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European Political Discourse on Multiculturalism, ECHR and the Issues of Religious Symbols

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Abstract

European Court of Human Rights (ECHR)'s previous rulings on use of religious symbols have been seriously questioned by scholars as politically motivated. They argue that the rulings are continuation European Enlightenment period worldview through which they homogenize rest of the world under their static gaze. ECHR's ruling regarding religious symbols are part of the political discourse that existes outside the court. This paper focuses on ECHR's contradiction in compromising secularism with democracy within Christian dominated Europe in the light of few cases involving Muslim women. The paper argues that while forming ruling the court puts Christian culture at subject position in Europe and Muslim as an object, alien, outside.

Keywords: ECHR, religious symbols, political discourse, secularism, Christian culture, Muslim.

INTRODUCTION

"The European Court of Human Rights is in a position to address these challenges, but until it begins to challenge its own assumptions and look at the consequences of its approach, the Court is unlikely to move toward a more neutral understanding of religion under Article 9. Focusing on belief in considering issues of religion is not necessarily wrong or useless. It is merely culturally dependent on 1700 years of Christian history, so ingrained as to be invisible." (Petty, 2016)

The debate about religious dress has remained a subject of intense controversy in Europe in past few decades. The battles between those wishing to wear clothing signifying religious belief, and those wishing to restrict them, have been fought out against a background of immigration, and racial, cultural, religious diversity. The debate also covers a wide range of different complex aspects such as the role of history and colonialism and the subsequent increase of racism and islamophobia in Europe. The debate includes countless facets and spurs from various political standpoints, islamist groups and different feminist theories. It involves the question of the appropriate role of pluralism, secularism and religion in the modern, European societies. The perceived tension between exercising freedom of religion by wearing the hijab and a secular, modern society adds to the complexity of the subject. The issue has, at times, been portrayed as clash between a liberal, pluralist, secular West valuing democracy, rights and personal autonomy; and an irrational, repressive Islam whose adherents nevertheless, within that liberal secular State, have the right to religious freedom. Currently the debate has touched a new pitch on accout of rising rightwing political parties and refugee influx to Europe from Muslim countries.

THE CREATION OF EUROPEAN COURT OF HUMAN RIGHTS

The proposal to create a system guaranteeing the human rights of everyone within Europe was born out of the aftermath of the Second World War which had consumed millions of lives in Europe. The creation of ECHR was the result of the collective desire of the European states, which were exhausted by the WWII, to to prevent states from becoming corrupt again, to

protect human rights. Soon after the formation of the Council of Europe in 1949, the Committee of Ministers of the Council authorised the Consultative Assembly to include on its agenda as a matter of priority, the maintenance and further realisation of human rights.

The ECHR was the step after the Universal Declaration of Human Rights by the United Nations General Assembly. The creation of the legally binding treaty can be seen as the natural towards the collective enforcement of the rights stated in the Universal Declaration. Although inspired by the UDHR, the ECHR differs from the Declaration by focusing specifically on the protection and advancement of civil and political rights, through its implementation machinery. The ECHR provides an effective complaints procedure under which inter-state and individual complaints can be made, referring alleged breaches of the Convention to the ECHR. Iit states that the prerequisite to justice and peace is the common understanding and observance of human rights, best maintained through an effective political democracy.

Article 9 - Freedom of Thought, Conscience and Religion

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

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

The broad latitutde for these debates has been offered by the Article 9 of the Convention itself which has two parts: The first part covers the positive dimention of the Article. This part offers a broad range of freedoms of thought, consciousness and religion that could be practised, observed or manifested both in private and public. However, the second part, which is negative, addresses the conditions such as public safety in a democracy, protection of public order, health or morals, or the protections of rights and freedoms of others. The conditions are so broad that they almost make the freedoms offered by the first part

impossible to implement. Particularly in the political atmosphere of past few decades in Europe, which is grappling with refugee influx and terrorist attacks.

Tom Lewis while discussing the doctrine of margins of appriciation exams the cases "in which victims have claimed breaches of religious rights have been brought under Article 10 ECHR, the right to freedom of expression and under Article ECHR 9, the right to freedom of thought, conscience and religion. These Articles in common with Articles 8 (private and family life) and 11 (association and assembly), posses two-paragraph structure which expressly allows for a balance to be struck between individual's right and the greater social good. The margin of appreciation doctrine is entirely judge-made; it has no textual basis within the Convention itself. The Court's jurisdiction is of a supervisory nature and is subsidiary to the primary protection for rights provided by national authorities which are closer to the 'vital forces of their countries'. The doctrine's purpose, therefore, is to allow a degree of latitude to States as to how they protect the individual rights set out in the Convention."

In the cases related to religion the court has offered a significant leeway to the respective states while imposing the restrictions on religious manifestations. Muslim women have been the worst affected by the court rulings related to religious manifestations, since the women's headscarf, burka or clothing have historically remained a dominant discourse in the West with regard to Muslims. As Evans states, headscarf, from the Western point of view, has both been as a symbol of two binary opposites: aggression as well as victomhood:

"The reasoning reflects part of the broader debate about Muslim girls and women and their clothing. The debate reflects two seemingly contradictory views of Muslim women and girls. The Court uses both stereotypes of Muslim women without any recognition of the inherent contradiction between the two and with minimal evidence to demonstrate that either stereotype is accurate with respect either to the applicants or to Muslim women more generally. The first stereotype is that of victim — the victim of a gender oppressive religion, needing protection from abusive, violent male relatives, and passive, unable to help herself in the face of a culture of male dominance. This argument is also used by many governments who seek to justify the ban on the headscarf on non-religious grounds. The second stereotype relied on by the Court is that of aggressor — the Muslim woman as fundamentalist who

forces values onto the unwilling and undefended. This is illustrated in the Court's discussion of proselytism and intolerance. The woman in a headscarf is inherently and unavoidably engaged in ruthlessly propagating her views — even a school teacher who never mentions the word 'Islam' is such a dangerous proselytiser that she needs to be removed from the school. Moreover, the values that are being propagated are dangerous, intolerant and discriminatory, and threaten to undermine the secular system that would otherwise grant equal protection to all religions and beliefs."

CASES RELATED TO MUSLIM WOMEN

Some cases and their rulings by the court have been symbolic of the debates among scholars.

Leyla Shahin vs. Turkey case:

In Şahin v. Turkey, the applicant (Leyla Şahin) was a medical student at Istanbul University who objected to a circular, issued by the University's Vice Chancellor, prohibiting the wearing of the Islamic headscarf (and beards) on campus. Following the introduction of the circular, Şahin was denied access to classes and exams on account of her insistence on wearing the scarf. Disciplinary proceedings were brought against her for participating in an unauthorised demonstration against the ban, and she was temporarily suspended from the University. When Şahin's attempts to challenge the circular failed in the Turkish courts, she applied to the European Court, claiming that the state's actions had unlawfully prevented her from manifesting her faith, contrary to Article 9 of the ECHR. The Turkish government responded to Şahin's claims by arguing that the headscarf ban in universities was necessary to protect the constitutional precept of secularism.

The government pointed to the case-law of the Turkish Constitutional Court, which had held that the principle of secularism was: the guarantor of democratic values; the meeting point of liberty and equality; a check on the state according preference to a particular religion; and a safeguard which protected the individual from arbitrary interference from the state or extremist movements. Furthermore, and perhaps most critically, the government stressed that: "The principle of secularism was a preliminary requisite for a liberal pluralist democracy and that there were factors peculiar to Turkey that meant that the principle of secularism had assumed particular importance there compared to other democracies . . . The fact that Turkey

was the only Muslim country to have adopted a liberal democracy . . . was explained by the fact that it had strictly applied the principle of secularism and that … protection of the secular State was an essential prerequisite to the application of the European Convention in Turkey. The Turkish government thus raised a sinister prospect for the Court to contemplate: that democracy itself, and the human rights protection for which it was a prerequisite, would be seriously eroded if the constitutional principle of secularism were not to be assiduously guarded.

Faced with such a threat, the Grand Chamber was not inclined to second guess the state. The Court observed that this notion of secularism − which was one of the fundamental principles of the Turkish state − was consistent with the values underpinning the Convention, as well as being in harmony with the rule of law, crucial for the respect of human rights, and necessary to protect democracy. Indeed, the Court noted that: "[T]here must be borne in mind the impact wearing [the headscarf], presented as a compulsory religious duty, may have on those who choose not to wear it . . . the issues at stake include the protection of the rights and freedoms of others and the maintenance of public order."

By stating that Sahin's headscarf use may have an impact on "those who choose not to wear it", the court's assumption at once reduces the subject into a social object, one who has to bear the political burden of the state. The judgement fails to treat Sahin as an individual, thus costing her individual democratic rights for its own version of democracy of which secularism is an important ingrient.

In Şahin there was no suggestion that the applicant herself posed a threat to the values of secularism, nor was there any evidence that the Islamic headscarf had provoked disorderly conduct or caused disruption to the everyday life of the University. Nonetheless, by a majority of sixteen votes to one, the Grand Chamber concluded that the measures were a proportionate interference with Şahin's Article 9 rights. The European Court therefore held that because the headscarf had taken on a "political significance" in recent years, the restrictions imposed on those wishing to wear it were justified by "a pressing social need". The Strasbourg judges were concerned about the threat of "extremist political movements" that might seek "to impose on society as a whole their religious symbols and conception of society founded on religious precepts."

Accordingly, it was legitimate for the state to adopt a stance against such movements, and the headscarf regulations had to be viewed in this context as a measure intended to achieve the

legitimate aim of preserving pluralism in the University. It was also understandable that the University authorities should wish to maintain the secular nature of the institution and thus "consider it contrary to such values to allow religious attire, including the Islamic headscarf, to be worn". Crucially, in matters of religion, the state was entitled to a margin of appreciation. The Court thus held that: "By reason of their direct and continuous contact with the education community the university authorities [were] in principle better placed than an international court to evaluate local needs and conditions or the requirements of a particular course . . . [and that] Article 9 [did] not always confer a right to behave in a manner governed by religious belief and [did] not confer on people who [did] so the right to disregard rules that have proved to be justified."

Osmanoglu and Kocabas v. Switzerland:

The case concerned the refusal of Muslim parents to send their daughters, who had not reached the age of puberty, to compulsory mixed swimming lessons as part of their schooling and the authorities' refusal to grant them an exemption. The Court found that the applicants' right to manifest their religion was in issue and observed that the authorities' refusal to grant them an exemption from swimming lessons had been an interference with the freedom of religion, that interference being prescribed by law and pursuing a legitimate aim (protection of foreign pupils from any form of social exclusion).

The Court emphasised, however, that school played a special role in the process of social integration, particularly where children of foreign origin were concerned. It observed that the children's interest in a full education, facilitating their successful social integration according to local customs and mores, took precedence over the parents' wish to have their daughters exempted from mixed swimming lessons and that the children's interest in attending swimming lessons was not just to learn to swim, but above all to take part in that activity with all the other pupils, with no exception on account of the children's origin or their parents' religious or philosophical convictions.

The Court also noted that the authorities had offered the applicants very flexible arrangements to reduce the impact of the children's attendance at mixed swimming classes on their parents' religious convictions, such as allowing their daughters to wear a burkini. It also noted that the

procedure in the present case had been accessible and had enabled the applicants to have the merits of their application for an exemption examined. The Court accordingly found that by giving precedence to the children's obligation to follow the full school curriculum and their successful integration over the applicants' private interest in obtaining an exemption from mixed swimming lessons for their daughters on religious grounds, the domestic authorities had not exceeded the considerable margin of appreciation afforded to them in the present case, which concerned compulsory education.

SAS vs. France:

This decision was anounced in 2014 by EHRC. The applicant was named S.A.S, a women of Pakistani origin, who challenged the French "burqa ban" on wearing face coverings in public spaces. The Court held that prohibiting the concealment of a person's face in public did not violate the ECHR Convention the Court's judgement: The applicant, S.A.S, is a practicing Muslim living in France who at times elects to wear religious clothing that conceals her face, such as a burqa or a niqab. In April 2011, a law prohibiting the concealment of a person's face in public entered into force in France. The applicant claimed that the law prohibited her from wearing religious clothing of her choosing and violated her rights under articles 3 (cruel and degrading treatment), 8 (private life), 9 (freedom of religion), 10 (freedom of expression) and 11 (freedom of assembly and association) of the European Convention on Human Rights separately and in conjunction with Article 14 (freedom from discrimination).

The Court declared inadmissible the applicant's claims under articles 3 and 11 alone and taken together with Article 14 on the grounds that they were manifestly ill-founded according to the admissibility criteria set forth in Article 35 of the Convention.

The court analysed the compatibility of the French law with Article 8 (respect for private life) and Article 9 (freedom of religion) of the Convention. Because the Court found that the law constituted an "interference" with or "limitation" on the exercise of both of these rights, it then determined whether the interference was "prescribed by law," pursues a legitimate aim, and is "necessary in a democratic society." The State proposed and the Court accepted that the law pursued two legitimate aims: public safety, and "respect for the minimum set of values of an open and democratic society".

With regard to the first justification, the Court acknowledged that the evidence indicated that the French legislature intended the law to address issues of public safety that may arise from

the concealment of faces in public. However, the Grand Chamber found it necessary to conduct a more thorough analysis of the State's second justification, which is not explicitly identified in the Convention as an acceptable reason for restricting either the right to respect for private life or freedom of religion. The Grand Chamber rejected the French government's reasoning that the law was intended to promote respect for gender equality and respect for human dignity, but accepted that the law works to ensure the conditions conducive to "living together" or "respect for the minimum requirements of life in society."

Finally, the Court considered whether the interference with the applicant's rights was "necessary in a democratic society" for public safety or for "respect for the minimum set of values of an open and democratic society." In this analysis, the Grand Chamber primarily focused on Article 9 (freedom of religion). The Grand Chamber noted that in a democratic society with diverse religious beliefs, "it may be necessary to place limitations on freedom to manifest one's religion or beliefs in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected." Id. at para. 26.

The Grand Chamber accepted that the State is "in principle better placed than an international court to evaluate local needs and conditions" and therefore is typically granted a wide margin of appreciation in determining the extent to which a limitation on freedom of religion is necessary in a democratic society. The Grand Chamber noted the legislature's assertion that "[t]he systematic concealment of the face in public places, contrary to the ideal of fraternity…"

Despite the weight given to the State's room for manoeuvre, the Court found that a ban on face coverings was not necessary for the promotion of public safety within the context of articles 8 or 9 of the Convention. The Court held that a ban on facial coverings in public places was only proportionate in the case of a general threat to public safety, which the French government did not demonstrate in this case. However, the Court did find that the ban could be considered necessary for ensuring the conditions of social life, under the rubric of protecting the rights of others. The majority wrote: It indeed falls within the powers of the State to secure the conditions whereby individuals can live together in their diversity. Moreover, the Court is able to accept that a State may find it essential to give particular weight in this connection to the interaction between individuals and may consider this to be adversely affected by the fact that some conceal their faces in public places.

Dahlab v Switzerland:

The applicant Lucia Dahlab, a Swiss national was a primary-school teacher appointed on september 1990, and converted to Islam in March 1991 after which she began wearing headscarf. In 1996 school barred her from wearing headscarf while carrying out her professional duties, as such conduct was incompatible with section 6 of the Public Education Act. The applicant appealed against that decision to the Geneva cantonal government. The cantonal government dismissed the appeal on the following grounds: Same year she appealed in ECHR alleging a violation of Article 9 of the Convention and submitted that the prohibition on wearing a headscarf interfered with the "inviolable core of her freedom of religion", the Federal Court upheld the government's decision.
The court gave following arguments:

- "The impact that a powerful external symbol such as the wearing of a headscarf may have on the freedom of conscience and religion of very young children."
- The headscarf was held to be "hard to square with the principle of gender equality" and "might have some kind of proselytising effect".
- Therefore it is "difficult to reconcile the wearing of an Islamic headscarf with the message of tolerance, respect for others and, above all, equality and non-discrimination."

The Court labelled the Islamic headscarf a "powerful external symbol", and chose to regard it as being irreconcilable with gender equality. This is regrettable, as the Court failed to consider Islamic women to wearing the headscarf as a means of achieving gender equality, and instead imposed its own interpretation without any evidence.

CASES INVOLVING CHRISTIANS AT EUROPEAN COURT OF HUMAN RIGHTS AND THE JUDGEMENTS

The European Court of Human Rights has shown utmost concern for reasoning and human rights when it comes to cases related to Christian applicants. However, the rulings have not remained unaffected by the "popular Christian sentiment" in Europe. The rulings in these cases underscore their sharp contrast against the judgements passed in cases where Muslim members were involved, indirectly emphasizing that the European culture is particularly Christian and Islamic Cultural symbols are merely an infringement. Lets have a look at few cases involving Christians symbols.

Lautsi and Others v. Italy Judgment

Lautsi and her two sons, Dataico and Sami Albertin, are resident in Italy. Dataico and Sami attended a State school in Abano Terme. A crucifix was fixed to the wall in each of the school's classrooms. In 2002, during a meeting of the school's governors, Lautsi's husband raised the question of the presence of religious symbols in the classrooms, particularly mentioning crucifixes, and asked whether they ought to be removed. The school's governors decided to keep religious symbols in classrooms. Lautsi contested that decision in the Veneto Administrative Court, complaining of an infringement of the principle of secularism, relying in that connection on Articles 3 (principle of equality) and 19 (religious freedom) of the Italian Constitution and Article 9 of the Convention, and on the principle of the impartiality of public administrative authorities (Article 97 of the Constitution) (ECHR, 30814/06).
The Court unanimously decided in 2009 in favour of Lautsi who said that state schools in the Italian town of Abano Terme, where she lives, refused to remove the Roman Catholic symbols from classrooms. The plaintiff, Soile Lautsi, argued that this violated Italy's secular constitution, as well as the right of parents, under article 2 of protocol 1 of the European convention on human rights, "to ensure [their children's education] in conformity with their own religious and philosophical convictions". Thus, Lautsi v Italy was not a case of "a theologically neutral state tak[ing] no position on the question of which gods exist", but the government of Italy imposing a symbol of Catholicism on every classroom in the country (Sims, 2011).

The court agreed, saying children were entitled to freedom of religion and that although "encouraging" for some pupils, the crucifix could be "emotionally disturbing for pupils of other religions or those who profess no religion". It said the state had an obligation "to refrain from imposing beliefs, even indirectly, in places where persons are dependent on it or in places where they are particularly vulnerable" (Butt, 2011).

But in 2011 The European Court of Human Rights overturned its former ruling, calling crucifixes as acceptable in the continent's state school classrooms, describing them as an "essentially passive symbol" with no obvious religious influence. In its judgment, handed down in Strasbourg, the court found that while the crucifix was "above all a religious symbol" there was no evidence that its display on classroom walls might have an influence on pupils. The court added there was nothing to suggest that "the [Italian] authorities were intolerant of pupils who believed in other religions, were non-believers or who held non-religious

philosophical convictions." Nor was there evidence that the presence of a crucifix had "encouraged the development of teaching practices with a proselytising tendency".

Case of Eweida and Others v. The United Kingdom

The case consists of four applications brought against the UK by Christians members who believed that they had suffered unlawful discrimination at the hands of their respective employers on the grounds of their religious beliefs. Each applicant argued that the state had violated their right to freedom of religion under Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and/or their right to be free from discrimination in the exercise of this freedom under Article 14 together with Article 9 ECHR. They argued variously that the state had either failed to take action to protect these rights or had taken actions which violated the rights. All applicants complained that domestic law failed adequately to protect their right to manifest their religion.

Two of the applicants, Ms Eweida and Ms Chaplin, are Christians who believe that their faith requires them to wear a small cross on a chain visibly around their neck. In both cases, the women's respective employers had refused to allow them to continue in their role unless they removed their cross.

Ms Eweida worked for a private employer, British Airways (BA), in a customer facing role and was told that the cross was a breach of BA's uniform policy. In 2006, Ms Eweida began to display her cross and, after refusing to remove or cover it, she was sent home without pay. In October 2006, after a month's absence, Ms Eweida was offered a non-customer facing role in which she could have worn the cross but she refused this offer and remained at home without pay. In November 2006, BA announced a review of its uniform policy and, in January 2007, BA amended the policy so that religious or charity symbols would be permitted where authorised in future. In February 2007, Ms Eweida was reinstated in her old job, able to wear her cross. She brought claims of unlawful discrimination and sought compensation for the period of time she was without pay. In particular she claimed that the company had indirectly discriminated against her because its uniform policy put her, on the basis of her beliefs, at a significant disadvantage as compared to colleagues with other beliefs, and this could not be justified. Her claims were rejected by the UK courts.

Ms Chaplin worked for a state hospital, the Royal Devon and Exeter NHS Foundation Trust, from 1989 to July 2010. The hospital's uniform policy, which was based on guidance from the state Department of Health, prohibited the wearing of necklaces "to reduce the risk of injury when handling patients". It stated that staff would not unreasonably be denied approval for the wearing of religious jewellery if they made such a request. In 2009 a change in uniform meant that Ms Chaplin's cross was visible. Her requests to wear it were refused on health and safety grounds. The hospital suggested that Ms Chaplin attach the cross to a badge but, as the badge was not worn at all times, Ms Chaplin refused. In November 2009, Ms Chaplin was moved to a non-nursing temporary position which ceased to exist in July 2010. Ms Chaplin claimed unlawful direct and indirect discrimination. She claimed direct discrimination on the basis that the policy targeted Christians and that Sikhs and Muslims were not treated in the same way in relation to the policy. Her indirect discrimination claim was on similar grounds to those raised by Ms Eweida. Ms Chaplin's claims of unlawful direct and indirect discrimination were rejected by the UK Employment Tribunal and she was advised that, given the Court of Appeal's decision in Ms Eweida's case, any appeal would have no prospect of success.

The other two applicants, Mr MacFarlane and Ms Ladele are Christians who believe that homosexual activity/relationships cannot be condoned. Ms Ladele was a registrar for a local authority. She believes that same-sex civil partnerships are contrary to God's law. She had been employed by the authority since 1992 and as a registrar since 2002. The authority had a "Dignity for All" policy in which the authority agreed to challenge discrimination in all its forms. This applied to staff, residents and services users and covered discrimination on the grounds of sexuality. The policy stated that the authority had no tolerance for discrimination. In 2005 the Civil Partnership Act 2004 came into force, providing for legal registration of civil partnerships between same-sex couples. In December 2005 the authority designated all registrars as civil partnership registrars, a role that Ms Ladele felt she could not undertake given her beliefs. Initially Ms Ladele avoided conducting civil partnerships by making informal arrangements with colleagues. However, in 2006, two of her colleagues complained that this was discriminatory. The authority informed Ms Ladele that her refusal to conduct the partnerships was a breach of its Code of Conduct and equality policy. Formal disciplinary

proceedings were taken and Ms Ladele lost her job. Ms Ladele brought claims of direct and indirect discrimination. Although the Employment Tribunal found in her favour, the UK's appeal courts both found against her. Mr MacFarlane was employed by a private organisation, Relate Avon Limited (Relate), which provides confidential sex therapy and relationship counselling. Mr MacFarlane believes that the Bible states that homosexual activity is sinful and that he should do nothing which directly endorses such activity. Relate's equal opportunities policy stated that, amongst other things, the company was committed to ensuring that no clients receive less favourable treatment on the basis of their sexual orientation. Mr MacFarlane worked for the company from 2003 to 2008. In 2007, there was a perception in the company that Mr MacFarlane was unwilling to work on sexual issues with homosexual couples. The matter was investigated and, following a procedure during which Mr MacFarlane's statement that he would provide such services was considered to be false, he was dismissed in March 2008. Mr MacFar lane's claims of direct and indirect discrimination were rejected by the UK courts. The applicants brought their cases to the ECHR on various dates in 2010. In April 2011, the applications were communicated to the government and the ECHR decided to rule on their merits and admissibility at the same time. At the date of its judgment, the Court decided to join all four applications as they raised related issues. A number of third parties intervened in the case including, amongst others, the UK's Equality and Human Rights Commission (EHRC), The National Secular Society, the Bishops of Chester and Blackburn and the Fédération Internationale des lingues des Droits de l'Homme (FIDH, ICJ, ILGA-Europe), with views across a spectrum, identifying the contentious nature of the issues raised by the applications (ECJL, 2013).

Nadia Eweida, the BA check-in worker, won her appeal but Lilian Ladele, a local authority registrar who also lives in London, Shirley Chaplin, a nurse from Exeter, and Gary McFarlane, a Bristol marriage counsellor, all had their claims dismissed. Three other UK Christians, who appealed to the ECHR claiming that their religious liberties had been infringed, lost their challenges.

In the case of Eweida [the British Airways check-in worker], it was a very limited victory which simply means that if employers want to prevent an employee wearing religious symbol for corporate image purposes, they must prove that their image is negatively affected by such manifestations of belief. In the case of Chaplin [a nurse] the court has acknowledged that employers are better placed than the court to decide if jewellery is a health and safety risk,

and did not support the idea of blanket permission to wear religious symbols in the workplace (BBC, 2013).

CONCLUDING ANALYSIS

The overall conclusion of the Court is disappointing. The judgments are internally inconsistent. On the one hand, they contain strong and detailed reasoning on the issues of gender and dignity, issues which have traditionally been subject to significant academic and policy debate. On the other hand, it gives significant leeway to states to legislate to uphold the very nebulous concept of 'living together', an aim which could equally be met by promoting a 'live and let live' attitude.

Two basic trends have materialised - the first is one where the court has adopted a more neutral kind of secularism, and where the judges have prioritised the individual consciences of the plaintiffs over that of the different authorities that, invariably, call to notions of "public order" to justify certain restrictions. But this trend has typically been associated with religious freedom cases lodged by members of Christian communities, including, for example, the British Airways employee who had been told by her employers that she couldn't wear a crucifix. There is, nevertheless, another trend at work - one which is far more aggressively secularist, and which has, invariably, affected Muslim communities. This is especially so in cases when individual religious manifestations do not display any signs of political intentions but are performed bona fide making these prohibitions difficult to reconcile with the necessity to protect a democratic society.

REFERENCES:

- BBC, (2013, January 15). British Airways christian employee Nadia Eweida wins case. *BBC.* Retrieved June 08, 2017, from http://www.bbc.com.
- Butt, R. (2011, March 18). European Court of Human Rights rules crucifixes are allowed in state schools. *The Guardian*. Retrieved May 05, 2017, from https://www.theguardian.com.
- Çınar, A., (2008). Subversion and subjugation in the public sphere: secularism and the Islamic headscarf. *Signs*, 33 (4).
- ECHR, (2011). Religious symbols and clothing: display of religious symbols in state-school classrooms*:* Lautsi and Others v. Italy. *ECHR Press Release*.
- ECHR, Case of Lautsi and thers v. Italy. *Application no. 30814/06).*
- ECLJ, (2013, January 08). The four ECHR Christian cases versus the United-Kingdom to be issued on 15 January 2013. *European Center for Law and Justice.* Retrieved June 05, 2017, from https://eclj.org.
- Evans, C., (2006). The 'Islamic scarf' in the European Court of Human Rights. *Melbourne Journal of International Law*.
- Gani, A., (2014, Oct. 03). What is the European convention on human rights?. *The Guardian*. Retrieved May 01, 2017, from https://www.theguardian.com.
- Hagberg, A., (2017). The European Convention on Human Rights and the hijab, *Regional Legal Systems*, 2017.
- Hellyer, H A. (2017, January, 12). On Muslims, swimming lessons, and European secularism. *Aljazeera*. Retrieved May 01, 2017, from http://www.aljazeera.com.
- Lewis, T., (2007). What not to wear: religious rights, the European Court, and the margin of appreciation. *The International and Comparative Law Quarterly*. 56 (2).
- Loucaides, L. G., (2007). *The European Convention on Human Rights: collected essays.* The Netherlands: Koninklijke Brill nv, Leiden.

— Marshall, J., (2008). Conditions for freedom? European human rights law and the Islamic headscarf debate, *Human Rights Quarterly*. 30 (3).

— Petty, A. R., (2016). Religion, conscience, and belief in the european court of human rights. *George Washington International Law Review.* 802.

— Sims, P., (2011, March 25). Compulsory crucifixes in Italian classrooms? Not a good sign. *The Guardian*. Retrieved May 07, 2017, from https://www.theguardian.com.

— Vickers**,** L., (2014, September 10). S.A.S. v France: the French burqa ban and religious freedom**.** *E-International Relations*. Retrieved, May 01, 2017, from http://www.e-ir.info.

— Willsher, K., (2014, July 01). France's burqa ban upheld by human rights court. *The Guardian.* Retrieved May 01, 2017**,** from https://www.theguardian.com.