Female Genital Mutilation between Human Rights and Tradition

Female circumcision is a form of gender-based violence and a fundamental violation of the rights of girls and women. The World Health Organisation (WHO) defines female circumcision, or female genital mutilation (FGM) as: 'all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.' An important complication in ending FGM is that it is a deeply entrenched social norm, practiced in 29 countries in Africa and the Middle East. According to a statistical overview provided by UNICEF in 2013, more than 125 million of the girls and women living in these countries have experienced FGM (2013, UNICEF – *Female Genital Mutilation/Cutting: a statistical overview and exploration of the dynamics of change*).

Despite the absence of data collection, it is estimated that also in some EU countries women and girls are at risk of FGM. Because of this the practice has gained more attention in the EU during recent years.

The WHO identified four major types of FGM:

- The *clitoridectomy* is the partial or total removal of the clitoris;
- The *excision* is the removal of all the clitoris and the inner labia (lips that surround the vagina), with or without removal of the labia majora (larger outer lips);
- The *infibulation* is the narrowing of the vagina opening by creating a seal, formed by cutting and repositioning the labia;
- Girls and women can be subjected to other harmful procedures for non-medical purposes, like pricking, piercing, incising, scraping and cauterising the genital area.

As was quoted above, female circumcision has no health benefits. Even more so, FGM alters the natural functions of the woman's body and it can be harmful in many ways. Further, the procedure carries great risk and can generate immediate consequences such as severe pain, shock, haemorrhage,

sepsis (bacterial infection), urine retention, and / or injury to nearby genital tissue. Additionally, FGM can produce long-term implications like cysts, damage to the external reproductive system, uterus or vaginal infections, complications in pregnancy and child birth or psychological damage. Because of the potential destructive effects, there are cases when it is necessary for circumcised women to undergo further surgeries later in life. (WHO – *Female genital mutilation*).

The age at which female circumcision is practiced differs from one ethnic group to the other. It can vary from shortly after birth to after delivering the first child, but mostly it is carried out on girls whose age is between four and ten. Although in urban areas female circumcision can be performed in a hospital, in rural African areas the procedure is often carried out by an old woman of the village with no medical training. Besides, often basic tools are used such as knives, scissors, razor blades or pieces of glass. The hygienic conditions in which the procedure occurs are, therefore, very poor most of the times.

The practice is supported by a wide range of motives and justifications which are deeply-rooted into the cultural and historical situation of the societies where FGM is mostly carried out.

The two main justifications for FGM are religion and tradition. Since it is mainly practiced in Muslim communities, female circumcision acquired a religious dimension. However, in the risk countries FGM is practiced by followers of different beliefs, such as Christians, Animists and Jews. It would be therefore wrong to identify the procedure only with the Islamic faith. Besides, it is not practiced by all Muslims. Even more important than perceiving female circumcision as a religious obligation, social pressure is imposed on individuals trough family and community members. Those who do not implement the practice would be excluded and ostracised from the community life.

It can be claimed that tradition and not religion is the main origin of the justifications supporting FGM. While many traditions promote social cohesion,

others do great harm to the physical and psychological integrity of individuals. FGM is perceived as an initiation rite, a transition in status from girlhood to womanhood and marriageable age[1] (Before the initiation through mutilation, the girls are kept in seclusion for at least two weeks and they get instructed about morality, social codes, being a good wife, behaviours around elders and other age groups (2009, African-Women.org – *Myths and Justifications for the Perpetuation of FGM*).

Among sociological reasons, the sexual and marriage factors are essential. In many Third World countries, marriage is necessary for a woman's survival. Finding a husband and reproducing are the ways a woman can reach economic stability and social status. In order to get married a girl needs to be a virgin, otherwise both the girl and her family could face social consequences. FGM is considered as a way to ensure virginity. Alongside this justification, women are also believed to be weak when it comes to emotion and the control of their sexuality; circumcision is expected to control women's sexuality. However, even though FGM may reduce physical feelings, it cannot reduce the desire and it is not assurance of chastity (Dr. Ashenafi Moges – *What is behind the tradition of FGM?*).

Psychological reasons play also an important role, particularly regarding gender identity. FGM is often considered a necessary practice in order for girls to be considered a complete woman. Clitoris and labia are seen as 'male parts' of a woman's body, and clitoris is also considered to be ugly on a girl. The practice eliminates any indication of maleness in a woman's body and makes a woman feminine (Amnesty International – *End FGM European Campaign*).

Another justification for the practice of FGM is the fact that it contributes to the cleanliness and beauty of women, since an unmutilated woman is considered dirty and polluted. It is believed that secretions produced by the glands in the clitoris, labia minora and majora are bad smelling and unhygienic, therefore their removal makes the body clean. In reality, by closing the vulva and preventing the natural flow of urine and menstrual flow, FGM could lead to uncleanliness. (Dr. Ashenafi Moges – *What is behind*

the tradition of FGM?).

As argued before, the practice of FGM is, in any form, internationally recognised as a violation of the human rights of girls and women. Despite that several actions have been taken to address the issue on an international level, they were mostly unsuccessful. The interventions were often external, and those who tried to tackle the problem ignored the social and economic context of the countries were FGM is practiced. Some actions taken by Western feminists and human rights activists were also met with resistance and negative reactions from locals; these initiatives were considered as condescending and derogatory toward their culture. (1997, Frances A. Althaus – *Female Circumcision: Rite of Passage Or Violation of Rights?*)

The rights of women and girls, which the practice of FGM violates, are protected in several international and regional instruments such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention Against Torture, Convention on the Elimination of Discrimination Against Women (CEDAW) and Convention on the Rights of the Child (CRC), the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union.

Both national and domestic legislation did not prove to be successful in eliminating FGM. At the contrary, they forced to carry out the procedure in secret and unsanitary areas, increasing health risks for girls and women. (Jessica A. Platt – *Female circumcision: Religious practice v. Human rights violation*)

Some international organisations have therefore developed new ways to address the issue. They support local activist groups with funding, training and technical expertise instead of being directly involved. A positive way to address female circumcision can be through education and women’s empowerment. Educational groups in the countries where FGM is mostly practiced can give women knowledge about the operational procedure involved in female circumcision, the different forms of FGM, and inform them about the

procedure's potential health risks. (Jessica A. Platt – *Female circumcision: Religious practice v. Human rights violation*). In order to establish a balance between religious beliefs and the promotion of human rights, the clinicalisation of female circumcision or the implementation of mild forms of circumcision that can be carried out in a hospital at the birth of a female child can be promoted[2]. (The *sunna*, for instance, is a form of circumcision practiced in Somalia under sterile and anaesthetic conditions and which drastically decrease the possibilities of casualties).

Finally, circumcision through words can be encouraged. It is a way to implement the practice spiritually rather than physically through a programme of training, counselling and informing girls on anatomy, physiology, sexual and reproductive health, gender issues. The program is followed by a ceremony performed in front of the entire community which represents the rite of passage of girls into womanhood. Circumcision through words is a spiritual alternative which allows women to practice their religion without risking their health. (Jessica A. Platt – *Female circumcision: Religious practice v. Human rights violation*)

The practice of female circumcision derives from complex belief systems. Many efforts to eradicate the practice originated from outside the community often met with hostility from the community practicing them: the idea of ending their tradition is inconceivable, and Western pressures for change is perceived as culturally imperialistic. This is why actions to stop female circumcision are most likely to be effective when they originate within the culture that practices them. (1998, Lauren Hersh – *Giving Up Harmful Practices, Not Culture*).

Addressing FGM requires a long-term commitment and a collective effort. There are no easy or quick solutions. Female circumcision needs actions from different sectors and on different levels. The international community plays an important role in raising awareness on the issues, but legislation alone is not sufficient to end FGM. Engage the communities where the practice is widely spread, and adopt programmes that include empowering education – with a special focus on women's empowerment – is a good way to develop knowledge

and consensus at community level. (2008, WHO – *Eliminating Female genital mutilation*).

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The manifesting Muslim in contemporary Europe; respecting or restricting freedom of religion?

I have seen great intolerance shown in support of tolerance.

~Samuel Taylor Coleridge

Introduction

While inherently diverse in its variation, the concept of religion as a whole has been aptly described as "…one of the most vital elements that go to make up the identity of believers and their conception of life" (*Kokkinakis v. Greece*). Given the historical role and significance of religion throughout European history, it is no wonder that respect for religious freedom is nowadays, albeit to varying extents, categorically enshrined in some form or other within each Council of Europe member state.Furthermore, Article 9 of the European Convention of Human Rights (ECHR)guarantees freedom of religion- not only the right to choose one's own religion but also the practice and manifestation of such.

This protection however, despite its national, European and International guarantees,has in practice given rise to many conflicts of interest between the individual and the state. This is primarily due to the non-absolute nature of freedom to manifest one's religion under Article 9 ECHR, as qualified under Article 9(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 following assessment will focus on various European national practices in limiting the right of the individual to manifest his/her religious beliefs and the European Court's evaluation and response to such curtailments. Of specific focus will be the challenges faced by Muslim women within Europe and their right to wear the hijab in the conduct of their daily life, particularly within the education system.

A divided approach

As will be examined below, the Court has often sought to establish whether

there exists a common approach throughout the member states as regards the domestic legal position of the Islamic headdress in the education environment. Such a European consensus does not currently exist, understandably due to the different ethnic demographics and prominence of religion within the state itself, as well as the varyingly politicised dimension of the issue. Take Turkey for instance. Despite its majority Muslim population, the state's staunchly secularist nature has repeatedly trumped the right to freedom of religion, notwithstanding the constitutionally enshrined protection of the latter. The ban on the hijab within the public education system has lead to large-scale national debate on the issue, and has prompted substantial litigation at national and European level. Only within recent years and due to considerable public pressure has Turkey somewhat eased the staunch restrictions on the headscarf.

Conversely in the United Kingdom, where Islam is neither traditionally the religion of the state nor the majority religion today, the quintessentially multicultural approach has manifested without any such institutional prohibitions on the hijab generally, as well as within the sphere of education. Numerous schools have been considered to go to lengths to provide school uniforms tailored to Muslim dress code, as too have the Metropolitan Police Force.

In 2004, France introduced legislation prohibiting the wearing of the hijab and other overtly religious symbols in both primary and secondary schools, though it does not extend to universities. France has also gone one step further as regards the full-face Islamic veil (the niqab and burka) and has banned such religious dress entirely within the public sphere. The impetus of the law stemmed from security concerns, where it was argued that a person is not readily identifiable while their faces are concealed. In addition, the political debate has focussed strongly on the compatibility of the full-face veil with concepts of equality and women's rights, leading the French parliament to condemn the religious headdress as "an affront to the nation's values of dignity and equality" (*BBC World News*, 'The Islamic veil across Europe'). In 2011, Belgium followed the French lead and became the second EU state to prohibit the burqa, while the issue has also been strongly debated

in the Netherlands in recent years.

In Denmark, it is currently not prohibited to wear the Islamic veil in education institutions. However, as of 2008, it is prohibited for members of the judiciary to wear distinctly religious symbols, including the hijab, so as to maintain a religiously and politically impartial courtroom. Finally, in Germany, the constitutional court ruled in 2003 that the banning of the hijab in education institutions was permissible, providing it had legislative underpinning.

The evaluation by the European Court of Human Rights

As noted above the right to manifest one's religion is clearly susceptible to limitations by the state providing the interference is, "prescribed by law…necessary in a democratic society in the interests of public safety, for the protection of the rights and freedoms of others" (Article 9(2) ECHR). On the other hand, the Strasbourg judiciary is also quick to reiterate the vital role of freedom of religion and its importance in defining a pluralist, democratic society:

"Freedom of…religion is one of the foundations of a 'democratic society…The pluralism indissociable from a democratic society which has been dearly won over the centuries depends on it." (*Kokkinakis v. Greece*)

However, as its jurisprudence clearly attests, the Court has shown significant reluctance in rebuking domestic legislation and the rulings of national courts where interferences with the manifestation of religion have arisen. The wide margin of appreciation (*i.e.* the room for legal variation) afforded to the member states in this regard has been justified on the basis of a lack of European consensus on, "the importance of the significance of religion in society…[and] must inevitably be left up to a point to the State concerned, as it will depend on the domestic context…"(*Leyla Şahin v. Turkey*). In this regard, the deference by the Court toward the relevant member states has been highly criticised as undermining the fundamental nature of the right to religion and instead "adopt[ing] the intellectually lazy option of running for the cover [of] the margin of appreciation."(Lewis,

‘What not to wear: religious rights, the European Court and the margin of appreciation’)

In *Karaduman v. Turkey*, the University of Ankara had refused to issue the applicant’s university degree, pending the provision of an identification photograph that showed the applicant without any headdress. The European Commission of Human Rights (the Commission) upheld the ruling of the national courts that the requirement that students could not wear headdress of any sort in their identification photographs, including the Islamic veil, did not violate Article 9. Critical in the decision to dismiss the applicant’s case, the Commission highlighted that the applicant had knowingly enrolled in a secular university, where restrictions on the manifestation of religion could be expected so as “to ensure harmonious coexistence between students of different beliefs.” (*Karaduman v. Turkey,* p. 108). The European Court approved of the Turkish Constitutional Court’s fears that the veil worn by some Muslim women at the university might adversely affect those who had chosen not to wear such. Finally, the Commission concluded that all other considerations aside, the provision of a photograph for identification purposes only, which was not intended for exposure to the general public, could not be seen as a manifestation of religion. Thus, it determined that no interference had in fact occurred under Article 9 ECHR.

The case of *Dahlab v. Switzerland* concerned a Muslim primary school teacher, who had been prohibited from wearing the hijab at school, as it was in contravention of the denominational neutrality required within the Swiss education system. Section 6 of the cantonal Public Education Act of 1940 explicitly required that “the religious beliefs of pupils and parents [be] respected”. Here, the Court examined the ruling of the Federal Court in significant detail. Particular importance was attached to the domestic court’s finding that the age of the pupils in the applicant’s class (between 4 and 8 years) made them highly impressionable by the “role-model” figure of a teacher. The Court was concerned that given the children’s young age, there was a possibility that the hijab would have a proselytising effect on the children, despite the lack of any complaints by the students’ parents to that effect. Finally, in holding that the state had not exceeded its margin of

appreciation, the Court appeared to agree with the Federal Court that the hijab itself was difficult to reconcile with the concepts of “tolerance, respect for others and …equality and non-discrimination”. Thus, having found that the restriction was justified in principle and was proportionate given the young age of the children, the Court held that the limitation was therefore necessary in a democratic society and dismissed the application.

With due regard to the above, the most significant case in this area is *Leyla Şahin v. Turkey*. The applicant had been in her fifth year of medical school at the University of Istanbul when the alleged violation occurred. Şahin was on several occasions refused access to various aspects of her medical education on the grounds that her hijab was in contravention of the various regulations in place. The Constitutional Court had previously ruled in 1991 that the prohibition on wearing the veil and headscarf in higher education institutions did not conflict with the Constitution given that such a restriction was necessary to preserve the secular nature of the state, as enshrined in Article 2 of the Turkish Constitution and also gender equality inherent in the Constitution’s Preamble (the introductory founding principles). Having thus found a basis in law, the Grand Chamber further held that the restriction had also pursued a legitimate aim in that it sought to preserve the secularist nature of the state and also the rights and freedoms of others of differing religious convictions. In the final element of evaluating whether the restriction was “necessary in a democratic society”, the Court cited *Dahlab,* where the hijab was seen to be a “powerful external symbol”, its potential proselytising effect and the anomalous nature of such with the concepts of tolerance and equality for women. In the final proportionality assessment, the Court highlighted the fact that the ban affected all religious attire, not merely that of Islamic origin (para. 118). Furthermore, the ban had come in light of a prolonged public debate on the issue, as well as extensive examination by the Turkish courts, and thus had supposedly taken all the relevant affected parties’ rights into account (para. 120). On such a basis, the Court did not find a violation of the applicant’s right to freedom of religion by virtue of the legitimate restriction provided under Article 9 (2) ECHR.

Despite a lack of controversy from within the Grand Chamber panel itself (16 votes to one), the judgment of the Court opened itself up to substantial criticism by human rights groups and religious organisations alike. The ruling of the majority also incurred pointed disapproval from the sole dissenting judge- Judge Tulkens- in her dissent. It is submitted by the author, much in the same vein as Judge Tulkens, that the Court failed to properly distinguish the situation in *Dahlab,* where one of the crucial factors in the case was the authoritative role of the applicant vis-à-vis her young students. Here however, the applicant had been 25 years old at the time of the interference and had consistently maintained that she chose to wear the veil of her own volition. In no uncertain terms, Judge Tulkens voiced her concerns about the Court's paternalistic approach in its subjective opining of the alleged fears associated within Islamic practice, where she firmly believed that such pronouncements went far beyond the Court's role. As to the majority's claim that the veil was *inter alia* "hard to reconcile with the principal of equality" (para. 111), Judge Tulkens pointed out (and it is submitted correctly) that:

"It is not the Court's role to make an appraisal of this type…[nor should it] impose its viewpoint on the applicant…"

She reiterated on several occasions that the Court had not been furnished with sufficient evidence that the hijab posed a security threat to Turkish society and that the Court hadn't sufficiently supervised the domestic restriction.

After the judgment in *Şahin*, the prominent human rights NGO Human Rights Watch echoed the concern and disappointment of Judge Tulkens, maintaining that the Court had:

"let down thousands of women who will be prevented from studying in Turkey's universities… It missed an important opportunity in this case to stand firmly behind principles of freedom of religion, expression, and non-discrimination…" (Human Rights Watch, 'Turkey: Headscarf Ruling Denies Women Education and Career')

Since the case of *Şahin*, significant developments have occurred in Turkey regarding the prohibition on the Islamic headscarf. After an initially unsuccessful attempt in 2008, the ban on the headscarf in universities was finally lifted at the end of 2010. As recently as October 2013, the restrictions have also been eased in the workplace, allowing women employed in the public sector to wear the headscarf, for the first time since the modern Turkish state was founded. The lifting of the ban has split public opinion in Turkey; many believe that such comes as a large step in restoring freedom of religion and expression as well as enabling women to take a more active role in the workforce, while opponents warn of the eroding effect it may have on the secularist state.

S.A.S. v. France: Strasbourg to evaluate the French Burqa Ban

The Grand Chamber of the Court is currently adjudicating the highly pertinent and seminal case of *S.A.S. v. France*, with the judgment due sometime this year. At the core of the complaint is the French law criminalising the full-face veil. The applicant, a devout Muslim woman who wears the burqa, complains that the French law violates her rights to: freedom from inhumane or degrading treatment (Article 3 ECHR), private life (Article 8), freedom to manifest religious beliefs (Article 9 ECHR), freedom of association and assembly (Article 11 ECHR), and prohibition from discrimination (Article 14 ECHR). Under the law, first introduced in October 2010, those found to be wearing a full-face covering in public places, except in places of worship, can be fined by up to €150, while those found guilty of coercing others to wear the veil face a fine of up to €30,000 and a year in prison. Furthermore, anyone found to have breached the law is also required to take mandatory citizenship training to remind the convicted person of the "republican values of tolerance and respect for human dignity' (Open Society Foundations, 'S.A.S. v. France: Criminal Penalty for Wearing a Full-Face Veil in Public Spaces'). Several NGOs have filed *amicus curiae* (third party) briefs in support of the applicant, including the Open Society Justice Initiative, Liberty, Article 19 and Ghent University Human Rights Centre. The general common thread of the support is the argument that the law is disproportionate in its aims, unfairly prejudices the ability of certain Muslim women to

conduct their daily life according to their religious convictions and stands to encourage the stigmatisation of Islam. Furthermore, the former Council of Europe's Commissioner for Human Rights also voiced serious concern with regard to the ban, expressing that:

"Those who have argued for a general ban on the burka and niqab have not managed to show that these garments in any way undermine democracy, public safety, order or morals. The fact that a very small number of women wear such clothing has made the proposals even less convincing. Nor has it been possible to prove that these women are victims of more gender repression than others." (Thomas Hammarberg, 'The Europe Must Not Ban The Burqa' *The Guardian*, March 2010)

Similarly, the Council of Europe's Parliamentary Assembly also issued a recommendation, which *inter alia* "call□s□ on members states not to establish a general ban on full face veiling or other religious or special clothing" (Recommendation 1927: 'Islam, Islamism and Islamophobia in Europe', June 2010). Rather, the recommendation focuses on the prevention and punishment of those who try to coerce others into wearing such clothing by: "penalising, on the one hand, all forms of coercion, oppression or violence that compel women to wear the veil or the full veil, and by creating, on the other hand, social and economic conditions enabling women to make informed choices through the promotion of genuine policies on equal opportunities for women and men which embody access to education, training, employment and housing." (Recommendation 1927, para. 3.15)

It is the author's contention that by shifting the focus from punishing the individual believer to those who coerce female Muslims to wear the veil is the correct approach by which to tackle the concerns regarding gender empowerment and equality. A mandatory ban on the veil does not take into account the debilitating effects it will have on those women who adhere to a certain religious interpretation, whereby their personal manifestation of such is dependent on wearing the veil. Not only does it have the potential to ostracise these women from daily life should they feel they cannot go outdoors without their covering, but it can also create negative

stigmatisation within society itself. Minority adherents, as is the case with the estimated 2,000 Muslim women that wear the full-face veil in France, stand to be the target of a distinctly hostile and negative stereotype fostered by a law that tells society that these women pose a threat to democracy and the French nation as a whole.

This case provides the Grand Chamber with the opportunity to move away from its earlier paternalistic approach as seen in *Şahin,* and to narrow the excessive margin of appreciation it has tended to afford to states in their limitations on religious manifestations. It is predicted that the crux of the issue to be determined by the Court will be whether the French law is "necessary in a democratic society". In this regard, it is hoped that the Court will recognise the disproportionate effects the law creates. Firstly, should it be argued that the law is a national security measure (regarding facial identification), then the Court should take note of the very small percentage of women who actually wear the full-face covering in France. The second relevant issue relates to the correlation of the full-face veil with being irreconcilable with the principles of tolerance and equality, as highlighted in *Dahlab* and *Şahin*. The focus should not be on punishing fully consenting Muslim women for adhering to an interpretation of their religion, but rather to examine whether the law adequately protects women who are being coerced into wearing the veil. In this regard, it is submitted that the relevant paragraph of the French law which criminalises the coercion of forcing the veil upon another can be considered "necessary in a democratic society", while the automatic criminalisation of fully-consenting women is paternalistic, disproportionate and has detrimental effects on the individual. From the perspective of the applicant in *S.A.S. v. France*, namely a fully consenting Muslim woman, it is hoped that the Court will find the restriction on her right to manifest her religion to be in violation of Article 9 ECHR.

Conclusion:

Instead of liberating the women from the alleged shackles of oppression, domestic laws such as those seen in the extreme in France and Belgium, fail

to entertain the notion that women may *choose* to wear these symbols. Thus by banning the veils, the laws not only encroach on women's right of autonomy and self-determination, but also render them with a *de facto* ultimatum of choosing between pursuing education, work and daily life *or* adhering to their religious convictions.

The sensitivities that are involved in cases of this sort go to the very core of the individual's identity and also define a state's efforts to strike that much sought after balance between appeasing both the religious zealots and hard-core secularists. In the middle of both extremes are the individuals who are looking to pursue their religious duties, and those individuals preferring not to be affected by those rituals by proxy. If the Court is to be convinced by national measures against so-called "fundamentalist movements", such strongly-worded allegations need to be substantiated by some sort of empirical proof before the Court should readily endorse such controversial sentiments. Similarly, the Court should be more willing to examine the individual applicant's situation more closely and whether the respondent government's arguments make practical sense in light of the facts. On this basis, it is the author's contention that the Court in *Şahin* should have put greater emphasis on the applicant's free choice and age, as was done by Judge Tulkens. At the very least, the Court should have disassociated itself from the point that she was being a so-called victim of the veil. As to the case of *S.A.S. v. France*, it is contended that the Court should seize this opportunity to recognise and protect minority religious adherents, leaving misplaced paternalism and societal prejudice aside.

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European Convention for the Protection of Human Rights and Fundamental

Freedoms, 1953.

Article 9 ECHR “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.”

Freedom of religion is enshrined in Article 18 of the Universal Declaration of Human Rights, 1948 [hereinafter UDHR] and Article 18 of the International Covenant on Civil and Political Rights, 1976 [hereinafter ICCPR].

In *Leyla Şahin v. Turkey* (application no. 44774/98) (Grand Chamber) Judgment of 10 November 2005, the Grand Chamber of the Court examined the approaches of several different member states regarding the role of the Islamic headgear in state education (see paras. 55- 65).

Karaduman v. Turkey (Application no. 16278/90) (Comm.) Decision 3 May 1993].

Dahlab v. Switzerland (Application no. 42393/98) Decision of 15 February 2001).

The secular nature of the Turkey is confirmed in Articles 2, 4 and 14 with Freedom of religion guaranteed under Article 24, with the explicit limitation that “prayer, worships and religious services” must not violate or undermine *inter alia* the secular nature of the state under Article14

In the United Kingdom, the most up to date census of 2011, showing that Islam accounted for 4.8% of the population, the second largest religion after Christianity. Available at UK Office for National Statistics, ‘Religion in England and Wales 2011’:

http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/rpt-religion.html#tab-Measuring-religion (last

accessed 16 April 2014).

In *R (on the application of Begum) v. Headteacher and Governor of Denbigh High School* [2006] UKHL 15, the House of Lords did accept the school authority's refusal to allow the applicant to wear a *jilbab* (a full-body cloak) as they school provided a similar Islamic garment, *shalwar kameeze*, designed specially in keeping with the Islamic manifestation and also the school uniform requirement.

Islamic Human Rights Commission, "Briefing: Good Practice on the Headscarf in Europe" 9 March, 2004. http://www.ihrc.org.uk/show.php?id=1030 (last accessed on 16/04/2014).

Article L. 141-5-1 of the French Education Code. The religious symbols envisioned by the amendment include the Islamic veil, the Jewish kippa and Christian crosses that are manifestly over-sized.

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