



## WHAT CAN FRANCE LEARN FROM THE CZECH REPUBLIC'S APPROACH TO THE ISSUE OF WEARING (ISLAMIC) RELIGIOUS SYMBOLS

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**Abstract.** The latest “(Anti)Separation Bill” in France stirred new waves of discussion and criticism. Given the fact that France and the Czech Republic are European secular states and members of the EU – with the former acting as a trendsetter and the latter being the second most agnostic state in the EU – this paper attempts to understand the path down which Europe is heading on the question of freedom of conscience, religion, and expression. The author examines the approach of the Czech Republic to the issue of wearing Islamic religious symbols through the prism of the Czech Supreme Court and EU experience in the European court of human rights in the fields of education and employment. The problems associated with the wearing of religious symbols, especially Islamic ones, as scarves for women that cover their heads (i.e., the hijab) have been relevant for the past few decades, and remain open questions even in democracies such as the EU member states. This paper will discuss the position of one secular state – the Czech Republic – through the case law in this area, as well as providing an overview through the decisions of the European Court of Human Rights in the cases of the EU member states. The aim of this article is not to compare political trends and judicial approaches between France and the Czech Republic, but rather to provide alternative approaches to the right to manifest religion as demonstrated by latest judgement of the Czech Supreme Court – a source of inspiration in the vein of the motto “Liberty, equality, fraternity”.

**Keywords:** human rights, the right to freedom of religion, religious symbols, ECtHR, Czech Republic, France’s separation bill

### Introduction

In the modern democratic world, freedom has become an indisputable milestone on which not only our entire understandings of civilization and the degrees of development of societies are based, but also our impressions of the countries that represent it. The slogan of Robespierre and the symbol of the French Revolution – “Liberté, égalité, fraternité” – runs like a red thread through all international legal acts, rooting the concept of fundamental human rights. However, even this recognizable motto has lately become controversial due to its use by French politicians and the provision of new laws that separate those who should or should not, according to politicians, fully enjoy human rights.

On April 11, 2021, the French Senate approved a toughened version of the controversial bill against separatism, or the “separatism bill” (Woods, 2021). This bill is accused of stigmatising Islam and has been discussed by lawyers and activists around the world. Whilst it is ostensibly aimed at “ensur[ing] respect for the principles of secularism and neutrality of public service” (Tidey, 2021), critics of the bill state that it expands the alleged principle of neutrality by forbidding not only civil servants but “all private contractors of public services” from sharing political opinions, or even wearing physical representations of their religion (Griffin, 2021; Yeung, 2021).

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Attitudes towards religious symbols differ, even across the EU member states. The reasons for these different approaches to regulation lie in different historical and political contexts, namely: the number of believers; the number of immigrants of a particular religion; their level of assimilation or integration into society; and many other factors.

In order to understand the path trodden by European states regarding freedom of religion, expression, and conscience, this article will examine the approaches of the European Court of Human Rights (ECtHR), as well as the attitude of particular states, to a number of cases which were heard in court. Alongside this analysis of key cases, the approaches of judicial bodies and the overriding political discourse in a secular state that is one of the most agnostic in the EU – the Czech Republic – will be considered. This consideration will provide a reflection on the recent restrictive laws in a state which represents the cradle of modern European democracy – France.

France, being the host-state of the largest Muslim population in Western Europe (approximately 8–10% of the population of France; US Department of State [2010]), can hardly be compared with the Czech Republic regarding its religious – specifically, Muslim – community, especially in regard to the coherency of such a religious community given the quantity of Muslim immigrants in France. Moreover, the legal system in France is established in a different way than in the Czech Republic, and there are also differences in the relationship between state and religion. The aim of this paper is not to compare these states either in terms of their statistical and historical data or their approaches to such incomparable situations, but rather to provide alternative views on or approaches to equitable treatment and the right to manifest one’s religion through the wearing of religious symbols – not least since France is always considered to be somewhat strict in regard to its attitude to Islamic religious symbols. In addition, legislation prohibiting the use of religious symbols by schoolchildren and students can scarcely be found almost anywhere in Europe, except for in France.

This article will be structured as follows. In the first chapter, the approach of the ECtHR to the issue of the manifestation of religion through the wearing of religious symbols in places of employment or education will be discussed. In the second chapter, an overview of the French approach to wearing Islamic religious symbols will be provided. In the third chapter, discussion will be followed by a summation of the approach of the Czech Republic to this issue, including its judicial bodies, the opinions of official authorities, and political trends.

## **1. The ECtHR’s approach to the issue of wearing religious symbols**

Since time immemorial, spirituality – the religious principle of the individual – has been a cornerstone on the path to the perception and understanding of the human essence. Equally, religion has been the regulator of morality, culture, and even way of life for entire societies, and has formed the basis for the ethical and legal norms that have been adopted. Moreover, in the modern world there are entire countries where legislation is based on religious law. However, even in a secular state – the measure of which is democracy – one of the fundamental foundations of this system is freedom of religion.

Article 9 of the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms) proclaims that “Everyone has the right to freedom of thought, conscience and religion”, and further stipulates that this is not an unlimited or absolute right: “it 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 in the interests of the rights and freedoms of others”. In other words, everyone’s rights should be equally balanced, and discrimination of any kind should be avoided.

A person’s religion is manifested not only in their inner conviction, or hidden worship, but also through the wearing of various religious symbols. Nevertheless, not a single legislative document explains the meaning of religion, faith, or – crucially – a religious symbol. Evans (2009), in his “Manual on the Wearing of Religious Symbols in Public Areas”, speaks of a religious symbol as an “object of religious veneration”, considering all of

those things that form elements of the religious life of a believer and contribute to the exercise of freedom to practice their religion or belief in worship, teaching, and observance. This can include a wide variety of clothing, tools, writing materials, images, structures, and a variety of additional items that are difficult to specify. Evans stresses the importance of the subjective interpretation, that is, the individual's intention to wear or show elements of religion. In terms of law enforcement, some scholars believe that the freedom of a certain religion is related to a specific territory, while others deny territorial limits, calling them unjustified (Edge, 2006).

Fundamental rights and freedoms are enshrined in the constitution of each democratic state in different ways. In some states, a broad concept— such as freedom of conscience – is given, whereas in some the concepts of freedom of religion are more precisely defined. Regarding the European Union and its member states, along with their national legislation, the observance of the right to religion in the field of employment is regulated by Council Directive 2000/78/EC, which establishes a general framework for equal treatment in employment and occupation. Several EU member states have extended the basic principles of non-discrimination to the field of education in their national jurisdictions – for example, the Equality Act (2010) in the United Kingdom, the Allgemeines Gleichbehandlungsgesetz in Germany, or the Antidiskriminační zákon [Anti-Discrimination Act] (No. 198/2009 Coll.) in the Czech Republic.

National courts interpret legislative acts in their own ways, using an objective approach and taking into account the realities of the society to which the decision will be applied. In cases where all of the stages of the national courts have been applied and a satisfactory solution has not been achieved, the applicant has the right to seek the observance of their rights at the ECtHR.

In regard to non-EU member states, the ECtHR recognizes the legality of wearing symbols as a declaration of religious belief, as in cases such as *Moscow Branch of the Salvation Army v. Russia* (2007) or *Leyla Şahin v. Turkey* (2005). This was also clarified in the case of *Ahmet Arslan and Others v. Turkey* (2010), where the application of this right in public places was stressed, but not in public institutions as these are places where religious neutrality may take precedence over the right to practice one's religion.

However, the ECtHR cannot always satisfy an applicant's attempt to protect their fundamental rights. The international non-profit organization Human Rights Watch noted in its 2010 report (Human Rights Watch, 2010) that the ECtHR interprets the right of authorities to restrict the wearing of religious clothing by civil servants and in state institutions rather liberally. Thus, in the case of *El Morsli v. France* (2008), the court declared the applicant's complaints inadmissible. A Moroccan citizen who had married a French man was denied a French visa because she did not agree to remove her Islamic headscarf during an identity check in the presence of male employees at the French Consulate General in Marrakech. The court, in its inadmissibility decision, argued that the identification served the legitimate purpose of ensuring public safety, and that the applicant only had to take off her headscarf for a very short period of time.

The controversial decisions of the ECtHR in the field of employment are illustrated in the cases of *Eweida and Others v. United Kingdom* (2013) and *Chaplin v. United Kingdom*. In the first case, the court granted the claim of the applicant, a Christian woman employed by the private company British Airways, whose request to be allowed to wear a pectoral cross on a chain had previously been denied by her employers. According to the company's internal regulations, employees were not allowed to wear ostentatious jewellery, including religious symbols, but exceptions were made for representatives of other religions – such as Sikh employees wearing a turban and bracelet, or Muslim women wearing a hijab. As part of its analysis, the ECtHR stated that the conflicting interests in this case were not fairly balanced by the courts of the United Kingdom, since the freedom to express one's convictions in public is one of the fundamental rights necessary to ensure pluralism and diversity in a democratic society.

The ECtHR took the opposite position in the case of *Chaplin*, a nurse in a public hospital who also wanted to openly demonstrate her attitude towards her religion in her workplace by wearing a pectoral cross. The hospital

prohibited the wearing of any jewellery or religious symbols for reasons of hygiene and safety. However, the hospital made an exception for Muslim female employees; they could cover their hair with a sport hijab made of dense fabric that hugged their heads. In this case, the ECtHR did not find a violation of rights, since – in the analysis of proportionality – the religious freedom of the employee was less important than the hospital’s fear of non-compliance with the basic rules of safety and hygiene, as the pectoral cross might potentially come into contact with an open wound.

The difference between these cases is in the conflict of interests in the approach. The ECtHR put out a clear message in its decisions: that efforts to preserve pluralism and democracy should be within the limits that are permissible for others to express their beliefs openly. Limitations, however, may be acceptable where there is a threat to the health of third parties, which may well be assessed by national authorities on an individual basis. With regard to the educational sector, the situation is different – the court has in the past rejected applicants who tried to challenge bans on the wearing of turbans and headscarves by students and teachers in schools and universities (for example, the 2009 cases of *Aktas v. France*, *Bayrak v. France*, *Gamaleddyn v. France*, *Ghazal v. France*, *J. Singh v. France*, and *R. Singh v. France*).

Thus, in *Dogru v. France* (2009) and *Kervanci v. France* (2008) the ECtHR declared the complaints inadmissible, considering the domestic authorities’ conclusions on the inadmissibility of wearing an Islamic headscarf in physical education classes justified for health and safety reasons. A similar decision was issued by the ECtHR in 2009, ruling that interference with the freedom of students to express their adherence to religion was provided for by French law and pursued the legitimate aim of protecting the rights and freedoms of others and protecting public order, but also emphasizing the role of the state as a neutral and impartial creator of conditions for practicing various cults, religions, and beliefs.

The court’s position on the wearing of religious symbols by teachers is illustrated in the case of *Dahlab v. Switzerland* (2001). Here the applicant, who had converted to Islam, was a primary school teacher, and complained that her school’s administration had forbidden her from teaching lessons while wearing a headscarf. For several years prior to this, the applicant had been teaching her lessons while wearing a headscarf, and this did not cause any tangible inconvenience. In 2001, the ECtHR declared the complaint inadmissible, considering that there was a threat of proselytism since the applicant, as a state representative, was responsible for children aged four to eight, and schoolchildren of this age are more easily influenced than older students.

In accordance with court rulings on cases in the field of the wearing of religious symbols in educational institutions, the right to an individual’s access to education may be subject to certain restrictions imposed on this right by the state itself. At the same time, a contradiction exists between freedom of religion, the right of a parent to raise a child in accordance with their religious beliefs, and restrictions on the right to education within the framework of state policy. Trying to strike a balance between extremes, with discrimination on the one hand and proselytism on the other, the ECtHR imposes on the state the obligation to maintain neutrality in the conduct of religious policy.

## **2. The French approach to the issue of wearing religious symbols**

Following the direction of the ECtHR, which gives more freedom to states when regulating the right to manifest their religions, France – being a state based on the principle of secularism – applied its approach of the absolute liberation of public space from religious symbols. The French law, however, specifically targets the Muslim community rather than religious communities as a whole (Barnett, 2011).

France, being the host-state of the largest Muslim population in Western Europe (about 8-10% of the population of France; US Department of State [2010]), acts to protect its principles of secularism. For the past decade, it has been criticized for its approach in this regard – especially its attitude toward Islamic religious symbols covering a woman’s head and/or face, as it was the first EU country to ban the niqab in 2011. Although the debate has taken place over several decades (since at least 1989), in 2004 France passed a law banning the use of religious symbols

in public elementary and secondary schools, which was intended to neutralize the learning environment (Bowen, 2008b).

France applies the principle of *laïcité* or *status quo* in the relationship between the state and any organized religion in the educational sector, where students are supposed to leave their religious identity outside the classroom and participate in lessons as equal members of the French nation (Bowen, 2008a). In 2011, France continued to ban religious symbols, tackling mostly Muslim women by passing Law No. 2010-1192 prohibiting concealment of the face in a public space.

On the day that this law came into force, a complaint against it was immediately filed with the European Court of Human Rights (Willsher, 2014). In addition to the cases discussed in the first part of this paper, one of the more recognizable cases on this issue is *S.A.S. v. France* (2014), where the applicant complained that this law deprived her of the possibility of wearing a full-face veil in public. She alleged that there had been a violation of her freedom of thought, conscience, and religion, and of her right to respect for her private and family life, as well as alleging that she had been discriminated against. The ECtHR, however, unanimously ruled that the French law did not violate the European Convention, and confirmed its legitimate aim of ensuring the respect of the French principle of “living together”. As in the above-mentioned cases of *Dogru v. France* (2009) and *Kervanci v. France* (2008), the expulsion of students from school for wearing headscarves was justified for reasons of health and safety.

The law on banning religious symbols in public schools was confirmed by the French supreme courts (of both administrative and private law) in 2004, which ruled against Muslim students wearing headscarves.<sup>2</sup> In 2013, the French Council of State (the Administrative Supreme Court) supported the priority of public order over the freedom of religious expression.<sup>3</sup>

The Council of State also explained that the principle of secularity shall apply to public sector employees, leaving the decision with employers in the public sector.<sup>4</sup> However, a few years later a law was adopted in accordance with EU Directive 2000/78/EC86, providing the right for employers to prescribe the principle of neutrality and stipulate restrictions on the religious freedoms of employees.

Several protests were held as a result of the legislative and judicial approaches to regulating the wearing of Islamic religious symbols, and many international organizations criticized the French position – including the Office of the United Nations High Commissioner (OHCHR, 2018). Furthermore, scholars produced analyses confirming the adverse effect of these Laws on the community (Human Rights Watch, 2014; Abdelgadir & Fouka, 2020; Agha, 2015; Barnett, 2011; Beckford, 2016; Chin, 2019).

Notwithstanding public and academic opinions, ten years later the Law on the prohibition of niqabs and religious symbols in public places has received indirect amendment. The French approach to Islamic religious symbols in fact toughened, and in 2021 the so-called “anti-separatism bill” was approved – a bill directed against the alleged separatism of some parts of the population, aiming towards neutrality of public service (Tidey, 2021).

This document tackles the Muslim community in France, aiming at preventing its radicalization through deeper adaptation to the basic values of France and its social and political conditions. The strategy of the French government involves countering the attempts of radical Islamists to legalize the phenomenon of “political Islam”. Whilst the bill does not mention “Islamic or Muslim separatism” or “Islamist radicalism”, it was referred to in the government submission, as well as in a speech given by France’s president addressed to the Muslim population which even contained the phrase “Islamist radicalism”<sup>5</sup> (Wires, 2021).

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<sup>2</sup> Conseil d’Etat 2009 Melle Myriam A; Cour de cassation chambre civile, Audience publique du mardi 2005 N° de pourvoi: 02-19831.

<sup>3</sup> Conseil d’Etat, Etude demandée par le Défenseur des droits, adopted 19 December 2013.

<sup>4</sup> Conseil d’Etat, Etude demandée par le Défenseur des droits, adopted 19 December 2013.

<sup>5</sup> Speech of President Macron (Ministère de l’Europe et des Affaires étrangères, n.d.)

The bill confirms the importance of the principle of neutrality, amongst others, by prohibiting the wearing of Islamic religious symbols such as the hijab by the civil servants. Moreover, it extends this principle to the employees of private companies that are in contractual relations with the public sector. This bill is a topic of discussion for lawyers and activists around the world (Griffin, 2021; Yeung, 2021; Pistorius, 2021).

This legislative act could become a radical way of outlining the priority of the principle of secularism in the country. Moreover, it might even become a model for some EU member states to follow.

### **3. The Czech approach to the issue of wearing religious symbols**

The position of the Czech Republic on the wearing of religious symbols is noteworthy, given the fact that the state is a republic with a low number of people declaring that they belong to any religion or church community.<sup>6</sup> Only 10% of the respondents of a recent survey were adherents of Roman Catholicism; less than 1% Protestantism; and the remaining 9.4% adherents of other religions, most of which professed Czech Evangelical, Hussite, and Orthodox Churches. Less than 0.1% of the total population professed Islamic (including Czech converts), Jewish, or Buddhist beliefs (Czech Statistical Office, 2011, 2014). Within the European Union, the Czech Republic ranks second in terms of the non-believing proportion of the population; in other words, many consider themselves to be agnostic. However, in the Czech Republic, religious holidays such as Christmas or Easter are celebrated at the state level.

The issue of wearing a pectoral cross did not cause as much publicity as the wearing of Islamic headscarves has recently, due to the current political situation. Even though most cases of this nature do not reach court (due to the applicants' fear of the instability of political trends and the ambiguity of decisions), there are precedents – one of which finally received a decision in the Supreme Court of the Czech Republic.

The first of these high-profile media cases – which did not, however, reach court – involved a primary school teacher who converted to Islam in 2013 and came to class with her head covered (Beneš, 2013). The principal of her school received many complaints from parents demanding the dismissal of this teacher – however, the principal's position was supported by the law. Czech law does not address the question of whether wearing a religious symbol constitutes propaganda of religion, or proselytism, or whether a teacher's religion could be an obstacle in fulfilling their obligations.

In the Charter of Fundamental Rights and Freedoms of the Czech Republic (No. 2/1993 Coll.), which is part of the constitutional order of the Czech Republic, articles 15 and 16 expressly stipulate that “the state is based on democratic values and should not be bound by any ideology or religion”, which is interpreted by the Czech Constitutional Court as a guarantee of religious pluralism and tolerance.<sup>7</sup> Freedom of thought, conscience, and religion is guaranteed in Article 15 (1) of the Charter. Article 16(1) further establishes that “everyone has the right to freely exercise their religion or belief, otherwise individually or together with others, privately or publicly - in worship, teaching, religious activities or rituals”. All of these specifications of the Court stipulate that the right is “limited by law if the protection of the democratic system is necessary to ensure public safety, order, health and morality, or the rights and freedoms of others”. Issues that relate to the prohibition of discrimination are also raised in other legal acts, for example, in the Civil Code or Labour Code as well as in the Anti-Discrimination Act.

After weighing the importance of upholding fundamental rights, the principal decided to keep the teacher in her position and let her continue to teach. It is noteworthy that a similar position to that taken by the Czech Republic

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<sup>6</sup> Almost a third of all those who declared their affiliation to the faith chose the option of “Believers – not professing any church or religious society” (Czech Statistical Office, 2014).

<sup>7</sup> Decision of the Constitutional Court of the Czech Republic 1. 7. 2010, Pl. ÚS 9/07.

was taken by a neighboring state – Germany, whose federal constitutional court also faced a similar case in “*Kopftuch*” (“headscarf”).<sup>8</sup>

The decisions of the Czech school principal and the Federal Constitutional Court of Germany at the national level are indicative of how the state itself can, within the framework of international law, solve the problem, meeting the needs of humanism without following the decision of the ECHR in this case.

The second case relates to a medical student from Somali studying in a Czech secondary school. In 2012, a female student wearing an Islamic headscarf was indirectly discriminated against in a secondary education medical school. The girl was forbidden from coming to classes wearing a hijab, and was thus forced to leave the school. The school inspection supported the position of the school’s principal on the exclusion of the student. However, the Public Defender of Rights, or Ombudsman, of the Czech Republic – Anna Šabatová – became involved in the case, clarifying that “equal treatment does not mean equitable treatment. The ban on wearing a headscarf is fundamentally different for a believer and an unbeliever. The universal ban on wearing religious symbols is an interference with religious freedom, and this behaviour of the medical school and its principal violates anti-discrimination laws and the law on education”.<sup>9</sup> Emphasizing the importance of religious rights, she also cited a decree from the Ministry of Health that restricts the wearing of the hijab within the legitimate framework of ensuring health and safety, but nevertheless establishes the obligation to cover the hair for the same purpose.

Nevertheless, the school did not consider the suggestions and opinion of the ombudsman, and the student took the case to court. The case itself received broad media coverage, with a wave of action from Islamophobic supporters of the school principal. The student had to abandon her studies at the school after the principal invited her to take off her hijab for theoretical classes, although it was originally agreed by both sides that the hijab would be put aside only during nursing practice.

The student proceeded in the court, demanding an apology from the school and material compensation for the moral damage caused by discrimination. She was not able to succeed either in the first instance at the District Court, nor in the second instance at the Municipal Court of Appeal. However, the final decision of the Czech Supreme Court offered a different interpretation, whereby the court stated that banning the hijab from a school’s theoretical lessons had no legitimate aim.

In its judgment<sup>10</sup> (2019), the Supreme Court referred to international and national regulations. The court mentioned Article 9 of the European Convention on Human Rights, emphasizing that everyone has the right to freedom of religion and its manifestation, unless it is subject to the lawful limitations necessary in a democratic society in the interests of public security, public order, health or morals, or the rights and freedoms of others. In the national law of the Czech Republic, such an idea is stipulated in the Charter of Fundamental Rights and Freedoms. Further, the implementation of this right to freedom of religion regarding education and its provision is stipulated among others in the provisions of § 7 para. 1 of the Anti-Discrimination Act, which allows for different treatment in access to education and its provision on the grounds of religion if it is objectively justified by a legitimate aim.

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<sup>8</sup> In its judgment in this case, the German court noted that the Islamic headscarf can express respect for the wishes of the family, be a sign of abstinence, or an expression of cultural identity – not necessarily a political symbol of fundamentalism and opposition to Western values.

<sup>9</sup> In Czech, Anna Šabatová stated: “*Rovné zacházení neznamená vždy stejné zacházení. Pro osoby bez vyznání či osoby vyznávající náboženství s méně striktními pravidly není zákaz nosit pokrývku hlavy obecně důležitý. Pro muslimské ženy má však nošení muslimského šátku zásadní význam jako projev náboženského vyznání. Plošný zákaz tedy nepochybně představuje zásah do náboženské svobody a jednání ředitelky školy bylo v rozporu s antidiskriminačním i školským zákone ... Podle mého názoru není pochyb, že v rámci teoretického vyučování na zdravotnické střední škole neexistuje rozumný důvod zakazovat studentům nosit pokrývku hlavy, pokud jsou vyjádřením jejich náboženského vyznání.*” (The Ombudsman, 2014).

<sup>10</sup> Judgment No. 25 Cdo 348/2019, issued on November, 27, 2019  
[https://nsoud.cz/Judikatura/judikatura\\_ns.nsf/WebSearch/6645282FBB8A9222C125851800296BFE?openDocument&Highlight=0](https://nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/6645282FBB8A9222C125851800296BFE?openDocument&Highlight=0)

The Municipal Court, in its decision, implied the legitimate aim of protecting the rights and freedoms of others by banning the hijab, stressing that the school should be a neutral environment and utilizing a somewhat politicized reasoning. It stated that in the Czech Republic there is no legal basis for mandatory tolerance of religious symbols; that the use of such a symbol is contrary to the right to freedom of religion – i.e., freedom not to be exposed to these symbols – especially when it comes to foreign symbols that represent the political nature of religion (Islam), which is contrary to Western liberal ideals.

The Supreme Court did not follow up on this statement, its connection with the politicization of religion, or the phrase regarding western liberal ideas, instead referring to Article 2 of the Czech Charter of Fundamental Rights and Freedoms and noting that the state is based on democratic values and “may not be bound by any exclusive ideology or religion”. Further, it stressed the significance of the law, as state power can be exercised only in cases within the limits set by law, in the manner prescribed by law. It followed by concluding that the Czech Republic must accept and tolerate religious pluralism – i.e., above all, it must not discriminate against or unreasonably favour one religion. The maintenance of religious neutrality by the state means that it does not interfere with the fundamental right to freedom of religion or expression, but creates the conditions for its realization, protects the exercise of these rights and freedoms from disruptive interference, and establishes conditions for the coexistence of conflicting worldviews and people who profess different religions. The Supreme Court further stated that the ban on wearing the hijab could not be justified based on any interest in the protection of public security and order, as the wearing of the hijab alone does not increase security risks.

In terms of this connection, communication No. ČŠIG3601/14-G21 from the Ministry of Education, Youth and Sport in 2014 is noteworthy, which referred to the perspective of the student. It approached this issue in such a way as to suggest that the school must not restrict the possibility of wearing religious symbols with the intention of restricting the religious rights of individuals (e.g., that it considers the wearing of certain religious symbols to be inappropriate, unethical, unsuitable for the cultural area of Central Europe, etc.), with an exception occurring only when it would be difficult to identify the person (Právo svobody projevu..., 2014).

In their arguments, the courts of the first and second instances were referring to France and its approach to this issue. Other than this, a remarkable reference to Germany was made in the judgement, as a state with a similar legal system and position of religion in the public space (the judgment “Kopftuch”). The decisions of the Czech Constitutional Court No. Pl. ÚS 9/07, Pl. ÚS 6/02 and the Supreme Administrative Court No. 5 As 65/2015 were also referred to in this respect.

The Supreme Court discussed neutrality and concluded that the mere wearing of a visible religious symbol cannot be seen as a violation of such neutrality. This decision was intended to give the priority to humanistic principles and balances of powers rather than political trends, but was perceived in the media as being unpopular in Europe (Rozehnal, 2019). The school was not satisfied with this, and in 2021 announced that it would proceed with the case using its right of appeal. This is perhaps an unsurprising step given the widespread support of the Czech far-right SPD political party, with its known Islamophobic agenda, and the support that school has received from the current president of the Czech Republic, who awarded the principal with a state award in 2018 and described her as “a brave woman in the fight against intolerant ideology”.<sup>11</sup>

Nevertheless, above all of this the judicial system of the Czech Republic continues to remain separate from political speculation following the best practices of democratic society.

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<sup>11</sup> “*Hnutí SPD se v žádném případě s tímto postojem nesmíruje. A připomínám, že ve Sněmovně jsou dva návrhy zákonů z pera SPD*”, translated as “The SPD movement is by no means in line with this position. And I remind you that there are two bills in the House from the pen of the SPD” – Tomio Okamura, the chairperson of SPD Tomio Okamura (Veselá, 2019).



## Conclusion

In summing up the above, it becomes clear that the position of the ECtHR – which operates within the framework of the European Convention on Human Rights, balancing the predominance of one right over another – regarding the right to wear religious symbols is ambiguous. The court uses different approaches in making its decisions, considering the priorities of certain factors (for example, public safety over the rights of the individual) and offering particular states greater freedom within the framework of international law. The state, in turn, may decide not to follow the decisions of the ECtHR, giving priority to humanistic principles as in the example of the Supreme Court of the Czech Republic.

As is clear from the discussion in this article, the approach of the Czech Republic to the wearing of religious symbols – Islamic religious symbols, specifically – is not uniform due to political trends and vectors and the views of functionaries. Despite this, the Ombudsman and the Supreme Court provided well-argued analyses of the balance between equal and equitable treatment and the manifestation of religion. Although only two examples of wearing religious symbols at work and at study were provided, they received widespread media coverage, and both demonstrated the different approaches of the judicial bodies and of the political sphere. In addition, two drastically different approaches taken by school principals were provided, as well as the opinion of a political party and even of the president of the Czech Republic. It is significant to note that the stance taken by the Supreme Court did not follow the stance taken by the president, emphasizing the separation of powers between executive (president) and judiciary (Supreme Court) and legislative powers, again a phenomenon described by French political philosopher Baron de Montesquieu.

The Czech Supreme Court emphasized two important ideas regarding neutrality and equitable treatment: 1) the state must accept and tolerate religious pluralism, without any discrimination, whilst creating the conditions for the realization and protection of religious balance or neutrality; and 2) the fact that some religious elements or symbols (in this case the hijab) are foreign elements in society does not constitute a violation of the norms of this society, including the norms of social behaviour, morality, or ethics.

This ought to serve as an inspiration to the EU member states – France in particular, given its recent political circumstances – when adopting laws aimed at discriminating against particular communities that wear religious symbols. When, instead of the just and equitable treatment of its citizens and residents, the state applies stricter laws to a selected target group, thus artificially separating it from the rest of society, a contradiction described by Cicero as *summum jus, summa injuria* (Cicero, 44/1913, Book I, x, 33) is created. In other words, the excessively precise exercise of the right gives rise to the greatest injustice. Such a contradiction is revealed in the process of the implementation of legal norms. A certain role in overcoming such contradictions is played by the restrictive or diffuse interpretation of these norms by judicial practice – a good example of which was provided by the Czech Supreme Court.

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