

Children’s Religious Rights in School: Religious Education, Display of Religious Symbols and Religious Clothing in Schools

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ABSTRACT

From the outset, religious entities have played a central role in education. Despite significant national and regional differences, a number of Catholic religious orders and Protestant schools have shaped the education system in most European countries. Introducing compulsory education (mostly in the 18th century) did not change the central role of denominations in the education system. Across Eastern Europe, the communist regime has curtailed the role of churches in education as well as the possibility of churches providing religious education in public schools. Since the collapse of the communist system, various schemes of religious education were reintroduced in public schools, and religious communities were once again considered important service providers in the education system. Symbols carrying cultural identity—often linked to religion—may have reappeared in schools; in this respect there are significant national differences. Participation in religious education at public schools generally depends on parental decision. Considering the limited presence of Islam in the eastern part of Central Europe, the issue of Islamic headscarf at schools has yet to become a subject of wider public debate. Schools have remained the most important institution of society where generations growing up learn to live together in harmony.

KEYWORDS

school, religious education, ethics, church schools, religious symbols, religious garment

Parents carry the ultimate responsibility for their children and have the natural right to determine their education.¹ Faith communities have made an indisputable claim for the right to offer their teaching to future generations with due consideration of parental decisions. Schools in medieval Europe emerged in a religious

1 E.g.: Universal Declaration of Human Rights, Art. 26.3. First Protocol to the European Convention on Human Rights, Art. 2. In a peculiar way was the Convention on the Rights of the Child when recognising the right of the child to freedom of thought, conscience and religion, only acknowledging the role of parents (or guardians) « to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child ».

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setting: cathedral chapters and monasteries were the first schools and the state has respected, endorsed and supported the prominent role of churches in education. State supervision over the school system has been a policy of absolutism when education has become a public issue, assuming a compulsory nature.² Religious communities have remained important actors in the education system, with significant national and historical differences; the path to a peaceful and equitable coexistence was often paved by intense political debate on the role of church and religion in education. Some countries have rather set on cooperation between church and state with regard to education, whereas others rather marginalised religious elements in the public education system. It is worth noting that before and besides the school, family and religious communities have played a determinative role in the religious upbringing of children. These realities are, by their very nature, fields of freedom rather than legal regulation. There is no other social structure comparable to the school system that shape the attitude and worldview of subsequent generations—in fact schools are a reflection of society. Parents, the state and religious communities form a delicate triangle sharing a natural interest in education. Interests are linked to rights and duties: whereas the relations between parents, as well as between parents and children are primarily not determined by legal provisions; state policies are expressed by legislation. The education system has to be shaped taking into consideration parental rights. The European Court of Human Rights contends that ‘the State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions. That is the limit that must not be exceeded’.³

1. Religious Education

Religious education in the narrow sense would be denominational religious education or religious instruction, i.e. the introduction of a child into the doctrine of a religious community upon the decision of his/her parents. In this sense, it is a core element of parental right to decide the education of children and provide for that, given that one religion taught and learnt is ones’ own. Teaching about religion may be considered an integral part of school curriculum irrespective of the religious affiliation of children. Religious education lies at the intersection of three institutions: family, religion and state.⁴

Specifically, religious communities would have the right to provide *religious education* in public schools and kindergartens at the request of children/students and their parents; non-public schools may fall under different regulation. A state that is neutral with regard to religion generally maintains an education system that is also neutral and equally accessible to all citizens. Neutrality, however, does not mean that the

2 Rees, 1986, pp. 54–55.

3 *Folgerø and Others v. Norway*, Application No. 15472/02, 29 June 2007.

4 Durham, 2013, pp. 1–9.

education system cannot be bound by certain values as well as cultural legacy. The Constitution of Bavaria (1946) provides for “reverence for God” as the first goal of education (Article 131 (2)), and determines, that ‘State elementary schools shall be open to all children of school age. In them children shall be taught and educated according to the principles of the Christian creed’. (Article 135). The Fundamental Law of Hungary ensures the right of children to be brought up ‘in accordance with the values based on the constitutional identity and Christian culture of our country’ (Article XVI (1)).

In most European countries, some form of denominational religious education has survived within the public school system, whereas in communist-ruled countries, this right appears seriously constrained. With the collapse of the communist regime, new arrangements had to be determined respecting the fundamental rights of parents, pupils and religious communities, while taking into account social changes.

The access of religious communities to public schools, criteria for a religious community to provide religious education at school, training of teachers of religion, determination of the curriculum as well as funding religious education constitute sensitive issues often regulated in concordat agreements.⁵

1.1. No Religion in Schools

Some school systems exclude religion from public education—the United States of America or France serve as well-known examples, followed by countries like Slovenia and Albania.⁶ In these countries, religious parents may opt for non-public schools and religious communities would provide for religious education on their own premises—like at Sunday schools. The more secular the public education system, the stronger the demand for establishing private, religious schools. This may be the reason that the percentage of pupils attending church schools is much higher in France where the public education system is secular, than is Germany where religious education is part of public education.

1.2. Opting-Out Systems

Religious education in public schools can be organised in an “opting-out” or “opting-in” model. Greece applies an opting-out model with regard to orthodox religious education, similar to Malta with Catholic religious education. In this model, the main rule is that all children attend the instruction of the dominant religion, leaving the possibility to withdraw without any specific explanation. In Thrace on the territory established by the Treaty of Lausanne (1923), Muslim children receive Islamic religious education in minority schools.⁷ In most parts of Germany, registered denomination would automatically mean that pupils attend the religious education of their denomination at school. Parents—or pupils after age 14—may opt out at the beginning of every school year. In the opting-out model, usually ethics classes are offered to those not

5 Němec, 2012, pp. 203–247.

6 Staničić, 2021b, p. 144.

7 Maghioros, 2013, p. 134.

attending religion classes. When all children attend either religious or ethics classes, the attendance of religious classes may be higher. As the state sets the curriculum of ethics courses, some interest may be generated in the content of religious classes that could limit the discretion of religious communities. The attendance, grading as well as the proper decree of the religious teacher could become a matter of common interest when religion is not merely considered an optional afternoon activity.

Pupils (parents) may opt out from compulsory denominational religious education in most parts of Germany. According to the Basic Law of Germany, ‘Without prejudice to the state’s right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned’.⁸ Religion is one of the subjects taught, but since the state has no religion, it is required to cooperate with religious communities to determine the content of the class.⁹

The age limit of children making their own decisions with regard to religion—including religious education—may vary. In Austria and Germany, legal regulation sets the minimum age when children can make their own decisions in religious issues, including attending religious education (“*Religionsmündigkeit*”). Individuals aged above 14 are considered “mature” and may, in most Austrian and German states, freely opt out from compulsory denominational religious education or convert to another faith. Parents may make all decisions regarding religious affairs until the child turns 10; between ages 10 and 12, the parents must take their child’s opinion into account, although the child may only leave the given religion with the consent of both parents. When the child is between 12 and 14, the parents may decide to leave a religious community against the child’s will, and after reaching the age of 14, the child may make independent decisions, including leaving school-based religious education.¹⁰

1.3. *Opting-In Systems*

In the “opting-in” model, religious education is an optional subject added to the normal school curriculum, and parents/pupils are required to make a positive decision to enrol in religion classes. For example in Italy, parents (or in secondary school, the students themselves) have to declare every year whether their children can take part in Catholic religious education or withdraw from it. When a determinative majority attends religion classes, it may become practically a part of the school curriculum. In this case, it is important to pay attention to the equality and inclusion of those not opting for religion classes, the teaching of ethics can be a reasonable alternative¹¹ or even a necessity.¹²

8 Basic Law, Art. 7 (3).

9 Mückl, 1997, p. 517.

10 Gesetz über die religiöse Kindererziehung; 15 July 1921 (RGLB. S. 939). Available at: https://www.oesterreich.gv.at/themen/leben_in_oesterreich/kirchenein___austritt_und_religionen/Seite.820012.html (Accessed: 15 December 2022).

11 E.g. CRC/C/POL/CO/5-6 (Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Poland), pt. 25. Available at: <https://www.ohchr.org/en/documents/concluding-observations/crccpolco5-6-concluding-observations-combined-fifth-and-sixth>.

12 *Grzelak v. Poland*, Application No. 7710/02, Judgement 15 June 2010.

Certainly, figures and proportions matter: a small minority cannot expect the majority to not express its religious views through participation in religion classes.¹³ When it is only a small minority that opts for religion classes, then optional religion classes can be left for afternoon hour, and religion classes may concur with a wide range of alternative possibilities.

In “opting-in” models, it is common to set a minimum number of attendants of a course for the school to provide or host religion classes of a given faith community. If religious minorities are not concentrated in certain geographical areas, they are not likely to reach the minimum requirements. A possible solution to this problem has been arranged in Poland providing for the possibility to arrange religion (or ethics) classes in inter-school groups regardless of the number of students.¹⁴ Additional legal requirements may foresee a proper decree of the teacher of religion classes or a certain legal status of the religious community that may also lead to only mainstream religious communities offering religion classes at public schools.

An opt-in to optional religious education is provided by mainstream denominations in nations like Italy, Poland as well as countries in Central Europe.¹⁵ According to the Concordat between Poland and the Holy See, the curriculum for the teaching of Catholic religion as well as the textbooks used are edited by the ecclesiastical authority and communicated to competent civil authorities.¹⁶ Similar regulations have been made in other concordat agreements besides national laws. The curricula, textbooks and other instruments need ecclesiastical approval and consultation with the ministry of education and deserves similar funding to other subjects. With regard to supervision, the church also has the right to observe classes and agree on the persons who conduct state school inspection with regard to religion classes.¹⁷

Determining the content of religion classes in public schools could turn into a conflict between the church and state. Where denominational education is provided at school, the respective faith communities determine the content. Whereas the neutral approach provides information on history, arts and ethics of various religious traditions, the denominational instruction ‘contributes to the feeling of being at home in one’s own religion, thereby allowing the transmission of values in a sustainable manner’.¹⁸

1.4. Teaching About Religion

Religious education has been transformed into neutral education on religious issues in Norway, Sweden, Denmark, the Netherlands and Great Britain. This is not religious education in the narrow sense as it does not aim to introduce the faith of a given

13 Stożek and Ponikowska, 2017, p. 234.

14 Stanisz, 2023, pp. 142–143.

15 Optional religious education in public schools is provided in Belgium, Croatia, Hungary, Latvia, Lithuania, Austria, Poland, Portugal, Serbia, Slovakia, Spain, Greece, Ireland and Romania.

16 Concordat Art. 12.2.

17 Agreement between Slovak Republic and the Holy See regarding Catholic upbringing and education (March 2004) Art. II.

18 Heinig, 2011, p. 176.

religious community, but provide knowledge on religious culture and traditions globally.

Public schools should not endorse any religion or ideology but must provide objective information about religions and philosophical convictions. Teachers at public schools should adopt a neutral stance; they have the right to express their opinions or beliefs, but should not indoctrinate their students. Schools should provide fundamental information on ethics.

1.5. Religious Education in Hungary

In Hungary, denominational religious education was considered compulsory at public schools until 1949. After the communists took over, religious education became optional, although elementary schools were formally obliged to ensure its potential. As a consequence of restrictive administrative practice and systematic harassment of parents, by the 1980s, only 4% of children received religious education at schools—mostly in rural areas. Starting from 1990, the obstacles for religious education were eliminated and the cooperation of schools and churches reinforced to provide for adequate space and time for religious education and, in many areas, schools once again began imparting religious education. Act IV/1990 reinforced the possibility for children/students to participate in optional religious education and instruction organised by a church legal entity in state or council educational–teaching institutions. Church legal entities could freely organise *religious education* and instruction upon requisition from parents in kindergartens and on demand of parents and students at schools and halls of residence. Religious education and instruction at kindergartens may be organised separately from kindergarten activities, also taking into account the daily routine of the kindergarten. They may be organised at schools in conformity with the order of compulsory curricular activities. It has become the exclusive task of church legal entities to define the content of religious education and instruction, to employ and supervise religious education teachers, and execute the acts of administration related to religious education and instruction with special regard to the organisation of the application for religious education and instruction, the issuance of progress reports and certificates, and supervision of lessons. The school, hall of residence or kindergarten is obliged to provide the necessary material conditions for religious education and instruction, using the tools available at the educational–teaching institution, with particular focus on the appropriate use of rooms and necessary conditions for application and operation. The kindergarten, school or hall of residence are expected to cooperate with the interested church legal entity in the course of the performance of the tasks related to the optional religious education and instruction organised by the church legal entity.

As part of an important change introduced in 2012, ethics was introduced to the curriculum of elementary schools (Grades 1–8). Children participating in religious education at schools do not participate in ethics classes; essentially, religious education has become a compulsory elective subject rather than an optional subject.¹⁹

19 Act XCX/2011. §35.

Religious education in public schools can only be offered by recognised churches and not by religious associations.²⁰ Religious instruction in public schools is delivered by ecclesiastical entities, not the school. The instruction is not part of the school curriculum, the individual imparting religion classes is not a member of the school staff, and grades are not given in school reports, only participation is registered. Churches are free to decide on the content of the religious classes as well as their supervision. Those teaching religion are church employees; however, the state provides funding for churches to pay the teachers. The school has only to provide an appropriate time for religious classes as well as teaching facilities. Churches are free to expound their beliefs during religious classes; they are not required to restrict themselves to providing neutral education, merely giving information about religion, as do the public schools. Religious education is not part of the public school's task; it is a form of introduction into the life and doctrines of a given religious community at the request of students and parents. Churches have the right to offer religious education in higher grades as well as kindergarten, but this is mostly not the case; in practice, religious education in secondary education is only provided in church-run schools.

2. Schools Run by Religious Entities

The model of religious instruction may be influenced by the role of schools maintained by religious communities in a given country. A majority of schools in Ireland are under the patronage of the Catholic church, and a few are managed by other faith communities, leaving a limited number of schools to non-denominational or multi-denominational patrons.²¹ Notwithstanding the patronage-system, these are public, state-sponsored schools. Furthermore, over 60% of schools in the Netherlands are run by the Catholic church, while Protestant denomination public schools are a minority. In Belgium, the majority of schools is Catholic;²² certainly, in an increasingly pluralistic and secular society, the identity of these schools may not be expressed in an intrusive manner. Whereas in some countries of Western Europe, churches have remained major service providers in education; countries subjected to communist domination schools were nationalised. After the collapse of the communist regime, churches reopened some of their schools, although most pupils attended public schools.

When parents or religious communities set up a school, they exercise a fundamental right. When questions arise on the freedom of religion in these schools, freedom of the school governing board, church as well as both parents and children has to be taken into consideration.²³ Schools run by religious entities can be very open and

20 Act CCVI/2011. §21.

21 Colton, 2011, p. 236.

22 Torfs, 2011, p. 63.

23 Poniatowski, 2021, p. 123.

tolerant with regard to religion, but also have the right to be exclusive. Primarily, it shall be part of religious autonomy to determine the rules to be followed at schools run by faith communities.

In Hungary, private schools are distinct from church-run schools. They can make denominational religious education compulsory, but can also exclude religious education and enrol all students to ethics classes. Parents pay tuition to private schools if the owner does not enter into a contractual arrangement with the state.²⁴ Parents with the constitutional right to decide on the education of their children also have the authority to set up schools that have more autonomy than public schools. “*Church schools*” can be private schools in some countries, whereas in Hungary, they are neither classified as public nor private. At the secondary education level, the proportion of church schools is over 20%. There may be some villages where the only local school or certain small towns where the only secondary school is run by a religious community. Even in these cases, a neutral public school has to be available for all families that do not wish to attend a school maintained by a particular denomination. Meanwhile, in most European countries, church-run schools complement the public education system, constituting a determinative part of the education system.

In Hungary, all schools, including church-run schools are bound by a national core curriculum, although individual schools are allowed to establish their own teaching programme. Church schools evidently advance the tradition and identity of faith communities, contrary to state schools that remain neutral with regard to religion. Religious symbols are allowed on the building as well as in the classrooms. Religious instruction may be a compulsory part of the curriculum (in this case, ethics is not a compulsory subject),²⁵ and scores obtained are shown in the school report. Church schools are allowed to select not only their staff, but also their pupils according to religious principles—none of this is allowed in public schools. Church-run schools, however, can be obliged to enrol a minimum number of students from the given municipality. The state budget grants equal funding for schools formally maintained by the church; the enjoyment of equal public subsidies, however, precludes the right to collect tuition fees. Most church schools function in buildings that used to be church schools prior to their nationalisation in 1948, although churches are also engaged in the construction of new schools, and in some cases, they have taken over public schools from municipalities on a contractual basis. Public schools have to be accessible to everyone without an “undue burden”. Ultimately, parental decisions and expectations decide whether they send their kids admit to the school in their own schools district, as there is no obligation to accept a school assigned by authorities. Accordingly, parents are free to choose a school for their children that can also be in another settlement if they are ready to commute. The natural parental effort to provide the best possible education to their children is also expressed by a strong

24 Act XCX/2011. §31(2).

25 Act CXC/2011. §32(1)j).

demand for schools run by religious communities, as the public perception is that these schools provide a better quality and safer school environment. Obviously, religious communities would not engage in education without a pressing social demand for it. Certainly, local peculiarities have an influence as some church-run institutions expressly seek to provide service to marginalised social groups whereas others may rather draw middle-class families. Approximately 10% of children go to kindergartens run by religious communities; almost 20% of elementary schools and about 25% of secondary schools are run by religious entities.

3. The Display of Religious Symbols

Displaying religious symbols is an essential aspect of manifesting one's religion; this right can be exercised by pupils, teachers and staff of public schools with due respect to others, although it may require regulation and restraint. A public school does not carry rights; on the contrary, it is obliged to respect the rights of others and determine equitable compromises when rights clash. Exercising the right to manifest one's religion should not become offensive for others, although its definition depends on social settings; however, some religious symbols may convey a cultural identity. When the cultural content is obviously superior to religious information, even public authorities—like the school management—may display symbols that have religious character.²⁶

The display of religious symbols in public schools is being increasingly debated among the public as well as in courts. The setting may differ by country, with the display of religious symbols generating debate in some places, while their removal triggering dispute in others. Both changes demand justification. In Germany, the decision of the Federal Constitutional Court in 1995 to remove crosses from Bavarian public schools²⁷ triggered public outrage and resulted in new legislation, giving authority to school directors to determine an equitable solution when parents request the removal of the cross for serious and understandable reasons of faith or belief, considering the wish of the majority.²⁸ Later legislation prescribes the display of crucifixes at the entrance of all public buildings to express Bavarian cultural identity.²⁹

The *Lautsi v. Italy* case decided by the Grand Chamber of the European Court of Human Rights can be considered a landmark decision on the display of religious symbols in classrooms of public schools.³⁰ The final decision states that the requirement in Italian law and practice that crucifixes have to be displayed in classrooms

26 Csink, 2021, p. 98.

27 BVerfG BVerfGE 93, 1.

28 Art. 7, Abs. 4 BayEUG für Grundschulen; Art. 7a Abs. 6.

29 Allgemeine Geschäftsordnung für die Behörden des Freistaates Bayern (AGO) vom 12. Dezember 2000 (GVBl. S. 873; 2001 S. 28 BayRS 200-21-1) Last promulgation: 14. Dezember 2021 (GVBl. S. 695).

30 *Lautsi and Others v. Italy*, Application No. 30814/06, 18 March 2011.

of public schools³¹ does not violate the European Convention on Human Rights. The petitioner, an agnostic Finnish-born Italian national Ms. Soile Lautsi, requested the School Council to remove the crucifix at her son's school. When the School Council decided not to comply, Lautsi applied to the Veneto Administrative Court, which decided that the presence of crucifixes in State-school classrooms did not offend the principle of secularism. Ms. Lautsi appealed to the Supreme Administrative Court, which upheld the Veneto Court's decision reasoning that in Italy, the crucifix symbolised the religious origin of values (tolerance, mutual respect, valorisation of the person, affirmation of one's rights, consideration for one's freedom, autonomy of one's moral conscience vis-à-vis authority, human solidarity and refusal of any form of discrimination), which characterised Italian civilisation and that keeping the crucifix did not have any religious connotations.

The judgement of the Chamber of the European Court of Human Rights declared that there had been a violation of Article 9 (freedom of religion) and Article 2 of Protocol No. 1. (freedom of education) of the European Convention on Human Rights.³² This decision triggered an uproar in Italy and beyond. The court stated that a crucifix can have a plurality of meanings, but the religious meaning was predominant. Besides the positive aspects of religious freedom, there is a "negative right"—not to have or express religion and this aspect deserved special protection if it was the State. The Chamber's judgement did not share the Italian position that regarded Catholic symbols as a contribution to pluralism.

The Italian government appealed to the Grand Chamber of the Court against the judgement, supported by a number of governments and expert opinions. In its decision on 18 March 2011, the Grand Chamber voted 15–2 to overturn the judgement. The court did not regard crucifixes in state-school classrooms as secular symbols, although it recognised its cultural relevance.³³ The crucifix undoubtedly refers to the majority religion of Italy; however, it is "an essentially passive symbol" that does not have 'an influence on pupils comparable to that of didactic speech or participation in religious activities'. Accordingly, the presence of a religious symbol did not constitute a violation of the Convention.

Two aspects are worth considering with regard to the judgement. Stating no violation by the prescription certainly does not mean that an eventual lack of a similar prescription would constitute a violation. An empty wall does not violate rights but remains empty. The other remarkable aspect is that the Italian case has dealt with a symbol placed by state authorities. The state does not have the right to express religious convictions; essentially, the decision to display the cross was not an exercise of freedom, but an expression of a cultural mission. Symbols placed by staff members, parents or children would fall under different scrutiny as they hold rights. The state has no freedom of religion, whereas individuals do. It can be added that recent Italian

31 Feliciani, 2016, pp. 111–116.

32 *Lautsi v. Italy*, Application No. 30814/06, 3 November 2009.

33 Torfs, 2016, p. 10.

jurisprudence acknowledging that the presence of the crucifix on the wall does not discriminate against anyone; however, it is up to the students in the given community (school assembly or class council) to seek reasonable accommodation of other beliefs eventually adding symbols of other religions.³⁴

Considering that there is no European standard on the display of religious symbols in public schools, national legislation may vary. In a number of countries, like Austria³⁵, Poland³⁶, Romania³⁷ or Slovakia,³⁸ religious symbols in public schools are common, whereas in the Czech Republic,³⁹ Hungary⁴⁰ or Slovenia,⁴¹ no religious symbols are placed in public schools. In some legal systems, there are clear legal provisions on having a cross at public schools; e.g. in Austria, there is a clear legal regulation prescribing to have a cross in all classrooms where the majority of pupils belong to a Christian denomination.⁴² Scholarship acknowledges that there may be some constraint on those who reject the cross, but regards this as minimal, and the display of the cross is reconcilable with the religious neutrality of the state.⁴³ The display of religious symbols may be general praxis without a statutory regulation as well—like in the case of Serbia⁴⁴ and Poland where crosses returned to public institutions after the collapse of the communist regime ‘as a result of grassroots initiatives that enjoyed broad social support’.⁴⁵ This way the cross in public spaces is regarded as an expression of the freedom to manifest religion—a freedom regained after the communist regime.⁴⁶ The practice of displaying crosses in classrooms triggered political tension in Croatia, although no regulation was passed.⁴⁷ At private or church-run institutions, the organisation itself decides on displaying religious symbols.

It has to be noted, that the aforementioned litigation at the German Federal Constitutional Court as well as the European Court of Human Rights referred to religious symbols displayed by the state. Religious symbols displayed by pupils had to be examined differently and that issue was not subject to the litigation. Pupils, parents, teachers and staff have to find an acceptable compromise on the decoration of classrooms. Excluding religious symbols from public space may prevent the confrontation with rejected symbols, but the price is that those having a religious affiliation are limited

34 Licastro, 2021.

35 The Agreement on Education between the Holy See and Republic of Austria (1962) foresees to have a cross in all classrooms where the majority of pupils are members of a Christian denomination.

36 Stanisz, 2016, p. 175.

37 Tănase, 2016, p. 231.

38 Vladár, 2021, p. 199.

39 Němec, 2021, p. 57.

40 Csink, 2021, p. 73.

41 Staničić, 2021a, p. 235.

42 Religionsunterrichtsgesetz § 2b.

43 Kalb, Potz and Schinkele, 2003, p. 374.

44 Đukić, 2021, p. 161. F.

45 Sobczyk, 2021, p. 129.

46 Stanisz, 2016, p. 175.

47 Savić, 2021, p. 31.

in manifesting it, whereas those being agnostic do not suffer any limitation. Using a majoritarian principle would be insensitive. Schools can become the training ground for social coexistence where different identities meet and exchange. An exchange is only possible if identities can be expressed. When originally religious images become elements of culture, even a secular environment may endorse them. For example, in Central Europe, a Christmas tree or a nativity scene at Christmas time has to be accepted by everyone.

4. Religious Clothing in School

In Central Europe, school uniforms are not common. As long as the wearing of a garment is not restricted, we can assume that wearing of it is legally protected. Dress codes at schools are often relatively general, e.g. only “extravagant” attire is prohibited.

Considering the limited social presence of Islam in Central European countries that were under communist rule prior to 1990, the issue of Muslim headscarf did not become a subject wider of public debate yet. As long as there are no limitations, both teachers and pupils can wear religious garments. General principles could limit extreme appearance when this would curtail the effectiveness of education. Probably a *burka* or a *niqab* would fall in this category. What extreme means may depend on a given social setting—e.g. eventually a metropolitan area could be different from a rural one.

The challenge of integration of children with a migratory background is a sensitive issue and there is no uniform solution. France decided to outlaw all “conspicuous” religious symbols at public institutions.⁴⁸ The Muslim headscarf falls under this ban; neither teachers nor pupils are allowed to wear a *hijab* at public schools. Muslim girls may be welcome at Catholic schools, although the number of Muslim private schools has also been increasing. In most parts of Germany, there is a ban on headscarf for teachers, but pupils are free to wear it. European Court of Human Rights jurisprudence did not regard limitations of religious garment as a violation of freedom of religion, certainly not in case of physical education,⁴⁹ or with regards to teachers.⁵⁰

Religiously motivated behaviour should enjoy the same protection as religiously determined garments. Prayer, religious holidays, fasting and observance of dietary rules deserve protection in a pluralistic and often secular environment, where even those belonging to a majority religion may become a minority if they truly follow the doctrine and tradition of their faith. In a public school, religion may not be considered a reason for social exclusion. A spirit of respect and tolerance requires different steps under different circumstances. Generally, minorities should not feel uncomfortable,

48 Law no. 2004-228 of March 15, 2004.

49 E.g.: *Dogru v. France*, Application no. 27058/05, Judgement 4 December 2008.

50 E.g.: *Dahlab v Switzerland*, Application No. 42393/98, Judgement 15 February 2001.

neither Muslim children praying at German schools, nor agnostic children refraining from prayer at Polish schools. Meanwhile, the sensitivity of a minority (religious or secular) should not lead to the consequence that majorities refrain from exercising their rights in order to avoid offending the sensitivities of minorities. An environment where all convictions can be lived and expressed is considered healthy than one that excludes religious expression and promotes concealed beliefs. A healthy pluralism can flourish where identities are lived and gifts exchanged. Schools are the primary arena for social coexistence where this tolerant pluralism has to be taught to future generations by living it in practice.

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