

LIMITATION OF THE FREEDOM TO MANIFEST ONE'S RELIGION: THE INTERPRETATION BY THE ECTHR OF THE "RIGHTS AND FREEDOMS OF OTHERS"

MAGDALENA PÉREZ DIBARRART¹

Abstract:

During the last decades, the limitation of the freedom to manifest one's religion has been a highly controversial issue. Certain European states have restricted the use and wearing of some religious symbols and dresses, and the European Court of Human Rights ("ECtHR" or the "Court") has reviewed several of those situations. In order for a restriction to be legitimate, it must pursue a legitimate aim, and one of the possible legitimate aims is the protection of the rights and freedoms of others. Several decisions of the Court in this area were studied, in order to clarify what this legitimate aim encompasses. It was concluded that the ECtHR usually does not perform an in-depth analysis of the concept. Nevertheless, some important inferences were made, from which some problems from the Court's approach were also highlighted. Those problems derive on a lower degree of protection of the freedom to manifest one's religion through religious symbols and dresses.

Key words: freedom of religion, religious symbols and dresses, rights and freedoms of others.

Resumen:

Durante las últimas décadas, la limitación de la libertad de manifestar su religión ha sido un tema controversial. Algunos estados europeos han impuesto limitaciones al uso de algunos símbolos y vestimentas religiosas, y el Tribunal Europeo de Derechos Humanos (el "Tribunal") ha emitido varias decisiones respecto a estos asuntos. Para que una restricción sea legítima, ésta debe constituir una medida necesaria, y una de esas posibles medidas necesarias es la protección de los derechos o las libertades de los demás. Con el objetivo de clarificar qué implica esta medida necesaria se estudiaron varias decisiones del Tribunal sobre este tema. Se concluyó que, en general, el Tribunal no suele analizar este concepto con mucha profundidad. Sin embargo, se destacaron importantes inferencias, en base a las cuales también se recalcaron algunos problemas en el análisis del Tribunal. Esos problemas implican una menor protección de la libertad de manifestar su religión mediante el uso de símbolos y vestimentas religiosas.

Palabras claves: libertad de religión, símbolos y vestimentas religiosas, derechos o libertades de los demás.

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1. BRIEF CONTEXTUALIZATION

The limitation of the freedom to manifest one's religion has been a highly controversial issue in the last decades.² Europe, one of the main focuses of immigration,

¹ This article is an extract of the author's master's thesis at the University of Amsterdam. The research was supervised by prof. dr. Yvonne Donders, Head of the Department of International and European Public Law at the Faculty of Law of the University of Amsterdam

² See BIELEFELDT, H. (2013). "Misperceptions of Freedom of Religion or Belief" in *Human Rights Quarterly*. vol. 35, p. 67, and EVANS, M. D. (2010-2011). "From Cartoons to Crucifixes: Current Controversies Concerning the Freedom of Religion and the Freedom of Expression before the European Court of Human Rights" in *Journal of Law and Religion*. vol. 26 (1), p. 352, 364

and thus, multiculturalism,³ has been at the center of that debate.⁴ Certain states have restricted the use and wearing of some religious symbols and dresses. Those restrictions may encompass a wide variety of forms, from allowing an educational institution to limit the use of symbols under specific circumstances, to the enactment of a law that forbids the wearing of clothing designated to conceal the face, such as the burqa and niqab, in public spaces.

2. INTERNATIONAL HUMAN RIGHTS LAW AND FREEDOM OF RELIGION

The Right to Freedom of thought, conscience and religion ("freedom of religion") is one of the fundamental freedoms. An important distinction must be drawn between the two dimensions of the freedom of religion: its internal element (*forum internum*) and its external dimension (*forum externum*). The former, which is "largely exercised inside an individual's heart and mind"⁵ and covers private religious activities such as prayer and personal devotion, falls beyond the state's power⁶ and cannot be restricted, under any circumstances. On the other hand, the freedom to manifest one's religion or belief (*forum externum*) may be limited in certain circumstances.

According to Article 18 (3) of the International Covenant on Civil and Political Rights ("ICCPR" or the "Covenant") and Article 9 (2) European Convention on Human Rights ("ECHR" or the "Convention"), in order for a State to legally restrict the freedom to manifest one's religion, three conditions must be fulfilled: the limitation must be prescribed by law (condition of legality), it must pursue a legitimate aim (condition of legitimacy), and must be necessary in a democratic society (condition of necessity and proportionality).⁷

The condition of legality requires that the law imposing the limitation "must specify in detail the precise circumstances in which such interferences may be permitted".⁸ The aim of this requirement is to avoid vagueness, which may create a risk of arbitrariness and discrimination, and may cause that individuals abstain from exercising their rights out of lack of clarity.⁹

³ See ALSTON, P. & GOODMAN, R. (2013). *International Human Rights*. Oxford: Oxford University Press, p. 627

⁴ See MCCREA, R. (2013). "The Ban on the Veil and European Law" in *Human Rights Law Review*, p. 58

⁵ HARRIS, D. et al. (2014). *Law of the European Convention on Human Rights*. Oxford: Oxford University Press (3rd ed), p. 594, quoting GOMIEN, D. (2000). *Short guide to the European Convention on Human Rights*. Strasbourg: Council of Europe Publishing (3rd ed)

⁶ CUMPER, P. (2010). "Religion, belief and international human rights in the twenty-first century" in *Research Handbook on International Human Rights Law*, Joseph, S., McBeth, A. Cheltenham: Edward Elgar, p. 478

⁷ DE SCHUTTER, O. (2014). *International Human Rights Law*. Cambridge: Cambridge University Press, p. 339

⁸ *Ibid*, p. 344

⁹ *Ibid*, p. 347

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The condition of legitimacy implies that interference with the freedom to manifest one's religion may be exclusively justified by one or more of the legitimate aims listed in Article 18 (3) of the ICCPR and in Article 9 (2) ECHR: public safety, public order, health or morals, rights and freedoms of others. The Human Rights Committee, through its General Comment 22 (1993) to Article 18 of the ICCPR ("GC"), observes that Article 18 (3) ICCPR is to be strictly interpreted: "restrictions are not allowed on grounds not specified there, (...) (they) may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated".¹⁰ In the same line, the ECtHR has stated that only the criteria mentioned in Article 9 (2) of the Convention may be the basis of any restrictions, and that the legitimate aims are exhaustively listed there.¹¹ When analysing the condition of legitimacy "the Court often quickly defers to the state's assertion of a legitimate aim".¹² As De Schutter explains, "[d]ue probably to the open-ended formulations by which the admissible aims are described, [supervisory bodies] have generally exercised a rather minimal degree of scrutiny on the aims pursued by such restrictions."¹³ This explains that, in order to avoid the arbitrariness of national authorities, the other two conditions have been highly resorted to and developed.¹⁴ Even the ECtHR has recognized that "the Court's practice is to be quite succinct when it verifies the existence of a legitimate aim".¹⁵ The present research is focused on the concept of the rights and freedoms of others, and in particular, on the interpretation that the ECtHR has given to this notion. This has been described as the "most nebulous" of the possible legitimate aims.¹⁶

The condition of necessity and proportionality means that the restriction must be limited to what is appropriate for the fulfilment of the specific aim, and must not go beyond of what is strictly required by the need to achieve that aim.¹⁷

Turning to the issue of the manifestation of one's religion through the use and wearing of religious symbols and dresses, Article 18 (1) ICCPR and Article 9 (2) ECHR provide that the right to freedom of religion includes the right to manifest one's religion "in teaching, practice, worship and observance". The Human Rights Committee ("HRC" or the

¹⁰ Para. 8 General Comment Adopted by the Human Rights Committee No. 22, 27-09-1993, CCPR/C/21/Rev.1/ Add.4

¹¹ ECHR (5th Sect.) 14-06-2007, 77703/01 (Svyato-Mykhaylivska Parafiya v. Ukraine) para. 132

¹² SCHARFFS, B. (2010-2011). "Symposium Introduction: The Freedom of Religion and Belief Jurisprudence of the European Court of Human Rights: Legal, Moral, Political and Religious Perspectives" in *Journal of Law and Religion*. vol. 26 (1), p. 258

¹³ DE SCHUTTER, O. (2014). *International Human Rights Law*. Cambridge: Cambridge University Press, p. 361

¹⁴ MARTÍNEZ-TORRÓN, J. (2005). "Limitations of Religious Freedom in the Case Law of the European Court of Human Rights" in *Emory International Law Review*. vol. 19, p. 634

¹⁵ ECHR (GC) 01-07-2014, 43835/11 (S.A.S. v. France) para. 114

¹⁶ HARRIS, D. et al. (2014). *Law of the European Convention on Human Rights*. Oxford: Oxford University Press (3rd ed), p. 607

¹⁷ DE SCHUTTER, O.(2014). *International Human Rights Law*. Cambridge: Cambridge University Press, p.368

"Committee") has clarified that the freedom to manifest one's religion encompasses a broad range of acts, including the use of ritual objects, the display of symbols and the wearing of distinctive clothing or headcoverings.¹⁸ Consistently, the Committee held in *Hudoyberganova v. Uzbekistan* that "the freedom to manifest one's religion encompasses the right to wear clothes or attire in public which is in conformity with the individual's faith or religion".¹⁹

Moreover, the Report E/CN.4/2006/5 of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, from January 9th, 2006, dedicates an entire section to religious symbols, reflecting that it is a relevant issue in the exercise of freedom of religion. It states that, as the display of religious symbols is considered a manifestation of religion, and not part of the *forum internum*, it may be subject to limitations.²⁰ It then emphasises that limitations shall be regulated by Article 18 (3), which shall be strictly interpreted.²¹

Furthermore, Article 6 (c) of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted by General Assembly Resolution 36/55 on November 1981, prescribes that the right to freedom of religion shall include the freedom "to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief".

The issue of wearing religious clothing and using religious symbols is a complex one, and has become source of potent legal and political controversy.²² This is true especially in the European context; "one of the most contentious issues raised before the Court in recent times has concerned religious symbols in the educational arena",²³ not only but mainly regarding the individual's right to manifest his or her religion through religious symbols and dresses. Lately, those issues have extended to public places.

¹⁸ Para. 4 General Comment Adopted by the Human Rights Committee No. 22, 27-09-1993, CCPR/C/21/Rev.1/ Add.4

¹⁹ HRC 05-11-2004, 931/2000 (*Raihon Hudoyberganova v. Uzbekistan*) para. 6.2

²⁰ Para. 40 Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, 09-01-2006, E/CN.4/2006/5

²¹ *Ibid*, para. 54

²² EVANS, C. (2006). "The 'Islamic Scarf' in The European Court of Human Rights" in *The Melbourne Journal of International Law*. vol. 7 (1), p. 52, and BOYLE, K. & SHAH, S. (2014). "Thought, Expression, Association, and Assembly" in *International Human Rights Law*, Moeckli D, Shah S. & Sivakumaran S. Oxford: Oxford University Press, p. 223

²³ EVANS, M. D. (2010-2011). "From Cartoons to Crucifixes: Current Controversies Concerning the Freedom of Religion and the Freedom of Expression before the European Court of Human Rights" in *Journal of Law and Religion*. vol. 26 (1), p. 352

3. THE ECTHR JURISPRUDENCE: PROTECTING THE RIGHTS AND FREEDOMS OF OTHERS

DAHLAB V. SWITZERLAND (2001) – A POWERFUL EXTERNAL SYMBOL

This case is considered to be “representative and typical of the fate that awaits other applicants in religious freedom cases of this nature”.²⁴ The applicant, Lucia Dahlab, converted to Islam and began wearing an Islamic headscarf during 1991. She was appointed as a primary-school teacher in 1990, and only in mid-1996 she was requested to stop wearing the headscarf while teaching.²⁵ Her relevant arguments for the concept of study were that for more than five years, no complaints were made by pupils or parents, and that her headscarf had not bothered her colleagues.²⁶

The ECtHR declared the application inadmissible for being manifestly ill-founded. The Court briefly considered that the measures adopted pursued a legitimate aim, namely, among others, the protection of the rights and freedoms of others. In that context the Court did not elaborate upon the concept of study. Nevertheless, in the analysis of necessity in a democratic society, the Court touched upon it. It accepted that “it is very difficult to assess the impact that a powerful external symbol such as the wearing of a headscarf may have on the freedom of conscience and religion of very young children”. However, it considered the pupils’ age (between four and eight) to declare that they were more easily influenced than older pupils, and that it could not be denied outright the proselytising effect that the wearing of a headscarf may have.²⁷ Additionally, the Federal Court’s decision, quoted by the ECtHR, considered that the teacher’s attitude played an important role, being able to influence on their pupils, as an example to which they are particularly receptive in account to their age, their daily contact and the hierarchically nature of their relationship.²⁸

Through the decision, the Court did not state expressly which rights and from whom should be at stake in order to establish the existence of the legitimate aim of study. Nevertheless, it may be inferred that in this case the others protected through the restrictive measure were Ms Dahlab’s pupils, and that their right to freedom of religion and not to be confronted with the religion of others was at stake.

²⁴ EVANS, C. (2006). “The ‘Islamic Scarf’ in The European Court of Human Rights” in *The Melbourne Journal of International Law*. vol. 7 (1), p. 54

²⁵ ECHR (2nd Sect.) 15-02-2001, 42393/98 (Dahlab v. Switzerland) p. 1, under heading *The Facts - Circumstances of the Case*

²⁶ *Ibid*, p. 10, under heading *The Law*

²⁷ *Ibid*, p. 13, under heading *The Law*

²⁸ *Ibid*, p. 6, under heading *Circumstances of the Case*

An issue that remains unclear is the degree of certitude over which the Court adopted the decision. As stated above, the Court considered that it is very difficult to assess the impact of a powerful external symbol, and that its proselytizing effect could not be denied outright. Under that phrasing, it seems that the Court remained in the context of uncertainties, not being convinced of the impact that the headscarf would have on Ms Dahlab's pupils. In Radačić's opinion, "there was no evidence of the impact of the headscarf on children".²⁹ And if it is not clear the impact that this religious clothing could have in the children, those children being understood as the others protected by the restrictive measure, it seems doubtful that the legitimate aim of the protection of the rights and freedoms of others was actually present in this case. Because, if there was no impact, how could those rights have been at stake? As Evans stated, "[t]his wording is a roundabout way of saying that there was no evidence whatsoever presented to the Court of any harmful or proselytising effect".³⁰ She further observes that "the Court sets up a scenario in which these mysterious and ill-defined others must be protected against a presumptive wrongdoer".³¹

LEYLA ŞAHİN V. TURKEY (2005) – SECULARISM

This case concerns a Turkish woman who pursued medical studies at the Istanbul University. She was denied access to a written examination and a lecture due to her wearing a headscarf and not removing it. After being suspended for protesting in an unauthorised assembly against the rules on dress, she continued with her studies at the Vienna University.³²

When analysing the legitimate aim, the Court just briefly stated that it was able to accept that the interference pursued the protection of the rights and freedoms of others and public order. Once again, the Court did not elaborate upon the meaning of the concept under study; however, it addressed the issue when discussing the condition of necessity. The Court considered "the impact which wearing such a symbol, which is presented or perceived as a compulsory religious duty, may have on those who choose not to wear it". The ECtHR stressed out that in Turkey the majority of the population adhere to Islam, that lately this religious symbol has taken on political significance, and that there were extremist movements that seek to impose their conception of society founded on religious precepts.³³ As the Court found that the interference was justified and proportionate, it held that there was no breach of Article 9.

²⁹ RADAČIĆ, I. (2012). "Religious Symbols in Educational Institutions: Jurisprudence of the European Court of Human Rights" in *Religion & Human Rights*. vol. 7 (2), p. 148

³⁰ EVANS, C. (2006). "The 'Islamic Scarf' in The European Court of Human Rights" in *The Melbourne Journal of International Law*. vol. 7 (1), p. 63

³¹ *Ibid*, p. 61

³² ECHR (GC) 10-11-2005, 44774/98 (Leyla Şahin v. Turkey) paras. 14, 16, 17, 24, 28

³³ *Ibid*, para. 115

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Once more, the Court did not state expressly through the decision which rights and from whom were at stake in order to establish the existence of the legitimate aim of study. Nevertheless, it may be inferred that in this case, those others and the scope of their rights were broader than in the case of *Dahlab v. Switzerland*. As Dingemans expressed, “[t]his represented a different approach from that adopted by the Court in *Dahlab v. Switzerland* (where the focus had been on the impact on pupils) by introducing a new focus on the potential political consequences of allowing religious clothing to be worn in state institutions in a secular society.”³⁴ Apparently, the others protected through the restrictive measure were all the assistants to the Istanbul University. Arguably, their right to freedom of religion was at stake, not only from the religious perspective as such, but including the freedom of thought understood as the right to have independent ideas, which incorporates the Court’s concern regarding the political significance of the religious symbol and the existence of extremist movements.

Judge Tulkens, through her dissenting opinion, disagreed in the manner that secularism was applied in the decision, so she did not consider that the interference was necessary in a democratic society.³⁵ According to her point of view, the majority’s generalized assessment that the wearing of the headscarf contravenes the principle of secularism rises the following difficulties: there was no evidence that the applicant acted contravening that principle (Ms Şahin even claimed that she had no intention to put the principle of secularism into question), and the judgment made no distinction between teachers and students (referring to *Dahlab* decision).³⁶ Additionally, for Judge Tulkens, others’ rights and freedoms would be infringed if the headscarf was worn in an ostentatious or aggressive manner, or was used “to exert pressure, to provoke a reaction, to proselytize or to spread propaganda and undermine the convictions of others. However, the Government did not argue that this was the case and there was no evidence before the Court to suggest that Ms Şahin had any such intention.”³⁷ Regarding the Court’s reference to the threat posed by extremist political movements, Judge Tulkens considered that merely wearing the headscarf cannot be associated with fundamentalism, and that there was nothing that implied that Ms Şahin had fundamentalist views.

An interesting aspect of this decision is that no concrete analysis of the rights and freedoms of others at stake was made; or at least, not expressly. It may be argued that, from the text of the decision, it is not crystal clear how those rights were actually at stake. Dingemans referred to the Court’s assertion regarding the impact that wearing such a symbol may have on those who chose not to wear it, stating that “it is not clear what the

³⁴ DINGEMANS, J. et al. (2013). *The Protection of Religious Rights: Law and Practice*. Oxford: Oxford University Press, p. 111

³⁵ ECHR (GC) 10-11-2005, 44774/98 (*Leyla Şahin v. Turkey*) dissenting paras. 4, 13

³⁶ *Ibid*, dissenting para. 7

³⁷ *Ibid*, dissenting para. 8

evidence of this is. The 'religious peace' of the school or university in question did not seem to have been threatened in any way."³⁸ In Lerner's view, one of the serious questions that this judgment raises is if the Court "thoroughly substantiate its assertion that the use of the headscarf by Ms Şahin on the University of Istanbul's premises implied a serious risk of (...) affecting the rights of others".³⁹ Moreover, Judge Tulkens considered that there was no evidence that Ms Şahin had the intention to exert pressure or to proselytize and undermine the convictions of others. Furthermore, it is not clear how university students, who are supposed to be educated adults pursuing a professional career, and "who are legally and physically competent to make every decision about their life without any constraint",⁴⁰ could be influenced by a religious dress in a manner that impairs their rights and freedoms. In Cumper's words, the implications of this decision, "that rational autonomous adult university students could be pressurised into wearing the headscarf because of the decision to do so by some of their contemporaries, is open to serious question, and appears to take the protection of 'others' criterion too far".⁴¹

The relevance that the Court gives to the principle of secularism is also remarkable. The problem is that secularism is not mentioned between the legitimate aims from Article 9 (2) ECHR, and throughout the decision the principle of secularism was not considered in itself as a right of others by the Court. This predicament could be salvaged considering secularism as a way to achieve the protection of rights and freedoms of others and public order. But even if the ECtHR referred to the Turkish Constitutional Court's consideration of secularism as necessarily involving freedom of religion, it may be argued that the ECtHR failed to express how that was achieved in the particular case, as it was arguably stated how others' rights were at stake. The concern regarding secularism as a legitimate aim has been brought up by Altiparmak and Karahanoğullari:

(C)an the European Court really convincingly base its judgment on the principle of secularism, considering that secularism has not been enumerated as a legitimate aim to restrict a right in the Convention (...)? The Court did not discuss this point. Instead, as it does generally, it accepted the respondent government's argument that the impugned measure pursued legitimate aims under Article 9 (2).⁴²

³⁸ DINGEMANS, J. et al. (2013). *The Protection of Religious Rights: Law and Practice*. Oxford: Oxford University Press, p. 113

³⁹ LERNER, N. (2006). *Religion, Secular Beliefs and Human Rights: 25 Years After the 1981 Declaration*. Leiden, Boston: Martinus Nijhoff Publishers, p. 195

⁴⁰ ALTIPARMAK, K., & KARAHANOGULLARI, O. (2006). "European Court of Human Rights After Şahin: The Debate on Headscarves is not Over" in *European Constitutional Law Review*. vol. 2, p.285

⁴¹ CUMPER, P. (2010). "Religion, belief and international human rights in the twenty-first century" in *Research Handbook on International Human Rights Law*, Joseph, S., McBeth, A. Cheltenham: Edward Elgar, p. 486

⁴² ALTIPARMAK, K., & KARAHANOGULLARI, O. (2006). "European Court of Human Rights After Şahin: The Debate on Headscarves is not Over" in *European Constitutional Law Review*. vol. 2, p. 278

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Despite the criticisms received by this decision, the Court has used it as basis for upholding the restrictions in Turkey on further cases.⁴³

JASVIR SINGH V. FRANCE (2009) – LAW NO. 2004-228

This controversial decision⁴⁴ followed a similar reasoning as the cases of Aktas, Bayrak, Gamaleddyn, Ghazal, and Ranjit Singh, all and each of them against France. These cases confirm the deferential approach towards headscarf bans,⁴⁵ and by extension, to religious symbols and dresses bans. The applications were declared inadmissible due to being manifestly ill-founded. The cases were brought before the ECtHR in the context of the application of the French Law no. 2004-228, that amended the Education Code, forbidding students to wear in school symbols or clothing through which they could ostensibly manifest their religious affiliation.⁴⁶ At the beginning of the school year 2004-2005, when the referred law entered into force,⁴⁷ some Muslim girls (Aktas, Bayrak, Gamaleddyn and Ghazal) and Sikh young men (Jasvir Singh and Ranjit Singh) went to school wearing headscarves and Sikh *keski* (under-turban), respectively. When they refused to remove them, they were first denied to access the classroom, and finally expelled.⁴⁸

In the specific case of Jasvir Singh, the Court found that the wearing of a turban by a Sikh man is a way to manifest his religion, and that the restriction imposed by the French Law no. 2004-228 constituted a limitation to the freedom of that manifestation. It then considered that the restriction was prescribed by law, and that it pursued the legitimate aims of protecting the rights and freedoms of others and public order. When reviewing necessity, the Court referred to a previous decision in which the restriction to the use of a headscarf during physical educational classes was considered lawful, and stated that there was no reason to diverge from that case. It then noted that the ban was exclusively justified by the protection of the principle of secularism.⁴⁹

⁴³ HARRIS, D. et al. (2014). *Law of the European Convention on Human Rights*. Oxford: Oxford University Press (3rd ed), p. 609

⁴⁴ *Ibid*, p. 610

⁴⁵ LOENEN, T. (2012). "Framing Headscarves and other Multi-Cultural Issues as Religious, Cultural, Racial or Gendered: The Role of Human Rights Law" in *Netherlands Quarterly of Human Rights*. vol. 2012/4, p. 477

⁴⁶ Art. 1 French Law no. 2004-228, free translation [online via <http://legifrance.gouv.fr>, accessed on 18-05-2015]

⁴⁷ *Ibid*, Art. 4

⁴⁸ ECHR Information Note on the Court's case-law No. 121, July 2009. Aktas v. France (43563/08), Bayrak v. France (14308/08), Gamaleddyn v. France (18527/08), Ghazal v. France (29134/08), Jasvir Singh v. France (25463/08) and Ranjit Singh v. France (27561/08)

⁴⁹ ECHR (5th Sect.) 30-06-2009, 25463/08 (Jasvir Singh v. France) p. 6, 7, 8, under heading *En Droit*, free translation

Once more, the Court did not analyse in detail how the others' rights were at stake. Additionally, the above-referred statement of the ECtHR regarding secularism as the only justification is significant. It seems that the Court just affirmed that the measure protects the rights and freedoms of others, and it did not state how and why, finally assuming that the real justification is secularism.

BIKRAMJIT SINGH V. FRANCE (2012) – HUMAN RIGHTS COMMITTEE

This decision, although adopted by the HRC and not by the ECtHR, is analysed within this chapter as it presents a similar factual background to the case of Jasvir Singh v. France, just analysed above.

The author, an Indian national of the Sikh faith, student at a French public school, was denied access to the classroom and then expelled from school for wearing the *keski*,⁵⁰ in infringement of Law no. 2004-228.⁵¹

The HRC found that Act no. 2004-228 constituted a restriction in the exercise of the freedom of religion.⁵² When analysing the condition of legitimacy, the Committee considered that the principle of secularism is itself a means to protect the religious freedom of all a State's population, and that Law no. 2004-228 serves purposes related to protecting the rights and freedoms of others.⁵³ However, the HRC took the view that the State did not prove that Mr Singh, by wearing the *keski*, would have posed a threat to the rights and freedoms of other pupils. Additionally, the Committee considered that the State failed to show how the sacrifice of a person's right is either necessary or proportionate to the benefits achieved. As it was considered that the expulsion was not necessary, the HRC ascertained that a violation of Article 18 ICCPR occurred.⁵⁴ The Committee also stated that the state was under an obligation to prevent similar violations, and that it should review Law no. 2004-228 in the light of its Covenant's obligations.⁵⁵

The different approach that the HRC takes in this issue is remarkable, as compared to the one adopted by the ECtHR. As stated above, the Court, confronted with a situation very similar to the one just referred to, did not even pronounce on the merits; it just stated that the applications were manifestly ill-founded, indicating briefly that the measure pursued a legitimate aim, namely, the protection of the rights and freedoms of others. On the contrary, the HRC did not only pronounce on the merits; it stated that although

⁵⁰ A *keski* is a small turban, covering the long uncut hair considered sacred in the Sikh religion. The wearing of the turban is a categorical, explicit and mandatory religious precept in Sikhism. HRC 01-11-2012, 1852/2008 (Bikramjit Singh v. France) para. 2.3

⁵¹ HRC 01-11-2012, 1852/2008 (Bikramjit Singh v. France) paras. 1.1, 2.6

⁵² *Ibid*, para. 8.3

⁵³ *Ibid*, para. 8.6

⁵⁴ *Ibid*, para. 8.7

⁵⁵ *Ibid*, para. 10

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Law no. 2004-228, in an abstract level, may protect the rights and freedoms of others, in the specific case it was not proven how those rights were at stake.

AHMET ARSLAN AND OTHERS V. TURKEY (2010) – CHANGE OF APPROACH?

This case was brought before the ECtHR by 127 members of the religious group *Aczimendi tarikati*. They were arrested and condemned for touring Ankara's streets wearing an attire characteristic of their faith (a black turban, saroual and tunic, and porting a stick), in the context of their participation in a religious ceremony in the Kocatepe mosque.⁵⁶

The Court stated, exclusively considering the importance of the principle of secularism in Turkey, that the restriction pursued various legitimate aims, including the protection of the rights and freedoms of others.⁵⁷ However, the ECtHR could not establish that the restriction was necessary.⁵⁸ For reaching this conclusion, the applicants' position of simple citizens (as opposed to an official status in Dahlab) and the public character of the areas where the facts developed (as opposed to a public educational institution in Leyla Şahin) were taken into consideration.⁵⁹ Finally, it was not proven that the applicants' actions constituted a pressure over others, nor a situation of proselytism, as no element showed that they tried to exercise abusive influence over the passers-by in the public places trying to promote their religious convictions.⁶⁰

The Court's analysis is noteworthy; it first estimated that the restriction pursued the legitimate aim of protecting the rights and freedoms of others, and then, under the condition of necessity, considered that others were not pressured by the applicant's actions. So if the passers-by were not pressured, and therefore their rights were not at stake, how does the measure protect their rights? Furthermore, when referring to the condition of necessity, the Court did not analyse if the measure was appropriate and proportionate for protecting the rights and freedoms of others; it just stated that others' rights were not at stake, actually referring to the condition of legitimacy. This evidences that the Court performed the real analysis of legitimate aim under the test of necessity, and not under the condition of legitimacy. Although at the end the result could be the same, as a breach of Article 9 would be found in both cases, this way of proceeding creates certain inconsistencies, as the real analysis of the legitimate aim is performed under the necessity test, and not under the condition of legitimacy. In Viljanen's words, this approach "tends to modify the test into an imprecise and arbitrary assessment,

⁵⁶ ECHR (2nd Sect.) 23-02-2010, 41135/98 (Ahmet Arslan and others v. Turkey) paras. 3, 6, 7, free translation

⁵⁷ *Ibid*, para. 43

⁵⁸ *Ibid*, para. 52

⁵⁹ *Ibid*, para 48, 49

⁶⁰ *Ibid*, paras. 50, 51

because it lacks transparency on how the interpretation mechanism operates".⁶¹ This curious way of proceeding may be explained in two different ways: a) the ECtHR does not consider seriously if the restriction pursues a legitimate aim; it just states it in order to comply with the legal requirement, and just then, in the context of necessity, really develops the proper analysis; or b) the Court states that a measure pursues a legitimate aim in an abstract level; just then, in the analysis of necessity, analyses if the measure really pursues a legitimate aim considering the circumstances of the specific cases.

Nevertheless, this case is valuable as the Court effectively analysed if and how the rights of others were at stake. Based on the lack of certitude of the infringement of others' rights, the Court found that the restriction was not lawful. Some of the previously referred cases, such as *Şahin v. Turkey*, lack this analysis, just satisfying the requirement of necessity regarding the principle of secularism, and not the legitimate aim of the rights and freedoms of others, or at least, not in a direct way. This decision is also valuable as the Court considers some factors in relation to the possibility to restrict the freedom to manifest one's religion through symbols and dresses: a) the position or role of the people involved and b) the characteristics of the place where the manifestation occurs.

S.A.S. v. FRANCE (2014) – LIVING TOGETHER

This decision has been highly controversial.⁶² A public opinion poll even categorized this judgement as the Court's worst one of that year.⁶³

The application was brought by a French woman, a devout Muslim, who wore the burqa or the niqab⁶⁴ to express her religious beliefs. She emphasized to the Court that she was not pressured to dress in that way by her family, and explained that her aim was to feel at peace with herself, not to annoy others.⁶⁵ The main issue of this case was French Law no. 2010-1192 (the "Face Concealment Law"), which prohibits the wearing in public places of clothing designed to conceal one's face. The concept 'public places' is understood in a broad sense. Certain exceptions may be authorized through legislation, but no exemption is granted for the manifestation of one's religion.

The Government claimed that the limitation pursued the legitimate aim of the respect for the minimum set of values of an open and democratic society, in specific three: the equality between men and woman, the respect for human dignity and the observance of

⁶¹ VILJANEN, J. (2003). *The European Court of Human Rights as a Developer of the General Doctrines of Human Rights Law*. Tampere: Tampere University Press, p. 216

⁶² See, eg. YUSUF, H. (2014). "S.A.S. v France Supporting 'Living Together' or Forced Assimilation?" in *International Human Rights Law Review*. vol. 3(1), p. 277-302

⁶³ <http://strasbourgobservers.com/2015/02/12/the-results-are-in-poll-on-best-and-worst-ecthr-judgment-of-2014/>, accessed on 17-05-2015

⁶⁴ Burqa: a full-body covering including a mesh over the face. Niqab: a full-face veil leaving an opening only for the eyes. ECHR (GC) 01-07-2014, 43835/11 (S.A.S. v. France) para. 11

⁶⁵ ECHR (GC) 01-07-2014, 43835/11 (S.A.S. v. France) paras. 10-12

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the minimum requirements of life in society, or of living together. They submitted that this aim could be linked to the protection of the rights and freedoms of others.⁶⁶

The Court analysed the three values invoked by the Government, and although it noted that neither of them corresponded to a legitimate aim listed in Article 9 (2) ECHR, it focused on the examination of the protection of the rights and freedoms of others, as the Government linked the referred values to that legitimate aim.⁶⁷ First, the Court considered that a state cannot invoke equality between men and women with the view of banning a practice defended by a woman as the applicant.⁶⁸ Then the Court stated that the respect for human dignity cannot justify a ban on the wearing of burqa or niqab in public places, as it is an expression of cultural identity and pluralism, inherent in democracy.⁶⁹ Finally, the Court considered that the respect for the minimum requirements of life in society, or of living together, can be linked to the legitimate aim discussed.⁷⁰ In a brief explanation, the Court, taking into account the important role that face plays in social interaction, understood the view that individuals in public places “may not wish to see practices” that call into question the possibility of interpersonal relationships, which by virtue of consensus is an indispensable element of community life in society. Therefore, the Court accepted that what was protected by the ban was “the right of others to live in a space of socialization which makes living together easier”.⁷¹ Thus, the requirement of a legitimate aim was fulfilled.

In a partly dissenting opinion, judges Nussberger and Jäderblom considered doubtful that the Face Concealment Law pursued any legitimate aim under Article 9. Beginning with the assumption that the Court’s case-law is not clear as to what may constitute rights and freedoms of others outside the scope of rights protected by the Convention, they considered that the concept of living together does not fall directly in any right protected by the ECHR.⁷² It was also stated that “there is no right not to be shocked or provoked by different models of cultural or religious tradition”,⁷³ nor to “enter into contact with other people, in public places, against their will”.⁷⁴ Therefore, they could not find which concrete right could be inferred from the abstract principle of living together.⁷⁵

This decision provides an interesting base for inferring what the Court considers as the rights and freedoms of others, and specifically, what category shall the others’ rights have. In the cases reviewed so far, although debatably, the others’ right protected was

⁶⁶ *Ibid*, para. 116

⁶⁷ *Ibid*, para. 117

⁶⁸ *Ibid*, para. 119

⁶⁹ *Ibid*, para. 120

⁷⁰ *Ibid*, para. 121

⁷¹ *Ibid*, para. 122

⁷² *Ibid*, dissenting para. 5

⁷³ *Ibid*, dissenting para. 7

⁷⁴ *Ibid*, dissenting para. 8

⁷⁵ *Ibid*, dissenting para. 10

the freedom of religion, as the measures sought to prevent pressure and proselytism by the wearer or user of the religious dress or symbol. Therefore, a right protected by the Convention was always at stake. *S.A.S. v. France*, however, presents a different scenario.

In the context of the analysis of the requirement of a legitimate aim, referring to the general principles concerning Article 9, the Court considered that "where these rights and freedoms of others are themselves among those guaranteed by the Convention (...) it must be accepted that the need to protect them may lead States to restrict other rights or freedoms" protected by the Convention.⁷⁶ Nevertheless, the Court did not explain which fundamental right protected by the Convention was at stake in this case, allowing the restriction to the manifestation of one's religion. It is clear that the concept of "living together" is not a right, and that the alleged right of others to live in a space of socialization, is not among the rights protected by the Convention. Additionally, judges Nussberger and Jäderblom assumed that is not clear what constitutes rights of others outside the scope of the Convention. All those considerations lead to deduce that although it is not clear how or which, rights of others outside those ones protected by the ECHR may be claimed in order to restrict the right to manifest one's religion. Accordingly, Van der Schyff has stated, previous to this decision, regarding the legitimate aim of study in general terms, that "the rights and freedoms of others do not only refer to other fundamental rights, contained or not contained in the Convention, but refers to all instances where someone has an interest in the application of a legal rule and where such a rule is not applied".⁷⁷

However, even if the Court considers the rights and freedoms of others in a broad sense, that does not prevent that this legitimate aim involves a right, and the notion of living together is not a legally recognized right. The Court found that the concept of living together can be linked to the legitimate aim of the protection of the rights and freedoms of others. Therefore, the Court's decision could be understood from a broad construction of Article 9 (2) ECHR: a restrictive measure is lawful not only if it pursues a legitimate aim stated there, but it will be lawful even if it pursues an aim just linked to one of those legitimate aims. This approach is consistent with the Court's following statement:

The Court reiterates that the enumeration of the exceptions to the individual's freedom to manifest his or her religion or beliefs, as listed in Article 9 § 2, is exhaustive and that their definition is restrictive (see, among other authorities, *Svyato-Mykhaylivska Parafiya v. Ukraine* (...) and *Nolan and K. v. Russia* (...)). For it to be compatible with the Convention, a limitation of this freedom must, in particular, pursue an aim that can be *linked* to one of those listed in this provision.⁷⁸

⁷⁶ *Ibid*, para. 128

⁷⁷ SCHYFF, G. VAN DER (2005). *Limitation of Rights: A Study of the European Convention and the South African Bill of Rights*. Nijmegen: Wolf Legal Publishers, p. 193

⁷⁸ ECHR (GC) 01-07-2014, 43835/11 (*S.A.S. v. France*) para. 113 (emphasis added)

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The Court's statement is noteworthy. It first states that the legitimate aims list is restrictive, and then it states that the aim pursued may be linked to one of the aims listed in Article 9 (2) ECHR. Under that wording, apparently it may be sufficient that the restrictions pursue an aim linked to a legitimate aim from Article 9 (2) ECHR, and it is not strictly required that the limitation pursues exclusively one of those legitimate aims.

This decision includes a broader conception of the rights and freedoms of others not only from the perspective of what is understood as those rights and freedoms, but also from the perspective of who shall be those others protected through the restrictive measure. From the decision, it may be inferred that the others protected through the restrictive measure were all the members of the French society, as those are the ones who would eventually meet a Muslim woman with her face concealed at a public place, who have the right to live in a space of socialisation, and who are arguably protected by the concept of living together.

The decision by the Court in the *S.A.S. v. France* case has been highly criticized. Yusuf claims that “[t]he Court risks promoting forced assimilation policies against minorities”,⁷⁹ and that “[this decision] has a real potential of legalising cultural genocide by those who are a majority or hold the reins of political power against national ethnic minorities or emigrant populations”.⁸⁰ Prior to this decision, Bielefeldt expressed his view in the following terms: “a peace based on recognizing people’s most diverse deep convictions and concomitant practices hardly fits with authoritarian ideas of a state imposed societal harmony between communities”.⁸¹

4. OVERVIEW, INFERENCES AND IMPLICATIONS

As the previous section shows, throughout the analysis of the Court's decisions, the ECtHR usually does not perform an in-depth analysis of the concept of the rights and freedoms of others as legitimate aim. In effect, the only case where there is a direct examination of this legitimate aim is in *S.A.S. v. France*, and here even the Court acknowledged that “the Court's practice is to be quite succinct when it verifies the existence of a legitimate aim”.⁸² This lack of analysis involves some serious problems, for the purposes of really understanding this legitimate aim, and from a substantive point of view. Nevertheless, from the decisions' entire text, some important inferences were made, from which some problems from the Court's approach were also derived.

⁷⁹ YUSUF, H. (2014). “S.A.S. v France Supporting ‘Living Together’ or Forced Assimilation?” in *International Human Rights Law Review*. vol. 3(1), p. 277

⁸⁰ *Ibid*, p. 299

⁸¹ BIELEFELDT, H. (2013). “Misperceptions of Freedom of Religion or Belief” in *Human Rights Quarterly*. vol. 35, p. 47

⁸² ECHR (GC) 01-07-2014, 43835/11 (*S.A.S. v. France*) para. 114

The first implication is that, throughout the cases, the concept of the rights and freedoms of others evolved, and from two perspectives: 1) who shall be those others protected through the restrictive measure, and 2) what is understood as those rights and freedoms. Regarding the first perspective, there was an evolution from the particular group of pupils of a specific teacher (Dahlab), to all the assistants to a particular university (Leyla Şahin), to finally, all the members of a particular society (S.A.S.).⁸³ Regarding the perspective of what is understood as those rights and freedoms, in the first case the right protected was the right to freedom of religion (Dahlab), then it was extended to the right to have independent ideas, including the political significance of the religious symbol (Leyla Şahin), and finally the Court incorporated rights outside those protected in the Convention and even the concept of "living together", which is not a legally recognized right (S.A.S.).

In the same line, given the possibility that a restrictive measure protects just a concept, and not a legally recognized right, it was inferred that it is not strictly necessary that the restrictive measure pursues exclusively one of the legitimate aims enumerated in Article 9 (2) ECHR; it suffices that the aim pursued is linked to one of the legitimate aims there enumerated.⁸⁴ This is considered later on as a problem in the Court's approach.

A third inference drawn from the case law is that the Court, in the context of religious manifestation in public places, considered some relevant indicators or factors regarding the specific circumstances of the case, in order to determine that the restriction was not lawful. The first indicator is the position or role of the people who manifest their religion, contrasting the position of simple citizens, to the official status of the teachers in *Dahlab v. Switzerland*. The second indicator is the characteristics of the place where the manifestation occurs, contrasting the character of public places to the character of public educational institutions in *Şahin v. Turkey*.⁸⁵ It was deduced that the Court takes into account the position of simple citizens and the character of public places in order to consider that the rights and freedoms of others are not at stake. Nevertheless, the Court did not consider these indicators in *S.A.S. v. France*, which also involved an entire concealment of the face. In regard to the religious manifestation in educational institutions, there are no relevant indicators to be highlighted. The only possible conclusion to be drawn from those cases is that the ECtHR will most certainly consider that, in secular states, a limitation to the freedom to manifest one's religion in educational institutions pursues the legitimate aim of protecting the rights and freedoms of others and that it complies with the necessity requirement, no matter by whom the religious symbol or dress is used or worn (teachers or students), or whose rights are

⁸³ Although this extension of the concept of the rights and freedoms of others was developed through the time, it is not necessarily a result of a change in the Court's conception of this legitimate aim through the years. This evolution may also be explained by the fact that the first case brought before the Court was restricted to issues regarding a specific teacher, and the last case extended to a situation that involved the whole society.

⁸⁴ ECHR (GC) 01-07-2014, 43835/11 (*S.A.S. v. France*) para. 113

⁸⁵ ECHR (2nd Sect.) 23-02-2010, 41135/98 (*Ahmet Arslan and others v. Turkey*) paras. 48, 49, free translation

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protected by the restriction (pupils of four years or university students). It is unclear if the Court would have arrived to the same conclusions regarding non-secular states.

Turning to the problems derived from the Court's decisions, the first one to be highlighted is that the Court left a series of unanswered questions, and in much of the cases, lacked a concrete analysis. In general, the Court failed to expressly state which rights, from whom and in which way were at stake in order to restrict the freedom to manifest one's religion.⁸⁶ Moreover, in many of the decisions the Court just stated, from an abstract perspective, without considering the particularities of the case, that the restriction pursued the legitimate aim of protecting the rights and freedoms of others, and all of this without verifying if those freedoms were at stake.⁸⁷ In all these cases, the concept of the rights and freedoms of others appears to be used as a catchword, but its content and relevance is not explained. This situation involves a problem from two perspectives. From an academic point of view, this limits the possibility to construe a complete jurisprudential understanding of the concept of rights and freedoms of others. From a substantive perspective it seems that the Court, when failing to answer these questions, is not really analysing if the rights and freedoms of others were at stake.

Another issue deriving from the ECtHR's judgments is that they give the impression that the Court was not certain if the others' rights were at stake. In *Dahlab v. Switzerland*, the Court apparently remained in the context of uncertainties, as it considered that it is very difficult to assess the impact of a powerful external symbol, and that it cannot be denied outright its proselytizing effect.⁸⁸ In *Şahin v. Turkey*, as the focus remained over the principle of secularism, no concrete analysis of the rights and freedoms of others at stake was made. This approach is not in accordance with the Court's case-law, which clearly establishes that where there has been interference with a fundamental right, mere affirmations do not suffice: they must be supported by concrete examples.⁸⁹ Moreover, as stated by Judge Tulkens, "[o]nly indisputable facts and reasons whose legitimacy is beyond doubt -not mere worries or fears- are capable of satisfying that requirement and justifying interference with a right guaranteed by the Convention."⁹⁰ The decision in *Arslan v. Turkey* seems to imply a departure from this problem of lack of certainty. Here, as it was not proven that the applicants' action constituted a pressure over others, the Court found that the limitation to the freedom to manifest their religion was not

⁸⁶ E.g.: *Leyla Şahin v. Turkey* (2005), *Jasvir Singh v. France* (2009)

⁸⁷ This problem is even more evident when comparing the Court's judgement in *Jasvir Singh v. France* (2009) to the decision of the Human Rights Committee in *Bikramjit Singh v. France* (2012), in which this body did perform a concrete analysis regarding the others' rights and freedoms at stake, and found that under the specific circumstances of the case, there was no proof of any threat to the other pupils' rights.

⁸⁸ ECHR (2nd Sect.) 15-02-2001, 42393/98 (*Dahlab v. Switzerland*) p. 6, under heading *Circumstances of the Case*

⁸⁹ ECHR (GC) 10-11-2005, 44774/98 (*Leyla Şahin v. Turkey*) dissenting para. 5

⁹⁰ *Ibid*

necessary in a democratic society, due, among other reasons, to a lack of real infringement of others' rights.

The third problem to be highlighted is in relation to the previously mentioned implication: that it suffices that the aim pursued is just linked to one of the legitimate aims. This means that the Court has decided these kind of cases over a broad construction of the legitimate aims, tacitly straying away from the rule of strict interpretation of limitation clauses.⁹¹ Most of the decisions analysed did not refer to this rule or to the cases that developed it, and the only decision that did it, added the possibility of pursuing an aim only linked to the protection of the rights and freedoms of others.⁹² This interpretation involves the risk of taking the concept of rights and freedoms of others too far, establishing an extremely broad construction of Article 9 (2) ECHR. It may be argued that this construction of the legitimate aim is then revised under the condition of necessity; as the Court stated in the *S.A.S. v. France* case, "in view of the flexibility of the notion of "living together" and the resulting risk of abuse, the Court must engage in a careful examination of the necessity of the impugned limitation".⁹³ Nevertheless, it may also be argued that that revision under necessity in the *S.A.S. v. France* case was not enough. In Yusuf's words, "nothing further in the majority decision demonstrated any such cautionary approach".⁹⁴

All that being said, what are the consequences of this approach taken by the Court? This entails a lower degree of protection of the freedom to manifest one's religion through religious symbols and dresses. The ECtHR has failed to consider this legitimate aim in a serious way, by staying away from the rule of strict interpretation, analysing this aim from a purely abstract perspective and ruling under a lack of certitude. In Judge Tulkens' words, the Court "has shown itself less willing to intervene in cases concerning religious practices (...) which only appear to receive a subsidiary form of protection".⁹⁵ Those others have not been seriously considered. Those others have been used as scapegoats, in order to restrict the freedoms of those whose rights and freedoms were actually at stake: Lucia Dahlab, Leyla Şahin, Jasvir Singh, anonymous *S.A.S.*, and all those other anonymous believers indirectly affected by the Court's decisions. Therefore, the concept of the rights and freedoms of others shall not be lightly considered. It would be desirable that the Court really digs into this concept, considering the specific circumstances of the case

⁹¹ According to the rule of strict interpretation of limitation clauses, established by the Convention institutions, "those paragraphs of Articles of the Convention which provide for an exception to a right guaranteed are to be narrowly interpreted", and "no other criteria than those mentioned in the exception clause itself may be at the basis of any restrictions, and these criteria, in turn, must be understood in such a way that the language is not extended beyond its ordinary meaning." ECHR (Chamber) 25-03-1983, 7136/75 (*Silver and Others v. The United Kingdom*) para. 97; European Commission of Human Rights (DR) 18-05-1977, 6538/74 (*The Sunday Times v. The United Kingdom*) para. 194

⁹² ECHR (GC) 01-07-2014, 43835/11 (*S.A.S. v. France*) para. 113

⁹³ ECHR (GC) 01-07-2014, 43835/11 (*S.A.S. v. France*) para. 122

⁹⁴ Yusuf, H. (2014). "S.A.S. v France Supporting 'Living Together' or Forced Assimilation?" in *International Human Rights Law Review*. vol. 3(1), p. 286

⁹⁵ ECHR (GC) 01-07-2014, 43835/11 (*S.A.S. v. France*) dissenting para. 6

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looking at the real risk of the others' rights, achieving a certain level of certitude, and returning to the rule of strict interpretation of the limitation clauses.

The measures adopted and validated by the Court, whose intention is supposedly to protect the rights and freedoms of others, will, in turn, mostly achieve forced assimilation⁹⁶ in educational institutions and in public places, and not the protection of those ill-defined others.⁹⁷ This forced assimilation is not the purpose of the ECHR;

“Rather than making the world uniform, human rights represent the aspiration to empower human beings (...) to freely express their most diverse opinions and convictions. (...) (W)orking for an equal implementation of human rights for everyone will make societies more diverse and more pluralistic.”⁹⁸

⁹⁶ Regarding S.A.S. v. France, see YUSUF, H. (2014). “S.A.S. v France Supporting ‘Living Together’ or Forced Assimilation?” in *International Human Rights Law Review*. vol. 3(1), p. 277-302

⁹⁷ Regarding Dahlab v. Switzerland, see EVANS, C. (2006). “The ‘Islamic Scarf’ in The European Court of Human Rights” in *The Melbourne Journal of International Law*. vol. 7 (1), p. 61

⁹⁸ BIELEFELDT, H. (2013). “Misperceptions of Freedom of Religion or Belief” in *Human Rights Quarterly*. vol. 35, p. 51

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