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Balancing Secularism and the Right to Wear the Hijab in Europe: Why and How the ECtHR Needs to Recalibrate the Scales

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Abstract

The European Convention on Human Rights protects the fundamental right to manifest one's religious beliefs, including protecting a Muslim woman's right to wear a hijab in Europe. However, some member States are prohibiting the hijab in certain contexts to protect the principle of secularism and the European Court of Human Rights is upholding these restrictions by employing a wide margin of appreciation. This paper argues that this is not justifiable as there are numerous and wide-reaching issues with the Court's approach, ranging from a failure to properly apply the legal test to a failure to consider the consequences of the restrictions on the applicants. It also argues that some member States are using abstract aims like 'secularism' and 'living together' to disguise a hostility toward Islam and that the Court is unwilling to directly address this reality. Therefore, this paper recommends three practical reforms that address the flaws in the Court's analysis and strike a more appropriate balance between state autonomy and the protection of fundamental individual rights. These reforms are necessary to promote tolerance in Europe and prevent states from relying on increasingly abstract and self-defined principles to restrict individual rights.

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I Introduction

Throughout history, religion has played a fundamental role in the fabric of society. Due to globalisation and migration, the different strands of religious beliefs existing in Europe have proliferated to create a complex tapestry in the current time. Concurrently, many European states have adopted a sharp divide between the state and religion, with some states adopting secularism as a constitutional principle. Tension has therefore increased between a state's desire to promote secularism and an individual's right to manifest their religious beliefs, as protected under Article 9 of the European Convention on Human Rights (ECHR). This clash is epitomised in cases which have come before the European Court of Human Rights (ECtHR) involving a Muslim woman's right to wear a hijab and a member State's desire to prohibit the hijab in particular contexts to protect the principle of secularism.

This paper outlines four key cases where the ECtHR has upheld prohibitive measures on the hijab by accepting a restrictive approach to secularism that seeks to remove religion from the public sphere and by employing a wide margin of appreciation, meaning that the State has considerable discretion.[1] Is this justifiable? This paper argues it is not justifiable by illustrating the numerous and wide-reaching issues with the ECtHR's approach. Some of these issues include the Court's failure to consider the necessity of the restrictive measures in a democratic society, its failure to consider the consequences of the restrictive measure on the applicants, and its failure to consider the wider implications of the measure on the integration of Muslim women in Europe. It also seeks to demonstrate that some member States are using abstract aims like 'secularism' and 'living together' as a veil for the reality that the State is hostile toward Islam and that the ECtHR has chosen to ignore this intolerant behaviour. Finally, this paper recommends three practical reforms to the Court's approach that would allow it to address the flaws in its analysis and to strike a more appropriate balance between state autonomy and the protection of fundamental individual rights.

[1] Mónika Ambrus "The European Court of Human Rights and Standards of Proof in Religion Cases" (2013) 8 Relig. Hum. Rights 107 at 109.

This paper makes a new contribution to the literature by drawing together a comprehensive analysis of the issues which permeate the jurisprudence regarding the hijab and secularism and to suggest necessary reforms. The narrow scope of the paper is important as drawing parallels between cases involving different religious beliefs makes it more difficult to draw comparisons and suggest practical reforms. A breadth of literature has also focused on a particular issue involving Article 9 more broadly – such as how the margin of appreciation has been applied across Article 9[2] – yet this paper seeks to specifically focus on how cases of a certain character should be approached.

Scrutinising the ECtHR's acceptance of restrictions on the hijab is necessary because the right to manifest one's religious beliefs is a cornerstone individual right that should not be eroded by the overreach of the state, especially when this religious manifestation is an integral element of one's identity. The ECtHR has gradually expanded the areas of society where prohibitions on Islamic veils are justifiable, ranging from primary schools, to universities, to the public service, to the entire public sphere, illustrating a concerning trend of curtailing individual rights. Additionally, as Muslim women wishing to wear a veil are a minority in most member States of the Council of Europe, the ECtHR is failing to uphold its duty to protect minorities and consequently promoting assimilation in Europe, thus making these cases unique from other Article 9 cases which do not concern minority rights. As States are also able to define the importance of principles like secularism, this opens the door for States to rely on a variety of self-defined principles to restrict freedom of religion and therefore render Article 9 increasingly ineffective.

II The Legal Test

Article 9(1) of the ECHR stipulates that everyone has the "right to freedom of thought, conscience and religion," including the right "to manifest his religion or belief, in worship,

[2] For example, see Stephanie E. Berry "Avoiding Scrutiny? The Margin of Appreciation and Religious Freedom" in Jeroen Temperman, T. Jeremy Gunn, and Malcolm Evans (eds) *The European Court of Human Rights and the Freedom of Religion or Belief: The 25 Years since Kokkinakis* (Koninklijke Brill NV, Leiden, 2019) 103.

teaching practice and observance".[3] The hijab, a scarf covering the hair and neck but leaving the face exposed, is one element of the Muslim code of morality and decent conduct that applies to both men and women as expressed in the Quran.[4] Although not all Muslim women wear a hijab, it is viewed by many as "fundamentally part of their religious identity and their culture"[5] and therefore, the right to wear a hijab is protected under Article 9. As the hijab is an integral element of one's sense of self, not merely a means of expressing one's religious affiliation, the threshold to curtail this individual right must be set at a high standard. The ECHR recognises the value of protecting religious manifestations like the hijab as Article 9(2) states that the right to manifest one's religious belief is only subject to:[6]

> such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others".

The legal test arising from Article 9 is that religious manifestations can only be curtailed where first, the limitation is provided by law; second, the law strives to achieve one of the legitimate aims under Article 9(2); and third, the curtailment of the religious expression/manifestation is reasonably necessary in a democratic society and proportionate to the realisation of the legitimate aim.[7] Notably, although 9(2) sets out numerous legitimate aims which State parties can rely on to justify restrictions, the primary ground which has been relied on in the forthcoming cases is "for the protection of the rights and freedoms of others". This ground is the broadest of the legitimate aims under 9(2), as it allows the State party to make its own assessment of the nature of the rights and freedoms of others and to determine when those rights and freedoms need protecting, indicating that State parties are intentionally relying on this subjective legitimate aim rather than a more

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[3] European Convention on Human Rights ETS 5 (opened for signature 4 November 1950, entered into force 3 September 1953), Art 9.

[4] Sanam Noor "Hijab Controversy in Europe" (2007) 60 Pakistan Horizon 27 at 29-30.

[5] Article 19 *LEGAL COMMENT: Bans on the Full Face Veil and Human Rights: A Freedom of Expression Perspective* (Article 19, London, 2010) at [3].

[6] European Convention on Human Rights, above n 3, Art 9.

[7] Article 19, above n 5, at [1].

objective aim like the protection of public health. As member States may struggle to rely on a more objective ground, this gives a preliminary indication that they are stretching the meaning of Article 9(2).

III Key Concepts

As stated above, member States have successfully argued that the right to wear the hijab can be curtailed to uphold the principle of secularism, by claiming that the hijab interferes with the secular rights and freedoms of others under Article 9(2). Some scrutiny of the term 'secularism' is therefore required. Defined simply in the Cambridge dictionary, secularism is the belief that religion should not be involved in the organisation of ordinary social or political activities.[8] Similarly, most scholars accept a minimal definition of secularism which turns on the fact that "political authority does not rest on religious authority and the latter does not dominate political authority".[9] However, when secularism is employed as a principle of a state, the basic definition can take be interpreted differently.[10] Scholars have conceptualised a binary distinction between two contrasting approaches to secularism, including a 'liberal' versus 'fundamentalist' approach,[11] a 'benevolent' versus 'hostile' approach,[12] or a 'soft' versus 'hard' approach.[13] The former terms refer to a state that refrains from adopting or imposing any religious or non-religious beliefs upon its citizens and permits the expression of religious beliefs in the public sphere.[14] The latter terms mean that the state takes an active role in excluding religious beliefs from the public sphere.[15] Although this approach is "not to be conflated with Atheism" the exclusion of religious

[8] Cambridge Dictionary "secularism" < www.dictionary.cambridge.org/>

[9] Andrew Copson "Conceptions of secularism" in *Secularism: A Very Short Introduction* (Oxford Academic, Oxford, 2019) 78 at 81.

[10] Ian Leigh and Rex Ahdar "Post-Secularism and the European Court of Human Rights: Or How God Never Really Went Away" (2012) 75 Mod. Law Rev. 1064 at 1069.

[11] Ingvill Plesner "The European Court on Human Rights between fundamentalist and liberal secularism" (paper presented at the seminar 'The Islamic Head Scarf Controversy and the Future of Freedom of Religion or Belief' Strasbourg, 28– 30 July) at 1.

[12] Leigh and Ahdar, above n 10, at 1068.

[13] Alicia Cebada Romero "The European Court of Human Rights and Religion: Between Christian Neutrality and the Fear of Islam" (2013) 11 NZJPIL 75 at 79.

[14] Leigh and Ahdar, above n 10, at 1069-1070.

[15] Leigh and Ahdar, above n 10, at 1071.

beliefs from the public sphere effectively promotes a stance against the existence of the divine.[16] Two countries discussed in this paper, France and Turkey, have expressly taken a restrictive approach to secularism that confines religious beliefs to the private sphere, as expressed through the Constitutional principles *laïcité* (in France) and *laiklik* (in Turkey).[17] For the purposes of this essay, the terms 'liberal' approach and 'fundamentalist' approach shall be used, but to avoid semantic confusion, this article pertains to the literature relating to the aforementioned interchangeable terms.

Evidently, the liberal versus fundamentalist approaches to secularism represent two ends of a spectrum and states within the Council of Europe can move along this spectrum depending on political governance and societal attitudes. As the ECtHR is a regional body, it cannot impose one view of secularism upon member States, so the margin of appreciation is used by the ECtHR to accommodate the views of the member States where the Court finds it appropriate.[18] The margin of appreciation refers to "the room for manoeuvre the Strasbourg institutions are prepared to accord national authorities in fulfilling their obligations" under the ECHR.[19] Despite not appearing in the text of the Convention itself, it has become a "well-entrenched"[20] judicial construct that provides the necessary flexibility to fairly enforce the Convention.[21] However, it has also been described as "slippery and elusive" and "a substitute for coherent legal analysis of the legal issues at stake".[22] Ordinarily, the Court operates from the presumption that a narrow margin of appreciation should be employed in order to protect the rights contained in the ECHR.[23] It

[16] Leigh and Ahdar, above n 10, at 1071.
[17] Rossella Botton "The Constitutional Principle of Secularism in the Member States of the Council of Europe" Md. Jahid Hossain Bhuiyan and Ann Black (eds) *Religious Freedom in Secular States: A 21st Century Perspective* (Koninklijke Brill NV, Leiden, 2022) 147 at 150.
[18] Romero, above n 13, at 76.
[19] Steven Greer *The Margin of Appreciation: Interpretation and Discretion under the European Convention on Human Rights* (Council of Europe Publishing, Strasbourg, 2000) at 5.
[20] Berry, above n 2, at 104.
[21] Aduku Abdul Ainoko "The Margin of Appreciation Doctrine and the European Court of Human Rights: The Inconsistent Application in the Interpretation of the Right to Freedom of Expression and the Right to Freedom of Thought, Conscience and Religion" (2022) 5 Strathclyde Law Review 91 at 107.
[22] Ainoko, above n 21, at 105-106.
[23] Ambrus, above n 1, at 112.

then relies on three broad reasons why the margin of appreciation should be employed more widely when circumstances require it. These three reasons include where there is a clash of Convention rights, where there is no European consensus on the issue and where national authorities are better placed to evaluate the dilemma.[24]

IV ECtHR Jurisprudence

This section analyses four key cases involving the hijab and a State party's reliance on secularism as a legitimate aim under the protection of the rights and freedoms of others. In all four cases, the Court has undertaken a similar analysis to determine that there is no violation of Article 9. First, the ECtHR accepts that the restrictive measures were prescribed by law and that the measures taken by the State sought to achieve the legitimate aim of protecting the rights and freedoms of others by protecting the principle of secularism. As to whether the measure is necessary in a democratic society, the ECtHR then affords the State party a wide margin in appreciation in each case by determining that there is no European consensus on the issue and/or that the national authority is better placed to make the decision. It then concludes that the State has not exceeded its margin of appreciation and there is no violation of Article 9. The following summaries of each case seek to thread these elements together by discussing the salient reasoning in each case.

First, *Dahlab v Switzerland*[25] took place in the secular Canton of Geneva where there was a Constitutional requirement that teachers at state schools must observe the principle of secularism by refraining from manifesting their religious beliefs.[26] The applicant (Mrs Dahlab) was a primary school teacher in Geneva who converted to Islam and began to wear a hijab to school.[27] The Director General of Primary Education subsequently issued a notice to Mrs Dahlab that she was prohibited from wearing a hijab to school as it contravened the Public Education Act which set out the non-denominational nature of public schools.[28] She applied to the ECtHR, alleging that this measure violated Article 9. The Court held that

[24] Berry, above n 2, at 104.
[25] *Dahlab v Switzerland* [2001] 2001-V ECHR 447 (Grand Chamber).
[26] *Dahlab v Switzerland,* above n 25, at 8.
[27] At 8-9.
[28] At 1-2.

despite no complaints from parents or staff, the hijab may "have some kind of proselytising effect" on the convictions of the young children in Mrs Dahlab's class, aged four to eight years old.[29] Therefore, the State did not exceed its margin of appreciation in holding that Mrs Dahlab's right to manifest her religion can be curtailed to preserve religious harmony at the school and there was no violation of Article 9.[30]

In the second case, *Leyla Şahin v Turkey* (hereafter, *Şahin)*, Leyla Şahin, was a fifth-year medicine student enrolled at Istanbul University.[31] Şahin had worn a hijab for the four years she had spent at university and wished to continue to do so when the Vice-Chancellor issued a circular on 23 February 1998 asserting that students were not permitted to wear the hijab at university.[32] Shortly after, Şahin was denied entry to exams due to her hijab and subsequently brought a claim to the ECtHR, alleging a violation of Article 9.[33] The Grander Chamber endorsed the Chamber's view that although a majority of the Turkish population are Muslim, placing limitations on freedom of religion was necessary to meet "a pressing social need" to maintain the secular Turkish state, especially as "this religious symbol has taken on political significance in Turkey".[34] The Court then afforded Turkey a wide margin of appreciation to avoid rendering the university's internal rules "devoid of purpose" and to respect Turkey's narrow application of the principle of secularism.[35] It decided a wide margin of deference was appropriate due to the lack of European consensus on the wearing of religious clothing at educational institutions[36] and that "the university authorities are in principle better placed than an international court to evaluate local needs and conditions or the requirements of a particular course".[37] The Court thus concluded that there was no violation of Article 9.[38] It should be noted that Turkey has since repealed its

[29] At 13.
[30] At 13.
[31] *Leyla Şahin v Turkey* (2005) 2005-XI ECHR 115 (Grand Chamber) at [15].
[32] At [16].
[33] At [17].
[34] At [115].
[35] At [121].
[36] Berry, above n 2, at 112 and *Leyla Şahin v Turkey*, above n 31, at [109].
[37] *Leyla Şahin v Turkey*, above n 31, at [121].
[38] At [123].

hijab ban at universities, largely due to the election of Recep Tayyip Erdoğan in 2014 who has shown support for Muslim concerns and has subsequently been accused of eroding the secular nature of the Turkish state.[39] However, despite the repeal of the hijab ban, the *Şahin* decision remains a key case concerning secular justifications for banning the hijab, so it is of significance to the ECtHR jurisprudence.

The third case, *Dogru v France*,[40] concerned an eleven-year-old Muslim girl who sought to wear a hijab at a French state school, including for physical education classes, despite being told that it could not be worn during such classes.[41] When she refused to remove her hijab for physical education classes, the school expelled the pupil[42] and an application was brought to the ECtHR alleging a violation of her right to religious expression.[43] *Dogru* echoed the reasoning of *Şahin* as the Court afforded France a wide margin of appreciation because opinions regarding the state and religion differ greatly throughout Europe and thus the view of the national authority "must be given special importance".[44] The Court also noted that due to the "prime importance" of the constitutional principle of secularism, it was reasonable in the French context to restrict religious freedoms to preserve the secular nature of state schools, illustrating clear acceptance of France's fundamentalist secular approach.[45] The Court concluded that the national authority's decision that the applicant's right to manifest her religious beliefs could be curtailed to protect the principle of secularism was not "unreasonable",[46] especially as the applicant was able to attend correspondence classes.[47] Therefore, there was no violation of Article 9.

[39] Paul Kirby "Erdogan: Turkey's all-powerful leader of 20 years" (22 May 2023) BBC News < www.bbc.com/news >

[40] *Dogru v France* (2009) 49 EHRR 8 (Section I, ECHR).

[41] At [6]-[7].

[42] At [8].

[43] At [3].

[44] At [63].

[45] At [72].

[46] At [73].

[47] At [76].

Finally, in *Ebrahimian v France,*[48] a French national, Mrs Ebrahimian, worked as a social worker at a public Parisian hospital on a fixed-term contract.[49] The Director of Human Resources issued notice to Mrs Ebrahimian that her contract would not be renewed because she refused to remove her hijab at work, despite the fact some patients had issued complaints.[50] Mrs Ebrahimian applied to the ECtHR and argued that the decision to refuse to renew her contract violated Article 9.[51] The Court held it was necessary in a democratic society for Mrs Ebrahimian to remove her hijab during working hours in order to protect the rights of others, namely to provide "equal treatment for patients and the proper functioning of the service" by strictly enforcing the principle of secularism.[52] The Court acknowledged that France had chosen to elevate the secular rights of others over the individual right to manifest one's beliefs in the public service and that it was appropriate to afford France a wide margin of appreciation to respect the State's determination that the interference was necessary and proportionate.[53] It held that "the domestic authorities must be allowed a wide margin of appreciation, as hospital managers are better placed to take decisions in their establishments than a court".[54] Therefore, the Court concluded that there was no violation of Article 9.

V Holes in the ECtHR's Approach

Prima facie, one may approve of the consistency with which the ECtHR has sewn together its reasoning in these broadly similar cases and agree that secularism, a principle carrying great importance in some European states, can justifiably restrict a Muslim woman's right to manifest her religious beliefs by wearing a hijab. However, upon closer inspection, there are several issues with the approach taken in these cases which illustrate that the ECtHR's

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[48] *Ebrahimian v France* [2015] 2015-VIII ECHR 51 (Grand Chamber).

[49] European Court of Human Rights "ECtHR 26 November 2015, application 64846/11. (Ebrahimian), Religious Discrimination" (2015) European Employment Lawyers Association < www.eela.eelc-updates.com/summary >

[50] *Ebrahimian v France,* above n 48, at [7].

[51] At [7].

[52] At [71].

[53] At [71] – [72].

[54] At [66].

acceptance of the fundamentalist secular approach and the use of a wide margin of deference are not appropriate and have unjustifiable, wide-reaching consequences.

A. Creating a False Dichotomy about the Nature of Religious Beliefs

A preliminary issue with the Court accepting the fundamentalist approach is that it is accepting the false assumption that all religious beliefs can be neatly divided into private beliefs (*forum internum*) and the public manifestation of those beliefs (*forum externum*).[55] The Court is maintaining that it is possible and acceptable to sever a Muslim woman's *forum internum* and *forum externum*, as although she may not be able to manifest her beliefs, she still retains those beliefs internally. However, this perspective fails to accept that restricting a woman's right to wear a hijab also fundamentally contradicts her *forum internum,* as she is unable to uphold her convictions of modesty.[56] Therefore, by seeking to expel religion from the public sphere, the fundamentalist secular approach "ignores religion-as-identity and religion-as-a-way-of-life for individual as well as community".[57] As religious practices like the wearing of a hijab "affect the entire life of individual believers, wherever they find themselves", the *forum externum/internum* distinction is not an appropriate framework to employ.[58] Additionally, the distinction is not neutral as it favours Christians or atheists whose religious beliefs are not as manifestly apparent as other religious groups, such as Muslim women who wear a hijab, Sikh men who wear a turban, or Jewish men who wear a kippah.[59]

B. Reliance on the Notion that there is No European Consensus

The notion that there was no European consensus on regulating the wearing of the hijab was a key reason that the Court employed a wide margin of appreciation in *Şahin* and *Ebrahimian*. In *Şahin,* despite noting that only one other country (France) had placed a

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[55] Turan Kayaoglu "Trying Islam: Muslims before the European Court of Human Rights" (2014) 34 J. Muslim Minor. Aff. 345 at 348.

[56] Kayaoglu, above n 55, at 348.

[57] Kayaoglu, above n 55, at 348.

[58] Julie Ringelheim "Rights, religion and the public sphere: the European Court of Human Rights in search of a theory?" in Lorenzo Zucca and Camil Ungureanu (eds) *Law, State and Religion in the New Europe: Debates and Dilemmas* (Cambridge University Press, Cambridge, 2012) 238 at 245.

[59] European Court of Human Rights, above n 49.

restriction on the hijab in educational institutions,[60] the Court then held that as schools in many other states had the freedom to make decisions about religious clothing policies, there was no European consensus on the issue.[61] In *Ebrahimian*, the Court first noted that a majority of member States do not regulate religious clothing in the workplace (including for public servants) and that only five of 26 States have a complete ban on religious clothing for public servants. Despite this, the Court went on to claim that "consideration must be given to the national context of State-Church relations, which evolve over time in line with changes in society" and that there was no clear consensus.

If we consider that 'consensus' means a general agreement,[62] then if only a few members of the Council of Europe have similar restrictions on the wearing of the hijab, there is a consensus that such a restriction is *not* necessary in a democratic society.[63] Instead, the Court seems to have taken the opposite approach by asserting that where a few countries have restrictions, this means there is an absence of consensus. However, this is an illogical argument. If there is a consensus that very few states have restrictions on the hijab in tertiary institutions or workplaces in Europe, as per the statements in *Şahin* and *Ebrahimian* to that effect, the Court should not then negate this factor by reference to the differing views on religion throughout Europe. It would be more logical to assert that there is a consensus against restrictions on the hijab in certain contexts, so the absence of European consensus cannot widen the margin of appreciation afforded to the State. The fact that there are differing views on religion in Europe can remain relevant in determining whether the national authority is better placed to make the decision, but it should not result in the finding that there is no European consensus.

C. A Failure to Properly Analyse Necessity and Proportionality

[60] *Leyla Şahin v Turkey*, above n 31, at [55]-[65]; and Berry, above n 2, at 113.

[61] Berry, above n 2, at 112; and *Leyla Şahin v Turkey*, above n 31, at [109].

[62] Cambridge Dictionary "consensus" < www.dictionary.cambridge.org/>

[63] Jeroen Temperman, T. Jeremy Gunn, and Malcolm Evans "Introduction" in Jeroen Temperman, T. Jeremy Gunn, and Malcolm Evans *Studies* (eds) *The European Court of Human Rights and the Freedom of Religion or Belief: The 25 Years since Kokkinakis* (Koninklijke Brill NV, Leiden, 2019) 1 at 7.

The ECtHR acknowledged in *Dahlab* that even where it affords the State with a wide margin of appreciation, the Court must still engage in an analysis of whether the measure was necessary and proportionate to the legitimate aim:[64]

> The Court's task is to determine whether the measures taken at national level were justified in principle – that is, whether the reasons adduced to justify them appear "relevant and sufficient" and are proportionate to the legitimate aim pursued.

Judge O'Leary echoed these words in her Partly Dissenting judgment in *Ebrahimian*, stating that the Court "cannot divest itself of its supervisory role" due to "reference to ever more abstract ideals and principles" like secularism.[65] However, in practise the Court has failed to heed its words and instead failed to conduct a proper analysis of whether interference with the applicant's rights under Article 9 was necessary and proportionate in a democratic society, as stipulated under 9(2).[66] This seems to be because "the Court does not question the elevated position of secularism" and therefore states can comfortably rely on secularism to widen the margin of appreciation and remove religion from the public sphere.[67]

Although a genuine threat to the principle of secularism could mean that interference is necessary, there is insufficient evidence that the applicants in these cases were engaging in activities that made the restrictive measures necessary and proportionate. In *Dahlab*, the government conceded that Mrs Dahlab's teaching had remained secular in nature with no mention of her personal beliefs, she was not engaging in any proselytising activities, and that Mrs Dahlab had worn her hijab for three years without complaints from any parents.[68] Therefore, the Court's claim that the hijab may have a "proselytising effect" seems based on hypothetical and subjective concerns about infringement on the rights of the children

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[64] *Dahlab v Switzerland,* above n 25, at 12.

[65] *Ebrahimian v France,* above n 48, Partly Concurring and Partly Dissenting Opinion of Judge O'Leary, at page 37.

[66] Berry, above n 2, at 115.

[67] Carolyn Evans, "Individual and Group Religious Freedom in the European Court of Human Rights: Cracks in the Intellectual Architecture" (2010-2011) 26 JLR 321 at 336.

[68] *Dahlab v Switzerland,* above n 25, at 6.

rather than any real interference with the rights and freedoms of others.[69] Additionally, rather than balancing the impact on Mrs Dahlab with the perceived impact on the pupils, the Court largely accepted the State's view that the measure was proportionate without scrutiny. Although it may be true that national authorities are well-placed to make decisions about the public education system, the Court should have considered whether removing the hijab from the public education sphere was truly necessary to protect secularism.

In *Şahin*, there was also an inadequate analysis of whether the measure was necessary, as the majority accepted that the hijab was associated with religious extremism, despite the fact the applicant had peacefully worn a hijab for four years at the university and was not personally aligned with any political movement.[70] Judge Tulkens criticised this conceptual leap in her dissent as "merely wearing the hijab cannot be associated with fundamentalism and it is vital to distinguish between those who wear the hijab and "extremists" who seek to impose the hijab as they do other religious symbols".[71] Therefore, it is difficult to understand how the Court found the interference necessary to protect Turkey's secular values from religious extremism.

Lastly, in *Ebrahimian*, France's claim that the restrictive measure was necessary to ensure equal treatment of patients makes a questionable leap from a staff member wearing a hijab to the quality of her treatment. Dissenting Judge De Gaetano noted the dubious nature of this assertion, as it is a "false (and… very dangerous) premise… that the users of public service cannot be guaranteed an impartial service if the public official serving them manifests in the slightest way his or her religious affiliation".[72]

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[69] Brett G. Scharffs "Kokkinakis and the Narratives of Proper and Improper Proselytizing" in Jeroen Temperman, T. Jeremy Gunn, and Malcolm Evans *Studies* (eds) *The European Court of Human Rights and the Freedom of Religion or Belief: The 25 Years since Kokkinakis* (Koninklijke Brill NV, Leiden, 2019) 153 at 170-171.

[70] Romero, above n 13, at 98-99.

[71] *Leyla Şahin v Turkey,* above n 31, Dissenting Opinion of Judge Tulkens, at 10.

[72] *Ebrahimian v France,* above n 48, Dissenting Opinion of Judge De Gaetano, at page 39.

Therefore, due to the absence of evidence that the interference was necessary in these cases, it can be concluded that the Court is taking a context-specific issue regarding the hijab and then extrapolating it "into a larger abstract justification based on the need to protect secularism *per se*," which "is not satisfactory".[73] Stephanie Berry explains that the Court's failure to scrutinise the necessity of interference in cases concerning the hijab and secularism can be attributed to two of the Court's (false) assumptions.[74] First, the ECtHR is assuming that the principle of secularism is inherently consistent with the state's role as a "neutral and impartial organiser" of society. Second, the Court is assuming that secularism seeks to protect the rights and freedoms of all members of society, so limitations on this ground are justified. However, the fundamentalist secular approach is primarily concerned with removing religion from the public sphere, rather than with protecting individual freedoms or ensuring that the state acts neutrally.[75] As restrictions on the hijab also do not protect Muslim rights, secularism does not protect the rights of all members of society. Therefore, the Court's failure to fully assess the necessity and proportionality of the measures cannot be justified.

D. A Failure to Consider the Practical Consequences on the Applicant

The wide margin of appreciation also means that the ECtHR is not engaging in a comprehensive proportionality test that weighs the practical *consequences* of the restrictive measure on the applicant with the impact on the rights and freedoms of others. There were many serious and specific consequences in the aforementioned cases that were not discussed because the Court afforded the State party a wide margin of appreciation and thus effectively divested itself of its supervisory role. For example, in *Ebrahimian* the Court failed to consider that the number of jobs in the French public service is around 5.6 million whilst the total number of jobs is estimated at 26 million.[76] Therefore, those wearing visible religious manifestations like the hijab would be prohibited from

[73] Ronan McCrea "Secularism before the Strasbourg Court: Abstract Constitutional Principles as a Basis for Limiting Rights" (2016) 79 MLR 691 at 700.
[74] Berry, above n 2, at 115.
[75] Berry, above n 2, at 115.
[76] European Court of Human Rights, above n 49.

approximately 21% of employment opportunities.[77] The Court should have included these facts in their proportionality analysis and considered whether something less than a blanket ban was appropriate. Further, in both *Şahin* and *Dogru*, Muslim women who wished to wear a hijab were unable to attend their desired educational institution as a consequence of the ECtHR decisions. The importance of considering the consequences of the restrictive measure on the applicant has also been acknowledged by the ECtHR itself in *Eweida and Others*, where two of the applicants lost their jobs due to their religious manifestations.[78] The Court emphasised that the loss of employment was a serious consequence for both applicants and thus was a highly relevant consideration as to whether the interference with Article 9 was proportionate.[79] Therefore, it seems inconsistent and unfair that the Court did not place significance on the consequences on the Muslim applicants.

E. A Failure to Consider the Wider Implications on the Integration of Muslim Women

The failure of the Court to consider the consequences on the applicants by using a wide margin of appreciation also has wider implications for the integration of Muslim women in Europe. The Council of Europe was founded in 1949 and the ethno-cultural nature of Europe has dramatically changed since then due to migration.[80] There has also been a rise in legislation in Europe aiming to regulate the public sphere, which proponents of minority rights argue can result in indirectly disadvantaging minorities, as public institutions are shaped around the majority's culture, traditions and religion.[81] Therefore, the ECtHR's role as a regulator of the Council of Europe means that it must be attuned to how cases before the Court have consequences on how minorities are treated in Europe. This is especially important when tolerance and the protection of minorities are two key values that the Council of Europe exists to protect and State parties thus agreed to uphold when joining the Council.[82]

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[77] European Court of Human Rights, above n 49.

[78] *Eweida and Others v The United Kingdom* [2013] 2013-I ECHR 215 (Grand Chamber).

[79] *Eweida and Others v The United Kingdom*, above n 78, at [83].

[80] "About the Council of Europe – Overview" Council of Europe < www.coe.int/en/>

[81] Ringelheim, above n 58, at 246.

[82] "Values: Human Rights, Democracy, Rule of Law" Council of Europe < www.coe.int/en/>

There is a spectrum of approaches to the integration of minorities, ranging from a pluralist approach to an assimilationist approach. In a pluralist state, "cultural differences of minority groups are recognised and actively supported by the state".[83] In contrast, an assimilationist approach is where "cultural differences are explicitly disapproved by the state and regulated to the private sphere so that "integration takes place by absorption of cultural suppression".[84] A middle ground exists where the state supports equal political rights but does not endorse group rights for different minorities.[85]

Dahlab, Dogru, and *Ebrahimian* all illustrate an assimilationist approach toward Muslim women, as the right to wear the hijab is being suppressed to the private sphere and women are being coerced to absorb the non-Muslim dominant culture of their country to participate in certain public contexts. The same cannot be said of *Şahin,* as Turkey has a Muslim majority so assimilation into a different majority culture is not an issue here. Nevertheless, an assimilationist approach has been justified by the view that an emphasis on diversity will inevitably result in an unstable and discordant society and that minorities must adapt to the dominant culture to gain socioeconomic benefits.[86] The assimilationist approach thus operates from a Lockean perspective that minorities are entering into a social contract with their new country, so to reap benefits from that society they must forego some aspects of their identity which do not align with the new country's principles and values. Some have also expressed concern that the wearing of Islamic veils is even a sign that Muslim women have failed to integrate and thus will be marginalised unless they decide to conform.[87]

The assimilationist approach is clear in *Dogru,* as this decision could be described as stating that for a Muslim schoolgirl to benefit from attending a French state school, her desire to

[83] Ellen Wiles "Headscarves, Human Rights, and Harmonious Multicultural Society" (2007) 41 Law Soc. Rev. 699 at 712.
[84] Wiles, above n 83, at 712.
[85] Wiles, above n 83, at 712.
[86] Wiles, above n 83, at 713.
[87] Erica Howard "Bans on the Wearing of Burqas, Niqabs and Hijabs, Religious Freedom and the Secular Nature of the State" in Md. Jahid Hossain Bhuiyan and Ann Black (eds) *Religious Freedom in Secular States: A 21st Century Perspective* (Koninklijke Brill NV, Leiden, 2022) 73 at 81.

dress modestly in accordance with her religious beliefs must be suppressed during physical education classes otherwise she cannot attain a public education. *Ebrahimian* also operates from an assimilationist perspective as it requires that for a Muslim woman to benefit from working in the French public service, her desire to manifest her religious beliefs must be suppressed to fit within the French secular ideal.

It is true that states have the autonomy to choose an assimilationist model. However, when member States impose harsh restrictions in the name of secularism and are subsequently brought before the ECtHR, their autonomy should be subject to the Court's duty to ensure that states uphold the values of tolerance and the protection of minorities – values which the assimilationist approach is squarely at odds with. As measures restricting the right to wear the hijab promote the assimilation of Muslim women in non-Muslim majority countries, this is an important consequence which should be within the contemplation of whether a ban is proportionate. Instead, by affording member States with a wide margin appreciation and conducting a cursory proportionality test, the Court is failing to acknowledge the effect of its decisions on how Muslim women can integrate into European communities.

VI Is Secularism a Veil for Hostility toward Islam?

The wide-reaching issues with the ECtHR jurisprudence concerning Muslim women's rights raises a more fundamental, underlying question as to whether member States have relied on 'secularism' as a veil for the reality that the State is hostile toward Islam. The negative politicisation of Islam at the ECtHR can be traced back to *Şahin* where the Grand Chamber endorsed the Chamber's comments that the measure prohibiting the hijab at universities could be seen as "a stance" against "extremist political movements in Turkey which seek to impose on society as a whole their religious symbols and conception of a society founded on religious precepts".[88] More recently, far-right political parties have seen an increase in support in countries across Europe including in France, Spain, the United

[88] *Leyla Şahin v Turkey*, above n 31, at [115].

Kingdom, Hungary, and Germany.[89] These parties share a common desire to "rid Europe of its 'Muslim issue' which is perceived as a threat to Europe" often by construing Islam as "a political religion, an ideology which seeks to subject our free Western society to Islam".[90] For example, in 2014, around the time *Ebrahimian* was decided, the French far-right party the Front National (now known as the National Rally) advocated for "enhanced protection of secularism in Europe' due to the threat of 'radical Islam' on Europe's Christian heritage".[91] The commitment to secularism as a means of minimising the visibility of Islam in French society illustrates that secularism is being used as a tool to propel a conservative political agenda rather than promote harmony in society.

Political hostility toward Islam was also explicitly discussed in *S.A.S. v France*.[92] In that case, the applicant challenged France that the prohibition on concealing the face in public spaces violated her right to wear a niqab (a full-face veil) that was protected by Article 9.[93] The ECtHR accepted France's submission that the ban could be justified in the interests of 'living together' which can be linked to the protection of the rights and freedoms of others under Article 9(2).[94] The Court noted the importance of the face during social interactions and agreed with France that the veil can be a "barrier" which breaches "the right of others to live in a space of socialisation which makes living together easier".[95] The Court concluded that the ban was proportionate so far as it guaranteed the conditions of living together and thus there was no violation of Article 9.[96]

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[89] Saira Khan "Institutionalised Islamophobia: The Rise of European Nationalism against Freedom of Religion for Muslims" in Javaid Rehman, Ayesha Shahid, and Steve Foster (eds) *The Asian Yearbook of Human Rights and Humanitarian Law* (Koninklijke Brill NV, Leiden, 2020) 330 at 332-333.

[90] Khan, above n 89, at 332.

[91] Hans-Georg Betz "Mosques, Minarets, Burqas and Other Essential Threats" in Ruth Wodak, Majid Khosravinik, and Brigitte Mral (eds) *Right-Wing Populism in Europe: Politics and Discourse* (Bloomsbury Academic, 2013) 71 at 75.

[92] *S.A.S. v France* [2014] 2014-III ECHR 291 (Grand Chamber).

[93] *S.A.S. v France,* above n 92, at [3].

[94] At [121].

[95] At [122].

[96] At [157] and [159].

However, in coming to this conclusion, the Court set out the preliminary 2010 French Parliamentary report that the Islamic full-face veil was "a practice at odds with the values of the Republic", as expressed in the maxim "liberty, equality, fraternity" and that it went "beyond mere incompatibility with secularism" as it represented a "form of subservience".[97] The Court acknowledged that third-party interveners had raised legitimate concerns that the debate contained Islamophobic comments and that although:[98]

> It is admittedly not for the Court to rule on whether legislation is desirable… It would, however, emphasise that a State which enters into a legislative process of this kind takes the risk of contributing to the consolidation of the stereotypes which affect certain categories of the population and of encouraging the expression of intolerance, when it has a duty, on the contrary, to promote tolerance.

These remarks are unsatisfactory. The Court is conceding that it has a duty to ensure that States uphold their duty to promote tolerance – allowing each individual to live according to their beliefs without being unduly encumbered by others' beliefs[99] – yet simultaneously failing to intervene in the face of intolerance against Islam. As the parliamentary debates are set out in depth in the judgment, the Court cannot simply accept that the prohibition on the full-face veil seeks to protect the notion of 'living together' when it is aware that this is a thin veil for Islamophobic views and that the ban has the effect of amplifying the division between Muslims and non-Muslims in France.[100] The dissenting judges in *S.A.S.* were acute to this reality, stating that the ban can be seen as a "sign of selective pluralism and restricted tolerance" that strives to eliminate an alleged cause of tension (Islam), despite this contradicting earlier statements made by the majority that "the role of the authorities ... is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other".[101]

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[97] At [17].

[98] At [149].

[99] Lorenzo Zucca *Tolerance or Toleration? How to Deal with Religious Conflicts in Europe* (Oxford University Press, Oxford, 2012) at 13.

[100] Howard, above n 87, at 88.

[101] *S.A.S v France*, above n 92, Joint Partly Dissenting Opinion of Judges Nussberger and Jäderblom, at [14].

Therefore, there is a strong indication that member States are relying on 'secularism' and 'living together' as a facade to promote an Islamophobic agenda and the ECtHR is aware of this reality but is choosing to turn a blind eye.

VII Reforms

The ECtHR needs to undertake reforms to strike a more appropriate balance between state autonomy and the protection of fundamental individual rights.

There has been a suggestion that instead of States engaging in a "sleight of hand", [102] to fit principles like secularism under 9(2) via the rights and freedoms of others, the legitimate aims for restricting the freedom to manifest one's religious beliefs could be expanded to include principles like secularism directly. [103] However, 9(2) was intentionally a strict provision due to the fundamental importance of protecting religious manifestations, so it is not appropriate to extend the wording of 9(2) to directly include principles like secularism as this gives the State too much latitude to erode individual freedoms.

Instead, there are three reforms that the ECtHR should consider as a logical result of the aforementioned issues.

A. Employ a Narrower Margin of Appreciation

First, the ECtHR needs to employ a narrower margin of appreciation by ceasing to rely on the idea that there is no European consensus. As stated above – contrary to the ECtHR's view – there is a European consensus that restrictions on the hijab are *not* necessary in the contexts which have arisen before the courts (educational institutions and the public service). The fact that a few member States have imposed restrictions can remain relevant to the Court's analysis of necessity and whether the national authority is better placed to make the decision. Nevertheless, the Court should refrain from increasing its margin of

[102] Ronan McCrea, above n 73, at 700.

[103] Ilias Trispiotis "Freedom of Religion, Equality and Discrimination in the European Convention on Rights" (PhD Thesis, University College London, 2016) 168-174.

deference on the basis that there is no European consensus, unless more countries adopt restrictions. Due to the wide-reaching issues flowing from the wide margin of appreciation, narrowing this margin is crucial to protect individual freedoms and ensuring that Article 9 can be implemented effectively.

B. Engage in a More Comprehensive Analysis of Necessity and Proportionality

Secondly, the Court needs to carry out its supervisory role by engaging in a more comprehensive analysis of the necessity and proportionality of the restrictive measure in a democratic society. Its analysis should involve setting out the factors on a case-by-case basis in favour of each party and engaging in some scrutiny of the State party's position. In particular, a more comprehensive proportionality test should involve (1) placing greater significance on the consequences for the applicant and (2) prioritising concrete aims over abstract aims.

1 Place greater significance on the consequences on the applicant

The Court needs to heed its comments in *Eweida and Others* indicating that the consequences of the restrictive measure on the applicant are significant when considering the proportionality of the measure. Although harsh consequences can be considered proportionate – as illustrated in *Eweida and Others* as the Court held that the loss of employment was proportionate for one applicant[104] – the Court must comprehensively weigh the consequences of the restriction on the religious manifestation with the legitimate aim. To gain a greater understanding of the consequences, a critical legal pluralist approach may be helpful, as a critical legal pluralist lens allows the Court to consider the "subjective beliefs of a legal subject" and look at an issue from the applicant's perspective.[105] Consideration of a Muslim perspective would allow the Court to reject the false *forum internum* versus *forum externum* dichotomy, appreciate the importance of modesty for the applicants, and the harsh consequences of the restrictive measure.

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[104] *Eweida and Others v The United Kingdom*, above n 78, at [100] and [106].

[105] Amy Jackson "A Critical Legal Pluralist Analysis of the Begum Case" (2010) 6 CLPE 2 at 2.

2 Prioritise concrete aims over abstract aims

The Court should also prioritise concrete aims (like the perceived impact on those in immediate contact with the applicant) over abstract aims (like protecting the principle of secularism) when conducting the proportionality analysis.[106] For example, Judge O'Leary acknowledged that in *Ebrahimian* that the concrete aim was to protect vulnerable psychiatric patients whereas the abstract aim was to protect the constitutional principle of secularism.[107] Judge O'Leary argued that when conducting the proportionality analysis, it was justifiable to conclude that the interference was proportionate to the concrete aim but criticised the abstract aim as rendering the analysis too abstract.[108] Therefore, it can be concluded that where there is concrete interference with the rights and freedoms of others, this should be seen as a stronger argument than an abstract interference with the principle of secularism in and of itself. This is beneficial as it weakens the weight of arguments based merely on self-defined State values.

Regarding concrete aims, the Court should also focus on "evidence of any real encroachment on the interests of others" when determining whether the interference is proportionate. [109] This consideration was raised in *Eweida and Others,* where one of the applicants, an employee of British Airways, was sent home for wearing a visible Christian crucifix as it breached the airline's policy that any religious jewellery must not be visible.[110] The Court held that there was no evidence of real encroachment on the rights of others, so the earlier courts had given too much weight to the employer's aim of presenting a corporate image and Mrs Eweida's Article 9 right had been breached.[111] Requiring evidence of real encroachment is also useful as it can be distinguished from mere

[106] Broadly referring to the discussion in McCrea, above n 73, at 695-696.

[107] *Ebrahimian v France,* above n 48, Partly Concurring and Partly Dissenting Opinion of Judge O'Leary, at page 35-36.

[108] *Ebrahimian v France,* above n 48, Partly Concurring and Partly Dissenting Opinion of Judge O'Leary, at page 35; and McCrea, above n 73, at 696.

[109] *Eweida and Others v The United Kingdom*, above n 78, at [95].

[110] *Eweida and Others v The United Kingdom*, above n 78, at [10] and [12].

[111] *Eweida and Others v The United Kingdom*, above n 78, at [94].

discomfort or offence, as there is no right to not be offended by someone else's religious manifestation.[112] This is particularly true as:[113]

> exposure to other religious practices and symbols is simply a fact of life in modern pluralistic democracies. Some offence to at least some persons is an inevitable by-product of contemporary social life, where [there is] an increasing range of diverse cultures, religions and lifestyles.

The distinction between discomfort and a real encroachment on others' rights may seem somewhat elusive. However, if the Court considers whether the subjective views of others are reasonable and sincere, rather than far-fetched and fictitious, this is sufficient to establish a real encroachment on others' rights.[114]

The need for the Court to focus on concrete aims and evidence of real encroachment on the rights and freedoms of others is illustrated in *S.A.S.* The allegedly legitimate aim of achieving the conditions of 'living together' is a very abstract aim. It is more abstract than the aim of protecting secularism, as secularism is a constitutional principle in France, whereas 'living together' is a "very general concept" that is not a constitutional principle.[115] The assertion that one needs to see another's face to engage in meaningful social interactions is also distinctly a Western notion that disregards the fact that veil-wearers have public exchanges all around the world.[116] France also failed to provide any concrete evidence that the full-face veil infringed on the rights and freedoms of others in social interactions, not meeting the standard of any real encroachment on the rights of others from *Eweida and Others*. Therefore, the ECtHR's acceptance that a purely abstract concept can supersede a fundamental right in the ECHR is a very problematic conclusion.

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[112] Leigh and Ahdar, above n 10, at 1090.

[113] Leigh and Ahdar, above n 10, at 1090.

[114] Leigh and Ahdar, above n 10, at 1090.

[115] *S.A.S. v France,* above n 92, Joint Partly Dissenting Opinion Of Judges Nussberger And Jäderblom, at [5].

[116] *S.A.S v France,* above n 92, Joint Partly Dissenting Opinion Of Judges Nussberger And Jäderblom, at [9]; and Sital Kalantry "The French Veil Ban: A Transnational Legal Feminist Approach" (2017) 46 Univ. Baltimore Law Rev. 201 at 225.

If the Court continues to accept that protecting principles like secularism and the aim of 'living together' can be legitimate aims for the purposes of 9(2), this means that States are able to restrict religious manifestations by virtue of increasingly abstract and ambiguous justifications. As Article 9(2) is intentionally narrow to prevent States from justifying restrictions on religious manifestations by arbitrary and subjective reasoning, the Court needs to refrain from heading in the direction of accepting increasingly abstract aims by applying a wide margin of deference. Otherwise, the Court will continue to "legitimize growing intolerance and fail[] to protect minorities from the tyranny of the majority".[117]

C. Promote Tolerance toward Islam

As member States are using 'secularism' and 'living together' to disguise hostility toward Islam, the ECtHR needs to refrain from complacently ignoring the origins of restrictive measures and thus legitimising hostile attitudes toward Islam in Europe. Instead, the Court needs to directly promote tolerance by considering that if a measure arises due to hostility toward Islam, the member State is not respecting the principles of tolerance and pluralism and therefore, the Court needs to increase its scrutiny of necessity. Admittedly, in 2010, the Parliamentary Assembly of the Council of Europe raised concerns that Muslims in several member States were being subjected to stigma and exclusion[118] and that cultivating a more inclusive and tolerant Europe must be a priority.[119] As intolerance has only increased since 2010 due to the absence of political will to undertake such changes, the ECtHR may face backlash if it prevents member States from implementing restrictive measures against Islamic veils. However, it is firmly within the ECtHR's mandate to promote "pluralism, tolerance, and broadmindness" and protect minority rights,[120] so it is nonsensical if an institution created to protect these values cannot do so. Article 9 is also rendered ineffective for Muslim women if the Court fails to address the hostile origins of restrictive measures which target Islamic veils, so there is a pressing need for the Court to reform its approach.

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[117] Berry, above n 2, at 113.

[118] Parliamentary Assembly, Council of Europe, Resolution 1743, para 1.

[119] Parliamentary Assembly, Council of Europe, Resolution 1743, para 8.

[120] *S.A.S v France*, above n 92, at [128].

VIII Concluding Remarks

In summary, member States are seeking to remove the hijab from the public sphere by taking a fundamentalist approach to secularism and the ECtHR is upholding these restrictive measures by affording member States with a wide margin of appreciation. This paper has sought to demonstrate that there are numerous and wide-reaching issues with this combination. The fundamentalist approach relies on a false separation between the public and private spheres which cannot apply to the Muslim faith as one's beliefs touch every aspect of one's life. The wide margin of appreciation also relies on the inaccurate proposition that there is no European consensus on the wearing of the hijab in particular contexts and means the Court is failing to conduct a proper analysis of whether the interference with Article 9 is necessary and proportionate in a democratic society. It also means that the Court has failed to consider the significance of the consequences of the restrictive measure on the applicants. More broadly, it means that the Court is ignoring the assimilationist impact of its decisions on the integration of Muslim women in European countries where they are a minority. Finally, this paper argued that some member States are using secularism and 'living together' as a veil to disguise hostility toward Islam and that the Court is choosing not to meaningfully address this reality.

Therefore, this paper concluded that the ECtHR needs to reform its approach in three ways. First, narrowing the margin of appreciation by ceasing to rely on the idea that there is no European consensus. Secondly, engaging in a more comprehensive necessity and proportionality analysis that includes (1) a proper consideration of the consequences of the restrictive measure on the applicant and (2) an analysis that prioritises concrete aims over abstract aims. Finally, directly addressing the Islamophobic roots of restrictive measures and promoting tolerance by closely scrutinising the necessity of such measures. These reforms mean that the Court can strike a more appropriate balance between state autonomy and individual rights to prevent States from relying on abstract and self-defined principles that stretch the wording of Article 9(2). The main obstacle to the implementation of reforms is that change needs to arise through judicial initiative, as due to the Grand Chamber precedents already established, the ECtHR may be hesitant to stray from its established stance. Nevertheless, instead of complacently assisting the removal of the Islamic strand

which is now woven into the religious fabric of Europe, the Court should use its position to rethread this strand and resist conflating one Muslim woman's desire to wear a veil with political extremism.

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