle of subsidiarity because the Court asserts that it is incumbent upon the states not the international judge ‘’to give an opinion on the exact content of these requirements as well as on the ‘necessity’ of a ‘restriction’ or ‘penalty’ intended to meet them’’ on the ground that states are in a better position

[139] See Evans, *supra* note 22, at 70. See also Gunn *supra* note 1, 422.
[140] See Evans, *supra* note 22, at 52.
[141] See, *Human Rights Watch Briefing Paper, supra* note 13, at 34.
[142] See *Handyside v United Kingdom* case, *supra* note 82.
[143] See Kyritsis and Tsakyrakis, *supra* note 35, at 211.
[144] See Evans, *supra* note 22, at 58.
[145] S. Mancini, ‘The Crucifix Rage: Supranational Constitutionalism Bumps Against the Counter-Majoritarian Difficulty’ (2010) 6(1) *European Constitutional Law Review* 6

compared to the judges.[146] In this context, the term 'necessity' deserves closer attention.

The Court established a high threshold to be discharged by a state[147]. It does not encompass the flexibility of the expressions i.e. "admissible", "ordinary", "useful", "reasonable" or "desirable".[148] Gun refers to the relevant standard set up by the Court, whether the Circular 1998, which Turkish state based its prohibitory measures, was 'advisable', 'defensible', 'acceptable', 'a good idea' or even 'reasonable under the circumstances'. Rather the explicit wording of the regulatory framework of the Convention sets up a much higher threshold which requires the Court to find out whether the prohibition was 'necessary in a democratic society.'[149] However, despite this strict test, the level of supervision by the Court has been decreased because of the development of that doctrine.[150] judge Tulkens truly observes that 'the mere invocation of the doctrine does not release the Court' from its obligation of supervision of the states in question.[151] The chosen language in articles 9(2) and 10(2), which govern the exceptions and limitations to the main rule, justifies restrictions on the right to freedom of thought, conscience, religion, and expression on the ground of necessity per se. The Court held that the adjective 'necessary' in the contexts of the articles in question "implies the existence of a 'pressing social need.'"[152]

Putting aside the controversial aspects concerning the implementation of the necessity test, the main concern with this doctrine is that it has enabled the Court to easily accept the state's reasoning without further questioning the main purpose behind the justifications or excuses. The original aim of the doctrine of the margin of appreciation, which the European Court developed, was to 'accommodate the consideration of cultural and historical differences.'[153] The intention was that this doctrine would allow the Court to interpret and implement the Convention so that local contexts and needs would be taken into account. Yet, it turns out that the doctrine started to be

[146] See *Handyside v United Kingdom* case, *supra* note 82.
[147] See Evans, *supra* note 22, at 57.
[148] See *Handyside v United Kingdom* case, *supra* note 82.
[149] See Gunn, *supra* note 1, at 343.
[150] See Evans, *supra* note 22, at 57.
[151] See Gunn, *supra* note 1, at 364.
[152] See, *Human Rights Watch Briefing Paper*, *supra* note 13, at 34.
[153] E. Benvenisti, 'Margin of Appreciation, Consensus, and Universal Standards' (1999) 31 *New York University Journal of International Law and Politics,* 843

used as a tool to justify state reasonings without further effort to ascertain the genuine intention of the state in question.[154]

Another problem with this doctrine is that the Court's acceptance of the doctrine of margin of appreciation has prevented it from 'systematically engaging with religious freedom.'[155] Because of its willingness to accept state's reasonings and justifications, the Court voluntarily refrained from challenging the states in question to resort to less restrictive means and methods to maintain order, public health, safety, and security in the sense that the adopted means might also accommodate the religious believers and practicers.[156] The Court regrettably avoided implementing the proportionality test, although it has repeatedly stated that the proportionality assessment deserves more attention. Gunn believes that there is no difference between a blanket prohibition on the headscarf and cutting off a hand because of a broken finger. It is clear that by resorting to that "solution", the Court succeeded in eliminating the inconvenience of a broken finger. Still, it should be aware that the measure taken by the Court is vastly disproportionate to the original problem.[157]

Under the proportionality test for Sahin decision, the Chambers were supposed to examine less restrictive measures to stop alleged Islamist pressures on female students. This means that the university could have come up with a circular stipulating that everyone is free to choose to wear what they want. Additionally, anyone pressuring their peers to wear or not to wear a certain type of apparel would be subject to disciplinary measures, including expulsion.[158] Such measures would have been much more proportionate as they would have protected the rights of all students. However, Istanbul University added further extreme measures such as the establishment of 'persuasion rooms' within the university which aimed at convincing female students to remove their headscarves; otherwise, they would lose the opportunity to continue their education. The Court -unintentionally- encouraged the local administrations to come up with such disproportionate measures.[159] Additionally, as the Court failed to come up with clear standards on the doctrine of margin of appreciation, its reference to the doctrine "has remained, at best, arbitrary and, at worst, have

[154] See Kayaoglu, *supra* note 7. at 349.
[155] Ibid, at 349-50.
[156] Ibid, at 350.
[157] See Gunn, *supra* note 1, at 363.
[158] Ibid, at 363.
[159] Ibid, at 364.

compromised the Court's mandate of promoting 'neutrality and pluralism.'"[160]

In its Sahin decision, it seems that the Court did not content itself with accepting the justifications and decisions of the state. In other words, it appeared to extend the scope of the doctrine beyond the acknowledgment of the reasonings of the government to the university administration, who is allegedly able to understand better the requirements of the educational institutions than the judges. The Court states that "by reason of their direct and continuous contact with the education community, the university authorities are in principle better placed than an international court to evaluate local needs and conditions or the requirements of a particular course."[161]

Evans draws our attention to a crucial point that the Court is 'opening the door to a dangerous extension of the margin of appreciation principle' by attributing a superior decision-making capacity to a local educational authority as it did so for governments in the first place.[162] Sahin decision indicates that the Court did not find anything wrong with deferring twice to authorities at the local and national levels. By its nature, this interpretation of the Court, through attribution of a superior decision-making capacity to the different levels of authorities, would double the risk of restrictive evaluation of the rules and standards of the Convention by these authorities in question.[163]

The Court introduced an additional doctrine -the consensus doctrine- linked to that of margin of appreciation in its *Rasmussen v Denmark* decision.[164] It held that several parameters could determine the scope of the margin of appreciation, such as the circumstances, the subject matter, or its background. In that context, the existence or nonexistence of common ground between the contracting states might be a relevant factor determining the scope of the doctrine of margin of appreciation. [165]This means that if there is a consensus on a particular policy among the contracting state, it would be more difficult to grant a certain level of margin to the states on that specific issue. Yet, according to Benvenisti, the

[160] Ibid, at 364.
[161] See, *Şahin v. Turkey* case, *supra* note 4, para 121.
[162] See Evans, *supra* note 22, at 58.
[163] Ibid, at 58.
[164] *Rasmussen v Denmark*, Judgment (Merits), Decision of 28 November 1984, Case No 9/1983/65/100, App No 8777/79 (A/87)
[165] See Fokas, *supra* note 2, at 59.

doctrine of consensus, when applied with that of margin of appreciation, poses a serious threat to the protection of minority rights and values. He basically argues that;

The less the Court is able to identify a European-wide consensus on the treatment of a particular issue, the wider the margins the Court is prepared to grant to the national institutions. Minority values, hardly reflected in national policies, are the main losers in this approach. "[166]

Unsurprisingly, the combination of these two doctrines would also result in claims of double standards. Besides, when adopted by the Court on religious freedom matters, this combination would undermine the pluralism that the Court has aimed to reach and ultimately would damage the Court's legitimacy.[167]

4.5. The Principle of Neutrality and Impartiality

The principles of neutrality and impartiality require that "the interests and concerns of every member of the political community should be treated equally, that no person or group should be treated as unworthy or otherwise subordinated to an inferior status."[168] The government of the principality of Monaco reminded that 'the principle of State neutrality require[s] the authorities to refrain from imposing a religious symbol where there ha[s] never been one and from withdrawing one that ha[s] always been there.'[169] According to this definition, the principle of state neutrality has two premises. The first one is that the state cannot impose a religious symbol if there has never been one. When we apply this principle to the headscarf case, it can be argued that because the headscarf was already in the classroom, it would not violate the neutrality principle if the state allowed students to wear this religious symbol. In other words, since the state itself does not impose this certain religious clothing, the existence of this religious apparel cannot be considered as a violation of the neutrality principle.

As for the second premise, the state is obliged to refrain from withdrawing a religious symbol that has always been there.[170] In this context, the state has a negative responsibility, meaning that it is responsible not to intervene in pupils' religious clothing preferences, which has already been there. In order to provide such an environment, the state must avoid

[166] See Benvenisti, *supra* note 154, at 843.
[167] See Fokas, *supra* note 2, at 59.
[168] C. L. Eisgruber et.al., *Religious Freedom and the Constitution* (Harvard University Press 2007)
[169] See, *Lautsi and others v Italy* case, *supra* note 6, Para. 48.
[170] See Fokas, *supra* note 2, at 66.

"rigging the rules of the game in favor of one conception of good, because to do so would amount to denying those who hold a different conception of the good the status of free and equal participant"[171] To put it simply, neutrality would be infringed first if the state forbids a certain religious practice or conviction on the ground that it is unworthy, second if the state officially or practically endorses or prioritizes a certain religious faith or attitude, third if the state puts pressure on people to pursue a certain religious faith and finally if the state endorses a religious faith 'in regulating areas of social life that pertain to one's status as free and equal member of the political community.'[172] All these scenarios would constitute an infringement of the right to religious freedom.

The Chamber of Lautsi 1 truly concluded that;

The compulsory display of a symbol of a particular faith in the exercise of public authority about specific situations subject to governmental supervision, particularly in classrooms, restrict[ed] the right of parents to educate their children in conformity with their convictions and the right of schoolchildren to believe or not believe.[173]

The Chamber continued that those rights were violated by that practice because the restrictions were not in line with the state's duty to respect the neutrality principle particularly in the field of education.[174]

The UN Special Rapporteur on Freedom of Religion or Belief, Heinder Bielefeldt, had reminded, before the judgment was released by the Grand Chamber (Lautsi 2), that "it may be difficult to reconcile the compulsory display of a religious symbol in all classrooms with the State's duty to uphold confessional neutrality in public education"[175] Subsequently, the Court faced a backlash against the decision of the Chamber across Europe. Those who showed a strong reaction to the ruling of the Chamber (Lautsi 1) did not want to accept the fact that the Chamber did not hold that the mere existence of a cross on the classroom walls would violate the concerned rights, but it did rule against the compulsory nature of a religious symbol in the classrooms.[176]

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[171] See Kyritsis and Tsakyrakis, *supra* note 35, at 205.
[172] See Kyritsis and Tsakyrakis, *supra* note 35, at 200.
[173] See, *Lautsi v Italy* case, *supra* note 5, para. 57.
[174] Ibid.
[175] Report of the Special Rapporteur on Freedom of Religion or Belief, 15 December 2010, A/HRC/16/53, para 44.
[176] See Romero, *supra* note 20, at 11.

It was not the applicants' aim to replace the crucifix with a symbol that reflects their own religious convictions, but they basically sought to ensure that the state would abstain from supporting any religious belief or practice.[177] However, in its final judgment, the Grand Chamber reversed the decision of the Chamber of Lautsi 1. It endorsed the Italian state's argument that Italian pre-constitutional rules allowing the mandatory display of the crucifix on the classroom walls did not amount to an infringement of the Convention.[178] The Grand Chamber ruled that the crucifix on the classroom walls is harmless on the ground of the passive nature of its presence. Yet, this decision has been interpreted by most as a 'departure from the Court's conception of state duty of neutrality and impartiality.'[179]

It is not surprising that the Italian authorities adopted a strategy to try to hide the compulsory character of the existence of the cross in the classrooms, and attempted to draw attention to the mere existence of that particular religious symbol as it asserts that it is a symbol reflecting the state's identity.[180] Similarly, the Grand Chamber tried to justify the arguments used by the Italian authorities in order to endorse the perception that pluralism still existed in Italian schools despite "the greater visibility which the presence of the crucifix gives to Christianity in schools."[181] Italian state resorted to the argument that Muslim students have the opportunity to celebrate Islamic *Ramadan*. According to the Court, the celebration of Ramadan or other religious rituals might tolerate the prohibition to wear the Islamic headscarf.

Yet, the possibility of wearing a headscarf should be compared with 'the possibility to wear a crucifix on a necklace but not with the obligation to display the crucifix in state schools.'[182] In a similar vein, the celebration of Ramadan can be compared with the celebration of Easter or Christmas, not with the mandatory display of a cross on the classroom walls.[183] In a similar case,[184] German Constitutional Court made a distinction between headscarf and crucifix cases. The Court held that the headscarf case has much to do

[177] See Kyritsis and Tsakyrakis, *supra* note 35, at 212.
[178] See Romero, *supra* note 20, at 10.
[179] See Fokas, *supra* note 2, at 62.
[180] See Romero, *supra* note 20, at 14.
[181] Ibid, at 20.
[182] Ibid.
[183] Ibid.
[184] *BverwGE C 21.01*, Decision of 4 July 2002, Federal Constitutional Court, BverwGE 116, 359

with the applicant's fundamental right -right to religion-while the crucifix case is directly linked to the state's duty of neutrality and impartiality.[185]

Another striking point that deserves closer consideration is that neutrality is to be contrasted to secularism. The main difference is the focus. While the principle of neutrality refers to and focuses on the constraints on state power, secularism pushes the states to pursue specific goals.[186] Neutral states are mostly more cautious about complying with the duty not to intervene. As for the secular state, it has an agenda, and therefore, it takes active measures to foster the sense of belongings among its members. For that reason, a secular state tends to more resort to paternalistic approaches than a neutral state.[187] Additionally, those states, which have devoted themselves to hardcore/ assertive secularism, aim to remove all references to the religion from the public sphere. According to the robust version of secularism, people are supposed to suppress their private identity and should prioritize their civic identity. [188]

In this stage, one can wonder how social life can be divided into the public and private spheres. In other words, who will determine which areas of social life would belong to the public or private spheres? Secularists' concern is basically that if the state authority allows its citizens to express and manifest their religious convictions and practices in the public sphere, then their civic identity would be suppressed and overwhelmed by their private identity, which ultimately destroys the civic bond of the society and creates sectarian minds. This issue showed itself in a highly controversial case in Turkey. Soon after the ECtHR ruled Sahin decision, the High Court of Turkey ruled that streets were not different from public schools. For that reason, The High Court arrived at a highly interesting conclusion, holding that those female teachers should not be allowed to wear headscarves not only in the classrooms but also on the streets because streets shall be deemed as a public sphere.[189]

In contrast to secularism, neutrality does not oppose the idea of the existence of religious beliefs in the public sphere by individuals. The only

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[185] In this case, the German Constitutional Court concluded that the right of the applicant might be restricted only by law. *See* T. Lock, 'Of Crucifixes and Headscarves: Religious Symbols in German Schools' in M. Hunter-Henin (ed), *Law, Religious Freedoms and Education in Europe* (Cultural Diversity and Law Routledge 2016) 356

[186] See Kyritsis and Tsakyrakis, *supra* note 35, at 206.

[187] Ibid, at 206.

[188] Ibid, at 206-7.

[189] *Kilinc v. Turkey*, [2004] Council of State, Case No 2004/4051.

concern of the neutrality principle is the 'manifestation or endorsement of religious beliefs and attitudes by the state.'[190] In a state complying with the standards of the principle of neutrality, citizens have the right to expect that the state will not support any religious faiths or convictions in a school environment. In this context, the Court should have concluded that the empty wall symbolizes the default settings of neutrality.[191] Kyritsis and Tsakyrakis truly point out that the place of the religious symbol does matter because it might have a strong impact on people. For instance, regardless of its salience and visibility, the religious symbols on the, i.e., national flags 'makes much less difference to one's status as free and equal'.[192] However, in a courtroom, polling station or a classroom (as in *Lautsi case*), the religious symbols might directly influence one's status.

5. Conclusion

The ECtHR has made a significant contribution to the protection and promotion of human rights since its establishment. Yet, the Court seems to have failed to provide adequate protection for the freedom of religion and belief in the context of religious symbols, although this particular right has no difference from other fundamental rights. The ambiguity of specific key terms, the absence of clear justifications in relation to the restrictions of certain religious rituals and practices, the prioritization of secularism over other principles and doctrines, the problematic interpretation and implementation of the doctrine of margin of appreciation, deference to the state's justifications and excuses without sufficient elaboration on these explanations, the inconsistent interpretations on the relevant provisions of the Convention, all preclude the Court from protecting and promoting the freedom of religion and belief adequately.[193]

It is true that serious challenges require serious analysis. Reactive thinking does not help the Court to deal with such problems.[194] Although the Court admits the importance of religious freedom in creating a pluralistic society, it seems to have dismissed the cases where a particular religious practice is not in line with a dominant and mainstream mode of religious practice.[195] When there is a conflict between the authority and citizen in

[190] See Kyritsis and Tsakyrakis, *supra* note 35, at 206.
[191] Ibid, at 211.
[192] Ibid, at 210.
[193] See Kayaoglu, *supra* note 7. at 349.
[194] See Gunn, *supra* note 1, at 365.
[195] See Kayaoglu, *supra* note 7. at 361.

relation to the manifestation of certain religious practices, the Court has decided to prioritize the needs and perspectives of the authority.[196]

In Dahlab, the Court took the side of the authority and allowed the humiliation of a qualified teacher. It agreed with the arguments of the authority that the case did not deserve to proceed to the merits because it was 'manifestly ill-founded.' It turns out that a woman without a flawless employment record had been sacked just because she refused to remove her headscarf that had no objection for years. Yet, the issue was so clear from the Court's perspective that it did not 'even deserve a full and proper consideration by the Court.'[197] Similarly, through its Sahin decision, the Court sided with the authority against a last year medical student who did not agree to remove her headscarf and accordingly was denied access to education. Although the Chamber stated that it was essential to understand the headscarf ban in its 'legal and social context', it repeatedly failed to provide the full context.[198]

Rather than admitting that the headscarf ban in the Turkish context was imposed by a military junta that had overthrown the legitimate government through a coup d'état, the Chambers misleadingly insisted on the assumption that the headscarf ban was based on the Turkish Constitution, and was part of Turkish democratic values.[199] An intelligent and well-educated woman can be considered reliable and competent enough to study medicine where she can make significant decisions in relation to the health and lives of people. Yet, the Court unintentionally contributed to the picture that she can be prohibited from studying this field not because she is incompetent or lacks a decent educational career but because she aims to follow her religious convictions and practices by covering her head with a veil.[200] Such rulings, released in the name of equality, tolerance, and human rights, have damaged the notion of neutrality that the Court claims to be an essential principle in these areas.[201]

At the other end of the spectrum, the Court disregarded the fact that the compulsory display of a religious symbol would constitute an infringement of the rights of pupils to believe or not to believe. It would also violate the rights of parents to educate their children in line with their religious

[196] Ibid, at 361.
[197] See Evans, *supra* note 22, at 60.
[198] See Gunn, *supra* note 1, at 352.
[199] Ibid, at 366.
[200] Ibid, at 367.
[201] See Evans, *supra* note 22, at 73.

convictions. Additionally, it is clear that the mandatory presence of a religious symbol cannot be in line with the principle of neutrality that the state has a duty to respect. These controversial judgments created a perception that adherents of non-Christian beliefs can gain no relief from the Court when their rights have been infringed because the Court has stereotypes and biases against their convictions. Similarly, the Court has contributed to the perception that it has simplistic, reductionist, patriarchal, and orientalist understandings and interpretations when it comes to the beliefs with which it is not familiar and comfortable.[202]

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