



BRILL

JOURNAL OF RELIGION IN EUROPE 14 (2021) 162-188

*Journal of  
Religion in  
Europe*  
brill.com/jre

# Proselytism and Ostentation: a Critical Discourse Analysis of the European Court of Human Rights' Case Law on Religious Symbols

*Giulia Evolvi*

Dept. of Media and Communication, Erasmus University, Rotterdam,  
The Netherlands  
*evolvi@eshcc.eur.nl*

*Mauro Gatti*

Dept. of Legal Studies, University of Bologna, Bologna, Italy  
*m.gatti@unibo.it*

## Abstract

This article focuses on the European Court of Human Rights' (ECtHR) case law about religious symbols (N=27) from 2001 to 2018, exploring the following questions: What discourses does the ECtHR employ in cases about religious symbols? How do ECtHR's discourses about religious symbols evolve in time? The data is innovatively analyzed through critical discourse analysis and leads to two findings: first, the ECtHR tends to endorse 'Christian secularism,' considering Christian symbols as compatible with secularism but not Muslim symbols; second, ECtHR discourses occasionally become more favorable to Muslim applicants over time, but the evolution of case law is not linear.

## Keywords

European Court of Human Rights – religious symbols – Christianity – Islam – critical discourse analysis – case law

## 1 Introduction

The presence of religious symbols in Europe kindles debates about the growing visibility of religion in public spaces and the governance of religious diversity.<sup>1</sup> Religious symbols and garments, and the Muslim veil in particular, are often considered marks of religious diversity, as they are an embodiment of lived religious practices.<sup>2</sup> The visibility of religious symbols in Europe can also lead to legal disputes in national or international courts.

This article analyzes the discourses about religious symbols—specifically headcovers and crucifixes—by looking at the totality of cases related to religious symbols ruled on by the European Court of Human Rights (ECtHR). The ECtHR is an international court that interprets the human rights standards defined in the European Convention on Human Rights (ECHR), binding for forty-seven states.<sup>3</sup> We chose to focus on the ECtHR because it has ruled on numerous cases regarding religious symbols, and it has had a substantial impact on the protection of religious minorities.<sup>4</sup> While numerous studies have addressed this topic from a legal perspective, we innovatively approach it through the lens of critical discourse analysis (CDA).<sup>5</sup> This methodology allows detecting ECtHR's discourses reserved for various religions. Indeed, the ECtHR tends to rule against the donning of Muslim symbols, the female veil in particular, but in favor of the display of Christian symbols, such as the crucifix.<sup>6</sup> Furthermore, not only the decisions regarding the display of certain symbols are significant per se, but also the reasoning behind these decisions

- 
- 1 Julia Martínez-Ariño, "Governing Religious Diversity in Cities: Critical Perspectives," *Religion, State and Society* 47/4–5 (2019), 364–373.
  - 2 Elisabeth Arweck, "Religion Materialised in the Everyday: Young People's Attitudes towards Material Expressions of Religion," in: Tim Hutchings & Joanne McKenzie (eds.), *Materiality and the Study of Religion: The Stuff of the Sacred* (New York: Routledge, 2016), 185–202.
  - 3 Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS no. 005. For the text of the ECHR, as amended, see European Court of Human Rights, *European Convention on Human Rights*, Council of Europe, 1 June 2010, 1–62. [www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) (accessed 25 May 2021).
  - 4 Effie Fokas & James T. Richardson, "The European Court of Human Rights and Minority Religions: Messages Generated and Messages Received," *Religion, State and Society* 45/3–4 (2017), 166–173; and Effie Fokas, "Rights Not Working? Grassroots-level Impact of the European Court of Human Rights on Religion," *Social Compass* 67/2 (2020), 191–205.
  - 5 For the legal perspective, see, e.g., Erica Howard, *Law and the Wearing of Religious Symbols in Europe* (New York: Routledge, 2019); and Jeroen Temperman, *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom* (Leiden: Martinus Nijhoff, 2012).
  - 6 Pablo Cristóbal Jiménez Lobeira, "Veils, Crucifixes and the Public Sphere: What Kind of Secularism? Rethinking Neutrality in a Post-secular Europe," *Journal of Intercultural Studies* 35/4 (2014), 385–402.

can both mirror public opinion on religion and contribute to shaping how religion is perceived in future legal cases and public discourses. Therefore, our first research question is:

RQ1: What discourses does the ECtHR employ in cases about religious symbols?

Moreover, the composition of the ECtHR, as well as discourses about religion in law journals, evolves over time. This might lead to an evolution of the case law: Melanie Adrian noted that, in older ECtHR cases, the court ruled about Islamic garments by evaluating facts, while most recent judgments appeal to vague concepts and general principles, such as secularism.<sup>7</sup> Hence, our second research question is:

RQ2: How do ECtHR's discourses about religious symbols evolve in time?

To answer these two questions, we will analyze the totality of cases ruled on by the ECtHR (N=27) about religious symbols, judged between 2001 and 2018 and regarding Islam, Christianity, or Sikhism. While other studies tend to focus only on a selection of cases, the analysis of the totality of the case law allows us to draw comparisons and to look at the evolution of discourses in time.<sup>8</sup> In the following section of this paper, we will offer an overview of the literature about secularism in Europe, arguing that the ECtHR's decisions about religious symbols often implicitly consider Christianity the only religion compatible with secularism, a perspective we define as 'Christian secularism.' In the methodology section, we will explain how critical discourse analysis can help us understand discourses employed by the ECtHR. Then, we will compare narratives about Christianity to those about Islam in the case law of the ECtHR, and we will analyze the differences among cases regarding Islam. The data suggests that the ECtHR progressively changed its attitude towards religious symbols, but the evolution is not linear and does not necessarily indicate greater tolerance for Muslim symbols or a departure from 'Christian secularism' in the case law.

## 2 Religious Symbols, Secularization, and Christian Secularism

The ECtHR's judgments frequently use the term 'secularism' to justify bans on religious symbols, as we will illustrate in the article. Therefore, this section

7 Melanie Adrian, "The Principled Slope: Religious Freedom and the European Court of Human Rights," *Religion, State and Society* 45/3-4 (2017), 174-185.

8 Fokas & Richardson, "The European Court."

describes two aspects of secularism that are relevant to understanding the use of this term: the academic debate on secularization and the secularist politics in Europe.<sup>9</sup> In doing so, we will talk about secularism in relation to the ‘othering’ of Islam and the position of Christianity in the European public sphere, and we will explain the concept of ‘Christian secularism’ to highlight some aspects of legal debates about religious symbols.

## 2.1 *Secularization Theory*

The academic scholarship on religion in the 1960s and 1970s, often rooted in the conviction that modernity coincides with the decline of religion, tended to describe Europe as progressing toward secularization.<sup>10</sup> However, while there is an empirical indication that religion is losing importance in various areas of public life, religion in Europe is not undergoing an uncritical decline.<sup>11</sup> Hence, some people continue to hold religious or spiritual beliefs even without being affiliated with a religious institution or belong to congregations even without a strong belief in god.<sup>12</sup> The critical work of José Casanova posits that secularization happens differently in various places of the world, and it needs to be contextualized not as an inevitable disappearance of religion but rather as a multifaced phenomenon that exists in various declinations.<sup>13</sup>

Within the European case, secularization theory also needs to take into account migration and religious change. The decline of certain forms of religion goes together with a greater pluralism, which made religion gain increasing public attention, especially when connected to violence and terror or when regarding the presence of religion in the public space—including religious garments and symbols.<sup>14</sup> In this respect, Tobias Müller claims that scholars have to address the socio-political implications of secularization and the growth of religious minorities assuming a post-colonial and gender

9 José Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994).

10 Philip S. Gorski et al., *The Post-secular in Question: Religion in Contemporary Society* (New York: New York University Press, 2012).

11 Regarding the loss of importance of public religion, see Jörg Stolz, “Secularization Theories in the Twenty-first Century: Ideas, Evidence, and Problems. Presidential Address,” *Social Compass* 67/2 (2020), 282–308.

12 Grace Davie, *Europe: The Exceptional Case. Parameters of Faith in the Modern World* (London: Darton, Longman & Todd, 2002).

13 Casanova, *Public Religions*.

14 On the connection with violence and terror, see Todd Green, “Religious Decline or Religious Change? Making Sense of Secularization in Europe,” *Religion Compass* 4/5 (2010), 300–311. On religion in the public space, see Susan J. Rasmussen, “Re-casting the Veil: Situated Meanings of Covering,” *Culture & Psychology* 19/2 (2013), 237–258.

perspective.<sup>15</sup> Following this line of reasoning, Nella van den Brandt problematizes the notion that women's emancipation comes from secular values and shows how a decolonial feminist approach may shed light on women's agency within religious traditions.<sup>16</sup> This is a valid point for this article, which focuses on court cases that mostly regard minority religions, specifically Islam, and whose majority of applicants are women. As we will explain in the method section, a post-colonial and gender approach on secularization helps contextualize ECtHR discourses about minority religions and women's agency.

## 2.2 *Secularism as a Political Project: 'Othering' Islam*

Secularization theories in academia coexist with the political project of secularism, which entails specific ideologies and policies. Secularism is often connected to modern nation-states as a constructed hegemonic set of values and identity imaginaries. As Talal Asad writes, European identity tends to be defined also in religious terms by excluding those that are perceived as 'non-European' and incompatible with the secularist project: religious minorities and, more specifically, Muslims.<sup>17</sup> For instance, debates about the accession of Turkey to the European Union have also included reflections on the supposedly 'European' character of a predominantly Muslim country.<sup>18</sup> Interestingly, Turkey itself (which is a party to the European Convention on Human Rights and under the jurisdiction of the ECtHR) has introduced a ban (in place until the 2010s) regulating the visibility of Islam through prohibitions of wearing veils in schools and other public buildings, as we will analyze in the next sections.<sup>19</sup> Hence, anxieties about Islam being somehow incompatible with so-called 'European civilization' have been expressed through the prohibition of visible—and supposedly 'non-secular'—religious practices even in predominantly Muslim contexts.

Following the enforcement of secularist principles, several European countries restrict and limit the wearing of religious symbols, especially the headscarf covering hair and neck and the face-covering garments, which

15 Tobias Müller, "Secularisation Theory and Its Discontents: Recapturing Decolonial and Gendered Narratives. Debate on Jörg Stolz's Article on Secularization Theories in the 21st Century: Ideas, Evidence, and Problems," *Social Compass* 67/2 (2020), 315–322.

16 Nella van den Brandt, "Secularity, Gender, and Emancipation: Thinking through Feminist Activism and Feminist Approaches to the Secular," *Religion* 49/4 (2019), 691–716.

17 Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003).

18 José Casanova, "Rethinking Secularization: A Global Comparative Perspective (Essay)," *The Hedgehog Review* 8/1–2 (2006), 1–21.

19 Claire Hancock, "Spatialities of the Secular: Geographies of the Veil in France and Turkey," *European Journal of Women's Studies* 15/3 (2008), 165–179.

sometimes result in cases ruled by the ECtHR.<sup>20</sup> In France, the 1989 *affaire du foulard* ('headscarf affair') involved three schoolgirls suspended for not removing their Muslim veils at school.<sup>21</sup> Subsequently, France approved a 2004 ban on 'ostentatious' religious symbols in public schools in the name of *laïcité*, the French principle of separation of church and state.<sup>22</sup> Even though academic scholarship on the topic described these bans as targeting Islamic headscarves and holding a gendered dimension,<sup>23</sup> they also affected the wearing of other religious symbols, such as headcovers for Jewish and Sikh men. Bills to ban full-face veils in public places further target Muslim garb, introduced in France, Belgium, the Netherlands, and Denmark between 2010 and 2011.<sup>24</sup> Bans against various forms of face and head cover tend to consider Islam as a monolithic entity and Muslim women as oppressed subjects.<sup>25</sup> By looking at court cases connected with such bans, Turan Kayaoglu argues that the ECtHR follows secularist principles and overlooks the needs of minority religions, sometimes also reproducing existing stereotypes against Muslims.<sup>26</sup>

### 2.3 *Secularism as a Political Project: Christian Secularism*

The secular project that considers certain religions, notably Islam, as 'other' to European values may simultaneously frame Christianity as compatible with secular policies. Even if religious practices may be declining in Europe, certain narratives tend to be characterized by a 'latent' form of Christianity.<sup>27</sup> For instance, far-right political parties, such as the Italian Lega and the French Rassemblement National, emphasize the alleged 'Christian roots' of European

20 Neil Chakraborti & Irene Zempi, "The Veil under Attack: Gendered Dimensions of Islamophobic Victimization," *International Review of Victimology* 18/3 (2012), 269–284.

21 Michela Ardizzoni, "Unveiling the Veil: Gendered Discourses and the (In)visibility of the Female Body in France," *Women's Studies* 33/5 (2004), 629–649.

22 Barbara Friedman & Patrick Merle, "Veiled Threats: Decentering and Unification in Transnational News Coverage of the French Veil Ban," *Feminist Media Studies* 13/5 (2013), 770–780.

23 Regarding an Islamic interpretation, see Dawn Lyon & Debora Spini, "Unveiling the Headscarf Debate," *Feminist Legal Studies* 12/3 (2004), 333–345.

24 M. I. Franklin, "Veil Dressing and the Gender Geopolitics of 'What Not to Wear,'" *International Studies Perspectives* 14/4 (2013), 394–416.

25 Alia Al-Saji, "The Racialization of Muslim Veils: A Philosophical Analysis," *Philosophy & Social Criticism* 36/8 (2010), 875–902.

26 Turan Kayaoglu, "Trying Islam: Muslims before the European Court of Human Rights," *Journal of Muslim Minority Affairs* 34/4 (2014), 345–364.

27 John Torpey, "A (Post-) Secular Age? Religion and the Two Exceptionalisms," *Social Research: An International Quarterly* 77/1 (2010), 269–296.

civilization to sustain a xenophobic and anti-migration agenda.<sup>28</sup> This creates what Annalisa Frisina defines, concerning the Italian context, as the “Catholic model of secularism”: the notion that Catholicism is at the basis of the nation’s identity.<sup>29</sup> Drawing from this definition, we use the term ‘Christian secularism’ to indicate the ideology of considering European values as based on the entanglement of Christian and secular values. From this perspective, Christianity occupies a privileged position within the European public sphere not only because it is considered as compatible with secularism (while other religions supposedly are not), but also because it is seen as the cultural and traditional force that shapes secular democracies.

Court cases about religious symbols both reflect and reinforce certain assumptions about religion and secularism in Europe. According to Roberta Medda-Windischer, the ECtHR often applies an “intolerant secularism” or “enlightenment fundamentalism” in prohibiting the wearing of religious symbols.<sup>30</sup> However, we would argue that the attitude of the ECtHR is better described through the notion of Christian secularism because it appears to apply “intolerant secularism” or “enlightenment fundamentalism” only to non-Christian symbols. Furthermore, cases involving Islam and Christianity often consider the veil as a threat to European identities and the crucifix as a mark of national traditions.<sup>31</sup> This tendency is exemplified by the *Lautsi v. Italy* case regarding the crucifix, which we will analyze in this article. The Italian media and public opinion were divided on whether to consider the crucifix as a religious symbol, a symbol of cultural identity, or a symbol of tolerance and freedom.<sup>32</sup> The work of Elayne Oliphant on the *Lautsi* case precisely describes the decision of the ECtHR to continue displaying the crucifix in Italian public schools as an instance of Christian secularism because some of the actors

---

28 On the Italian Lega Nord party, see Andrea Molle, “Religion and Right-wing Populism in Italy: Using ‘Judeo-Christian Roots’ to Kill the European Union,” *Religion, State and Society* 47/1 (2019), 151–168. On the French Front National party, see Peter Davies, “The Front National and Catholicism: From Intégrisme to Joan of Arc and Clovis,” *Religion Compass* 4/9 (2010), 576–587.

29 Annalisa Frisina, “The Making of Religious Pluralism in Italy: Discussing Religious Education from a New Generational Perspective,” *Social Compass* 58/2 (2011), 271–284, at 272.

30 Roberta Medda-Windischer, “Militant or Pluralist Secularism? The European Court of Human Rights Facing Religious Diversity,” *Religion, State and Society* 45/3–4 (2017), 216–231, at 217.

31 Leora Auslander, “Bavarian Crucifixes and French Headscarves: Religious Signs and the Postmodern European State,” *Cultural Dynamics* 12/3 (2000), 283–309.

32 Luca Ozzano & Alberta Giorgi, “The Debate on the Crucifix in Public Spaces in Twenty-first Century Italy,” *Mediterranean Politics* 18/2 (2013), 259–275.

involved in the case discursively framed the crucifix as also holding secular values.<sup>33</sup>

It is important to note that European bans on religious symbols may also involve Jewish garments, but there are no ECtHR judgments about Judaism. Hence, we talk about ‘Christian secularism,’ even though ‘Judeo-Christian secularism’ may be an alternative term to describe the phenomenon. Elizabeth Shakman Hurd employs ‘Judeo-Christian secularism’ to analyze how Judeo-Christian values are the common ground upon which so-called Western democracies lie.<sup>34</sup> As opposed to French *laïcité*, Judeo-Christian secularism does not entail a sharp separation between church and state but rather includes certain religious values in the public discourse and describes secularism as something peculiar to ‘the West.’ It is entirely possible that the lack of ECtHR judgments about Judaism is also due to this understanding of Judaism as compatible with secularism. However, since our sample only includes Christian symbols, the article will focus on Christian values.

Europe appears to be increasingly preoccupied with the visibility of non-Christian religions rather than undergoing a linear process of religious decline. This often involves secularist ideologies that implicitly marginalize non-Christian symbols while considering Christianity compatible with state secularism. Through the lens of Christian secularism, and with attention to gender and postcolonial approaches to secularization, we will analyze judgments of the ECtHR to understand how different religions in Europe, and Islam and Christianity in particular, are discursively framed as occupying different positions in the European public sphere.

### 3 Methodology: Analyzing ECtHR Cases about Religious Symbols

We performed a critical discourse analysis (CDA) on all the cases ruled on by the ECtHR (N=27) about religious symbols. We will first address the ECtHR’s role in interpreting the notion of ‘religious freedom.’ Then, we will present our sample and describe the religious symbols they are concerned with. Finally, we will explain how we applied CDA to case law and why this approach can prove more useful than traditional legal analysis to look at power imbalances in discourses about religion.

33 Elayne Oliphant, “The Crucifix as a Symbol of Secular Europe: The Surprising Semiotics of the European Court of Human Rights,” *Anthropology Today* 28/2 (2012), 10–12.

34 Elizabeth Shakman Hurd, *The Politics of Secularism in International Relations* (Princeton: Princeton University Press, 2007).



### 3.1 *The European Court of Human Rights and Religion*

The ECtHR applies the European Convention on Human Rights, an international treaty binding the forty-seven member states of the Council of Europe, including the twenty-seven member states of the European Union and twenty other countries. All the decisions discussed in this article were handed down by the ECtHR, which mostly adjudicates cases brought by individuals against the states parties to the European Convention, after such individuals have unsuccessfully sought protection for their human rights before domestic courts. The ECtHR often grants a wide ‘margin of appreciation’ to the states parties, meaning that it allows them ample discretion in the application of human rights in specific cases. The cases are judged by a Chamber of the ECtHR (composed of seven judges). If the applicant or defendant state appeals a chamber judgment, the case is also judged by a Grand Chamber (seventeen judges), and if a case raises a particularly serious question, it is ruled directly by a Grand Chamber. In our sample, the case *S.A.S.* falls in the latter category, while the cases *Lautsi* and *Leyla Şahin* fall in the former category, and, therefore, we analyzed both the Chamber and the Grand Chamber decisions (Table 1). The judges have different nationalities, and the composition of the court is never the same in different cases (except for the cases ruled on the same day, as shown in Table 1).

The ECtHR case law about religious symbols primarily concerns the interpretation and application of Article 9 of the European Convention on Human Rights.<sup>35</sup> According to this provision, everyone has the right to have or change a religion or belief (so-called *forum internum*), as well as the right to “manifest” religion or belief (so-called *forum externum*). Article 9 does not define ‘religion’ or ‘belief,’ but the ECtHR understands ‘belief’ broadly, as including not only established religions but also deeply held convictions such as pacifism or veganism. The case law of the ECtHR, discussed below, shows that the use of religious ‘symbols’ (defined as such in the judgments) may constitute a form of manifestation of religion, within the meaning of Article 9, para. 2, ECHR. By placing restrictions on the use of religious symbols, a state interferes with the manifestation of freedom of religion or belief. Such an interference may be compatible with the ECHR, but only under the conditions imposed by Article 9, para. 2: any restriction to the freedom to manifest religion or belief must be prescribed by law and be “necessary in a democratic society,” in the interests of

---

35 In some cases, the ECtHR was called to interpret other provisions, notably Article 2 of Protocol no. 1 to the ECHR (on the Right to Education). The application of this provision, at any rate, raises interpretative issues comparable to those concerning Article 9 ECHR and may lead to the development of similar discourses.

TABLE 1 Case law analyzed

Applicant	Respondent State	Date (dd/mm/yy)	App. No(s)	Symbol	Religion	Gender of the applicant	ECtHR decision
Dahlab	Switzerland	15/02/2001	42393/98	Veil	Islam	Female	Against the applicant
Leyla Sahin (Chamber)	Turkey	29/06/2004	44774/98	Veil	Islam	Female	Against the applicant
Phull	France	11/01/2005	35753/03	Turban	Sikhism	Male	Against the applicant
Leyla Sahin (Grand Chamber)	Turkey	10/11/2005	44774/98	Veil	Islam	Female	Against the applicant
Kurtulmus	Turkey	24/01/2006	65500/01	Veil	Islam	Female	Against the applicant
Köse et al.	Turkey	24/01/2006	26625/02	Veil	Islam	Female	Against the applicant
El Morsli	France	04/03/2008	15585/06	Veil	Islam	Female	Against the applicant
Mann Singh	France	13/11/2008	24479/07	Turban	Sikhism	Female	Against the applicant
Dogru	France	04/12/2008	27058/05	Veil	Islam	Female	Against the applicant
Kervanci	France	04/12/2008	31645/04	Veil	Islam	Female	Against the applicant
Bayrak	France	30/06/2009	143308/08	Veil	Islam	Female	Against the applicant
Aktas	France	30/06/2009	43563/08	Veil	Islam	Female	Against the applicant
Gamaleddyn	France	30/06/2009	18527/08	Veil	Islam	Female	Against the applicant
Ghazal	France	30/06/2009	28134/08	Veil	Islam	Female	Against the applicant
Singh R.	France	30/06/2009	27561/08	Turban	Sikhism	Male	Against the applicant
Singh J.	France	30/06/2009	25463/08	Turban	Sikhism	Male	Against the applicant
Arslan et al.	Turkey	23/02/2010	41135/98	Turban	Aczimendi tarikatı (Islamic group)	Male	In favor of the applicant
Lautsi et al. (Chamber)	Italy	03/11/2009	30814/06	Crucifix	Christianity (applicant is atheist)	Female	In favor of the applicant
Lautsi et al. (Grand Chamber)	Italy	18/03/2011	30814/06	Crucifix	Christianity (applicant is atheist)	Female	Against the applicant
Eweida	UK	15/01/2013	48420/10	Crucifix (necklace)	Christianity	Female	In favor of the applicant

public safety, public order, health, morals, or for the protection of the rights of others.<sup>36</sup>

As Article 9, para. 2, ECHR is formulated in general terms, its practical application may raise interpretative issues. The European Court of Human Rights

<sup>36</sup> For the quotes, refer to fn. 3.

is called in particular to determine whether the prohibition (or imposition) of religious symbols may be ‘necessary’ in a ‘democratic’ society to protect precise values such as ‘public order,’ ‘morals,’ or the ‘rights of others.’ In the interpretation of these concepts, the European Court of Human Rights developed discourses, which evolved in time, and which we will analyze in the following sections.

The ECtHR adopts its judgments by majority. In some cases, a minority of judges may disagree with the majority decision and write a dissenting opinion, which we will not analyze in this article. While dissenting opinions show the heterogeneity of judges’ views, we focus on the judgments of the ECtHR because they are binding (unlike dissenting opinions) and more likely to influence the solution of subsequent cases.

### 3.2 *Sample: ECtHR Case Law and Religious Symbols*

We analyzed the total corpus of ECtHR case law on religious symbols, which are summarized and referenced in Table 1. We did not analyze: *Çağlayan v. Turkey* (2008) and *Edidi v. Spain* (2016) because the applicants were ruled against for procedural reasons; *Araç v. Turkey* (2006) and *Tandogan v. Turkey* (2007) because they merely restate the case law; and *Sodan v. Turkey* (2016) because it was not the applicant, but his wife, who was wearing a religious symbol. Moreover, we did not analyze the decisions of the now-abolished European Commission of Human Rights.

The majority of the cases involve applicants who are Muslim (a total of twenty, which makes more than two-thirds of the sample), but there are also Sikh and Christian applicants; in *Lautsi*, the applicant was an atheist and the symbol in question was Christian. As already mentioned, there are no cases involving other religions, such as Judaism. The applicants come from eight different countries, with a predominance of cases from places, such as Turkey and France, where bans against the wearing of religious symbols existed at the time of the relevant facts.

As can be seen from Table 1, the majority of the cases regards Muslim women wearing veils, which also explains why the applicants are predominantly female (N=23). In talking about religious symbols, we chose to use the terminology that the ECtHR employs. The term ‘veil’ generically indicates women that cover their hair, in some cases with a headscarf and in others with a hat or a bonnet. There is one case, *Hamidovic v. Bosnia*, of a Muslim man wearing a skullcap. Some cases involve the female full-face veil (generally the niqab). The cases about turbans regard Sikh men, except for the *Arslan v. Turkey* case, which regards the attire of male members of the Muslim-inspired group

Aczimendi Tarikatı that included a turban. The *Lautsi v. Italy* case is the only one that does not concern objects worn by individuals, as it is about Catholic crucifixes hanging from the walls of a public school. Two other cases involve Christian women wanting to wear a necklace with a cross in the workplace.

Some cases are formally separate, but their text is identical or extremely similar because they were decided the same day, by the same judges, and the applicants had the same claims. For instance, the cases of *Bayrak*, *Aktas*, *Gamaleddyn*, *Ghazal*, *Singh R.*, and *Singh J.* all involve French high-school students, either Muslim or Sikh, who were prevented from attending public school for wearing religious headcovers. In these cases, we checked the cases for differences and coded the text only once.

Cases can have a length between four and sixty pages, and they contain several sections. Even though we read them all in entirety, we focused our analysis on the sections where the ECtHR explains its decision (generally titled “The Law”). The cases are written either in English or French, and we read them in their original language. Quotes in this article have been translated by the authors from French to English when necessary. The italics in the quotes have been added by the authors.

### 3.3 *Critical Discourse Analysis and ECtHR Case Law*

In analyzing ECtHR cases about religious symbols, we wanted to go beyond the court’s legal reasoning and discover which discourses support certain decisions. After an in-depth reading of the selected sections of the cases, we employed the program Atlas.ti to create thematic coding categories to find which notions were more recurrent within the cases and to establish patterns and similarities among the cases (Table 2). We found 142 initial codes that we afterward grouped in fourteen thematic categories, summarized in Table 2. Then, we performed a critical discourse analysis to understand how these themes are discursively framed and connected to the ECtHR’s expressions of religious and secular values.

We chose CDA as a method of analysis because we want to understand how linguistic nuances in the cases give indications of deeply ingrained ideologies that mirror societal values, as discourse gives insights into hegemonic and non-hegemonic meanings.<sup>37</sup> For example, CDA can be used to analyze populist discourses that employ xenophobic and Islamophobic tropes in political communication or policy papers about migrants and people belonging to

---

37 Norman Fairclough, “Critical Discourse Analysis and Critical Policy Studies,” *Critical Policy Studies* 7/2 (2013), 177–197.

TABLE 2 Themes

<b>Categories</b>	<b>Themes</b>
<b>State and society</b>	Impact of the symbol (on society)
	National identity
	Public function and space
	Public order and security
	Public safety
	Rights of others
	Tolerance and pluralism
	Vulnerable people
<b>Circumstances of the applicant</b>	Gender
	Motivations for using the symbol
	Impact of the ban (on the applicant)
	Extremism
<b>Need to compromise between applicant and state</b>	

gender, sexual, and ethnic minorities.<sup>38</sup> CDA has also been found to be useful in understanding concepts that are socially constructed within legal documents.<sup>39</sup> Lourdes Peroni highlights that the ECtHR tends to depict minorities,

- 38 See, respectively, Kurt Sengul, "Critical Discourse Analysis in Political Communication Research: A Case Study of Right-wing Populist Discourse in Australia," *Communication Research and Practice* 5/4 (2019), 1–17; and Paola Degani & Cristina Ghanem, "How Does the European Union Talk about Migrant Women and Religion? A Critical Discourse Analysis of the Agenda on Migration of the European Union and the Case Study of Nigerian Women," *Religions* 10/1 (2019), 1–19. <https://www.mdpi.com/2077-1444/10/1/27> (accessed 3 June 2021).
- 39 Johanna Niemi-Kiesiläinen, Päivi Honkatukia, & Minna Ruuskanen, "Legal Texts as Discourses," in: Asa Gunnarsson & Eva-Maria Svensson (eds.), *Exploiting the Limits of Law: Swedish Feminism and the Challenge to Pessimism* (Milton Park: Routledge, 2016), 69–88.

such as Muslim women, Sikhs, and Roma Gypsies, in negative terms through stereotypes, generalizations, and essentializations.<sup>40</sup> For example, in exploring the cases of *Leyla Şahin v. Turkey* and *Dahlab v. Switzerland*, which we also analyze in our sample, Peroni finds that the ECtHR often puts more emphasis on the action of wearing a veil (referring to it as the “the wearing of the [Muslim] headscarf”) rather than the agency of the woman wearing it. Furthermore, Peroni notes, the veil is often connected to terms such as “proselytizing,” while the Catholic crucifix was described in *Lautsi* as being “passive.”<sup>41</sup> These linguistic nuances show that legal texts are not necessarily neutral but reflect certain ideologies and values.

Drawing from the work of Peroni and starting from the premise that some European practices and policies may perpetuate the aforementioned ideology of Christian secularism, CDA helps us pay attention to language nuances that indicate power (im)balances concerning gender and religious belonging. Peroni’s analysis focused on a mix of cases regarding religious and cultural practices, as well as gender and sexuality, addressing four judgments. In contrast, we consider decisions dealing specifically with religious symbols, and our analysis, the findings of which are explored in the next section, systematically explores the entire ECtHR case law in this area.

#### 4 ECtHR on Religious Symbols: Discourses and Changes

The decisions of the ECtHR about religious symbols, summarized in Table 1, suggest that the general tendency is for the court to rule against applicants wishing to display religious symbols, but some patterns urge further investigation. First, when cases regard certain countries, such as France, the applicants always lose. This can be explained by the fact that the ECtHR tends to take into account the ‘margin of appreciation’ and, therefore, acknowledges the strict enforcement of *laïcité* in France (see the theme ‘national identity’ in Table 2). Second, out of the five cases in which symbols were allowed, two involve Christian symbols—*Lautsi v. Italy* (2011) and *Eweida v. UK* (2013)—while the ECtHR generally rules against applicants wishing to wear veils or turbans. Third, there are only two cases involving Muslim symbols in which the applicants are men—*Arslan* (2010) and *Hamidovic v. Bosnia & Herzegovina* (2017),

40 Lourdes Peroni, “Religion and Culture in the Discourse of the European Court of Human Rights: The Risks of Stereotyping and Naturalising,” *International Journal of Law in Context* 10/2 (2014), 195–221.

41 *Ibid.*, 204 and 212.

and they both won their cases. Lastly, the two most recent cases—*Hamidovic* and *Lachiri v. Belgium* (2018)—were ruled on in favor of the applicants. These observations suggest that there is a need to understand the discursive differences of the ECtHR about Christianity and Islam and its narratives about gender and to analyze how case law has changed over the years.

Our analysis highlights some dominant and recurrent themes in the ECtHR case law, summarized in Table 2. As the table shows, there are three main categories: discourses that refer to state and society; discourses about the applicant; and discourses about compromises between the applicant and the state. In the following sections, we will analyze such discourses and establish a comparison between ECtHR narratives about Islam and Christianity. Then, we will describe how ECtHR discourses about religious symbols change over time, focusing on Islam.

#### 4.1 *ECtHR Discourses about Religious Symbols*

The analysis revealed that the ECtHR tends to employ different narratives when it comes to Christian and non-Christian symbols, the Muslim veil in particular. This tendency is exemplified by *Dahlab v. Switzerland* (2001), a case in which a Muslim teacher was prevented from wearing a veil in the public school she worked for. The ECtHR described the hijab as a “powerful external symbol” and showed a preoccupation with its potential negative impact on vulnerable people, i.e., the young pupil who can be easily influenced.<sup>42</sup> The case was framed as follows:

In those circumstances, it *cannot be denied outright* that the wearing of a headscarf might have some kind of *proselytising effect*, seeing that it appears to be *imposed on women* by a precept which is laid down in the Koran and which, as the Federal Court noted, is *hard to square with the principle of gender equality*. It therefore appears difficult to reconcile the wearing of an Islamic headscarf with the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society must convey to their pupils.<sup>43</sup>

As the quote suggests, the symbol was intrinsically attributed proselytizing effects. The ECtHR did not have actual proof of her proselytizing in the classroom (apart from claiming that it “cannot be denied outright”) but seemed to

<sup>42</sup> ECtHR, *Dahlab v. Switzerland* (2001), decision of 15 February 2001, application no. 42393/98.  
<sup>43</sup> *Ibid.* All emphases in the case quotes are added. They are meant to underscore specific terminology used in the cases.

consider the symbol per se as incompatible with pluralist and secular values. The ECtHR also mentioned gender (see Table 2) by claiming that the practice of the veil “is hard to square with the principle of gender equality” but did not mention the applicant’s motivations for wearing the headscarf.

A similar case is that of *Leyla Şahin v. Turkey* (2004/2005), relating to a student who was prevented from wearing the Muslim veil at a university. In *Leyla Şahin*, the ECtHR accepted that the wearing of the veil runs counter to “equality before the law of men and women” and this garment may consequently be banned to “protect the rights and freedom of others.”<sup>44</sup> However, in this case the ECtHR also presented the prohibition of wearing the headscarf as linked to “public order” (see Table 2) because this symbol was allegedly connected with religious fundamentalism in Turkey, regardless of the claims or the practices of the person wearing it.<sup>45</sup>

The analysis of *Dahlab* and *Leyla Şahin* confirms the findings of Peroni that the ECtHR’s language attaches negative judgments to the Muslim veil. These two are not isolated cases: our analysis revealed that the ECtHR discourses are largely consistent when it comes to the Muslim veil. An example is the *Köse v. Turkey* case (2006), concerning schoolgirls wishing to wear the hijab in a Turkish school; while they attended a Koranic school inspired by Muslim principles, they were prevented from wearing religious symbols because of the Turkish law on secularism. In *Köse*, the ECtHR referred to *Leyla Şahin* and the case law of Turkish courts, according to which:

[A]llowing pupils to wear the Islamic headscarf is *incompatible with the principle of secularism* since the headscarf is in the process of becoming the symbol of a vision that is contrary to *women’s freedom* and the *fundamental principles*.<sup>46</sup>

In this case, the prohibition of the hijab was also justified on the basis of secularism and gender equality. The symbol was also generically considered against “fundamental principles,” an expression that may stress the incompatibility of the veil with democratic values. The ruling continued by mentioning pluralism (Table 2), referring approvingly to the case law of the Turkish Constitutional Court, whereby in a country “where the vast majority of the population

44 ECtHR (Chamber), *Leyla Şahin v. Turkey*, judgment of 29 June 2004, application no. 44774/98, paras. 108–110; and ECtHR (Grand Chamber), *Leyla Şahin v. Turkey*, judgment of 10 November 2005, application no. 44774/98, paras. 115–116.

45 Ibid.

46 ECtHR, *Köse and others v. Turkey*, decision of 24 January 2006, application no. 26625/02.



adhered to a specific religion,” the manifestation of rights and symbols of that religion “might put pressure on pupils who either did not practise that religion or adhered to another religion.”<sup>47</sup> In this case, the Muslim veil was considered as being “ostentatious” and exerting pressure on women not in spite of but precisely because Turkey is a predominantly Muslim country.<sup>48</sup>

Another similar case is *Kurtulmuş v. Turkey* (2006), regarding a university professor made to resign from her post because she wore a Muslim headscarf. The ECtHR mentioned *Dahlab* and ruled against the applicant to protect “neutrality” and “secularism” (Table 2).<sup>49</sup> These cases show how the language used in *Dahlab* and *Leyla Şahin* arguably influenced later case law and that the prohibition of the hijab was justified for various reasons, including its alleged incompatibility with secularism and pluralism, its intrinsic proselytizing character, and the threats it poses to gender equality.

While such discourses applied to the Muslim veil, the ECtHR treated Christian symbols differently. For instance, in the *Lautsi v. Italy* (2009/2011) case, an atheist mother asked for the Catholic crucifix to be removed from the walls of public schools. The ECtHR Chamber initially described the crucifix as a “powerful external symbol” through a direct quote from *Dahlab*.<sup>50</sup> However, the ECtHR Grand Chamber overruled the Chamber, by writing that the crucifix on a wall is essentially a “passive symbol,” in contrast with the Muslim veil previously described as a “powerful external symbol.”<sup>51</sup> In *Lautsi*, the Grand Chamber of the ECtHR used a language that does not imply specific supporting evidence, alleging that “it cannot reasonably be asserted” that the crucifix does or does not have an influence on pupils.<sup>52</sup> This statement may be contrasted with the court’s case law on the Islamic veil discussed above, in which the Court found that it “cannot be denied outright” that the veil has a proselytizing effect. It seems that veiled applicants, such as *Dahlab*, need somehow to prove that the symbol is not harmful to pupils, while the crucifix is considered harmless and as not effecting schoolchildren until proven otherwise.

The different discursive production about Christian symbols is also evident from the *Eweida v. UK* (2013) case, in which a Christian woman working for British Airways wished to wear a necklace with a cross against company

47 Ibid.

48 Ibid.

49 ECtHR, *Kurtulmuş v. Turkey*, decision of 24 January 2006, application no. 65500/01.

50 ECtHR (Chamber), *Lautsi v. Italy*, judgment of 3 November 2009, application no. 30814/06, para. 54.

51 ECtHR (Grand Chamber), *Lautsi v. Italy*, judgment of 18 March 2011, application no. 30814/06, para. 72.

52 Ibid., para. 66.

policies. This resembles the *Lautsi* case because the ECtHR described Eweida's cross as "discreet."<sup>53</sup> Not only is the symbol not "powerful" or "ostentatious," but the motivations and needs of the applicant (see Table 2) are also taken into account. The ECtHR wrote:

On one side of the scales was Ms Eweida's *desire* to manifest her religious belief. As previously noted, this is a fundamental right: because a healthy democratic society needs to tolerate and sustain pluralism and diversity; but also because of the value to an individual who has *made religion a central tenet* of his or her life to be able to *communicate* that belief to others. On the other side of the scales was the employer's wish to project a certain corporate image.<sup>54</sup>

The quote shows the reasoning behind the claim of the applicant and that of the company ('need to compromise between applicant and state,' Table 2). While the company's motivations were only briefly mentioned ("project a certain corporate image"), Eweida's "desire" to manifest her religious beliefs was considered an important right of the applicant, as she "made religion a central tenet" of her life. In addition to being "discreet," Eweida's cross was also described as being able to "communicate" a belief (and not as "proselytizing"). It seems remarkable that the court ascribed a "proselytizing" intent to Muslim women who intended to comply with a religious requirement (*Dahlab*) but not to a Christian woman who expressly intended to "bear witness" (as explicitly written in the *Eweida* judgment) to her faith. Be that as it may, the court concluded in *Eweida*, thus echoing *Lautsi*, that there was "no evidence" that the crucifix worn by the applicant had any negative impact on her employer brand.<sup>55</sup>

One may note that the case *Chaplin v. UK* (2013), judged jointly with *Eweida*, resulted in a Christian applicant being denied the right to wear a crucifix at work. Chaplin, a nurse who wished to wear a necklace with a cross, was prohibited to do so because it did not comply with the safety rules of the hospital. *Chaplin*, at any rate, does not contradict *Eweida*: the ECtHR reasoning exclusively concerns safety measures (see Table 2) and does not mention secularism, pluralism, or other themes that are recurrent for the other analyzed cases.

The comparisons between discourses about Christian and Muslim symbols show how the ECtHR seems to consider Islam as the 'other' to European

53 ECtHR, *Eweida and others v. UK*, judgment of 15 January 2013, applications nos. 48420/10, 59842/10, 51671/10, and 36516/10, para. 94.

54 Ibid.

55 Ibid.

culture by offering a monolithic view of the Muslim veil and by attributing a set of meanings to it implicit in its own visibility. The applicants who wear the veil are seldom subjects of the narratives, and their needs and motivations are overlooked to privilege the protection of society and national identities. In contrast, the Christian cross is allowed a nuanced set of meanings, and it is not deemed as incompatible with secularism, and the applicants wishing to wear this symbol are accorded the agency to explain their reasons and their needs. Even though the applicants of the aforementioned cases are all women, Muslim women are accorded less agency than non-Muslim women to determine the meanings of their garments.

#### 4.2 *Evolution of ECtHR Discourses*

Even though the ECtHR's discourses about Muslim symbols tend to offer a negative portrayal of Islam, they become more nuanced over time, and certain themes have been abandoned over the years. This is exemplified by the cases of *Bayrak*, *Aktas*, *Gamaleddyn*, *Ghazal*, *Singh R.*, and *Singh J* (2009), involving pupils wearing religious symbols in French public schools. These decisions are similar to those previously described because they still describe the veil (or, in the case of *Singh R.* and *Singh J*, the Sikh turban) as "ostentatious" and against the principle of state secularism. However, in these cases, the court did not consider it as having a "proselytizing" effect and did not make explicit references to gender.

The case *S.A.S. v. France* (2014), in which an anonymous applicant wished to wear a full-face veil (niqab) in public places contrary to the French ban, shows a further evolution in ECtHR discourses about Islam. In this case, the ECtHR did not describe the veil as "proselytizing" or "ostentatious" and, in contrast to the previously mentioned cases, showed concern for the impact of the ban on the applicant's private life. The issue of gender was raised, but, according to the court, "a State Party cannot invoke gender equality in order to ban a practice that is *defended by women*—such as the applicant."<sup>56</sup> While Dahlab and Leyla Şahin also claimed they chose to wear the veil (which was described, nonetheless, as "imposed"), this is the first case in which the ECtHR seemed to take into consideration Muslim women's agency in choosing to wear a symbol. The ECtHR did not mention extremism or public order. The text also points out that women wearing the full-face veil in France are a minority and, therefore, somehow less visible than hijab-wearing women. This bears some parallelism with another case, *Arslan and Others v. Turkey* (2010), in which the applicants belonged to a small Muslim-inspired religious group that Turkish authorities

<sup>56</sup> ECtHR, *S.A.S. v. France*, judgment of 1 July 2014, application no. 43835/11, para. 119.

defined as a “curiosity,” as noted by the ECtHR.<sup>57</sup> The non-threatening character of this small religious group possibly led the court to find that Turkey had violated the rights of the applicants in *Arslan and Others*. By contrast, the court held that France did not violate S.A.S.’s rights since the niqab is incompatible with the ‘rights of others’ (see Table 2) to the extent that it challenges “living together”:

The Court is therefore able to accept that the barrier raised against others by a veil concealing the face is perceived by the respondent State as breaching the *right of others* to live in a space of socialisation which makes *living together* easier.<sup>58</sup>

Despite negatively considering the full-face veil as a “barrier,” S.A.S. is a rare case in which a Muslim applicant’s needs and agency are taken into account, not dissimilarly to the Christian *Eweida* case. This approach also bears similarities with *Hamidovic v. Bosnia & Herzegovina* (2017), in which a Muslim man refused to remove his skullcap while at a tribunal. There is no mention of gender or public order, even though the applicant belonged to a group “opposing the concept of a secular State” and participated in a trial for religious-inspired terrorism.<sup>59</sup> In *Hamidovic*, the ECtHR mentioned the specific characteristics of Islam that made the applicant wear a religious garment all the time. It wrote:

The Court sees *no reason to doubt* that the applicant’s act was inspired by his *sincere religious belief* that he must wear a skullcap at all times, without any hidden agenda to make a mockery of the trial, incite others to reject secular and democratic values or cause a disturbance.

The text proceeds by explaining that the applicant had a respectful attitude and was willing to comply with the requests of the court by testifying. While the viewpoints of Dahlab or Leyla Şahin were not fully acknowledged, the beliefs of Hamidovic were described as “importan[t] to an individual” and “sincere.” The ECtHR did not need proof of the sincerity of Hamidovic’s beliefs, as it saw “no reason to doubt” them, analogous to *Eweida*. The court’s approach in *Hamidovic* seems indeed inspired by an increased concern for religious

---

57 ECtHR, *Arslan and Others v. Turkey*, judgment of 23 February 2010, application no. 41135/98, para. 51. Translation by authors.

58 ECtHR, *S.A.S. v. France*, para. 122.

59 ECtHR, *Hamidovic v. Bosnia & Herzegovina*, judgment of 5 December 2017, application no. 57792/15, para. 39.

pluralism, as the ECtHR also writes that “authorities must not neglect the specific features of different religions.”<sup>60</sup>

*Hamidovic* was followed by another case dealing with a person wearing religious attire in a courtroom, *Lachiri v. Belgium* (2018). This is the only ECtHR case on religious symbols won by a Muslim woman and in which the court found that the Muslim veil did not threaten public order. However, in this case, the court did not refer either to the ‘sincerity’ or ‘importance’ of Lachiri’s beliefs and did not call for respect of the “specific features of different religions.”<sup>61</sup> Arguably, the case was won because of its similarities with *Hamidovic*, which probably made it difficult for the ECtHR to take a different decision. However, Hamidovic’s beliefs and needs are explored more at length, perhaps because of his being a man and wearing a garment (a skullcap) less diffused in Europe than the female veil or because the facts took place in a country (Bosnia and Herzegovina) in which there are no strict secularist policies.

While *S.A.S.*, *Hamidovic*, and *Lachiri* may indicate a partial change in the ECtHR’s discourses about Islam, the case of *Ebrahimian v. France* (2015), involving a social worker employed by a public hospital, suggests the opposite. Even if *Ebrahimian* comes after *S.A.S.* and only two years before *Hamidovic*, the ECtHR’s reasonings and language in these cases are quite different. Ebrahimian’s contract was not renewed because she insisted on wearing “a simple head covering” (“*une simple coiffe*”), which she claimed “was anodyne in appearance.” However, the ECtHR quickly assumed that the head covering “resembles a scarf or an Islamic veil” and considered it as a religious symbol incompatible with state secularism, taking away the applicant’s agency to define her own practices.<sup>62</sup> The ECtHR ruled against the applicant with the following motivation:

The Court observes that the applicant was not accused of acts of pressure, provocation, or proselytism to the patients or colleagues at the hospital. However, the wearing of her veil was considered an *ostentatious manifestation* of her religion that is incompatible with the neutrality required by public service.<sup>63</sup>

60 Ibid., para. 41.

61 For the quotes, see *ibid.*

62 ECtHR, *Ebrahimian v. France*, judgment of 26 November 2016, application no. 64846/11, paras. 38 and 46.

63 Ibid., para. 62.

In this quote, the headcover, while not considered as intrinsically proselytizing as in the *Dahlab* case, is described as “ostentatious.” The judgment proceeds by explaining that, even if the applicant did not actively exert pressure, the mere visibility of her bonnet compromised the right of the patients, who are potentially vulnerable people and belong to different religions. Even if the applicant did not employ the symbol to proselytize (or to explicitly show her faith, as *Eweida* was allowed to do), the perception that other people may have by looking at the symbol seems to determine its social impact.

Therefore, the ECtHR discourses about religious symbols changed in time, but they did not necessarily become more favorable towards Muslim symbols. In the earlier cases, such as *Dahlab* and *Leyla Şahin*, the veil was negatively associated with extremism and lack of gender equality, discourses that are progressively abandoned. While cases such as *S.A.S.* and *Hamidovic* show a concern for the applicants that make them somehow similar to *Eweida*, the *Ebrahimian* case allows for the prohibition of the Muslim headcover based on it being “ostentatious.” The reasons for this may be that *Ebrahimian* was not a “private citizen,” as the ECtHR describes *Hamidovic* and *Lachiri*, nor wearing her headcover in a public space, as in the case of *S.A.S.*, but a civil servant working for a state hospital.<sup>64</sup> As Table 2 suggests, ‘public function and space’ is a recurrent theme in the cases: when applicants are students or employees within public institutions, they need to adhere to secularism more strictly, to the extent that any visible expression of their (Muslim) faith is depicted as “ostentatious.”

## 5 Conclusion

The ECtHR issued several judgments about religious symbols that help us understand some perceived values about religion and secularism in Europe. We performed a critical discourse analysis on the totality of ECtHR cases on religious symbols (twenty-seven) and discovered that the judgments often employ different narratives when it comes to Christianity and Islam and that these narratives changed over time but without following a linear progression. In this study, we limited our focus on ECtHR cases about religious symbols; further discourse analyses may address the evolution of other strands of the ECtHR’s case law on religion and the role of judges’ dissenting opinions or

64 See ECtHR, *Hamidovic v. Bosnia & Herzegovina*, para. 40; and ECtHR, *Lachiri v. Belgium*, judgment of 18 December 2018, application no. 3413/09, para. 44. Translation by the authors.

look at the impact that these judgments have had on society at large by exploring how newspapers reported them. ECtHR cases about Muslim symbols are sometimes ruled on similarly to cases about other symbols, such as the Sikh turban, the presence in judicial cases of which could also be explored in future studies. As mentioned in the article, there are no ECtHR cases on Jewish symbols, but future studies about court cases and Judaism would add theoretical depth to the notion of 'Judeo-Christian secularism.'

The analysis allowed us to come to two conclusions. First, the ECtHR indirectly promotes and perpetuates the notion of Christian secularism by describing Christian symbols as compatible with secular values and non-Christian symbols as the 'other' of European culture. This is consistent with findings from previous literature, but we analyzed a larger sample and found that frequently mentioned cases (such as *Dahlab* and *Leyla Şahin*) establish discursive patterns recurrent in other cases rather than them being exceptions.<sup>65</sup> Furthermore, the CDA suggested that applicants are given different degrees of agency: as a general tendency, Christian women or Muslim men are given more agency in determining their practices than Muslim women. By applying a post-colonial and gender approach to the analysis of these results, we would argue that European secular policies do not necessarily account for the agency of people, such as Muslim women, who choose to wear certain garments in public spaces to comply with religious norms but not necessarily to proselytize.

Second, the ECtHR judgments seem to progressively change over time in offering more agency to Muslim applicants, but cases that occurred closer in time are not necessarily consistent in their narratives. The changes in discourses are arguably also connected to other factors, including the 'margin of appreciation' of the states, the circumstances under which the applicant displayed the symbol, and the alleged need to protect vulnerable people, such as children and hospital patients. Therefore, there are no indications that future cases will result in Muslim applicants winning more often. It also seems that the ECtHR is more favorable to symbols that only a small percentage of the population would wear and that might be considered unthreatening 'curiosities,' such as full-face veils and certain types of male headcovers. Nonetheless, our findings show ECtHR judgments change over time and are consistent with the findings of Adrian, who claims that more recent cases do not describe the veil as threatening but as an affront to secularism and social cohesion.<sup>66</sup> However, contrary to Adrian's claim, we would argue that the ECtHR implicitly endorses the idea that Muslim garments are incompatible with secularism

---

65 For previous findings, see Oliphant, "The Crucifix"; and Peroni, "Religion and Culture."

66 Adrian, "The Principled Slope."

throughout its case law. While in recent cases the court emphasizes the impact of Muslim symbols on society, in earlier judgments it also focused on the applicants' alleged expression of fundamentalist ideology or lack of gender equality.

Therefore, the analysis of ECtHR discourses about religious symbols over time suggests that the judgments are often based on values, such as Christian secularism, that may indirectly marginalize members of minorities, especially if they are women. European courts are increasingly called to take a position on the growing religious diversity of the European continent by adjudicating cases on contentious issues such as religious symbols. It would be advisable for the members of the ECtHR, and jurists at large, to interpret and apply the law by critically re-conceptualizing 'European' values and identities.

### References

- Adrian, Melanie, "The Principled Slope: Religious Freedom and the European Court of Human Rights," *Religion, State and Society* 45/3–4 (2017), 174–185.
- Al-Saji, Alia, "The Racialization of Muslim Veils: A Philosophical Analysis," *Philosophy & Social Criticism* 36/8 (2010), 875–902.
- Ardizzoni, Michela, "Unveiling the Veil: Gendered Discourses and the (In)visibility of the Female Body in France," *Women's Studies* 33/5 (2004), 629–649.
- Arweck, Elisabeth, "Religion Materialised in the Everyday: Young People's Attitudes towards Material Expressions of Religion," in: Tim Hutchings & Joanne McKenzie (eds.), *Materiality and the Study of Religion: The Stuff of the Sacred* (New York: Routledge, 2016), 185–202.
- Asad, Talal, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003).
- Auslander, Leora, "Bavarian Crucifixes and French Headscarves: Religious Signs and the Postmodern European State," *Cultural Dynamics* 12/3 (2000), 283–309.
- Brandt, Nella van den, "Secularity, Gender, and Emancipation: Thinking through Feminist Activism and Feminist Approaches to the Secular," *Religion* 49/4 (2019), 691–716.
- Casanova, José, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994).
- Casanova, José, "Rethinking Secularization: A Global Comparative Perspective (Essay)," *The Hedgehog Review* 8/1–2 (2006), 1–21.
- Chakraborti, Neil, & Irene Zempi, "The Veil under Attack: Gendered Dimensions of Islamophobic Victimization," *International Review of Victimology* 18/3 (2012), 269–284.



- Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS no. 005. see [www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) (accessed 25 May 2021).
- Davie, Grace, *Europe: The Exceptional Case. Parameters of Faith in the Modern World* (London: Darton, Longman & Todd, 2002).
- Davies, Peter, "The Front National and Catholicism: From Intégrisme to Joan of Arc and Clovis," *Religion Compass* 4/9 (2010), 576–587.
- Degani, Paola, & Cristina Ghanem, "How Does the European Union Talk about Migrant Women and Religion? A Critical Discourse Analysis of the Agenda on Migration of the European Union and the Case Study of Nigerian Women," *Religions* 10/1 (2019), 1–19. <https://www.mdpi.com/2077-1444/10/1/27> (accessed 3 June 2021).
- ECtHR, *Dahlab v. Switzerland* (2001), decision of 15 February 2001, application no. 42393/98.
- ECtHR (Chamber), *Leyla Şahin v. Turkey*, judgment of 29 June 2004, application no. 44774/98, paras. 108–110.
- ECtHR (Grand Chamber), *Leyla Şahin v. Turkey*, judgment of 10 November 2005, application no. 44774/98.
- ECtHR, *Köse and others v. Turkey*, decision of 24 January 2006, application no. 26625/02.
- ECtHR, *Kurtulmuş v. Turkey*, decision of 24 January 2006, application no. 65500/01.
- ECtHR (Chamber), *Lautsi v. Italy*, judgment of 3 November 2009, application no. 30814/06.
- ECtHR, *Arslan and Others v. Turkey*, judgment of 23 February 2010, application no. 41135/98.
- ECtHR (Grand Chamber), *Lautsi v. Italy*, judgment of 18 March 2011, application no. 30814/06.
- ECtHR, *Eweida and others v. UK*, judgment of 15 January 2013, applications nos. 48420/10, 59842/10, 51671/10, and 36516/10.
- ECtHR, *S.A.S. v. France*, judgment of 1 July 2014, application no. 43835/11.
- ECtHR, *Ebrahimian v. France*, judgment of 26 November 2016, application no. 64846/11.
- ECtHR, *Hamidovic v. Bosnia & Herzegovina*, judgment of 5 December 2017, application no. 57792/15.
- ECtHR, *Lachiri v. Belgium*, judgment of 18 December 2018, application no. 3413/09.
- European Court of Human Rights (ECHR), *European Convention on Human Rights*, Council of Europe, 1 June 2010, 1–62. [www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) (accessed 25 May 2021).
- Fairclough, Norman, "Critical Discourse Analysis and Critical Policy Studies," *Critical Policy Studies* 7/2 (2013), 177–197.
- Fokas, Effie, "Rights Not Working? Grassroots-level Impact of the European Court of Human Rights on Religion," *Social Compass* 67/2 (2020), 191–205.

- Fokas, Effie, & James T. Richardson, "The European Court of Human Rights and Minority Religions: Messages Generated and Messages Received," *Religion, State and Society* 45/3–4 (2017), 166–173.
- Franklin, M. I., "Veil Dressing and the Gender Geopolitics of 'What Not to Wear,'" *International Studies Perspectives* 14/4 (2013), 394–416.
- Friedman, Barbara, & Patrick Merle, "Veiled Threats: Decentering and Unification in Transnational News Coverage of the French Veil Ban," *Feminist Media Studies* 13/5 (2013), 770–780.
- Frisina, Annalisa, "The Making of Religious Pluralism in Italy: Discussing Religious Education from a New Generational Perspective," *Social Compass* 58/2 (2011), 271–284.
- Gorski, Philip S., et al., *The Post-secular in Question: Religion in Contemporary Society* (New York: New York University Press, 2012).
- Green, Todd, "Religious Decline or Religious Change? Making Sense of Secularization in Europe," *Religion Compass* 4/5 (2010), 300–311.
- Hancock, Claire, "Spatialities of the Secular: Geographies of the Veil in France and Turkey," *European Journal of Women's Studies* 15/3 (2008), 165–179.
- Howard, Erica, *Law and the Wearing of Religious Symbols in Europe* (New York: Routledge, 2019).
- Hurd, Elizabeth Shakman, *The Politics of Secularism in International Relations* (Princeton: Princeton University Press, 2007).
- Jiménez Lobeira, Pablo Cristóbal, "Veils, Crucifixes and the Public Sphere: What Kind of Secularism? Rethinking Neutrality in a Post-secular Europe," *Journal of Intercultural Studies* 35/4 (2014), 385–402.
- Kayaoglu, Turan, "Trying Islam: Muslims before the European Court of Human Rights," *Journal of Muslim Minority Affairs* 34/4 (2014), 345–364.
- Lyon, Dawn, & Debora Spini, "Unveiling the Headscarf Debate," *Feminist Legal Studies* 12/3 (2004), 333–345.
- Martínez-Ariño, Julia, "Governing Religious Diversity in Cities: Critical Perspectives," *Religion, State and Society* 47/4–5 (2019), 364–373.
- Medda-Windischer, Roberta, "Militant or Pluralist Secularism? The European Court of Human Rights Facing Religious Diversity," *Religion, State and Society* 45/3–4 (2017), 216–231.
- Molle, Andrea, "Religion and Right-wing Populism in Italy: Using 'Judeo-Christian Roots' to Kill the European Union," *Religion, State and Society* 47/1 (2019), 151–168.
- Müller, Tobias, "Secularisation Theory and Its Discontents: Recapturing Decolonial and Gendered Narratives. Debate on Jörg Stolz's Article on Secularization Theories in the 21st Century: Ideas, Evidence, and Problems," *Social Compass* 67/2 (2020), 315–322.

- Niemi-Kiesiläinen, Johanna, Päivi Honkatukia, & Minna Ruuskanen, "Legal Texts as Discourses," in: Asa Gunnarsson & Eva-Maria Svensson (eds.), *Exploiting the Limits of Law: Swedish Feminism and the Challenge to Pessimism* (Milton Park: Routledge, 2016), 69–88.
- Oliphant, Elayne, "The Crucifix as a Symbol of Secular Europe: The Surprising Semiotics of the European Court of Human Rights," *Anthropology Today* 28/2 (2012), 10–12.
- Ozzano, Luca, & Alberta Giorgi, "The Debate on the Crucifix in Public Spaces in Twenty-first Century Italy," *Mediterranean Politics* 18/2 (2013), 259–275.
- Peroni, Lourdes, "Religion and Culture in the Discourse of the European Court of Human Rights: The Risks of Stereotyping and Naturalising," *International Journal of Law in Context* 10/2 (2014), 195–221.
- Rasmussen, Susan J., "Re-casting the Veil: Situated Meanings of Covering," *Culture & Psychology* 19/2 (2013), 237–258.
- Sengul, Kurt, "Critical Discourse Analysis in Political Communication Research: A Case Study of Right-wing Populist Discourse in Australia," *Communication Research and Practice* 5/4 (2019), 1–17.
- Stolz, Jörg, "Secularization Theories in the Twenty-first Century: Ideas, Evidence, and Problems. Presidential Address," *Social Compass* 67/2 (2020), 282–308.
- Temperman, Jeroen, *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom* (Leiden: Martinus Nijhoff, 2012).
- Torpey, John, "A (Post-) Secular Age? Religion and the Two Exceptionalisms," *Social Research: An International Quarterly* 77/1 (2010), 269–296.