

ISLAM AND SECULARISM WITHIN THE LEGAL FRAMEWORK OF THE EUROPEAN UNION

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This article aims to rekindle the longstanding debates surrounding the relationship between Islam and secularism in the contemporary context, particularly within the legal framework of the European Union (EU). It delves into how EU law sets the standards for Member States in navigating the interaction between the principle of freedom of Islamic thoughts and practice and the tenets of secularism. Examining the EU legal landscape, the article suggests that secularism dominates various aspects of social life in European societies, as mandated by EU law. Consequently, traditional religious practices, including those of Muslims, are increasingly marginalized from everyday life. While freedom of religion and non-discrimination remain fundamental principles, the prevailing secularist paradigm often shapes the accommodation of religious practices. By shedding light on this complex issue, the article contributes to a nuanced understanding of the delicate balance between the right to religious freedom and the dominant force of secularism within the EU legal context.

KEYWORDS: Anti-Muslim discrimination; EU law; freedom of religion; headscarf ban; Islam; secularism.

1. INTRODUCTION

The interaction between Islam and secularism has long been a subject of scholarly discourse, and its relevance continues to evolve in the modern era, encompassing various contexts. Due to its implications for religious freedom, minority rights, social cohesion, legal consistency, and human rights, one significant area of examination is the interplay between Islam and secularism within the legal framework of the European Union (EU), considering the EU's role in establishing legal standards across its 27 Member States in Europe.

Approaches to this topic can generally be categorized into two perspectives. The first perspective aligns with the ideas presented by Milton Yinger and Syed Muhammad Naquib al-Attas, which posit that secular world seeks to distance itself from religious under-

standing, supernatural beliefs, and religious symbols, emphasizing human autonomy and self-determination, placing the ultimate decision-making power in the hands of individuals rather than being guided by religious doctrines or divine accountability (Naquib al-Attas 1978; Yinger 1967). In this viewpoint, the dominance of secularism in societal structures and institutions can potentially lead to the marginalization or relegation of traditional religious practices.

In contrast, the second approach, supported by several contemporary scholars, contends that secularism can be understood as a framework that fosters equal respect for individuals with diverse worldviews, including religious conscience. It is not a doctrine that dictates specific thoughts and beliefs, rather it is a mechanism for coexistence, fostering an inclusive society where various ideas, beliefs, and worldviews can peacefully coexist without any single perspective dominating or being imposed upon others (Arzheimer 2023; Panagiotis 2014; Taylor and Maclure 2010). This perspective emphasizes the possibility of accommodating religious identities within a secular context. Secularism is seen as a means to ensure equal treatment and protection of religious freedom for all individuals, regardless of their faith.

In light of these divergent viewpoints, the objective of this article is to examine the significance of both perspectives within the legal framework of the European Union (EU). The analysis aims to gain valuable insights into how the EU's legal system addresses the interactions between Islam and secularism. By scrutinizing relevant legal provisions, court decisions, and legal practices within the EU, the study seeks to discern the manner in which these approaches are employed and their implications. Through shedding light on the legal parameters that govern the balance between Islam and secularism within the EU, this article contributes to scholarly discourse, enhancing comprehension of this multifaceted issue. It deepens understanding of the complex interplay between religion and the state in the EU, ultimately expanding knowledge in this domain.

2. METHODOLOGY

This article adopts a systematic approach to explore the correlation between Islam and secularism within the legal framework of the EU. Primarily, the study endeavours to acquire a comprehension of the concept of secularism and its inherent tensions with traditional Muslim values. This initial stage of inquiry aims to grasp the complexities surrounding the notion of secularism and its intersection with the long-standing values of the Muslim community. For this purpose, the key scholarly works on this topic are the subject of exploration. By establishing the correlation between Islam and secularism, the article moves to the analyses of the EU legal framework. The chosen methodology places emphasis on data collection and analysis, primarily centred around EU human rights laws that pertain to religious freedom and the prohibition of discrimination. The research delves into relevant treaty provisions, directives, and case laws of the Court of Justice of the European Union (CJEU), as they serve as the foundation of the EU's law on the status of Islam. Key sources of data include the Charter of Fundamental Rights of the EU (CFR), Council Directive 2000/78/EC (Employment Directive), and Council Directive 2000/43/EC, which prohibit

discrimination based on various grounds, including religion. Furthermore, a comprehensive analysis of notable CJEU case law is undertaken, focusing on pivotal cases such as the ones examined in 2017 involving Ms. Achbita (Case C-188/15) and Ms. Bougnaoui (Case C-157/15). Additionally, recent court judgments from 2021 are considered, specifically the cases of IX v. WABE eV (C-804/18) and MH Müller Handels GmbH v. MJ (C-341/19), which pertain to the safeguarding of Muslim beliefs and conscience in accordance with Council Directive 2000/78/EC.

The collected data will undergo qualitative analysis to extract meaningful insights and draw conclusions. This analysis involves examining the similarities and differences between treaty provisions, directives, and CJEU case laws in order to identify patterns and trends. Furthermore, the effectiveness of the EU's legal framework for safeguarding human rights and combating discrimination, with a specific focus on Islam and secularism, will be assessed.

By utilizing this methodology, a comprehensive examination of the EU's legal context concerning Islam and secularism is ensured. The study aims to shed light on whether secularism serves as a principle to uphold the fundamental right of freedom of Muslim thought and conscience or functions as a mechanism to erode Islamic practices and traditions.

3. SCHOLARLY THOUGHTS ON ISLAM AND SECULARISM

To understand the compatibility of Islamic principles with secularism, it is important to have a clear understanding of what Islam represents, the values it encompasses, and the essence of secularism itself. Islam is a complex entity, encompassing not just religious beliefs but also culture and civilization. Therefore, in order to grasp the potential contradictions between Islam and secularism, it is necessary to discern what Islam proposes that secularism does not endorse, as well as to ascertain the ultimate objectives of secularism.

Islam is the belief in Allah, the one and true God, which sets the main goal of human life as surrendering to Him. Along the path to submission, Islam promotes certain universal values that should shape everyday life and people's perceptions. These values consist of a set of beliefs and ideas that individuals follow as they deem them correct and essential (Faruqi 2007; Halstead 2010). According to Adibah Rahim, Muslim values are the words of Allah, preserved in the holy books, which guide people on how to approach God, fellow humans, and their environment (Rahim 2013). However, due to Islam's extensive history and the development of different Muslim societies over time, it becomes challenging to describe these values as universally shared. Islam, as a comprehensive belief system, encompasses not only spiritual and moral guidance but also provides a framework for social, legal, and ethical norms. As Muslims interact with diverse cultural contexts, they often incorporate local customs and practices into their daily lives while maintaining their Islamic identity (Ruthven 2006; Sinaga 2016). This fusion of Islam and local traditions allows Muslim communities to adapt to their surroundings while upholding their core religious principles. One noteworthy example of such coexistence is the Shari'ah, which, although not universally practiced among Muslims, is nonetheless attributed to Islamic thought (Auf 2016).

A discussion on Islam, secularism, and the inclusion of certain orthodox Muslim traditions may lead to the initial conclusion that European societies impose restrictions or limited lib-

erties on such traditions. This conclusion may suggest that orthodox Islam is fundamentally incompatible with modern secularism (Buskens 2016). However, it is essential to emphasize that this is not a basis for portraying secular principles as weapons directed against religion. In modern societies, a clear separation exists between religion and the state. Nevertheless, there are instances where secularism can reveal an unsettling aspect when considering the practices of less traditional Muslims. For example, in European societies, a Muslim woman who abides by the rule of law, respects the rights of others, including minority groups, and chooses to wear a religious symbol may encounter challenges (Gereluk 2005; Senyonjo 2007). The issue at hand is whether secularism tolerates such expressions of Islam. In some cases, laws pertaining to the neutrality of religious symbols may prohibit their display, even if they pose no threat or interference in state affairs. It is this particular focus on Muslim religious symbols that serves as the central theme of this article, aiming to uncover the underlying intentions of secularism.

Muslims are individuals who lead a religious life encompassing various aspects imbued with religious symbolism. Religious symbols not only indicate affiliation with a particular faith but also form integral components of a cultural system that shapes personal identity and reflects a way of life. According to Victor Turner, a British cultural anthropologist, symbols are objects or concepts widely recognized as natural representatives or reminders of something else, possessing analogous qualities or associative connections in reality or thought (Turner 1975: 151).

Thus, the act of wearing religious symbols serves as an expression of one's uniqueness and commitment to specific ideas, values, principles, and perspectives on life. Symbolism forms the foundation of cultural identity. Clifford Geertz, in his definition of culture, describes symbolism as historically transmitted patterns of meaning manifested through symbols—a system of inherited concepts expressed through symbolic forms that enable individuals to communicate, perpetuate, and develop their understanding and attitudes towards life (Geertz 1966: 89). Therefore, Muslim religious symbols encompass cultural patterns representing abstract concepts and ideas that Muslims utilize to structure their lives. Clothing plays a significant role in religious and cultural symbolism, as it serves as a vehicle for expressing one's cultural identity and may convey cultural values. As Fatjti Tajuddin asserts, the relationship between human culture and symbols is so interconnected that humans themselves can be viewed as symbolic beings (Tajuddin 2018: 21). Muslims, as symbolic beings, integrate their way of life into their religion, guided by the conscience instilled by their faith.

With this in mind, it remains uncertain as to why the religion of Islam, which promotes obedience to God, and the cultural expressions embodied in Muslim religious symbolism, find themselves in conflict with secularism. Secularism, broadly understood as a means of preserving religious and cultural traditions, aims to prevent any single belief system from exerting dominance over others, ensuring equal treatment for all individuals regardless of their religious affiliations (Anidjar 2006; Topal 2012). This raises the question of whether secularism truly embodies the principles of equality, non-discrimination, and the rule of law, safeguarding the rights of believers, non-believers, and individuals with diverse religious identities, or if it serves as a mechanism to remove traditional religious ideologies, including Islam, from modern societies.

For instance, certain EU countries like France, Belgium, and the Netherlands have implemented prohibitions on public displays of religiosity. This includes restrictions on exhibiting religious symbols within educational institutions and workplaces. This gives rise to conjecture among scholars that secularism strives to establish a societal model in which individuals are emancipated from religious conscience and symbols, thereby marginalizing religious traditions, particularly Islam (Freedman 2004; Jansen 2013). These examples illustrate the significance of Naquib al-Attas's perspective, which posits that secularism can be seen as a contemporary manifestation of Western European Christianity. Secularism attempts to maintain the role of religion in modernity by simplifying it into a set of values that do not necessitate a profound submission to God, as human beings have become less inclined towards such obedience. By streamlining religious rituals and customs, Christianity manages to remain relevant. Consequently, any religion that advocates for more traditional approaches to connecting with God is seen as a revival of the past. This interpretation sheds light on why the secular West does not readily accommodate traditional Islamic thoughts and practices. Under the conditions of secularism, Islam is compelled to either reform itself and align with a modernized version of Christianity that has lost its connection to God or face the risk of fading away (Naquib al-Attas 1978).

Naquib al-Attas's ideas resonate among contemporary thinkers, particularly those focusing on the European Union (EU). Scholars such as Tariq Modood and Riva Kastoryano highlight a significant issue within EU policies, which revolves around the interplay between secularism and Islam. The secularization of European societies, marked by a decreasing influence of traditional Christianity and a rise in secular values, has raised concerns regarding its impact on Muslim religious freedoms. Secularization is being utilized to suppress the religious expression of Muslims or pressure them to conform to the principles of secularism, following the model of Modern Christianity, which often entails downplaying the significance of religious practices (Modood and Kastoryano 2007: 13). Other scholars take an even more sceptical stance. For instance, Barrie Wharton and Raphaële Xenidis argue that EU secular values, rooted in the Judeo-Christian heritage, contribute to the marginalization of Islamic practices and reinforce prejudices against Muslims. Regarding the prohibition of religious symbols, they acknowledged that even the most secular form of Islam is often met with disapproval in Western European societies (Wharton 2008; Xenidis 2018).

Nevertheless, there exists another group of contemporary scholars who hold a more positive opinion regarding secularization. Michael Rectenwald views secularism as a more intricate principle that extends beyond mere antagonism towards religion. It is a life orientation that places utmost significance on worldly matters and regards observation and reason as the most effective means to understand and improve the aspects of human existence. While secularism originates from a response to religious beliefs, it does not necessarily constitute a religion in itself. Various forms of secularism have focused solely on eradicating religious beliefs, while others have sought to replace them with a secular ideology or creed (Rectenwald 2011).

In a similar vein, Robert Nelson argues that in a world marked by an increasing number of religious factions, secularism has often been regarded as a response to the reality of religious diversity. The underlying logic of secularism suggests that by conducting our affairs

without invoking God or religious beliefs, individuals can mitigate religious divisions and interact with one another based on shared principles and values (Nelson 2015).

In conclusion, the scholarly assumptions surrounding the concepts of Islam and secularism provide valuable insights into the core tensions of this topic. Some scholars are even highly critical of the European Union (EU) for prioritizing secularism while neglecting the religious rights of Muslims. However, a comprehensive understanding of this issue within the EU context ultimately relies on a thorough analysis of EU law. Such analysis can shed light on the complexities and nuances of how secularism and religious freedom are navigated and protected within the legal framework of the EU.

4. FREEDOM OF ISLAMIC THOUGHT AND CONSCIENCE IN THE EU

The implementation of EU legislation ensures that the principles of respecting religious freedom and preventing discrimination are recognized as fundamental human rights and integral to human dignity (TFEU, Art. 6(1)). These rights are safeguarded under Article 10 of the EU's Charter of Fundamental Rights, which states that

“Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance” (CFR, Art. 10).

This encompasses the freedom to change one's religion or belief and the freedom to publicly or privately practice and express one's religion or belief through worship, teaching, practice, and observance.

The relevance of Islam within this context is crucial. Islam, as a religion, is encompassed within the broader framework of religious liberty protected by the EU law. The respect for religious diversity, including Islam, is emphasized in Article 22 of the Charter of Fundamental Rights, which highlights the EU's obligation to honour cultural, linguistic, and religious differences (CFR, Art. 22).

Addressing the issue of non-discrimination based on religion, Article 21 of the Charter prohibits any form of discrimination on any grounds, including religion (CFR, Art. 21). This reaffirms the EU's commitment to ensuring equal treatment and protection for individuals regardless of their religious beliefs.

It is important to note that even before the Charter of Fundamental Rights became an integral part of EU's primary law, the EU had already taken steps towards combating discrimination. In 2000, two directives were adopted: the first directive aimed to prevent discrimination based on race and ethnic origins (Council Directive 2000/43/EC), while the second directive focused on prohibiting discrimination in the workplace based on religion or belief, disability, age, or sexual orientation (Council Directive 2000/78/EC). However, it is worth noting that the racial equality directive does not specifically include religious grounds, but as religion is a crucial attribute of racial categorization, Muslims are still able to rely on this piece of law to address religious discrimination.

It is crucial to recognize that the effectiveness of human rights laws may be constrained by other legislation or temporary derogations, which dictate the degree to which individuals can exercise their right to freedom of religion and protection against discrimination. Despite the absence of a hierarchical structure among human rights, the practical application of certain rights can be curtailed through legal derogations, impacting various aspects of human existence. This phenomenon is also observed within the legal framework of the EU.

The human rights protection system within the EU has a distinct legal framework. According to Article 51 of the Charter of Fundamental Rights (CFR), these rights and principles initially apply to EU institutions and subsequently to Member States when they implement EU law, based on the principle of subsidiarity. The principle of subsidiarity dictates that the EU can only take action in areas not exclusively within its competence if such action is more effective than action taken at the national or local level (TEU, Art. 5). Therefore, the application of the Charter at the national level should not undermine the principle of subsidiarity and should only cover situations falling within the EU's legal scope. As a result, the primary sources of individual human rights protection remain the national constitutions. However, the Charter does contain fundamental human rights that individuals can directly rely upon, known as "horizontal direct effect," as established by the legal doctrine developed in the 1994 case of *Paola Faccini Dori v Recreb Srl*. This doctrine enables individuals to make claims against other private individuals before national courts based on EU treaty provisions containing individual rights (Case C-91/92). Additionally, regarding EU directives that prohibit discrimination, individuals can invoke the legal doctrine of "vertical direct effect." This means that individuals can invoke EU law in legal disputes against Member States. The case of *Yvonne van Duyn v Home Office* in 1974 dealt with a Member State's obligation to ensure its legislation is compatible with EU law (Case 41-74).

At first glance, despite EU's unique legal framework, there is a legal foundation for the EU to exert its authority in the area of protecting Islam. The question remains as to whether the EU is willing to strengthen legal safeguards against religious discrimination and enhance the protection afforded to Muslim individuals affected by such discrimination. It is also crucial to recognize that not all forms of rituals can be automatically regarded as manifestations of religious beliefs. The guidelines on the promotion and protection of freedom of religion or belief, adopted by the Council of the European Union, emphasize that the freedom to express one's religion or belief, which includes acts of worship, observance, practice, and teaching, can encompass a wide range of activities. However, the assessment of whether a specific act is closely and directly connected to a religion or belief must be evaluated on a case-by-case basis (Council of the European Union 2013: 2). This guidance holds significant importance as it allows for the prohibition of certain religious practices, such as public Muslim prayer or wearing full-face coverings (Maurine and Navarrete 2019). Consequently, the EU empowers member states to determine which rituals can be protected under the freedom of religion. This creates a complex situation within human rights law, as Muslims who believe that these practices are essential acts of submission to God are restricted from exercising their rights in public settings. The issue of legal derogations is best examined through the case law of the EU.

4.1. EU Case Law on Islamic Symbolism

The most expansive definition of liberty is perhaps John Stuart Mill's portrayal of it as restricted individual freedom, provided that it may impede the freedom of others (Mill 1859: 16). However, even Mill may struggle to justify the most liberal and secular stance on prohibiting religious symbols, as it remains unclear what potential harm or danger such symbols may pose. So, it is not entirely unexpected that in the context of increasing secularization, the EU courts have established that certain religious symbols, particularly the Muslim headscarf, can potentially undermine the principle of equal treatment. In 2017, the Court of Justice of the EU, in its Grand Chamber, issued a ruling on cases involving religious discrimination against Muslim women. These cases were *Samira Achbita v. G4S Secure Solutions NV* (Case C-157/15) and *Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v. Micropole SA* (Case C-188/15). The national courts had sought a preliminary ruling from the Court of Justice to determine if discrimination had occurred under Council Directive 2000/78/EC.

The Employment Equality Directive, adopted by the EU in 2000, aims to prevent discrimination on various grounds, including religion, in the workplace (Council Directive 2000/78/EC, 2000). On 14th March 2017, the Court of Justice rendered its judgment in the case of *Samira Achbita v. G4S Secure Solutions NV* (Case C-157/15). Samira Achbita, a Muslim woman, had been employed as a receptionist in the private sector. She was dismissed from her job because she refused to comply with the company's internal policy that required employees to maintain neutrality with regards to visible political, religious, and philosophical symbols. The Court of Justice examined the case and concluded that there was no direct discrimination based on religion under Directive 2000/78. The court's decision was based on the fact that the company's policy of neutrality applied to all employees and did not specifically target Samira Achbita.

In the second case (Case C-188/15 *Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) vs. Micropole SA.*), the Court of Justice of the EU reached a different conclusion regarding discrimination on religious grounds. This case involved Ms. Bougnaoui, a Muslim woman employed by a private company, who was dismissed for refusing to remove her Islamic headscarf. Unlike the first case, the company did not have a policy of neutrality towards visible symbols, but the presence of the headscarf caused discomfort among certain employees. As a result, Ms. Bougnaoui was asked to come to work without wearing her headscarf. However, the Court determined that she had been treated unfairly compared to other employees and that discrimination on religious grounds had indeed taken place.

These cases highlight the importance of internal rules within companies regarding the display of political, philosophical, or religious symbols. In the first case, where the company had a policy of neutrality that applied to all employees, it was deemed a sufficient reason to limit religious freedom and no discrimination was found. However, in the second case, where such a policy was not in place, the Court ruled in favour of protecting religious freedom. It should be noted that employers have the ability to establish internal rules on symbol neutrality, which employees are expected to comply with or face potential termination.

In July 2021, the Court addressed similar cases involving *IX v. WABE eV* (C-804/18) and *MH Müller Handels GmbH v. MJ* (C-341/19). In both cases, the Court did not find religious discrimination. The companies had implemented internal directives that prohibited visible signs of political, philosophical, or religious beliefs in the workplace, and employees were dismissed for not removing their headscarves. The Court determined that as long as these rules are applied uniformly and without differentiation, they do not amount to direct discrimination based on religion or belief.

The interpretation of the law has resulted in a devaluation of Muslim religious liberty. Court decisions have shown that freedom of religion, including the freedom to manifest one's beliefs in public or private, can be restricted based on seemingly trivial circumstances. When a company or institution in Europe implements an internal rule prohibiting political, religious, or philosophical symbols for all employees, this becomes a legal justification to diminish the value of religious liberty and dismiss claims of discrimination.

The headscarf is a symbol of Muslim identity. It signifies that the wearer belongs to a different culture and religion than the majority of Europeans. By imposing secular norms of neutrality, Muslims are compelled to seek alternative ways to express their devotion and submission to God. The act of displaying their religious symbols, such as the headscarf, is perceived as a threat to the principles of secularism and is therefore deemed necessary to be prohibited. A natural right to manifest their beliefs is constrained, and Muslims are forced to conform to the appearance of others. Consequently, the court decisions indirectly promote radical form of secularism. Peter Cumper and Tom Lewis argue that such rulings demonstrate a "double standard" in the West's treatment of Islam, as it proclaims freedom of religion but fails to uphold secular liberal values in a way that disenfranchises Muslims (Cumper and Lewis 2009: 22). Gareth Davies also highlights the lack of respect afforded to Islam and its more devout adherents compared to milder or more familiar beliefs. He suggests that Europeans may be uncomfortable with Islam because it serves as a forceful reminder of views that Europe itself has only recently moved away from (Davies 2005: 512).

Taken together, these observations provide valuable insights into the intricate dynamics surrounding the intersection of religious liberty and the treatment of Islam within European societies. They highlight a notable discrepancy or divergence between the principles of religious freedom and the actual treatment and perception of Islam in European contexts. This discrepancy is further compounded by the prevailing influence of secularism, which can shape societal attitudes and policies towards religious practices, including those associated with Islam.

5. CONCLUSION

The tension between religious freedom and secularism is particularly evident in cases involving the wearing of Islamic symbols. The principles of religious liberty advocate for individuals to freely practice their faith without interference or discrimination. If secularism genuinely aims to protect equality and prevent the dominance of any particular belief or worldview, it should recognize that wearing a religious symbol is a personal choice and

does not pose a danger. Restricting individuals from exercising this right is both illiberal and discriminatory.

In the European Union legal context, the influence of secularism impacts the perception and treatment of Islam in European societies. There is often a strong emphasis on the neutrality of public spaces and institutions, which can result in restrictions on visible religious symbols or practices. As a result, Muslims face challenges in fully exercising their religious rights and expressing their faith. This suggests that EU law is not designed to accommodate Islam but rather to remove religious influences from the public sphere.

Referring back to the two perspectives on secularism introduced earlier in this discussion, the study of EU law related to Islamic thought and conscience reveals that modern scholars' attempts to describe secularism as a means of maintaining equality may fall short. Instead, the secularism upheld by the EU and Western European societies appears to view equality as equity, where individuals are equally deprived of the right to openly express their religious conscience in public. The ideas put forth by Milton Yinger and Syed Muhammad Naquib al-Attas several decades ago remain relevant today (Naquib al-Attas 1978; Yinger 1967). The ongoing process of secularization poses challenges for traditional religions such as Islam, leaving them with a limited range of choices. They must either reform their perspectives on the ways of submitting to God and adapt to the principles of secularism, or risk fading away.

Ultimately, the antagonism between Islam as a traditional religion and secularism calls for ongoing dialogue and examination of societal norms and policies. It necessitates a deeper exploration of how the principles of religious freedom can be upheld while respecting the diverse religious beliefs and practices of individuals, including Muslims. Achieving a balance that recognizes the importance of both religious liberty and secular values is a complex undertaking that requires continued engagement and understanding among scholars, legal institutions, policymakers, religious communities, and civil society.

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