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# **The European Ban on Wearing Religious Symbols in Workplace and the Importance of Religious Freedom in International Human Rights Law**

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Dear Editor,

The accommodation of religious beliefs in liberal, secular, and democratic societies is a controversial issue, particularly with regard to the wearing of religious clothes or symbols in the workplace or in public areas.<sup>1</sup>

In its first decision on the issue of women wearing Islamic headscarves at work, the European Court of Justice (ECJ) ruled that the garments could be banned as part of a general policy barring all religious and political symbols. It ruled that an employer's wish to project a neutral image was legitimate. This decision is allegedly consistent with international human rights law (IHRL) because it covers any religious manifestation without distinction: all employees are required to dress neutrally.<sup>2</sup>

IHRL upholds the rights to freedom of religion and expression, which include not only the freedom to adopt a religion or belief, but also the freedom to manifest it. IHRL supports practices that derive from religious beliefs, such as veiling, so long as they do not harm other people.<sup>3</sup>

The ECJ's decision is inconsistent with IHRL in that the latter states that neutrality is not merely about treating all religions with equal respect and regard; rather, it is also about guaranteeing protection for individual human rights.<sup>4</sup> The concept of secularism does not oblige individuals to hide their religious affiliations. Rather, the secular nature of a public

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<sup>1</sup> Ronan McCrea, 'Religion in the Workplace: Eweida and Others v United Kingdom' (2014) 77(2) *The Modern Law Review* 277, 277.

<sup>2</sup> Shaira Nanwani, 'The Burqa Ban: An Unreasonable Limitation on Religious Freedom or a Justifiable Restriction?' (2011) 25 *Emory International Law Review* 1431, 1470-1471.

<sup>3</sup> Sebastian Poulter, 'Muslim Headscarves in School: Contrasting Legal Approaches in England and France' (1997) 17 *Oxford Journal of Legal Studies* 43, 52-53.

<sup>4</sup> Eva Brems, 'Face Veil Bans in the European Court of Human Rights: The Importance of Empirical Findings' (2014) 22(2) *Journal of Law and Policy* 517, 541.

workplace or school should be maintained as long as individuals remain neutral in dealing with others.<sup>5</sup>

Neutrality demands that we refrain from endorsing or imposing certain religious beliefs on others.<sup>6</sup> An explicit religious statement or act, such as asking others to convert or refusing to provide service to others who follow a different religion, amounts to a breach of neutrality.<sup>7</sup> Thus, religious clothing or symbols do not compromise neutrality since their only function is the expression of an affiliation with a certain ideology, which should be endorsed in a healthy democratic society.<sup>8</sup> Accordingly, religion, sexual orientation, and race are irrelevant as long as everyone fulfils the duty of being neutral.<sup>9</sup>

In *Bikramjit Singh v France*, the applicant claimed that the 2004 French law that prohibits wearing conspicuous religious clothes in public schools violated his right to express his religion by wearing a turban. The Human Rights Committee (HRC) decided that secularism could not be used as a proportionate justification for violating the applicant's right to manifest his beliefs by wearing certain types of clothes.<sup>10</sup>

The ECJ's ruling is similar to the 2004 French law in that it prohibits religious symbols, including Muslim headscarves, Jewish skullcaps, and large Christian crosses, in schools and disproportionately affects Muslim women.<sup>11</sup> The fact that the ECJ's ruling is articulated in neutral terms does not necessarily mean that human rights are not violated or that no discrimination has occurred. Discrimination may occur when employers, without an objective and reasonable justification, fail to treat differently persons whose situations are significantly different.<sup>12</sup> The increasing number of Muslim women who consider wearing Islamic veils obligatory and fundamental to their personalities adds importance to the veil: it is not treated

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<sup>5</sup> Jennifer Heider, 'Unveiling the Truth Behind the French Burqa Ban: the Unwarranted Restriction of the Right to Freedom of Religion and the European Court of Human Rights' (2012) 22(1) *Indiana International and Comparative Law Review* 93, 112-113.

<sup>6</sup> Nanwani (n 2) 1460-1461.

<sup>7</sup> Robert Wintemute, 'Accommodating Religious Beliefs: Harm, Clothing or Symbols, and Refusals to Serve Others' (2014) 77(2) *The Modern Law Review* 223, 235.

<sup>8</sup> *Eweida and others v The United Kingdom* App no 51671/10 (ECHR, 15 January 2013) [94].

<sup>9</sup> Wintemute (n 7) 235.

<sup>10</sup> OHCHR, *Bikramjit Singh v France*, Communication No 1852/2008 (UN Doc CCPR/C/106/D/1852/2008, 2013) [8.7].

<sup>11</sup> Nanwani (n 2) 1445-1446.

<sup>12</sup> Myres S McDougal, Longzhi Chen and Harold D Lasswell, *Human Rights and World Public Order: The Basic Policies of an International Law of Human Dignity* (Yale University Press 1980) 653.

as a mere religious symbol but as an indispensable aspect of many Muslim women's religious practices.<sup>13</sup>

The ECJ ruling also seems to contradict the European Court of Human Rights (ECtHR) judgement that wearing religious symbols is sometimes part of an employee's right to manifest freedom of religion. For example, in *Eweida v UK*, the ECtHR decided that the prevention of employees from expressing themselves by wearing a cross would violate their right to freedom of religion.<sup>14</sup> The ECtHR based its decision on the belief that the act of wearing a cross does not constitute any real encroachment on the interests of others.<sup>15</sup> A clear example of the kind of evidence which can qualify as restricting an employee's right to freedom of religion is presented in *Chaplin v UK*. In this case, Chaplin was asked to remove her cross during her work as a nurse for the safety of patients because the cross might swing and fall into an open wound or a patient might grab the chain.<sup>16</sup>

On 13 March 2015, the German Constitutional Court overturned a state law prohibiting teachers from wearing a *hijab* inside schools because it was determined that this prohibition violated their religious freedom. The Constitutional Court emphasised that there must be a sufficiently specific and concrete risk to justify a ban on religious freedom. There is no evidence that the act of wearing a *hijab* constitutes a harm to others.<sup>17</sup>

The ECJ's ban on wearing Islamic veils in the workplace is more controversial because what constitutes a religious symbol is unclear. According to the ECtHR's case law, the only appropriate reference for deciding what constitutes a religious symbol or practice is individuals.<sup>18</sup> The absence of such a clear criterion for what constitutes a religious symbol adds ambiguity for employers in prohibiting the wearing of religious symbols.

In conclusion, although an employee's right to freedom of religion may be subordinated to the workplace policy, IHRL does not hold that the views of employers should always prevail. Rather, the fair and proper treatment of employees and the avoidance of any potential abuse

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<sup>13</sup> Javaid Rehman, *International Human Rights Law* (2nd edn, Pearson Education Limited 2010) 358- 360.

<sup>14</sup> *Eweida v The United Kingdom* (n 8) [106].

<sup>15</sup> *ibid* [94].

<sup>16</sup> *Ibid* [99].

<sup>17</sup> Timothy Jones, 'Constitutional Court Strikes Down Absolute Headscarf Ban' *DW News* (13 March 2015) <http://www.dw.com/en/constitutional-court-strikes-down-absolute-headscarf-ban/a-18313377> accessed 2 June 2017.

<sup>18</sup> Carolyn Evans, *Freedom of Religion under the European Convention on Human Rights* (OUP 2001) 53-57.

from employers must be ensured.<sup>19</sup> Hence, in order to be consistent with IHRL and the ECtHR's case law, the ECJ should rely more on empirical evidence in justifying the restriction of employees' right to manifest their freedom of religion by wearing religious symbols in the workplace.<sup>20</sup>

Is mise le meas,

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<sup>19</sup> *Sahin v Turkey* App No 44774/98 (ECHR, 10 November 2005) [108].

<sup>20</sup> *Wintemute* (n 7) 234; *Brems* (n 4) 517-519.