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ON ISLAMOPHOBIA AND THE RELIGIOUS RIGHTS OF MUSLIMS IN EUROPE

Francesca Romana Partipilo*

SUMMARY: 1. Introduction. – 2. Defining and Understanding Islamophobia. – 3. Private and Structural Islamophobia in Europe: The Impact on the Integration of Muslims and Their Religious Rights. – 4. Islamophobia and Freedom of Religion in the European Court of Human Rights' Jurisprudence. – 4.1. Freedom of Religion. – 4.2. Islamophobic Hate Speech. – 5. Islam in the European Public Space according to the European Court of Human Rights. – 6. Conclusion.

1. Introduction

After 9/11, Western liberal democracies have witnessed a steady rise in anti-Muslim sentiments and Islamophobic rhetoric.¹ As extensively noted, the attacks marked a turning point in the perception of Islam in the West, acting “as a catalyst for the incitement of hatred towards Muslims and Islam through acts of violence, discrimination and hate crimes”.² Subsequent episodes, such as the 2004 Madrid train

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* Post-doc Research Fellow in International Law, Alma Mater Studiorum, University of Bologna. E-mail: francesca.partipilo@unibo.it.

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¹ C. ALLEN, *Justifying Islamophobia: A post-9/11 Consideration of the European Union and British Contexts*, in *American Journal of Islam and Society*, 2004, pp. 1-25. Also, see Human Rights Council, *Human Rights Impact of Counter-Terrorism and Countering (Violent) Extremism Policies and Practices on The Rights of Women, Girls and The Family. Report of The Special Rapporteur on The Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, A/HRC/46/36, para. 11, where it is reported that “since 11 September 2001 a discriminatory use of counter-terrorism measures against Muslim individuals and communities has directly and indirectly affected the rights of associated family members. Significant research has uncovered wide misuse and abuse of surveillance laws on a discriminatory basis, targeting particular communities and groups based on ethnic background, race and religion”.

² B. AL ATOM, *Examining the Trends of Islamophobia: Western Public Attitudes since 9/11*, in *Studies in Sociology of Science*, 2014, p. 83.

bombings,³ the 2015 Charlie Hebdo and Bataclan attacks in Paris,⁴ as well as the war erupted in Gaza in 2023, further fuelled Islamophobic attitudes across several areas of the world.⁵ The conflation between Islam and terrorism became a recurring theme in public discourses on migration and integration. By way of example, the UK-based anti-hate crime charity Tell MAMA reported that there has been a “surge in rhetoric that falsely portrays Muslims as terrorists or terrorist sympathisers” following the conflict in Gaza.⁶ Nonetheless, the phenomenon of Islamophobia has not been confined to violent discourses or vicious online rhetoric. Many anti-Muslim (physical) attacks took place in different parts of Europe after the outbreak of the conflict.

In October 2023, Italian-Palestinian activist Karem Rohana was violently assaulted in Rome by two unidentified individuals after returning from Jerusalem, where he had been visiting his family.⁷ In September 2024, the Bosnian Mosque in Norrköping, Sweden, was the object of a hate crime in which windows were smashed and neo-Nazi slogans were spray-painted on the walls.⁸ In the UK, as mentioned above, Islamophobic assaults surged by 73 percent in 2024, reaching the highest number ever recorded by Tell MAMA. The organization attributed this rise in violence to the normalization of anti-Muslim rhetoric in politics and the spread of far-right conspiracy theories on social media.⁹ In France, in April 2025, a 22-year-old Muslim man, Aboubakar Cissé, was fatally stabbed while praying inside a mosque. The attacker, a 21-year-old man, allegedly filmed the assault while shouting anti-Islamic slurs towards the victim.¹⁰ The murder was widely condemned, with President Macron stressing that “religious hate has no place in France”.¹¹

It is worth stressing that Islamophobia is not exclusively a reaction to major geopolitical events or individual criminal acts. It is also a product of the deliberate

³ W. ROSE, R. MURPHY, M. ABRAHMS, *Does Terrorism Ever Work? The 2004 Madrid Train Bombings*, in *International Security*, 2007, pp. 185-192.

⁴ A. MONDON, A. WINTER, *Charlie Hebdo, Republican Secularism and Islamophobia*, in G. TITLEY, D. FREEDMAN, G. KHIABANY, A. MONDON (eds.), *After Charlie Hebdo: Terror, Racism and Free Speech*, London, 2017, pp. 31-45. The authors explain that the attack against Charlie Hebdo took place in a context in which Islamophobia had become increasingly mainstream in France.

⁵ I. IRFAN, M. AQEEL, M. HUSSAIN, *Critical Discourse Analysis of Islamophobia Reflection in Gaza-Israel Conflict: A Case Study of BBC Reporting*, in *Journal of Arts and Linguistics Studies*, 2024, pp. 289-301. Also see S. MANSOOR, *Anti-Muslim Hate in US Rises since 7 October but Advocates Praise Community Resilience*, in *The Guardian*, 2024.

⁶ I. ATTA, *The New Norm of Anti-Muslim Hate – Tell MAMA Report*, 2025.

⁷ K. CARBONI, *Karem Rohana, l'attivista italo-palestinese è stato pedinato e aggredito a Roma*, in *Wired Italia*, 2023.

⁸ E. FORIC, E. CLAEISSON, *Moskébygge i Norrköping utsatt för vandalism: “Riktat hatbrott”*, in *SVT Nyheter*, 2024.

⁹ A. MOHDIN, C. OSUH, *UK Islamophobic Assaults Surged by 73% in 2024, Anti-Hate Crime Charity Reports*, in *The Guardian*, 2024.

¹⁰ C. AYAD, *French Mosque Stabber Was Driven By “Morbid Fascination”, Prosecutor Says, Ruling Out Terror*, in *Le Monde*, 2025.

¹¹ S. DE LA FELD, *Religious Hate Has No Place in France, Says Macron After Muslim Killed in Mosque*, in *France 24*, 2025.

effort of some – often right-wing¹² – politicians to weaponize such events with a view to fostering stronger social cohesion by constructing a unifying “other” to be feared.¹³ In many cases, Islamophobia is used by right-wing parties to mobilize electors in their favour.¹⁴ The narrative embraced by these politicians portrays Muslims through ethnic, religious, and cultural lenses as a perceived threat to national identity, values and security.¹⁵ This process of “othering” and the unsubstantiated fear towards a “suitable enemy”¹⁶ represent some of the central features of Islamophobia.

In the light of the above, this paper examines whether the European Convention on Human Rights and Fundamental Freedoms (ECHR or the Convention) offers adequate protection against the ever-growing phenomenon of Islamophobia.¹⁷ To this end, it examines the case law of the European Court of Human Rights (ECtHR or the Court) relating to the religious freedom of individuals with a migratory background. It focuses on Arts 9 and 10 of the Convention, respectively guaranteeing freedom of religion and freedom of expression. By examining the Court’s interpretation of these two provisions, the aim of the article is to ascertain whether the ECtHR’s jurisprudence is truly protective of the religious rights of migrants or rather driven by a sort of covert (or unconscious) fear of Islam.¹⁸

For these reasons, the paper firstly explores the notion of Islamophobia and its implications on the religious rights of Muslims and their socio-economic integration in Europe (Sect. 2 and Sect. 3). Secondly, building on this background, it analyses the

¹² Parties such as France’s National Rally (previously known as the National Front), the United Kingdom Independence Party (UKIP), Spain’s Vox Party and the Austrian Freedom Party share a common concern regarding Islam and immigration in Europe and the threat they perceive it to have upon their cultures and European values. See S. KHAN, *Institutionalised Islamophobia: The Rise of European Nationalism against Freedom of Religion for Muslims*, in *Asian Yearbook of Human Rights and Humanitarian Law*, 2024, pp. 330-348.

¹³ J. STEINER, *Man’s Inhumanity to Man: Confrontations and Prejudice*, in *Psychoanalytic Inquiry*, 2016, pp. 285-294.

¹⁴ F. HAFEZ, *Shifting Borders: Islamophobia as Common Ground for Building Pan-European Right-Wing Unity*, in *Patterns of Prejudice*, 2014, pp. 479-499.

¹⁵ L. FEKETE, *A Suitable Enemy: Racism, Migration and Islamophobia in Europe*, London & New York, 2009. Also see A. KAYA, “Islamophobia” as an Ideology in *The West: Scapegoating Migrants of Muslim Origin*, in *An Anthology of Migration and Social Transformation: European Perspectives*, Cham, 2016, pp. 281-29. In this regard, also see J. CESARI, *Muslims as the Internal and External Enemy*, in *Why the West Fears Islam: An Exploration of Muslims in Liberal Democracies*, New York, 2013, pp. 1-20. Also see S. HAMID, *The Role of Islam in European Populism: How Refugee Flows and Fear of Muslims Drive Right-Wing Support*, in *Democracy and Disorder Policy Brief*, 2019.

¹⁶ D. KAMENOVA, E. PINGAUD, *Anti-Migration and Islamophobia: Web Populism and Targeting The “Easiest Other”*, in *Populism and The Web*, London, 2017, pp. 108-121.

¹⁷ An international treaty that was drafted under the auspices of the Council of Europe and opened for signature in 1950, entering into force in 1953. See E. BATES, *The Evolution of the European Convention on Human Rights: From Its Inception to The Creation of a Permanent Court of Human Rights*, Oxford, 2010.

¹⁸ C. MOE, *Refah Revisited: Strasbourg’s Construction of Islam*, in *Islam, Europe and Emerging Legal Issues*, London, 2016, pp. 235-272. Also see A. CEBADA ROMERO, *The European Court of Human Rights and Religion: Between “Christian” Neutrality and The Fear of Islam*, in *New Zealand Journal of Public and International Law*, 2013, pp. 75-101. The latter argues that the ECtHR often offers a biased interpretation of the State’s duty of neutrality which, on the one hand, better serves the interest and needs of the Christian churches and, on the other hand, shows the ECtHR’s fear of Islam.

jurisprudence of the ECtHR on Arts 9 and 10 of the Convention, with a view to determining whether it is adequately protective of the religious freedom of Muslim people, as well as being conducive to their social integration and their right not to be subjected to hate speech (Sect. 4). By critically analysing the Court's decisions, the paper assesses whether the ECtHR has provided a sustainable and balanced model of coexistence among different religious groups in Europe, capable of addressing the challenge of Islamophobia while striking a fair balance between Muslims' individual rights and the collective interests of host communities. It will be argued that, in certain cases, the Court has delivered rulings which may inadvertently support Islamophobic attitudes and policies in the Contracting States (Sect. 5 and Sect. 6).

2. Defining and Understanding Islamophobia

The mainstreaming of the term Islamophobia is not accompanied by a universally accepted definition in scientific literature. The concept of Islamophobia was originally introduced in the second half of the 80s¹⁹ to draw attention to harmful rhetoric and actions directed at Islam and Muslims in Western liberal democracies.²⁰ One of the first mentions of Islamophobia, as distinct from similar notions such as racism or xenophobia, is contained in Said's *Orientalism Reconsidered*.²¹ However, the notion became more widely known after the report on discrimination against Muslims published in 1997 by the Runnymede Trust, a British think-tank that had already brought public attention to the broader issues of racism, discrimination, and equal rights.²² The Runnymede report, published under the title *Islamophobia: A Challenge for Us All*, defines Islamophobia as:

any distinction, exclusion, or restriction towards, or preference against, Muslims (or those perceived to be Muslims) that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.²³

¹⁹ However, some authors have noted that French colonial administrators were often criticized with the use of the word *islamophobie* for their treatment of Muslim subjects, well before the 80s. See P. BRUCKNER, *There's No Such Thing as Islamophobia: Critique of Islam is a Fundamental Western Right, Not an Illness*, in *City Journal*, 2017.

²⁰ E. BLEICH, *What Is Islamophobia and How Much Is There? Theorizing and Measuring an Emerging Comparative Concept*, in *American Behavioral Scientist*, 2011, pp. 1581-1600. Also see E. BLEICH, *Defining and Researching Islamophobia*, in *Review of Middle East Studies*, 2012, pp. 180-189.

²¹ E. SAID, *Orientalism Reconsidered*, in *Cultural Critique*, 1985, pp. 89-107.

²² K. BORELL, *When Is the Time to Hate? A Research Review on the Impact of Dramatic Events on Islamophobia and Islamophobic Hate Crimes in Europe*, in *Islam and Christian-Muslim Relations*, 2015, pp. 409-421.

²³ G. CONWAY, *Islamophobia, A Challenge for Us All: Report of the Runnymede Trust Commission on British Muslims and Islamophobia*, 1997.

Over time, the concept of Islamophobia became the object of an intense academic debate. While there is no universally accepted definition of Islamophobia, the concept has been defined as a form of racism,²⁴ xeno-racism,²⁵ stereotyping,²⁶ a new “hybridist racism”,²⁷ prejudice,²⁸ fear,²⁹ and exclusion.³⁰ Some authors define Islamophobia as “a rejection of Islam, Muslim groups and Muslim individuals on the basis of prejudices and stereotypes” and argue that it “may have emotional, cognitive, evaluative as well as action-orientated elements”.³¹ Others define Islamophobia as “indiscriminate negative attitudes or emotions directed at Islam or Muslims”.³² Similarly, Islamophobia has been defined as “the presumption that Islam is inherently violent, alien, and inadmissible”.³³

Despite the variety of definitions, a common trait in most attempts to define Islamophobia is a deeply-rooted and unsubstantiated prejudice against Muslims, expressed through hostile acts that can escalate into serious violations of the rights of individuals with a Muslim background, including, in extreme cases, acts of violence. The discriminatory and violent character of Islamophobia has been acknowledged by many international institutions. The UN General Assembly, in a Resolution adopted on 15 March 2024,³⁴ mentioned that “growing manifestations of intolerance based on religion or belief, including in the digital context, [...] can generate hatred and violence among individuals from and within different nations”.³⁵ Similarly, the European Commission against Racism and Intolerance (ECRI), in its General Policy Recommendation no. 5, notes that “the prejudice suffered by Muslim communities [...] may manifest itself in different guises, in particular through negative general attitudes but also [...] through discriminatory acts and through violence and harassment”.³⁶ Islamophobia is thus acknowledged as a violent and discriminatory attitude, potentially entailing violations of fundamental rights such as the right to life,

²⁴ N. MEER, T. MODOOD, *Refutations of Racism in the “Muslim Question”*, in *Anti-Muslim Prejudice*, London, 2013, pp. 126-145.

²⁵ L. FEKETE, *A Suitable Enemy: Racism, Migration and Islamophobia in Europe*, op. cit.

²⁶ L. MOOSAVI, *The Racialization of Muslim Converts in Britain and Their Experiences of Islamophobia*, in *Critical Sociology*, 2015, pp. 41-56.

²⁷ M. COLE, *A Plethora of “Suitable Enemies”: British Racism at the Dawn of the Twenty-First Century*, in *Ethnic and Racial Studies*, 2009, pp. 1671-1685.

²⁸ R. IMHOFF, J. RECKER, *Differentiating Islamophobia: Introducing a New Scale to Measure Islamoprejudice and Secular Islam Critique*, in *Political Psychology*, 2012, pp. 811-824.

²⁹ P.G. DANCHIN, *Islam in the Secular Nomos of the European Court of Human Rights*, in *Michigan Journal of International Law*, 2013, pp. 225-237.

³⁰ E. BAYRAKLI, F. HAFEZ, *European Islamophobia Report 2017*, 2018.

³¹ J. STOLZ, *Explaining Islamophobia: A Test of Four Theories Based on a Case of a Swiss City*, in *Swiss Journal of Sociology*, 2005, pp. 547-566.

³² E. BLEICH, *What Is Islamophobia and How Much Is There?*, op. cit.

³³ K.A. BEYDOUN, *Islamophobia: Toward a Legal Definition and Framework*, in *Columbia Law Review Online*, 2016, pp. 108-125.

³⁴ Resolution adopted by the UN General Assembly on 15 March 2024, *Measures to Combat Islamophobia*, UN Doc A/RES/78/264.

³⁵ *Ibidem*, p. 2.

³⁶ ECRI General Policy Recommendation no. 5 on *Combating Intolerance and Discrimination Against Muslims*, adopted on 16 March 2000.

freedom of religion, private life, education, adequate housing, and so on.³⁷ This was originally acknowledged by the Runnymede report itself, stressing that Islamophobia could have the effect of “nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms”.

The Runnymede report also referred to the possibility that Islamophobia may target people “perceived to be Muslims”. In fact, it needs to be stressed that religious identity may be ascribed to someone by others. For instance, Turks can be racialized as Muslims, and people with Arab-sounding names or Middle Eastern looks may experience discrimination or be attacked for being “Muslim” (even if they are not), because religion is often linked to physical appearance or ethnicity.³⁸ In this regard, it was observed that Islamophobia is not necessarily triggered by skin colour – it can also be set off by one or more symbols of the Muslim faith, such as the Islamic headscarf.³⁹ As Sivanandan puts it, “the victims [of Islamophobia] are marked out not so much by their colour as by their beards and headscarves”.⁴⁰ Likewise, in November 2018, the All-Party Parliamentary Group on British Muslims published the report *Islamophobia Defined*, which asserted that “Islamophobia is rooted in racism and its victims are not just Muslims but also those who are perceived to be Muslims”.⁴¹ By the same token, it must be also noted that Islamophobia can be directed at Muslim individuals who may not be fervently religious – or even religious at all – based solely on their perceived religious or ethnic origins. As a result, Islamophobia inflates the number of practicing Muslims in Europe, by equating national origin with religious affiliation and ignoring highly variable degrees of religiosity.⁴²

Another aspect of Islamophobia is the fact that it tends to conflate all the different branches of Islam together, erasing any difference between the diverse identities and nuances within this religion.⁴³ This imposes upon Muslims a “collapsed collective identity in which diversity and depth are systematically denied and flattened”.⁴⁴

³⁷ K. HENRARD, *State Obligations to Counter Islamophobia: Comparing Fault Lines in the International Supervisory Practice of the HRC/ICCPR, the ECtHR and the AC/FCNM*, in *Erasmus Law Review*, 2020, pp. 82-97.

³⁸ J. E. CHENG, *Islamophobia, Muslimophobia or Racism? Parliamentary Discourses on Islam and Muslims in Debates on the Minaret Ban in Switzerland*, in *Discourse & Society*, 2015, pp. 562-586.

³⁹ M. COLE, *A Plethora of “Suitable Enemies”*, cit.

⁴⁰ A. SIVANANDAN, *Foreword to L. Fekete. A Suitable Enemy*, cit.

⁴¹ All-Party Parliamentary Group on British Muslims, *Report on the Inquiry into a Working Definition of Islamophobia/Anti-Muslim Hatred*, London: House of Commons, 2018.

⁴² M. KOENIG, *Religious Diversity, Islam, and Integration in Western Europe – Dissecting Symbolic, Social, and Institutional Boundary Dynamics*, in *KZfSS Kölner Zeitschrift für Soziologie und Sozialpsychologie*, 2023, pp. 121-147.

⁴³ N. SADEK, *Islamophobia, Shame, and the Collapse of Muslim Identities*, in *International Journal of Applied Psychoanalytic Studies*, 2017, pp. 200-221.

⁴⁴ N. SADEK, *Islamophobia, Shame*, cit. The Muslim community has, over time, split into different branches and groups. This is largely the result of leadership disputes which arose after the death of the prophet Muhammad. Faced with the question of who should lead the *umma* (community), Muslims argued over whether the leader had to be a member of the prophet's family and, if so, in what lineage. Over time, such differences in opinion evolved and were consolidated in the form of theological and legal teachings, giving rise to distinctive group identities. The Pew Research Center – which in 2009

Muslims are perceived as a single category, rather than a highly heterogeneous group of human beings, with different Islamic faiths and countries of origin or descent.⁴⁵ Clearly, this tendency is highly problematic as it perpetuates the identification of each individual Muslim with the – often distorted – idea of Islam prevalent in the Western society.

In conclusion, Islamophobia appears to be a much more articulated and complex phenomenon than a mere “fear and dislike of Islam and Muslims”.⁴⁶ It is characterized by a problematic conflation between the concepts of religion and ethnicity. It often results in religious identity being imposed upon someone by others, causing persons to be identified as Muslims exclusively on the basis of their physical features or attire. It often rests on the blatant disregard for the diversity and nuances between different branches of the Islamic religion. Finally, it is crucial to keep in mind that Islamophobia, as a deterministic view of Islam,⁴⁷ has a direct – and detrimental – impact on the lives and rights of people identified as Muslims, to which we now turn on.

3. Private and Structural Islamophobia in Europe: The Impact on the Integration of Muslims and Their Religious Rights

Religion plays a crucial role within migration dynamics.⁴⁸ Refugees often belong to communities with a strong sense of religion and a solid religious affiliation. In many cases, such affiliation does not match that prevailing in the host society where refugees are forced to relocate due to conflict, hunger or persecution. This is particularly evident in Europe, where States have been met, since 2015, with increasing numbers of displaced people,⁴⁹ mainly originating from Muslim countries. This has compounded traditional difficulties in the interaction between Muslim minorities and

conducted the most comprehensive demographic study of more than 200 countries – differentiates between two main branches: Sunni and Shiite. See Pew Research Centre, *Mapping the Global Muslim Population*, 2009.

⁴⁵ P. STATHAM, J. TILLIE, *Muslims in Their European Societies of Settlement: A Comparative Agenda for Empirical Research on Socio-Cultural Integration across Countries and Groups*, in P. STATHAM, J. TILLIE (eds.), *Muslims in Europe Comparative Perspectives on Socio-cultural Integration*, London, 2018 pp. 1-20.

⁴⁶ K.A. BEYDOUN, *Islamophobia*, cit.

⁴⁷ ECRI General Policy Recommendation no. 5 on *Combating Intolerance and Discrimination Against Muslims*, adopted on 16 March 2000.

⁴⁸ P. LEVITT, “You Know, Abraham Was Really the First Immigrant”: *Religion and Transnational Migration*, in *International migration review*, 2003, pp. 847-873. The author also stresses that migrants stay connected to their communities of origin through transnational religious practices. They may maintain long-distance membership in the religious organizations of their home country. In addition, they may continue to make financial contributions to these groups or seek long-distance spiritual and practical guidance from religious leaders in their countries of origin.

⁴⁹ M. SCIPIONI, *Failing Forward in EU Migration Policy? EU Integration after the 2015 Asylum and Migration Crisis*, in *Journal of European Public Policy*, 2018, pp. 1357-1375.

European societies.⁵⁰ European States have often responded to the perceived danger by embracing a securitization approach,⁵¹ which has further fuelled traditional anti-Muslim sentiments, hindering the socio-economic integration of migrants.

In a report published in 2024, the EU Fundamental Rights Agency (FRA) observed extremely high rates of racial discrimination against Muslims in employment, both when looking for work and at work.⁵² Many other studies have demonstrated that Muslims have higher rates of unemployment and underemployment compared to the rest of the population in the EU.⁵³ By way of example, a field experiment conducted in France and involving Senegalese immigrants of Muslim and Christian origins, revealed that Muslim immigrants faced significantly higher levels of labour market discrimination compared to their Christian counterparts.⁵⁴ When it comes to Muslim women, an intersectional approach to the issue of integration demonstrates that their participation to the labour force is significantly affected by the choice to wear religious garments.⁵⁵ It has been observed that Muslim women who wear traditional or religious clothing in public experience higher rates of racial discrimination in employment than those who do not.⁵⁶ Further, Muslims in Europe tend to live in inadequate accommodations and often face homelessness.⁵⁷ Living in

⁵⁰ For a detailed discussion of the main ethnic, cultural and religious diversity challenges that Europe is facing today, see A. TRIANDAFYLIDOU, *Addressing Cultural, Ethnic & Religious Diversity Challenges in Europe: A Comparative Overview of 15 European Countries*, ACCEPT-PLURALISM, 2011/02, Overview National Discourses, Comparative Country Report, 2011. Also see L. ZANFRINI, *Introduction: General Description of the Study, Key Issues, and Provisional Conclusions*, in L. ZANFRINI (ed.), *Migrants and Religion: Paths, Issues, and Lenses. A Multidisciplinary and Multi-Sited Study on the Role of Religious Belongings in Migratory and Integration Processes*, Leiden, 2020, pp. 3-52. Crucially, the author explains that the view of the European public on migrants usually comes down to something that Europe needs to defend itself from.

⁵¹ J. HUYSMANS, *The European Union and the Securitization of Migration*, in *JCMS: Journal of common market studies*, 2000, pp. 751-777.

⁵² Fundamental Rights Agency, *Being Muslim in the EU, Experiences of Muslims*, 2024.

⁵³ F. PEROCO, *Anti-migrant Islamophobia in Europe. Social Roots, Mechanisms and Actors*, in *Revista interdisciplinar da mobilidade humana*, 2018, pp. 25-40.

⁵⁴ D.D. LAITIN, C.L. ADIDA, M.A. VALFORT, *Why Muslim Integration Fails in Christian-Heritage Societies*, Harvard, 2016.

⁵⁵ For an overview of the importance of adopting an intersectional approach while dealing with the topic of migrant integration, see A. PAZ, R. KOOK, *"It Reminds Me That I Still Exist". Critical Thoughts on Intersectionality; Refugee Muslim Women in Berlin and the Meanings of the Hijab*, in *Journal of Ethnic and Migration Studies*, 2021, pp. 2979-2996. Also see A. VAKULENKO, *Islamic Headscarves' and the European Convention on Human Rights: an Intersectional Perspective*, in *Social & Legal Studies*, 2007, pp. 183-199. Also see P. CASTILLO-ORTIZ, A. ALI, N. SAMANTA, *Gender, Intersectionality, and Religious Manifestation before the European Court of Human Rights*, in *Journal of Human Rights*, 2019, pp. 76-91.

⁵⁶ S. GHUMMAN, A.M. RYAN, *Not Welcome Here: Discrimination towards Women Who Wear the Muslim Headscarf*, in *Human relations*, 2013, pp. 671-698. Also see D. R. HODGE, T. ZIDAN, A. HUSAIN, *Are Females Who Wear the Hijab More Likely to Experience Discrimination?: A National Study of Perceptions among American Muslim Women*, in *Journal of Ethnic & Cultural Diversity in Social Work*, 2024, pp. 301-312. Also see A. LECKCIVILIZE, A. STRAUB, *Headscarf and job recruitment. Lifting the veil of labour market discrimination*, in *IZA Journal of Labor Economics*, 2018, pp. 1-32.

⁵⁷ Fundamental Rights Agency, *Being Muslim in the EU, Experiences of Muslims*, 2024. Also see T. CHOUDHURY, *Muslims and Discrimination*, in *European Islam. Challenges for Public Policy and*

low-quality housing also impacts the enjoyment of other rights, such as the right to health.⁵⁸ In addition, Muslims experience *significant barriers to accessing welfare benefits*,⁵⁹ *which hampers their chances to achieve a meaningful socio-economic integration with the local population*.⁶⁰

It must be mentioned that Islamophobia is not only a result of the xenophobic tendencies of private individuals like employers or landlords. It may be also encouraged by (and embedded in) the structural features of the public apparatus of a State, or incorporated in national legislation.⁶¹ As acknowledged by ECRI, “anti-Muslim racism can be manifested, implicitly or explicitly, not only in individual attitudes and actions, but also structurally in policy initiatives or institutional arrangements”.⁶² With this in mind, some authors distinguish between “private” Islamophobia as the fear, suspicion, and violent targeting of Muslims by individuals or private actors, and “structural” Islamophobia as the process by which State actors perpetuate fear and suspicion of Muslims through enactment of surveillance programs, racial profiling, and immigration policy.⁶³

Since 9/11, many governments have adopted pieces of legislation which incorporate and strengthen xenophobic and Islamophobic attitudes.⁶⁴ Exemplary of this trend is the “Muslim ban” enacted by President Trump in 2017.⁶⁵ A famous predecessor was the Patriot Act, introduced by President Bush after 9/11, which disproportionately affected Muslim communities in the US.⁶⁶ These pieces of legislation are built upon the presumption that Muslim identity is associated with a national security threat. Consequently, they disproportionately target Muslim subjects and jeopardize their rights and liberties.⁶⁷

Regrettably, xenophobic legislation is not confined to the US territory. A symbol of structural Islamophobia in the European context is the “*burqa* ban”, introduced in

Society, CEPS Centre for European Policy Studies, 2007, pp. 77-106. The author maintains that Muslims are often disproportionately represented in areas with poor housing conditions.

⁵⁸ P. HOWDEN-CHAPMAN, J. BENNETT, R. EDWARDS, D. JACOBS, K. NATHAN, D. ORMANDY, *Review of the Impact of Housing Quality on Inequalities in Health and Well-Being*, in *Annual Review of Public Health*, 2023, pp. 233-254.

⁵⁹ The European Union Fundamental Rights Agency underlines how “more than one in 10 Muslims report facing racial discrimination in healthcare services, and they are twice as likely as the general population to have unmet medical needs”.

⁶⁰ A. MOHIUDDIN, *Muslims in Europe: Citizenship, Multiculturalism and Integration*, in *Journal of Muslim Minority Affairs*, 2017, pp. 393-412.

⁶¹ S. BONINO, *The British State “Security Syndrome” and Muslim Diversity: Challenges for Liberal Democracy in the Age of Terror*, in *Contemporary Islam*, 2016, pp. 223-247.

⁶² ECRI General Policy Recommendation no. 5 on *Combating Intolerance and Discrimination Against Muslims*, adopted on 16 March 2000, p.12.

⁶³ K.A. BEYDOUN, *Islamophobia*, cit.

⁶⁴ S. KHAN, *Institutionalised Islamophobia*, cit.

⁶⁵ Z. RAMAHI, *The Muslim Ban Cases*, in *California Law Review*, 2020, pp. 557-586.

⁶⁶ A vocal coalition of civil libertarians, privacy advocates, and immigrant organizations have challenged the USA Patriot Act as an overbroad and unjustified infringement of privacy, association, and due process rights. See S. KASHAN, *The USA Patriot Act: Impact on Freedoms and Civil Liberties*, in *Essai*, 2010, pp. 86-90.

⁶⁷ K.A. BEYDOUN, *Islamophobia*, cit.

France, Belgium and Austria in 2010, 2011 and 2018 respectively.⁶⁸ Similarly, a “minaret ban” was introduced in 2009 in the Swiss Constitution by means of a referendum allegedly motivated by the necessity to “limit the expansionist power symbol of Islam that questions fundamental constitutional rights such as the equality of sexes”.⁶⁹ According to some authors, this enactment of “anti-Muslim legislation” in European States must be interpreted as a sort of State endorsement of the phenomenon indicated as “private” Islamophobia.⁷⁰

That the “*burqa* ban” incorporated private Islamophobic tendencies was also acknowledged by the ECtHR in one of its landmark cases. In *S.A.S. v France*, in fact, the ECtHR emphasises that it was “very concerned by the indications [...] that Islamophobic remarks marked the debate which preceded the adoption of [the ‘*burqa* ban’]”.⁷¹ Notably, in 2011, also the Council of Europe’s Commissioner for Human Rights stressed the problematic nature of the “*burqua* ban”, rejecting the view that such bans “liberate” women, and stressing that the way the dress of a small number of women has been portrayed as a major problem requiring urgent legislation is “a sad capitulation to the prejudices of xenophobes”.⁷²

Before the enactment of the bans, the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution rejecting any general prohibition on the wearing of the *burqa* or other religious clothing, and stressing that Art. 9 of the Convention includes the right of individuals to choose freely to wear religious clothing.⁷³ In its Resolution 1743 on Islam, Islamism and Islamophobia in Europe, PACE indicated that while such laws may seem to benefit women, they deny women “who genuinely and freely desire to do so” the right to cover their faces as part of their religious expression.⁷⁴ In addition, PACE acknowledged that such prohibition might have had the adverse effect of generating family and community pressure on Muslim women to stay at home and confine themselves to contacts with other women. PACE also noted that Muslim women could be further excluded if they were to leave educational institutions, stay away from public spaces, and abandon work outside their communities.⁷⁵ Likewise, in 2018, the UN Human Rights Committee (HRC) found

⁶⁸ M. HUNTER-HENIN, *Why the French Don’t Like the Burqa: Laïcité, National Identity and Religious Freedom*, in *International and Comparative Law Quarterly*, 2012, pp. 613-639.

⁶⁹ N. GUNASEKERA, *A Popular Initiative to Ban Minarets and Its Human Rights Implications*, in *Islamic Law Blog*, 2020.

⁷⁰ K.A. BEYDOUN, *Islamophobia*, cit.

⁷¹ European Court of Human Rights, Grand Chamber, judgment of 1 July 2014, application no. 43835/11, *S.A.S. v. France*, para. 140. Also see S. Berry, *SAS v France: Does Anything Remain of the Right to Manifest Religion?*, in *EJIL: Talk!*, 2014.

⁷² T. HAMMARBERG - CoE Commissioner for Human Rights, *Penalising Women Who Wear the Burqua Does Not Liberate Them*, 2011.

⁷³ Parliamentary Assembly of the Council of Europe, Resolution 1742 (2010) on *Islam, Islamism and Islamophobia in Europe*, para. 16.

⁷⁴ *Ibidem*.

⁷⁵ Resolution 1742 (2010) on *Islam, Islamism and Islamophobia in Europe*, para. 17.

that a general ban on the wearing of the Islamic veil disproportionately harmed Muslim women's right to manifest their religious beliefs.⁷⁶

In light of the above, it is plausible to argue that, despite the absence of a universally agreed definition of Islamophobia under international law, the phenomenon represents both a distinct form of discrimination *per se* and the source of several other violations of human rights, such as the right to freedom of religion, private life, education, adequate housing, health.⁷⁷ The discriminatory nature of Islamophobia has been stressed by many international bodies. PACE mentioned that Islamophobia "is a form of racism, intolerance and discrimination against Muslims and those who are perceived as Muslims".⁷⁸ It added that "while linked to religion, Islamophobia cannot be reduced to discrimination based on the grounds of religion, as it results from a 'racialised' perception based on various markers that include ethnic or national origin, appearance and cultural characteristics".⁷⁹ Similarly, in 2021, the UN Special Rapporteur on Freedom of Religion or Belief, Ahmad Shaheed, published a report on countering Islamophobia, highlighting that expressions of discrimination and hostility motivated by anti-Muslim bias constitute serious obstacles to the enjoyment of human rights.⁸⁰ The Special Rapporteur added that entrenched and widespread essentialisations that depicted Muslims as cultural "other" validated discrimination.⁸¹ Evidence gathered for the report made clear that Islamophobia was a function of structural discrimination stemming from negative stereotypes.⁸²

Within academic literature, some authors have argued that Islamophobia represents a form of discrimination *per se*. For instance, Berry explains that Islamophobia often targets ethnicity and therefore falls within the grounds of discrimination enumerated in Art. 1(1) of the International Convention on the Elimination of All Forms of Discrimination (ICERD), despite the lack of an explicit reference to religion as a ground of discrimination.⁸³ As stressed by the author, this interpretation is supported by the practice of the Committee on the Elimination of Racial Discrimination (CERD), which has mentioned Muslims and Islamophobia in a number

⁷⁶ UN Human Rights Committee, *Hebbadj v. France*, Communication no. 2807/2016, Views of 17 July 2018, UN Doc. CCPR/C/123/D/2807/2016; UN Human Rights Committee, *Yaker v. France*, Communication no. 2747/2016, Views of 17 July 2018, UN Doc. CCPR/C/123/D/2807/2016.

⁷⁷ K. HENRARD, *State Obligations to Counter Islamophobia*, cit., p. 82.

⁷⁸ Parliamentary Assembly of the Council of Europe, Resolution 2457 (2022) on *Raising awareness of and countering Islamophobia, or anti-Muslim racism, in Europe*, para. 1.

⁷⁹ *Ibidem*.

⁸⁰ UN Human Rights Council, *Countering Islamophobia/Anti-Muslim Hatred to Eliminate Discrimination and Intolerance Based on Religion or Belief: Report of the Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed*, UN Doc A/HRC/46/30.

⁸¹ *Ibidem*.

⁸² UN Office of the High Commissioner for Human Rights, Special Rapporteur on Freedom of Religion or Belief to Human Rights Council: Islamophobia is a Result of Structural Discrimination Stemming from Negative Stereotypes, 4 March 2021, Press Release.

⁸³ S. E. BERRY, *Bringing Muslim Minorities within the International Convention on the Elimination of All Forms of Racial Discrimination - Square Peg in a Round Hole?*, in *Human Rights Law Review*, 2011, pp. 423-450.

of Concluding Observations, thus confirming that it does not consider that the phenomenon of Islamophobia falls outside its remit.⁸⁴

Further, the view that Islamophobia may be interpreted as a form of discrimination *per se* appears to be supported by ECRI's General Policy Recommendation No. 5, mentioned above, which understands Islamophobia as racism and discrimination. In the recommendation, ECRI maintains that, based on its definition of racism as "the belief that a ground such as race, colour, language, religion, nationality or ethnic origin justifies contempt for a person or group of persons", "the racism framework [is] fitting to qualify the phenomena of hatred and discrimination against Muslims or those perceived as Muslims".⁸⁵

It was mentioned that Islamophobia is not only a discrimination *per se* but also a source of human rights violations. Crucial for this contribution's purposes is the observation that the right to freedom of religion is heavily impacted by anti-Muslim tendencies and Islamophobic attitudes. The above-mentioned "*burqua* ban" and the "minaret ban" clearly exemplify how Islamophobia may exercise a detrimental impact on the religious rights of Muslim minorities. In this regard, it was correctly noted that obstacles to the social integration of Muslims often involve cultural and religious aspects.⁸⁶ In contemporary societies, the issue of accommodating Islam as a religion in public spaces has become crucially important. The public expression of Islamic symbols, such as headscarves, mosques, and minarets, is often perceived as challenging the secular foundations of the modern society. The public space then becomes a "site for the unfolding of disruptive encounters [between religions] and between citizens of different religious denominations, with different ways of life, and cultural values" and thus represents "an appropriate context for the expression of themes relating to Islam as raised by citizens of migrant origin".⁸⁷

To provide an example, in November 2023, in the municipality of Monfalcone, Italy, Mayor Cisint issued an ordinance prohibiting the performance of religious rites in two Islamic centres. The ordinance *de facto* resulted in the imposition of a ban on communal prayer for the Muslim citizens of the town.⁸⁸ The official motivation for this measure was that the two centres did not qualify as places of worship.⁸⁹ In practice, however, this decision deprived the entire Muslim community in Monfalcone

⁸⁴ CERD, Concluding Observations regarding the United Kingdom of Great Britain and Northern Ireland, 10 December 2003, CERD/C/63/CO/11 at para. 20; Concluding Observations regarding Denmark, 19 October 2006, CERD/C/DEN/CO/17 at para. 11; Concluding Observations regarding Denmark, 21 May 2002, CERD/C/60/CO/5 at para. 16; Concluding Observations regarding The Netherlands, 1 April 2010, CERD/C/NLD/ CO/17-18 at para. 14; Concluding Observations regarding The Netherlands: European part of the Kingdom, 10 May 2004, CERD/C/64/CO/7 at para. 10.

⁸⁵ ECRI General Policy Recommendation no. 5 on *Combating Intolerance and Discrimination Against Muslims*, cit.

⁸⁶ P. STATHAM, J. TILLIE, *Muslims in their European Societies*, cit.

⁸⁷ N. GÖLE, *Islam's Disruptive Visibility in the European Public Space*, in *Eurozine*, 2013.

⁸⁸ A. GIUFFRIDA, *Italian Town in Turmoil after Far-right Mayor Bans Muslim Prayers*, in *The Guardian*, 2024.

⁸⁹ A. ALVARO, *L'immigrazione straniera nella Toscana negli anni duemila: Questioni, bisogni e risposte di una società in trasformazione*, Viterbo, 2024.

of the possibility to engage in collective prayer – a right explicitly protected under Art. 9 ECHR . While one might dismiss this episode as merely a matter of urban development and municipal regulations, it must be contextualized within prior expressions of intolerance directed toward Monfalcone’s Muslim community by the mayor of the town.⁹⁰ This type of inter-religious encounters is inherent in the multicultural character of modern European societies, and leads us to the role played by the ECtHR in ensuring a peaceful collective life in the Contracting States.

4. Islamophobia and Freedom of Religion in the European Court of Human Rights’ Jurisprudence

The ECtHR plays a critical role in supervising the manner in which States interact with different religions and ensuring a peaceful coexistence among diverse religious communities.⁹¹ Operating in a multicultural context, the Court adheres to a principle of neutrality, according to which States must be impartial toward all the religious denominations on their territory.⁹² Nonetheless, it should be borne in mind that the CoE membership is predominantly Christian,⁹³ despite including many Muslim-majority States, such as Albania, Azerbaijan, and Turkey.⁹⁴

As the dominant religious tradition in Europe, Christianity continues to shape significant aspects of both the State and State law,⁹⁵ as well as the ECtHR’s jurisprudence and its interpretation of the public space in Europe. However, particularly after the “migration crisis” of 2025/2016, an increasing number of

⁹⁰ Euro News, *Anti-immigrants Rhetoric Divides Italian Coastal Town of Monfalcone*, 2024.

⁹¹ M. CHAIBI, *State and Church Relationships under the European Convention on Human Rights: A Value Framework for State Action*, in *Religions*, 2022, pp. 797-812. Also see J. WITTE JR, A. PIN, *Faith in Strasbourg and Luxembourg? The Fresh Rise of Religious Freedom Litigation in the Pan-European Courts*, in *Emory Law Journal*, 2021, pp. 587-661.

⁹² J. RINGELHEIM, *State Religious Neutrality as a Common European Standard? Reappraising the European Court of Human Rights Approach*, in *Oxford Journal of Law and Religion*, 2017, pp. 24-47. Also see I. LEIGH, *The European Court of Human Rights and Religious Neutrality*, in G. D. COSTA, M. EVANS, T. MODOOD, J. RIVERS (eds.), *Religion in a Liberal State*, Cambridge, 2013. The author underlines that “neutrality is a problematic concept, capable of several different meanings. Of these, the least controversial perhaps is the duty of state officials to behave impartially, that is without judging between the merits of different religions and in a non-discriminatory way.”

⁹³ On the Christian roots of Europe, see M. A. PERKINS, *Christendom and European Identity: The legacy of a Grand Narrative since 1789*, Berlin, 2004. Also see B. F. NELSEN, *Europe as a Christian Club: Religion and the Founding of the European Community, 1950-1975, The Ideological Dimension*, in *American Political Science Association Annual Meeting*, Washington, 2005.

⁹⁴ PACE underlined that “Europe, which has been historically shaped by monotheist religions, has become home to varied religious beliefs, including new ones. However, members of minority religious groups are vulnerable to intolerance and discrimination”. See Parliamentary Assembly of the Council of Europe (PACE), Committee on Legal Affairs and Human Rights, *Combating All Forms of Discrimination Based on Religion*, Doc. 12788.

⁹⁵ P. G. DANCHIN, *Islam in the Secular Nomos of the European Court of Human Rights*, in *Michigan Journal of International Law*, 2010, pp. 663-747.

European States host a significant Muslim presence.⁹⁶ In these States, new religious movements coexist with traditional ones, reshaping traditional social dynamics.⁹⁷ It is precisely in these States that the coexistence between different religions may become problematic, leading to the integration challenges discussed above. As underlined by PACE, Europe is not free from tensions between different religious communities and it is essential to step up protection of the members of religious groups against the risk of discrimination. PACE also stressed that the State must remain neutral and impartial in its relations with the various religions on its territory and pointed to the necessity to ensure tolerance towards religious minorities and to foster a culture of “living together” grounded on religious pluralism.⁹⁸

The fundamental provision of the ECHR regarding religion is Art. 9, guaranteeing the right to freedom of religion. The Court has repeatedly described this provision as “one of the foundations of a democratic society”⁹⁹ and “one of the most vital elements that go to make up the identity of believers”.¹⁰⁰ Pursuant to Art. 9, the right to freedom of thought, conscience and religion includes both the freedom to change one’s religion or belief, and the freedom to manifest one’s religion or belief in worship, teaching, practice and observance, either alone or in community with others, and in public or private.¹⁰¹ It is the right to manifest one’s religion or beliefs – the *forum externum* – that alone can be subject to limitations under Art. 9(2), provided such limitations are prescribed by law and are necessary in a democratic society to achieve one of the legitimate aims identified by the provision – namely the interests of public safety, the protection of public order, health or morals and the protection of the rights and freedoms of others.¹⁰² As to the permitted limitations, the ECtHR has often stressed that “in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on the freedom to manifest

⁹⁶ A. YUHAS, *Muslim Population in Europe to Reach 10% by 2050, New Forecast Shows*, in *The Guardian*, 2017. It was estimated that about 15% of all people under the jurisdiction of the European Court of Human Rights are Muslims. See PEW Research Center, *Muslim Population by Country*.

⁹⁷ It was explained that the new religious movements in Europe have reshaped the religious freedom law not only of individual European States but also of the European Court of Human Rights. See J. WITTE JR, A. PIN, *Faith in Strasbourg and Luxembourg?*, cit.

⁹⁸ Parliamentary Assembly of the Council of Europe (PACE), Committee on Legal Affairs and Human Rights, *Combating All Forms of Discrimination Based on Religion*, Doc. 12788.

⁹⁹ European Court of Human Rights, judgment of 25 May 1993, application no. 14307/88, *Kokkinakis c. Grèce*, para. 31; European Court of Human Rights, judgment of 22 June 2022, application no. 41817/10, *Christian Religious Organization of Jehovah’s Witnesses in the NKR v. Armenia*, para. 78.

¹⁰⁰ More precisely, the European Court of Human Rights has stated that Art. 9 of the European Convention on Human Rights in its religious dimension is not only one of the most vital elements that go to make up the identity of believers and their conception of life but also a precious asset for atheists, agnostics, sceptics and the unconcerned. See European Court of Human Rights, judgment of 13 December 2001, application no. 45701/99, *Metropolitan Church of Bessarabia and Others v. Moldova*, para. 114.

¹⁰¹ European Court of Human Rights, *Kokkinakis v. Greece*, cit., para. 28; European Court of Human Rights, judgment of 18 March 2011, application no. 30814/06, *Lautsi and Others v. Italy*, para. 29.

¹⁰² N. BRATZA, *The ‘Precious Asset’: Freedom of Religion Under the European Convention on Human Rights*, in *Ecclesiastical Law Journal*, 2012, pp. 256-271.

one's religion or belief in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected".¹⁰³

In addition to Art. 9, the Court's jurisprudence under Art. 10 – safeguarding the right to freedom of expression – is equally significant for this contribution, as it frequently addresses cases involving Islamophobic hate speech.¹⁰⁴ Under Art. 10, the right to freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.¹⁰⁵ Similarly to Art. 9, also Art. 10(2) admits such conditions and restrictions as are prescribed by law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.¹⁰⁶

The ECtHR has developed a rich body of case law addressing the limits of free expression and weighing the right to free speech against the protection of religious sentiments.¹⁰⁷ This jurisprudence may acquire a significant importance in the light of the upsurge of hate expressions, mainly anti-Islamic rhetoric.¹⁰⁸ As held by Moon, "hate speech, when directed at a religious group, often falsely attributes a dangerous or

¹⁰³ European Court of Human Rights, judgment of 25 May 1993, application no. 14307/88, *Kokkinakis c. Grèce*, cit., para. 33. Also see European Court of Human Rights, judgment of 26 April 2016, application no. 62649/10, *İzzettin Doğan and Others v. Turkey*, para. 106.

¹⁰⁴ For an overview of the phenomenon of Islamophobic hate speech on social media, see M. BÖYÜK, *Hate Speech on Social Media in the Axis of Islamophobia: Example of TikTok*, in *Journal of Media and Religion Studies*, 2024, pp. 91-122.

¹⁰⁵ European Court of Human Rights, judgment of 27 June 2017, application no. 17224/11, *Medžlis Islamske Zajednice Brčko and Others v. Bosnia And Herzegovina*, para. 51; European Court of Human Rights, judgment of 25 June 2002, application no. 51279/99, *Colombiani and Others v. France*, para. 39.

¹⁰⁶ G. GUNATILLEKE, *Justifying Limitations on the Freedom of Expression*, in *Human Rights Review*, 2021, pp. 91-108. By way of example, the author refers to the case of *Handyside v. The United Kingdom*, where the ECtHR upheld the seizure of an education book that dealt with the subject of sex, and found no violation of the freedom of expression in terms of Art. 10. In fact, the limitation was justified on the basis of public morals. See European Court of Human Rights, judgment of 7 December 1976, application no. 5493/72, *Handyside v. The United Kingdom*, para. 62.

¹⁰⁷ M. MASUD, *The Protection of Muslim Minorities against Cyber Hate in Europe: A Critique of the European Court of Human Rights Protection of Religious Followers against Hate Expression*, in *Coventry Law Journal*, 2024, pp. 1-14; E. Howard, *Freedom of Expression and Religious Hate Speech in Europe*, London, 2017; R. MOON, *Putting Faith in Hate: When Religion Is the Source or Target of Hate Speech*, Cambridge, 2018; E. BLEICH, S. AL-MATEEN, *Hate Speech and the European Court of Human Rights: Ideas and Judicial Decision-Making*, in *Michigan State International Law Review*, 2021, p. 179; J. MCHANGAMA, N. ALKIVIADOU, *Hate Speech and the European Court of Human Rights: Whatever Happened to the Right to Offend, Shock or Disturb?*, in *Human Rights Law Review*, 2021, pp. 1008-1042. The authors underline that the jurisprudence of the Court regarding hate speech is somehow inconsistent and criticize the fact that the Court and previously the Commission have adopted an overly restrictive approach to hate speech, which fails to provide adequate protection to political speech on controversial topics.

¹⁰⁸ M. MASUD, *The Protection of Muslim Minorities against Cyber Hate in Europe: A Critique of the European Court of Human Rights Protection of Religious Followers against Hate Expression*, in *Coventry Law Journal*, 2024, pp. 1-14. The widespread use of social media and the far-reaching powers of the digital world render this topic crucially important, as cyber-hate becomes more and more pervasive.

undesirable belief to the members of the group. The implication is that the members of a group that holds such a belief must themselves be dangerous or undesirable”.¹⁰⁹ History offers many concrete examples of the dangerous effects of hate speech, such as the infamous case of the *Radio-Télévision Libre des Mille Collines* in Rwanda.¹¹⁰ In fact, as widely reported, both prior to and during the Rwandan genocide, the radio station *Radio-Télévision Libre des Mille Collines* was employed to promote Hutu ideology and disseminate hateful propaganda against the Tutsi population, which was subsequently exterminated during the course of the genocide.¹¹¹

A comparison of ECtHR’s jurisprudence on Art. 9 and Art. 10 reveals a pattern of deference to States’ decisions. The case law focuses, on the one hand, on the curtailing of Muslims’ freedom of religion, particularly the right to manifest a religion through religious symbols and garments, and on the other hand, on the conviction of individuals accused of having disseminated hateful comments on Islam. In the following sections, it will be shown that, with few exceptions, the Court tends to endorse State choices by finding no violation of the relevant provision. While this trend may be explained by reference to the “margin of appreciation” doctrine,¹¹² it gives rise to diverging outcomes, apparently inspired by an opposite approach of the Court *vis-à-vis* Islam.

4.1. Freedom of Religion

The jurisprudence of the ECtHR on Art. 9, particularly its stance on the public display of religious symbols, has been strongly criticized for an intolerant approach *vis-à-vis* minority religions, such as Islam.¹¹³ Several authors have stigmatized the “double standard”¹¹⁴ applied by the Court, stressing how the practice of the ECtHR on

¹⁰⁹ R. MOON, *Putting Faith in Hate*, cit., p. 65.

¹¹⁰ F. MISSER, I. JAUMAIN, *Rwanda: Death by Radio*, in *Index on Censorship*, 1994, pp. 72-74.

¹¹¹ A. GRZYB, A. FREIER, *The Role of Radio Télévision Libre Des Mille Collines in the 1994 Rwandan Genocide: Hate Propaganda, Media Effects, and International Intervention*, in *Controversies in the field of genocide studies*, London, 2017.

¹¹² The margin of appreciation doctrine plays a central role in Convention rights adjudication. It has been consistently invoked by the Strasbourg Court ever since its seminal decision in *Handyside v United Kingdom*, where the Court held that “By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the ‘necessity’ of a ‘restriction’ or ‘penalty’ intended to meet them...”. See Y. ARAI-TAKAHASHI, Y. ARAI, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*, Mortsel, 2002.

¹¹³ C. MOE, *Refah Revisited*, cit.

¹¹⁴ C. JOPPKE, *Double Standards? Veils and Crucifixes in the European Legal Order*, in *European Journal of Sociology/Archives Européennes de Sociologie*, 2013, pp. 97-123. Also see P. RONCHI, *Crucifixes, Margin of Appreciation and Consensus: The Grand Chamber Ruling in Lautsi v Italy*, in *Ecclesiastical Law Journal*, 2011, pp. 287-297. Ronchi compares the ban on Muslim teachers wearing headscarves in Dahlab with the decision adopted by the Grand Chamber in Lautsi. The author believes that the Court does not give a convincing explanation of the different *ratio decidendi* between the two cases. More specifically, the author does not believe that 8 and 12-year-old Italian pupils are less easily influenced by a religious symbol than Swiss pupils between the age of 4 and 8.

religious symbols exhibits a biased approach,¹¹⁵ often accommodating Christian symbols and presenting them as part of the national identity of the Contracting State, while approving restrictions on the public display of Islamic symbols such as the minaret or the Islamic veil.¹¹⁶ By way of example, while in *Lautsi*¹¹⁷ the Court famously observed that displaying crucifixes in Italian classrooms did not represent a violation of the obligation on Contracting States to respect the religious and philosophical convictions of parents, in *Dahlab* the Court endorsed the Swiss authorities' decision to impose a ban on the wearing of the Islamic headscarf for teachers at school.¹¹⁸ Such a "double standard" led some authors to argue that "with respect to Islam, pluralism appears as a norm to be defended against an alleged threat. By contrast, with respect to Christianity, the Court takes pluralism as always affirmed by this religion".¹¹⁹ In this respect, Baldi argues that, in its jurisprudence on the Islamic veil, the ECtHR has widened the "margin of appreciation", leaving considerable discretion to Member States to define what kind of religious manifestations are allowed in the secular public space.¹²⁰ She adds that the Court's (apparent) neutral position, aimed at protecting the plurality of European views on State-church relations, actually hides a European desire to assimilate different religious practices and sensitivities into the homogeneity of Christian/secular European culture.¹²¹ Similarly, Berry explains that restrictions on freedom of religion predominantly impact religious minorities and the use of the doctrine of the "margin of appreciation" has the potential to defer to majoritarian preferences.¹²²

When analysing the Court's case law on religious garments, it is worth remembering that religious symbols and clothes are covered by the "freedom to

¹¹⁵ T. J. GUNN, *Adjudicating Rights of Conscience under the European Convention on Human Rights*, in J. WITTE JR., J.D. VAN DER VYVER (eds.), *Religious Human Rights in Global Perspective*, Leiden, 1996, pp. 305-330. The Author argues that the Court's Art. 9 jurisprudence demonstrates a persistent denial of applications from religions that are "new, minority, or non-traditional", as well as an "institutional bias in favour of traditional religions".

¹¹⁶ In this regard, also see A. CEBADA ROMERO, *The European Court of Human Rights*, cit.

¹¹⁷ For an analysis of the decision in *Lautsi*, see F. M. PALOMBINO, *Laicità dello Stato ed esposizione del crocifisso nella sentenza della Corte europea dei diritti dell'uomo nel caso Lautsi*, in *Rivista di diritto internazionale*, 2010, p. 134 ff. Also see F. M. PALOMBINO, *La decisione della Grande Camera della Corte europea dei diritti dell'uomo nel caso Lautsi: un uso incongruo della nozione di "simbolo passivo"*, in *Rivista di diritto internazionale*, 2011, p. 463 ff.

¹¹⁸ G. BALDI, *From Text to Meaning: Unpacking the Semiotics of Article 9 of the European Convention on Human Rights*, in *International Journal for the Semiotics of Law. Revue internationale de sémiotique juridique*, 2024, pp. 1285-1308. The author explains that in *Lautsi* the Court established that the crucifix did not endanger the pupils' negative or public order, while in *Dahlab* the Court considered the veil as a powerful external symbol that could endanger the inner state of pupils as well as the public order of the school.

¹¹⁹ C. JOPPKE, *Pluralism vs. Pluralism: Islam and Christianity in the European Court of Human Rights*, in J.L. COHEN, C. LABORDE (eds.), *Religion, Secularism, and Constitutional Democracy*, New York, 2015, pp. 89-110.

¹²⁰ G. BALDI, *Un-veiling Dichotomies*, Cham, 2021.

¹²¹ *Ibidem*, p. 87.

¹²² S. E. BERRY, *Religious Freedom and the European Court of Human Rights' Two Margins of Appreciation*, in *Religion & Human Rights*, 2017, pp. 198-209.

manifest one's religion in public" enshrined in Art. 9(1). Many authors underlined how the use of religious garments or other visible symbols constitutes one of the main means of expressing a religious belief. As such, it represents an integral part of the personal identity of religious individuals or people with a migratory background.¹²³

The series of cases concerning the Islamic headscarf is extensive and somewhat repetitive. These cases begin with *Dahlab v. Switzerland*,¹²⁴ and include the decisions of the Court in *Leyla Sahin v. Turkey*,¹²⁵ *Drogu v. France*,¹²⁶ and *Mikyas and Others v. Belgium*.¹²⁷ All these cases concern the wearing of the Islamic headscarf in public schools of universities. In *Dahlab*, the Court found that the principle of *laïcité* could be applied in such a way as to allow States to restrict the freedom to wear religious garments.¹²⁸ It clarified that, because Ms. Dahlab was working with children, wearing a veil at school could have a "proselytizing effect" on young minds.¹²⁹ Similarly, in *Sahin v. Turkey*, the Court held that the ban on wearing the veil in Turkish universities was aimed at preserving "the secular nature of the institution concerned".¹³⁰ In *Drogu v. France*, the Court found that – although at the time of the facts no law prohibited the wearing of the veil – the expulsion of a young girl from a school because she refused to remove her veil during physical education class was justified as necessary to protect the freedom of others and public order in the school. Similarly to *Dahlab*, in the decision adopted by the Court in *Mikyas*, the ECtHR found that the Belgian *burqa* ban – as applied, *inter alia*, in Belgian public schools – aimed to protect students against any form of social pressure and proselytism.¹³¹

While the above-mentioned cases addressed the issue of the Islamic headscarf in public schools of universities, the landmark case of *S.A.S. v. France* concerned the complaint of a French national, and practising Muslim, who was no longer allowed to wear the full-face veil in public after the introduction of the *burqa* ban in France. Similarly, *Belcacemi and Oussar v. Belgium* concerned the ban on the wearing in

¹²³ A. NUßBERGER, *The European Court of Human Rights and Freedom of Religion*, in M.W. JANIS, C. EVANS (eds.), *Religion and International Law*, Leiden, 2018, pp. 130-156.

¹²⁴ European Court of Human Rights, judgment of 15 February 2001, application no. 42393/98, *Dahlab v. Switzerland*.

¹²⁵ European Court of Human Rights, judgment of 10 November 2005, application no. 44774/98, *Leyla Sahin v. Turkey*.

¹²⁶ European Court of Human Rights, judgment of 4 December 2008, application no. 27058/05, *Drogu v. France*.

¹²⁷ European Court of Human Rights, judgment of 9 April 2024, application no. 50681/20, *Mikyas and Others v. Belgium*.

¹²⁸ G. BALDI, *From Text to Meaning: Unpacking the Semiotics of Article 9 of the European Convention on Human Rights*, in *International Journal for the Semiotics of Law. Revue internationale de sémiotique juridique*, 2024, pp. 1285-1308.

¹²⁹ *Ibidem*.

¹³⁰ European Court of Human Rights, *Leyla Sahin v. Turkey*, cit., para. 116.

¹³¹ European Court of Human Rights, *Mikyas and Others v. Belgium*, cit., para. 57. For a comment of this decision, see S. OUALD-CHAIB, *Mikyas v. Belgium: One More "Headscarf Case" That Manifestly Fails to Acknowledge Applicants' Concerns*, in *Strasbourg Observers*, 2024.

public of clothing that partly or totally covers the face under Belgian law.¹³² Interestingly, in *Belcacemi*, the Court, while allowing limitations to wear the veil in public, stressed that the veil may be a way for women to express their “personality” and their “convictions”.¹³³

In all these cases, the ECtHR agreed with national authorities that limitations to wear religious garments in public were allowed by Art. 9(2). More specifically, the Court often found that the practice of wearing Islamic symbols clashed with the aim of “protecting the rights and freedoms of others” or “public order”, as codified in Art. 9(2). In several cases, the Court held that the wearing of the Islamic headscarf was incompatible with the requirement of neutrality incumbent on public officials in discharging their functions.¹³⁴ The requirement of neutrality of public services was often interpreted by the Court as being linked to the requirement of protection of the rights and freedoms of others, that is, respect for the freedom of religion of everyone.¹³⁵

Similarly to the headscarf issue, also the “minaret ban”, introduced in the Swiss constitution by referendum in 2009, generated a heated discussion on Islamic symbols and their place in the public space.¹³⁶ The debate preceding the referendum was characterized by xenophobic remarks, with initiators of the referendum arguing that the ban sought to limit the “expansionist power symbol of Islam that questions fundamental constitutional rights such as the equality of sexes”.¹³⁷ The vote signaled the culmination of an intense debate in which “religious liberty became a casualty to the growing fear among non-Muslims of the alleged Islamization of Swiss society”.¹³⁸ Notwithstanding an attempt to bring the minaret ban before the ECtHR, the content of the prohibition and its impact on Muslim communities in Switzerland have not been examined by the Court. In fact, in *Ligue des musulmans de Suisse*, three associations and a foundation invoked Arts 9 and 14 of the Convention, complaining that the law banning the building of minarets amounted to a violation of their religious freedom and

¹³² European Court of Human Rights, Judgment of 11 July 2017, application no. 37798/13, *Belcacemi and Oussar v. Belgium*.

¹³³ *Ibidem*, para. 53.

¹³⁴ European Court of Human Rights, judgment of 26 November 2015, application no. 64846/11, *Ebrahimian v. France*.

¹³⁵ *Ibidem*, para. 63.

¹³⁶ D. MILLER, *Majorities and Minarets: Religious Freedom and Public Space*, in *British Journal of Political Science*, 2016, pp. 437-456. Also see M. CHERTI, *The Politics of Muslim Visibility in Europe: The Case of the Swiss Minaret Ban*, in *Public policy research*, 2010, pp. 157-161. Notably, the Human Rights Committee, considering the third periodic report submitted by Switzerland in 2009, expressed its concern about the referendum initiative aimed at prohibiting the construction of minarets and about the discriminatory advertising campaign which accompanied it. It also noted that such referendum initiative which would have brought the State party into non-compliance with its obligations under the International Covenant of Civil and Political Rights. See UN Human Rights Committee, *Concluding observations of the Human Rights Committee, Switzerland*, Doc. CCPR/C/CHE/CO/3 3 November 2009.

¹³⁷ N. GUNASEKERA, *A Popular Initiative*, cit.

¹³⁸ T. H. GREEN, *The Resistance to Minarets in Europe*, in *Journal of Church and State*, 2010, pp. 619-643.

to discrimination on the grounds of religion. However, the Court declared the case inadmissible and did not examine its merits.¹³⁹

Arguably, the Court's treatment of Islam in its Art. 9 jurisprudence revolves around the notion of neutrality of the European public space. It appears that the Court is ready to protect Islam – and its believers – for so long as it remains a matter of “internal” belief, limited to the private sphere, and does not encroach on the European secular public sphere.¹⁴⁰ Clearly, the public display of Islamic symbols elicits little sympathy from the Court. On the contrary, as seen in *Lautsi*,¹⁴¹ when dealing with Christian symbols the Court seems to adopt a presumption of neutrality. In this regard, it was explained that the exclusion or restriction of Islamic manifestations of religion or belief is based on an interpretation of norms which is ineluctably grounded in Christian conceptions of what constitutes religion and a proper religious subjectivity.¹⁴² Similarly, it was held that “the privatisation of religion is considered a *sine qua non* for modern secular democracy”.¹⁴³ However, this stance seems to contradict the very textual meaning of Art. 9, which allows the manifestation of a religion or belief in practice, either in public or private.

4.2. Islamophobic Hate Speech

As observed by Licastro, religiously motivated hate speech can take two distinct forms: it may target individuals or groups who share a religious faith, or it may originate from a specific religious community – often through their leaders – as a form of criticism directed at the doctrines, sacred figures, or practices of other religions.¹⁴⁴ As anticipated, this contribution looks at the first manifestation of hate speech.

Licastro observes that religious hate speech raises a crucial issue regarding to the victims and concerning the protection of their religious freedom, understood primarily as the right to equal dignity regardless of one's professed faith – which must be

¹³⁹ European Court of Human Rights, judgment of 28 June 2011, application no. 66274/09, *Ligue des Musulmans de Suisse et Autres c. Suisse*. The European Court declared the appeal inadmissible on the – slightly formalistic – ground that the applicants could not claim to be the victim of a violation of the Convention. As a matter of fact, Art. 34 of the Convention does not allow for complaints *in abstracto* alleging a violation of the Convention. In the present case, the Court decided that the applicants were neither direct nor indirect victims, in the way the family of a deceased person can sometimes be, since they had not argued that they might be envisaging building a mosque with a minaret in the near future. Thus, they had not shown that the constitutional provision in question was likely to limit their religious freedom. See R. PIERIK, *Is Symbolic Religious Establishment Permitted Within the European Convention? A Legal, Political, and Pragmatic Perspective*, in *Oxford Journal of Law and Religion*, 2022, pp. 122-144.

¹⁴⁰ P.G. DANCHIN, *Islam in the Secular Nomos*, cit., p. 672. Also see T. ASAD, *Reflections on Laïcité and the Public Sphere*, in *Items and Issues*, 2005, pp. 1-11.

¹⁴¹ European Court of Human Rights, *Lautsi and Others v. Italy*, cit.

¹⁴² T. ASAD, *Formations of the secular: Christianity, Islam, Modernity*, Stanford, 2003, p. 175.

¹⁴³ E. HUGHES, *Promoting Peace, Enforcing Democracy-The European Court of Human Rights' Treatment of Islam*, in *Human Rights*, 2016, p. 129.

¹⁴⁴ A. LICASTRO, *Discorso pubblico e religious hate speech nelle moderne società multiculturali*, in *Stato, Chiese e pluralismo confessionale*, 2025, pp. 46-67.

balanced with the right to freedom of expression.¹⁴⁵ It is within this theoretical framework that the ECtHR case law on Islamophobic hate speech should be understood. More specifically, central in the ECtHR case law is the necessity to strike a fair balance between the right to freedom of expression, protected by Art. 10, and the dignity of every religious faith and its adherents.¹⁴⁶

The ECtHR, in its Art. 10 case law, took a strict stance against anti-religious speech and the conflation of Muslims with terrorism.¹⁴⁷ In fact, in contrast with its seminal judgment in *Handyside v. The United Kingdom*, where it held that the right to freedom of expression protects not only expressions that are favourably received but also those that “offend, shock or disturb”,¹⁴⁸ the Court has later embraced a more protective stance towards religions, generally allowing States’ restrictions on harmful speech.

In *Norwood v. The United Kingdom*,¹⁴⁹ a regional organiser for the British National Party displayed a sign stating: “Islam out of Britain, Protect the British People”. The sign also showed the crescent and star symbol within a prohibition sign, and a photograph of the Twin Towers in flame.¹⁵⁰ The ECtHR found the claim to Art. 10 to be incompatible *ratione materiae* with the provisions and values of the ECHR, namely tolerance, social peace, and non-discrimination. In its judgment, the Court took account of the circumstance that the poster constituted a “general, vehement attack” against all Muslims in the UK and connecting an entire religious community with grave acts of terror was deemed incompatible with the Convention.¹⁵¹

Four years later, in the case of *Soulas and Others v. France*,¹⁵² three applicants were convicted by French authorities for inciting religious hatred through a publication entitled *The Colonisation of Europe: True Speech on Immigration and Islam*. The book argued that Islam was undertaking a hostile conquest of France and a religious war against Europe. Following publication of the book, French authorities had convicted the applicants, who then brought their case before the ECtHR. In its ruling,

¹⁴⁵ *Ibidem*, pp. 51-52.

¹⁴⁶ In *Gündüz v. Turkey*, the Court noted that “tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression that spread, incite, promote or justify hatred based on intolerance (including religious intolerance)”. See European Court of Human Rights, judgment of 4 December 2003, application no. 35071/97, *Gündüz v. Turkey*, para. 40.

¹⁴⁷ M. MASUD, *The protection of Muslim minorities against cyber hate in Europe: a critique of the European Court of Human Rights protection of religious followers against hate expression*, in *Coventry Law Journal*, 2024, pp. 1-14.

¹⁴⁸ European Court of Human Rights, *Handyside v. United Kingdom*, cit., para. 49.

¹⁴⁹ European Court of Human Rights, judgment of 16 November 2004, application no. 23131/03, *Norwood v. United Kingdom*.

¹⁵⁰ N. AHMAD, G. LILIENTHAL, A. BIN ASMAD, *The Impact of Social Media on UK Hate Crime: A Brief Study*, in *Journal of Internet Social Networking & Virtual Communities*, 2023.

¹⁵¹ A. BUYSE, *Dangerous Expressions: The ECHR, Violence and Free Speech*, in *International and Comparative Law Quarterly*, 2014, p. 491 ff.; M. MASUD, *The Protection of Muslim Minorities*, cit.

¹⁵² European Court of Human Rights, judgment of 10 July 2008, application no. 15948/03, *Soulas et Autres v. France*.

the Court referred to the State's margin of appreciation and acknowledged that the problems faced by States in implementing their immigration and integration policies are matters for national authorities, which have a profound knowledge of the country.¹⁵³ Finally, the Court accepted that there had been no violation of Art. 10 by French authorities.

More recently, in *Sanchez v. France*,¹⁵⁴ the Grand Chamber of the Court found that the criminal conviction of a politician for failing to promptly delete hate speech, posted by others, from his public Facebook account, did not violate the right to freedom of expression as guaranteed under Art. 10.¹⁵⁵ The ECtHR observed that "the group constituted by Muslims is associated, unequivocally in view of the way the comments are formulated, with objectively insulting and hurtful language".¹⁵⁶ The Court added that "tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society",¹⁵⁷ and that "it may be considered necessary in certain democratic societies to penalise or even prevent all forms of expression that propagate, encourage, promote or justify hatred based on intolerance (including religious intolerance)".¹⁵⁸

Interestingly, the Court noted that Mr Sanchez had not been criticised for making use of his right to freedom of expression in the context of political debate, but had been accused of, and convicted for, a lack of vigilance and responsiveness in relation to the comments posted on the wall of his Facebook account. This constitutes a substantial expansion of personal liability for someone else's speech, potentially justified by previous findings of the Court that political figures have increased duties and responsibilities and that it is crucial for politicians, when expressing themselves in public, to avoid comments that might foster intolerance.¹⁵⁹

In an older case concerning political debate, *Féret v. Belgium*,¹⁶⁰ leaflets and posters distributed by the Belgian political party Front National in an election campaign led to complaints of incitation to hatred, discrimination and violence.¹⁶¹ The

¹⁵³ *Ibidem*, para. 38. This is the margin of appreciation doctrine, consistently invoked by the Strasbourg Court ever since its seminal decision in *Handyside v. United Kingdom*. In that decision, the ECtHR held that "[b]y reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the "necessity" of a "restriction" or "penalty" intended to meet them". See European Court of Human Rights, *Handyside v. United Kingdom*, cit., paras. 48-49.

¹⁵⁴ European Court of Human Rights, judgment of 16 May 2023, application no. 45581/15, *Sanchez v. France*.

¹⁵⁵ K. LEMMENS, *Freedom of Expression on the Internet after Sanchez v France: How the European Court of Human Rights Accepts Third-party "Censorship"*, in *European Convention on Human Rights Law Review*, 2022, pp. 525-550.

¹⁵⁶ European Court of Human Rights, *Sanchez v. France*, cit., para. 173.

¹⁵⁷ *Ibidem*, para. 145.

¹⁵⁸ *Ibidem*, para. 149.

¹⁵⁹ European Court of Human Rights, judgment of 6 July 2006, application no. 59405/00, *Erbakan v. Turkey*.

¹⁶⁰ European Court of Human Rights, judgment of 16 July 2009, application no. 15615/07, *Féret v. Belgium*.

¹⁶¹ For an analysis of the case, see S. SOTTIAUX, *Conflicting Conceptions of Hate Speech in the ECtHR's Case Law*, in *German Law Journal*, 2022, pp. 1193-1211. The author is quite critic of the approach of

leaflets presented non-European immigrant communities as criminally-minded and keen to exploit the benefits they derived from living in Belgium. The president of the party, Mr. Féret, was convicted by Belgian authorities and presented his case to the ECtHR. The Court stated that Belgium had not violated Art. 10 ECHR, since it had convincingly argued that Mr. Féret's conviction was necessary in a democratic society.¹⁶² In its ruling, the ECtHR noted that one of the leaflets, titled "Attacks in the USA: it is the couscous clan", equated all Muslims with terrorists, without distinction, and represented an incitement to hatred towards all members of the group.¹⁶³ In this regard, the Court stressed that while political parties have a right to defend their positions in public, even if some of them offend, shock or worry a section of the population, they must avoid doing so by advocating racial discrimination and resorting to humiliating comments or attitudes, as such behaviour is likely to undermine confidence in democratic institution and provoke violent reactions among the public.¹⁶⁴

Many other cases may be cited, such as *E.S. v. Austria*,¹⁶⁵ a seminal decision within the case law on offence to religious feelings.¹⁶⁶ In this case, the applicant held a series of seminars entitled "Basic Information on Islam" at the far-right Freedom Party Education Institute in Vienna. The Court found no violation of Art. 10. It stressed that the right to freedom of expression carries responsibilities towards the rights and reputation of others,¹⁶⁷ while noting the importance of considering the specific situation in the country where offensive statements are made, and the context in which they are made.¹⁶⁸ Interestingly, the Court also referred to the concept of "religious peace",¹⁶⁹ which was left undefined but appears to indicate the necessity of a peaceful coexistence between different religions in a country historically characterized by the contextual – and often problematic – presence of different religious beliefs.

This brief overview of the jurisprudence on Art. 10 shows that the ECtHR consistently endorses States' convictions of individuals accused of disseminating insulting and hateful comments against Muslims, even when the contested expressions do not explicitly call for violence.¹⁷⁰ As a matter of fact, the Court indicated that

the Court and explains that the Court's jurisprudence on hate speech results in legal uncertainty at best, and arbitrariness and double standards at worst.

¹⁶² A. BUYSE, *Dangerous Expressions*, cit., pp. 491-503.

¹⁶³ European Court of Human Rights, *Féret v. Belgium*, cit., para. 71.

¹⁶⁴ *Ibidem*, para. 77.

¹⁶⁵ European Court of Human Rights, judgment of 25 October 2018, application no. 38450/12, *E.S. v. Austria*.

¹⁶⁶ S. SMET, *Free Speech versus Religious Feelings, the Sequel: Defamation of the Prophet Muhammad in ES v Austria*, in *European Constitutional Law Review*, 2019, pp. 158-170. Also see J.G. WRENCH, "Balancing" Free Expression and Religious Feelings in *ES v. Austria: Blasphemy by Any Other Name?*, in *Case Western Reserve Journal of International Law*, 2020, pp. 735-752.

¹⁶⁷ European Court of Human Rights, *E.S. v. Austria*, cit., paras. 54 and 55.

¹⁶⁸ *Ibidem*, para. 50.

¹⁶⁹ *Ibidem*, para. 57.

¹⁷⁰ J. MCHANGAMA, N. ALKIVIADOU, *Hate Speech and the European Court of Human Rights*, cit. The authors have criticised this approach, by stating that since the Court has often held that hate speech may be banned even without any demonstrable danger or violence, it is very difficult for Europeans to know

incitement to hatred and hate speech do not necessarily require or include appeals to violence.¹⁷¹ Such a strict approach is particularly interesting in light of the circumstance that, since the 1970s, the ECtHR has often reiterated that Art. 10 not only protects expressions that are “favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb”.¹⁷² As a consequence, the Court has usually been willing to protect free speech even when it enables the expression of disturbing opinions.¹⁷³ However, in contrast with its traditional stance on free speech, in the analysed cases, the ECtHR seems to favour the protection of Muslim minorities,¹⁷⁴ sanctioning their right not to be offended in their religious beliefs.

Predictably, when it comes to explicit appeals to violence, the Court grants a wider margin of appreciation to States, especially if expressions “incite to violence against a sector of the population”.¹⁷⁵ Nowadays, Muslims constitute an important section of the population in their host States – for instance, in France or Belgium Muslim communities are quite numerous – therefore this finding of the Court is certainly applicable to expressions that incite to violence against this demographic sector. Consequently, the Court often found no violation of Art. 10 when the State’s interference is considered necessary in a democratic society and corresponding to a pressing social need due to the nature of the acts or speech surpassing an acceptable limit.¹⁷⁶ In this regard, the ECtHR often refers to the risks inherent in conflating Islam with terrorism. Another interesting aspect of the above-mentioned case law is that the Court places substantial responsibility on politicians – or aspiring politicians – given their role in shaping and governing a society.

The above-mentioned judgments represent only a small fraction of the cases examined by the Court under Arts 9 and 10 of the Convention. This jurisprudence elicited substantial attention in academic circles, with rivers of ink spilled to comment, criticize or adhere to these rulings. Such a substantial degree of attention certainly demonstrates that questions relating to religious and cultural diversity in Western

the degree to which their right to freedom of expression is protected on controversial issues such as migration, integration and religion. See at p. 1034.

¹⁷¹ European Court of Human Rights, *Féret v. Belgium*, cit., para. 73.

¹⁷² European Court of Human Rights, *Handyside v. United Kingdom*, cit., para. 49.

¹⁷³ Famously, in *Jersild v. Denmark*, the Court found that the conviction of a journalist by Danish authorities for broadcasting an interview in which others made racist remarks constituted a violation of Art. 10. The Court emphasized the journalist’s role in facilitating public debate and held that holding him criminally liable interfered disproportionately with freedom of expression. See European Court of Human Rights, Grand Chamber, judgment of 23 September 1994, application no. 15890/89, *Jersild v. Denmark*.

¹⁷⁴ D. KEANE, *Attacking Hate Speech under Article 17 of the European Convention on Human Rights*, in *Netherlands Quarterly of Human Rights*, 2007, pp. 641–63.

¹⁷⁵ European Court of Human Rights, judgment of 8 July 1999, application no. 23556/94, *Ceylan v. Turkey*, para. 34.

¹⁷⁶ G. F. LENDVAI, G. GOSZTONYI, *Sacred Flames: The Burning of Quran in the Context of Free Speech*, in *Religion & Human Rights*, 2025, pp. 19-38.

liberal democracies have taken on a particular symbolic value.¹⁷⁷ However, faced with a heated public debate, the Court does not seem to agree on a univocal and unambiguous stance on Islam and its place in the public sphere, rather adopting two different approaches in its jurisprudence under Art. 9 and Art. 10. In what follows, a possible explanation for such a divergence will be put forth, with a view to identifying a unifying rationale for the jurisprudence of the Court.

5. Islam in the European Public Space according to the European Court of Human Rights

The analysed jurisprudence under Arts 9 and 10 reveals notable differences in the Court's approach towards Islam. On the one hand, by upholding States' limitations of Muslims' freedom of religion in cases related to Art. 9, the Court adopts an assimilationist approach that *de facto* "protects" the interests of the majority from the Muslim minority.¹⁷⁸ Conversely, in Art. 10 cases concerning hate speech or incitement to hatred, the Court apparently embraces a more protective stance towards Islam.¹⁷⁹ In these cases, the Court seems to prioritize the "dignity"¹⁸⁰ of Islam and the protection of Muslim communities against inflammatory speech, potentially leading to episodes of violence. This stance may be contextualized within a broader approach to hate speech, which consistently leads the ECtHR to emphasize that sometimes it is necessary to sanction or even prevent the types of expression that spread, incite, promote or justify hatred based on intolerance.¹⁸¹ Ostensibly, such divergence in the jurisprudence of the Court may be explained by reference to the different nature of the rights protected under Arts 9 and 10, as well as the different factual context of each case. Nonetheless, a more detailed comparison of the two lines of jurisprudence may provide an opportunity to draw broader conclusions about the Court's interpretation of Islam and its place within European public space.

¹⁷⁷ M. C. FOBLETS, *Islam under the Rule of Law in Europe: How Consistent Is the Human Rights Test?*, in *Religions*, 2021, pp. 857-868.

¹⁷⁸ G. CILIBERTO, *Migrants' Freedom of Religion under the European Convention on Human Rights: The Case of the Disposal of Religious Symbols*, in *Italian Review of International and Comparative Law*, 2025, pp. 151-172.

¹⁷⁹ J. STAJNKO, D. SITER, L.M. TOMAŽIČ, *Discrimination, Freedom of Expression and Two Concepts of Liberty: Assessing European Legislation Criminalizing Hate Speech*, in *Hungarian Journal of Legal Studies*, 2024, pp. 288-307. The authors stress that the case law of the ECtHR shows a trend towards the establishing of an ever-broadening set of restrictions on freedom of expression.

¹⁸⁰ For an analysis of the concept of dignity in the context of the judicial adjudication of human rights, see C. MCCRUDDEN, *Human Dignity and Judicial Interpretation of Human Rights*, in *European Journal of International Law*, 2008, pp. 655-724.

¹⁸¹ European Court of Human Rights, *Erbakan v. Turkey*, cit., para. 56. Also see D. KEANE, *Attacking Hate Speech under Article 17 of the European Convention on Human Rights*, in *Netherlands Quarterly of Human Rights*, 2007, pp. 641-663. Also see G. LETSAS, *Two Concepts of the Margin of Appreciation*, in *Oxford Journal of Legal Studies*, 2006, pp. 705-732.

An important reason to consider the role of the ECtHR in the context of the relationship between religion and the law is the “messages” the Court communicates about minority religions through its judgements.¹⁸² Such messages may influence how local actors conceive of, talk about, and pursue their rights at the local and national level.¹⁸³ In this respect, Fokas argues that the ECtHR may produce a “social effect” through its judgments, encouraging or discouraging a certain conception of religion in the European public space.¹⁸⁴

Our reading of the Court’s judgments on Art. 9 supports the widespread interpretation that the Court often failed to protect “uncomfortable” religious beliefs, particularly those held by minorities with a migrant background, in the name of integration,¹⁸⁵ gender equality,¹⁸⁶ the necessity to protect the rights and freedoms of others,¹⁸⁷ or public order.¹⁸⁸ As often argued in academic literature, this line of jurisprudence reveals a biased approach of the Court towards Islam.¹⁸⁹ Conversely, the jurisprudence on Art. 10 seems to be more protective of Islam, censoring every “gratuitously offensive” manifestation of free speech directed at this religion and its adherents.¹⁹⁰

Despite the differences, a noticeable similarity between the two types of cases is that, in both Art. 9 and Art. 10 cases, the Court endorses the decisions of national authorities, acknowledging that they are better placed to make informed decisions regarding the place of religion in their societies.¹⁹¹ The Court refers to the margin of

¹⁸² E. FOKAS, J. T. RICHARDSON, *The European Court of Human Rights and Minority Religions: Messages Generated and Messages Received*, London, 2020.

¹⁸³ E. FOKAS, *Rights Not Working? Grassroots-level Impact of the European Court of Human Rights on Religion*, in *Social Compass*, 2020, pp. 191-205. The author also cites Michael McCann, who describes how court decisions may take a “life of their own” once awareness of these decisions reaches the grassroots level. See M. W. MCCANN, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*, Chicago, 1994.

¹⁸⁴ E. FOKAS, *Islam at the European Court of Human Rights*, in *NAVEIN REET: Nordic Journal of Law and Social Research*, 2020, pp. 121-144.

¹⁸⁵ K. HENRARD, *Integration Reasoning at the ECtHR: Challenging the Boundaries of Minorities’ Citizenship*, in *Netherlands Quarterly of Human Rights*, 2020, pp. 55-74.

¹⁸⁶ J. MARSHALL, *SAS v France: Burqa Bans and the Control or Empowerment of Identities*, in *Human Rights Law Review*, 2015, pp. 377-389.

¹⁸⁷ K. HENRARD, P. VERMEERSCH, *Nationalism with a Human Face? European Human Rights Judgments and the Reinvention of Nationalist Politics*, in *Nationalities Papers*, 2020, pp. 809-825.

¹⁸⁸ G. F. LENDVAI, G. GOSZTONYI, *Sacred Flames: The Burning of Quran in the Context of Free Speech*, in *Religion & Human Rights*, 2025, pp. 19-38.

¹⁸⁹ T. KAYAOGLU, *Trying Islam: Muslims before the European Court of Human Rights*, in E. FOKAS, J. T. RICHARDSON (eds.), *The European Court of Human Rights and Minority Religions: Messages Generated and Messages Received*, pp. 84-103, London, 2020. The author explains that the Court’s handling of cases involving Muslims is particularly problematic because of fears both about Islam and Muslim visibility and demands.

¹⁹⁰ P. Y. KUHN, *Reforming the Approach to Racial and Religious Hate Speech under Article 10 of the European Convention on Human Rights*, in *Human Rights Law Review*, 2019, pp. 119-147.

¹⁹¹ M. L. CHAKIM, *The Margin of Appreciation and Freedom of Religion: Assessing Standards of the European Court of Human Rights*, in *The International Journal of Human Rights*, 2020, pp. 850-867. The author explains that the main argument of the margin of appreciation doctrine is that States are better positioned to determine when interference with freedom of religion becomes necessary in a

appreciation doctrine to justify its findings.¹⁹² However, as shown above, the application of the margin of appreciation doctrine leads to different outcomes in Art. 9 and Art. 10 cases. Addressing Art. 9 cases, Berry explains that the Court's deference to the margin of appreciation doctrine leads to decisions weighted against religious minorities, and to the ECtHR interpreting Art. 9 to constitute "protection *from* religion" rather than freedom *of* religion.¹⁹³ On the other hand, the Court's recourse to the margin of appreciation doctrine in Art. 10 cases appears to strengthen the protection of the "dignity" of Islam and its adherents. In fact, in many cases concerning hate speech, the Court has prohibited an "irresponsible freedom of expression that undermines the dignity of [certain] groups of the population".¹⁹⁴

Pursuant to one possible interpretation of the different approach of the Court towards Islam, this divergence may be explained through the conceptual distinction – introduced in para. 3 – between the notions of "private" and "public" Islamophobia. In that paragraph, it was observed that a difference exists between "private" Islamophobia as the fear, suspicion, and violent targeting of Muslims by individuals or private actors, and "structural" Islamophobia as the process by which State actors perpetuate fear and suspicion of Muslims through enactment of surveillance programs, racial profiling, and immigration policy.¹⁹⁵

In our view, the Court appears to be more willing to take a firm stance against instances of "*private*" Islamophobia, such as incitements to violence against Muslims made by private citizens – such as journalists, artists, politicians, and so on. In contrast, when confronted with "*public*" expressions of Islamophobia – incorporated within legislative measures like the *burqa* bans in France and Belgium – the Court tends to show greater deference to States. This "assimilationist" approach in Art. 9 cases¹⁹⁶ – which gives precedence to the "moralistic preferences of the majority"¹⁹⁷ – is driven by an effort to uphold a notion of *vivre ensemble* that appears to be strictly

democratic society. However, as argued by the author, serious problems arise when the Court 'hides' behind this doctrine to support national authorities.

¹⁹² D. POPOVIC, *Prevailing of Judicial Activism over Self-Restraint in the Jurisprudence of the European Court of Human Rights*, in *Creighton Law Review*, 2008, pp. 361-396. Also, see S. E. BERRY, *A 'Good Faith' Interpretation of the Right to Manifest Religion? The Diverging Approaches of the European Court of Human Rights and the UN Human Rights Committee*, in *Legal Studies*, 2017, pp. 672-694. Also see K. ALEXOPOULOU, *The Margin of Appreciation in Freedom of Thought, Conscience, and Religion under Article 9 of ECHR*, in *Oxford Journal of Law and Religion*, 2022, pp. 220-245. Also see R. NIGRO, *The Margin of Appreciation Doctrine and the Case Law of the European Court of Human Rights on the Islamic Veil*, in *Human Rights Law Review*, 2010, pp. 531-564.

¹⁹³ S. E. BERRY, *A Tale of Two Instruments: Religious Minorities and the Council of Europe's Rights Regime*, in *Netherlands Quarterly of Human Rights*, 2012, pp. 10-39.

¹⁹⁴ European Court of Human Rights, judgment of 11 February 2020, application no. 4493/11, *Atamanchuk v. Russia*.

¹⁹⁵ K. A. BEYDOUN, *Islamophobia*, cit.

¹⁹⁶ G. CILIBERTO, *Migrants' Freedom of Religion*, cit.

¹⁹⁷ G. LETSAS, *Two Concepts of the Margin of Appreciation*, in *Oxford Journal of Legal Studies*, 2006, pp. 705-732.

intertwined with the continent's traditional Christian heritage.¹⁹⁸ Consequently, the Court accepts that religious freedom entails securing the rights of a person – in our case a person of Muslim descent – against incursions by other private individuals but not against incursions by the State.

Therefore, one could argue that a reason for the different approach adopted by the Court in Art. 9 and Art. 10 cases resides, once again, in the Court's interpretation of the concept of *vivre ensemble*. As clarified in *S.A.S. v France*, the Court favours a relationship between Islam and the State based on “a principle of interaction between individuals, which is essential for the expression not only of pluralism, but also of tolerance and broadmindedness”.¹⁹⁹ As a consequence, the Court embraces an interpretation of peaceful, collective life that does not tolerate the display of visible Islamic symbols, interpreted as disturbing or fundamentally dangerous – due to their potential proselytizing effect. As clearly argued by Gatti and Evolvi, these symbols are often regarded as problematic due to their visibility.²⁰⁰ In turn, the visibility of the Islamic headscarf is problematic because it challenges the “secular normality” of Europe.²⁰¹ Similarly, Jeldtoft argues that in the European public discourse, it is often assumed that the “proper place for religion is the private domain – not the public, which belongs to the secular”.²⁰²

At the same time, when it comes to its jurisprudence under Art. 10, the Court shows that it will not tolerate public expressions of “private” Islamophobia – such as Islamophobic hate speech or incitement to hatred towards Muslims – as such expressions are disruptive of the peaceful coexistence of religions in the public sphere, based on the assumption that each (minority) religion must remain invisible to the others. In fact, as seen above, the Court's jurisprudence qualifies certain expressions as hate speech when they may “instil feelings of rejection, hostility or hatred against the targeted community”²⁰³ and when certain expressions are “incompatible with a serene social climate and could undermine confidence in the democratic institutions”.²⁰⁴ It thus seems that both lines of case law correspond, in the eyes of the Court, to the necessity to respect “the minimum requirements of life in society”.²⁰⁵ However, as aptly noted by Ringelheim, the ECtHR's attempts at developing a coherent model of

¹⁹⁸ For the argument that “upholding bans based on ‘living together’ disregards the ECtHR's responsibility to protect minorities”, see E. Howard, *Bans on the Wearing of Burqas, Niqabs and Hijabs, Religious Freedom and the Secular Nature of the State*, in M. J. H. BHUIYAN, A. BLACK (eds.), *Religious Freedom in Secular States: a 21st Century Perspective*, Leiden, 2022.

¹⁹⁹ European Court of Human Rights, Grand Chamber, judgment of 1 July 2014, application no. 43835/11, *SAS v. France*, para. 153.

²⁰⁰ M. GATTI, G. EVOLVI, *Bias and Judicial Narrative: A Critical Discourse Analysis of the ECtHR and ECJ Case Law on Religious Symbols*, in *European Law Open*, 2024, pp. 794-819.

²⁰¹ N. JELDTOLT, *The Hypervisibility of Islam*, in *Everyday Lived Islam in Europe*, 2016, pp. 23-38.

²⁰² *Ibidem*, at p. 25.

²⁰³ European Court of Human Rights, *Féret v. Belgium*, cit., para. 69.

²⁰⁴ *Ibidem*, para 73.

²⁰⁵ European Court of Human Rights, *SAS v. France*, cit., para. 141.

relations between religion and the public sphere remain tentative and fragmentary.²⁰⁶ In particular, one is left to wonder how, in the Court's view, efforts to curb Islamophobic hate speech can be reconciled with the possibility, increasingly granted to European States, to enact Islamophobic pieces of legislation, such as *burqa* bans and the prohibition to build minarets.

6. Conclusions

Although Europe has been historically shaped by Christianity, over the years it has become home to varied religious beliefs. Consequently, as noted by PACE, Europe is not free from tensions between the different religious communities, and it is essential to step up protection of the members of minority religious groups against the risk of discrimination.²⁰⁷ As seen in this contribution, the problematic interaction between the European Christian majority and Muslim minorities has given rise to serious episodes of Islamophobia, recently fueled by horrifying events such as the Charlie Hebdo terrorist attack in Paris. Sadly, partially due to these events, instances of anti-Muslim bigotry have proliferated, severely hindering the socio-economic integration of people with a Muslim background. To add to such a bleak picture, many politicians have weaponized the ever-growing fear of the public towards Muslims. The image of a dangerous Muslim has been introduced within public discourse and political debate. Muslims have become the European common enemy, useful to gain votes and mobilize constituencies. Consequently, in addition to facing significant barriers to their integration, Muslims have witnessed violence and widespread hate. In such a problematic context, claims to accommodate this new plurality – particularly that of religions – have multiplied.²⁰⁸

The present contribution acknowledges that the ECtHR jurisprudence plays a pivotal role in addressing the tensions resulting from encounters between the Christian majority and the Muslim minority in Europe. However, the Court appears to embrace an ambiguous approach towards Islam. Its Art. 9 jurisprudence appears to be biased in favour of Christianity and inspired by a “fear of Islam” which leads the Court to adopt a restrictive approach, especially with regard to the issue of religious symbols and garments. Conversely, the Court's jurisprudence on hate speech and Islamophobia, hinged on the provision of Art. 10, appears to be more tolerant of Islam and more protective of the dignity of its adherents. It was argued that this divergence may be explained by reference to the concepts of “State” and “private” Islamophobia, whereby

²⁰⁶ J. RINGELHEIM, *Rights, Religion and the Public Sphere: The European Court of Human Rights in Search of a Theory?*, in *A European Dilemma: Religion and the Public Sphere*, 2011, pp. 283-304.

²⁰⁷ Parliamentary Assembly of the Council of Europe (PACE), Committee on Legal Affairs and Human Rights, *Combating All Forms of Discrimination Based on Religion*, Doc. 12788.

²⁰⁸ R. MEDDA-WINDISCHER, *Militant or Pluralist Secularism? The European Court of Human Rights Facing Religious Diversity*, in E. FOKAS, J.T. RICHARDSON (eds.), *The European Court of Human Rights and Minority Religions*, London, 2020, pp. 51-66.

the Court does not accept Islamophobic remarks made by private citizens – such as journalists or politicians – which may endanger the peaceful, collective life on the European continent, while endorsing the phenomenon of “State” Islamophobia as enshrined in public policies and national legislation such as the French and Belgian *burqua* bans.

Nonetheless, the ambiguity of the Court’s jurisprudence is particularly troubling, in the face of a serious dilemma, that is the problem of the safety and dignity of Muslims on the European continent. Having regard to the “social effects” of the jurisprudence of the Court, it could be argued that the Court’s approach is not conducive to a peaceful coexistence between different religions on the European continent. Despite routinely employing the notions of secularism, pluralism, *laïcité*, and neutrality, the perspective adopted by the Court in cases concerning the wearing of Islamic symbols appears hinged on the notion of danger rather than that of neutrality of the State. In *Dahlab*, the Court eventually found that the right of a teacher to manifest her religious beliefs had to be weighed against the need to protect pupils.²⁰⁹ Protect them from who or what? Ostensibly, from Islam and the threat of proselytism. Similarly, by repeatedly stressing that limitations to the right to wear religious garments in public are justified by the legitimate aim of protecting “public order”,²¹⁰ the Court conveys an image of a dangerous Islam, a religion which is not conducive to a peaceful collective life, the *vivre ensemble* enucleated in *S.A.S. v France*.²¹¹ Pursuant to this interpretation, Islam, as symbolized by the headscarf, is a threat to the secular character of the European State and an obstacle to collective life.²¹² Therefore, while on the one hand protecting Muslims against the dangerous conflation of the concepts of Islam and terrorism – in its Art. 10 jurisprudence – the Court seems to endorse an Eurocentric “fear” of Islam, in its Art. 9 jurisprudence. In this manner, the ECtHR – through its Art. 9 jurisprudence – may be inadvertently supporting the very phenomenon it is attempting to eradicate – through its Art. 10 jurisprudence – namely Islamophobia.

²⁰⁹ A. CEBADA ROMERO, *The European Court of Human Rights and Religion*, op. cit.

²¹⁰ By way of example in European Court of Human Rights, judgment of 30 June 2009, application no. 43563/08, *Aktas v. France*; European Court of Human Rights, judgment of 30 June 2009, application no. 14308/08, *Bayrak v. France*; European Court of Human Rights, judgment of 30 June 2009, application no. 18527/08, *Gamaleddyn v. France*; European Court of Human Rights, judgment of 30 June 2009, application no. 29134/08, *Ghazal v. France*; European Court of Human Rights, judgment of 30 June 2009, application no. 25463/08, *J. Singh v. France*; European Court of Human Rights, *Mikyas and Others v Belgium*, cit.

²¹¹ In this judgment, the Court stresses the fact that the full-face Islamic veil has the particularity of entirely concealing the face, with the possible exception of the eyes. See European Court of Human Rights, *SAS v. France*, cit., para. 136.

²¹² P.G. DANCHIN, *Islam in the Secular Nomos of the European Court of Human Rights*, in *Michigan Journal of International Law*, 2010, pp. 663-747.

ABSTRACT: The contribution analyses the European Court of Human Rights' (ECtHR) jurisprudence on religious freedom and hate speech. It focuses on Arts 9 and 10 of the Convention, respectively guaranteeing freedom of religion and freedom of expression. It is argued that, while the Court's jurisprudence under Art. 9 ostensibly safeguards freedom of religion, irrespective of the specific faith, its restrictive approach towards Islamic symbols reveals a Eurocentric bias. Judgments such as *Dahlab* or *S.A.S. v. France* illustrate how notions of secularism, neutrality, and *vivre ensemble* are applied through a framework of "danger," casting Islam as incompatible with public order. Conversely, under Art. 10, the Court adopts a more protective stance, condemning Islamophobic speech by private actors on the grounds of safeguarding social peace. This divergence suggests that the Court distinguishes between "State" and "private" Islamophobia, tolerating the former while prohibiting the latter. Such inconsistency raises serious concerns regarding the Court's capacity to foster genuine pluralism in Europe. Ultimately, by privileging State-imposed restrictions under Art. 9 while simultaneously combating discriminatory expression under Art. 10, the Court risks entrenching systemic Islamophobia, undermining the very principles of religious freedom and equality it is mandated to protect.

KEYWORDS: freedom of religion – Islamophobia – migration – headscarf – hate speech.