Chapter VIII

Religious Symbols in the Public Sphere in the Case Law of the European Court of Human Rights

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1. Introduction

The manifestation of religious symbols in public space results primarily from the will of the individual. The essence of religious freedom also includes the possibility of manifesting one's religious beliefs. The mere disclosure of religious symbols in public spaces precedes public authorities' use of religious symbols. The beginning of Christianity marks a period of martyrdom when this religion was forbidden (*religio illicita*) and when public authorities fought against it. Even before the Edict of Milan of 313 introducing religious freedom, ancient Christians used religious symbols in public spaces, such as the famous symbol of *Ichthys*. This illustrates the importance of the use of religious symbols for believers. Therefore, such use of symbols precedes state use of the symbols in public space.

The history of most modern European countries is related to Christianity. In the Middle Ages, there was even a term for the Christian community (*societas christiana*). Moreover, this notion was ahead of the very notion of nation-states, as they are understood today. It was only in the 18th century that, next to the model of a religious state, a model of a secular state appeared in the relationship between the state and religious associations. For this reason, the use of religious symbols in public space is not a novelty; on the contrary, it can be said that it is part of the tradition of many

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European countries, particularly those that were or are still religious states. There are many countries where religious symbols are present even in the national flag, for example, in Switzerland[1], Slovakia, and Scandinavian countries. It is hard to find a more striking example of the use of religious symbols in public spaces, which is often a reference to a centuries-old tradition. Such symbols also appear in other countries around the world, regardless of the adopted model of the state–church relationship.[2] Of course, religious symbols also appear in other places, such as symbols of the cross in state schools and other public buildings, such as hospitals.

Bearing the above in mind, it is not surprising that religious freedom is currently guaranteed, *inter alia*, by the European Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on November 4, 1950[3], which is ensured by Strasbourg's European Court of Human Rights (ECHR) that relies thereon. This Court repeatedly resolves disputes concerning religious freedom, including matters related to the presence of religious symbols in public space, which are even more complicated as a result of pluralism in terms of the relationship between the state and the church.[4]

This paper presents selected judgments of the ECHR along with an analysis of the applied subsumption of norms in order to present general conclusions. Due to the limited framework of this study, only those judgments that synthetically refer to the issue of private and then public entities' use of religious symbols in public space are included. At this point, it is worth making a reservation that the analysis concerns religious symbols *sensu stricto*. Judgments related to religious clothing are only comparatively presented (in the case law, e.g., Islamic hijabs or Sikh turbans are treated heterogeneously as religious clothing or religious symbols in the broad sense).

The paper also discusses a few specific issues, such as the assessment of the degree of the ECHR's recognition of individual countries' legal order in the field of religious law regarding the use of religious symbols in public space. It is also interesting that the ECHR draws attention to the relationship between human rights guaranteed in the Convention and the European pluralism of the relations between the state and the church pursuant to the legal order of individual states. On the practical side, the paper highlights what type of argumentation proved to be effective in each case law.

1 The provenance of the flag of Switzerland is associated with the Battle of Laupen of June 21, 1339.

2 For example, the sign of the red cross itself is an element of the flag of such countries or dependent territories as: 1) Georgia, 2) Fiji, 3) Iceland, 4) Tonga, 5) Great Britain, 6) Saint Helena, Ascension Island and Tristan da Cunha. The red cross is also part of the coat of arms of the following countries: 1) Australia, 2) Fiji, 3) Iceland, 4) Jamaica, 5) Puerto Rico, 6) Tonga, 8) Saint Helena, Ascension Island and Tristan da Cunha. For Iceland and Great Britain, the red cross is not isosceles.

3 Hereinafter also referred to as "the Convention."

4 Many systems of these relations can be found in the doctrine in today's Europe. It seems that the most common division boils down to distinguishing between religious and secular states (both of which are further divided according to different criteria), cf. Mdina, 2020, pp. 35–48.

2. The European Convention for the Protection of Human Rights and Fundamental Freedoms in European Legal Culture

First, it should be emphasized that the Convention is not the only source of law regulating issues related to religious freedom in Europe. Both in the historical and the present aspect, religious freedom has been and is guaranteed in many normative acts, both those binding on the territory of a given state and in the international space, such as the Polish Confederation of Warsaw of 1573 or the Spanish dispute in Valladolid of 1570/1571, which took place at the other end of Europe and concerned the situation in another continent, just to name a few. In modern times, religious freedom is protected by multilateral international agreements, both universal[5] and European.[6] In addition, there are also bilateral agreements, such as in the form of the many concordats the Holy See has concluded with individual countries. At the same time, apart from international law, religious freedom is protected by individual European countries' constitutional and religious law.[7] This illustrates that the need to guarantee religious freedom is universal, regardless of time and place. Thus, the transition to the analysis of ECHR case law requires contextualization within individual countries' legal orders. The Convention is not exclusive as a normative act for the protection of religious freedom and is one of the many sources of law in this respect. It was also shaped by the recognition of the axiology formed in Europe for centuries, such as the dignity of the human person and the religious freedom resulting therefrom.

5 For example, the Universal Declaration of Human Rights, New York, December 10, 1948; Convention concerning Discrimination in Relation to Employment and Occupation, Geneva June 25, 1958; Convention on Combating Discrimination in the Field of Education, Paris, December 15, 1960; International Covenant on Civil and Political Rights, New York, December 19, 1966; International Covenant on Economic, Social and Cultural Rights opened for signature in New York on December 19, 1966; Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, New York, November 25, 1981; Convention on the Rights of the Child, adopted in New York on November 20, 1989; Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities signed, New York, December 18, 1992.

6 Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4, 1950 (hereinafter also referred to as "the Convention").

7 For example, pursuant to Art. 53 of the Polish Constitution of 1997: "1. Everyone is guaranteed freedom of conscience and religion. 2. Freedom of religion includes the freedom to profess or accept a religion of one's choice, and to manifest one's religion, individually or with others, publicly or privately, through worship, prayer, practice and teaching. Religious freedom also includes having temples and other places of worship according to the needs of believers, and the right of individuals to receive religious assistance wherever they are. 3. Parents have the right to provide their children with a moral and religious education and teaching in accordance with their convictions. […] 5. The freedom to manifest religion may be restricted only by statute and only when it is necessary to protect the security of the state, public order, health, morals or freedom and rights of other persons. 6. No one may be compelled to participate or not participate in religious practices […]."

The above lack of exclusivity does not mean, however, that the Convention is only a joint declaration. Individual states, following the *pacta sunt servanda* rule, have voluntarily obliged to recognize the ECHR's judgments, and mainly for this reason, its case law gradually has an increasing impact on the legal orders of individual states as well as on European legal culture.[8] At the same time, states' individual legal orders are still the basic source of legal regulations. This also applies to issues in the field of religious law, including the issue of the presence of religious symbols in public spaces when used by both private and public entities.

This can be illustrated using a few examples. An example of private entities' use of religious symbols is the wearing of religious symbols in the workplace. In this regard, the Court presented in its case law comparative legal regulations in this field, and it is quite worthwhile to examine them here. In most countries under the European Council, this is not regulated by law. The exceptions are three countries, namely Turkey, Ukraine, and some cantons in Switzerland, where public sector employees are forbidden to wear religious symbols.[9] Therefore, it can be concluded that such a situation is not accidental, and it is almost a rule that the rational legislator will leave these issues to judicial decisions. The Court itself noticed this complementary role of jurisprudence, which in this respect, despite the lack of legal regulations, indicated that employers may restrict the wearing of religious symbols (Belgium, Denmark, France, the Netherlands, and Germany). Moreover, according to jurisprudence in France and Germany, civil servants and state/public sector employees may not wear symbols. Interestingly, in France itself, the law clearly prohibits such a ban, and any restriction must proportionately achieve the legitimate aim of sanitation, health, and moral protection, or the company's credibility or image in the eyes of the customer. However, European solutions are not exclusive to a global scale. In its

8 For example, according to the judgment of the Polish Constitutional Court of 2 December 2009 (file ref. no. U 10/07; Journal of Laws 2009 no. 210, item 163): "[…] the parties to the Convention not only undertook to observe the catalogue of fundamental rights and freedoms contained in the Convention, but have committed themselves to submit to the judgments of the European Court of Human Rights […] adjudicating on the basis of the Convention and the Protocols supplementing it. The case-law of the Court establishes the normative content of the rights and fundamental freedoms summarized […] in the Convention and the Protocols. The judgments of the European Court establish common normative content of fundamental rights and freedoms, the legal regulations of which (including constitutional ones) in individual countries sometimes differ significantly. This also applies to the freedom of conscience and religion, one of the fundamental freedoms enshrined in the Convention. The legal regulation of the freedom of conscience and religion in individual European countries differs, but the European Court established the normative content of the principle of freedom of conscience and religion common to European democratic states, interpreting the provisions of the Convention, in particular its Art. 9, defining the freedom of conscience and religion." On the analysis of Art. 9 of the Convention in the case law of the Polish Constitutional Court cf. also Poniatowski, 2018, pp. 85–94. M. Rynkowski carried out an interesting comparative legal analysis on the understanding of the cross within the framework of European Union law. The case law of the Court of Justice of the European Union did not deal with the issue of the presence of the cross in public space, cf. Rynkowski, 2016, p. 37.

9 Cf. Eweida, § 47.

case law, the Court examines this perspective for comparison purposes. For example, in the United States, the wearing of religious symbols by government officials and employees is protected by the constitution and legislation.[10] It is worth adding that the United States is the first secular state in the world, based on the so-called wall of separation.[11]

The second example of a comparison of individual countries' legal orders made by the Court is public entities' use of religious symbols by placing them in state school classrooms. The Court noted that, as mentioned above, this issue is not governed by any specific provisions in the vast majority of Council of Europe member states.[12] In the Court's comparative compilations, one can note various models developed in individual countries' legal orders, starting with prohibition and ending with an obligation to place religious symbols, although the principle is basically the lack of regulation and leaving such disputes to the judiciary.

Such symbols are prohibited by law in France (except Alsace and the Moselle Department), Georgia, and Macedonia.[13] It is worth noting that in these countries, the so-called model of hostile separation is or was in place.[14] The use of these symbols in public place is clearly defined in Austria, Poland, Italy, and some federal states and cantons of Germany and Switzerland. Moreover, there is a group of countries where such symbols are used in classrooms without legal regulations in force, such as Greece, Spain, Ireland, Malta, Romania, and San Marino.[15] In the case law of the countries belonging to the Council of Europe, we can also find various positions, ranging from the lack of obstacles with regard to placing crosses in classrooms (Poland)[16], the need to seek a compromise with parents and students (Spain, Germany, Romania), and prohibition (Switzerland).[17]

Therefore, several preliminary conclusions were drawn. First, the Convention is *only* part of the European legal culture, which is based on axiology and tradition. Thus, the Convention cannot be interpreted in a specific legal vacuum. One can even say, paraphrasing physics nomenclature, that it is one of the "connected vessels" in the system that protects religious freedom. Consequently, in the Court's case law, one can find comparisons of norms concerning the use of religious symbols in public

10 Cf. Eweida, § 48.

11 In this country, one can also see the juxtaposition of religious freedom with other freedoms. There is even a saying that religious freedom is, in fact, the enemy of women's freedom, cf. Alvaré, 2013, p. 7.

12 Cf. Lautsi [Grand Chamber] v. Italy, 18 March 201, 30814/06. For the sake of distinction, the judgment of the first instance will be referred to as "Lautsi" and the second instance as "Lautsi [Grand Chamber]."

13 Cf. Lautsi [Grand Chamber], § 27.

14 This separation occurs in two ideological versions: extremely liberal—French and totalitarian—Soviet, cf. J. Krukowski, 2008, pp. 30–33.

15 Cf. Lautsi [Grand Chamber], § 27.

16 As P. Stanisz aptly points out, the return of crosses to state school classrooms in Poland after 1989 was not without controversy (the then Ombudsman unsuccessfully applied to the Constitutional Court in this regard). Cf. Stanisz, 2016, p. 157.

17 Cf. Lautsi [Grand Chamber], § 28.

space, both in the scope of the states with membership to the Council of Europe and other states, as well as other legal cultures. However, these comparative compilations are not only indicative. As it turns out, they are important for the decisions and judgments to be made in this respect. The Court has in view the (dys)functioning of the so-called European-wide compromise. For example, with regard to the use of religious symbols in public space in the form of a cross in state school classrooms, the Court did not find such a compromise and noticed a specific pluralism of solutions in individual countries.[18] As a result, the Court does not adjudicate unequivocally whether religious symbols may or may not be used in public spaces throughout Europe. The case law therefore focuses not on introducing a single binding interpretation and a unified position, but on an individual approach depending on the legal situation in a given country, which results largely from its tradition. Such an approach should be welcomed with appreciation, as it allows for the functioning and further development of religious pluralism. Consequently, various regulations regarding the use of religious symbols in public spaces are possible. This can be summarized as the Court's conditional approval of solutions in a given legal order in the field of the use of religious symbols in public space within the framework of the widely understood ideological pluralism. The Court's intervention would only be possible if these solutions have violated the general principles set out in the Convention. It also seems that a specific presumption of state solutions' compliance with the Convention can be drawn, which can be rebutted in the course of the proceedings by proving violation of these general principles.

3. General rules directly and indirectly concerning religious freedom as regards the use of religious symbols in public space

3.1 Freedom of thought, conscience, and religion

In the ECHR's judgements that were selected for the purposes of this paper (through the prism of the very use of religious symbols in public places), one can note that the Court refers first of all to several so-called general principles relating directly or indirectly to religious freedom. From a structural perspective, this is how the proper legal argument begins (preceded by the so-called historical part of the merits)—it is not accidental and allows the Court an appropriate subsumption

18 It can be noted that one of the reasons for this pluralism is the recognition of a specific axiological and systemic context. For example, in Poland one can find a position according to which the principles of human dignity and equality are recognized as the basis for the equality of religious associations, cf. Sobczyk, 2013, pp. 115–121.

process. These principles can be grouped as issues related to religious freedom, specifically the prohibition of discrimination and parents' right to raise children in accordance with their beliefs.

Addressing the first of these principles, that is, freedom of thought, conscience, and religion, it should be noted that in the Court's case law, the substantive aspect precedes the resolution of a given case. As regards the presence of religious symbols in public space, the key starting point seems to be Art. 9 of the Convention, according to which:

> 1. Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

A proper understanding of this freedom is the key to a proper understanding of the analyzed portion of the Court's case law. The significance of this freedom is evidenced by its recognition as one of the foundations of a democratic society.[19] Similar observations appear in the individual member states' legal orders.

The abovementioned article of the Convention has two dimensions. First, it relates to the subject and object of this freedom. Second, there are limitations to the sphere of externalization. Addressing the first aspect, it should be noted that freedom itself can have a positive aspect (freedom of belief) and a negative aspect (freedom of non-belief).

Both aspects are protected by Article 9 of the Convention.[20] Moreover, this freedom has internal and external aspects, with only the first aspect being absolute.[21] On the other hand, the second aspect, which may consist of manifesting religious beliefs in various forms, has an impact on others. Accordingly, the law should address this issue in a democratic society.[22] However, the Court did not conclude that the use of religious symbols in public places should be legally regulated. Interestingly, the above four aspects can be combined in every possible direction, including

19 Cf. Eweida, § 79. The Court has therefore confirmed a long line of case law in this regard. Cf. also Kokkinakis v. Greece, 14307/88, § 31; Otto-Preminger-Institut v. Austria, 13470/87, § 47; Şahin v. Turkey [Grand Chamber], 44774/98, § 104. The hallmarks of a democratic society are pluralism, tolerance, and broadmindedness, cf. Şahin, § 108.

20 Cf. Lautsi v. Italy, 30814/06, § 47. Cf. also Moravčíková, 2015, p. 38.

21 Cf. also judgment of the Polish Constitutional Court of 7 October 2015 (file ref. no. K 12/14; Journal of Laws 2015, item 143).

22 Cf. Eweida, § 80.

crossing; for example, the analyzed use of religious symbols in public places may refer to the positive and external aspects.

For an act to constitute a manifestation of beliefs in the sphere of the external aspect of this freedom, it should meet certain conditions.[23] Such an act must be related to religion. The Court emphasized that the existence of a close and direct link must be established in each case based on the facts. However, the applicant does not have to prove his or her religious obligation.[24] Thus, it can be seen again that the Court's position is not based on a simple dichotomy, but on various possibilities of classifying acts depending on the circumstances of a particular case, which should be considered prudent.

One can even speak of a certain "individualization" of these judgments in relation to a given legal order and, additionally, to a specific factual state. For example, an arbitrary judgment prohibiting the wearing of crosses in the workplace in any case could lead to specific paradoxes (e.g., prohibition of the wearing of crosses by employees of a church legal entity conducting charitable activities or organists). Therefore, the decisive factor is an individual and not a general approach to a given case, as evidenced by, for example, the increasing number of decisions concerning the use of religious symbols in public places (it can be even better observed in the example of religious clothing). Therefore, the question of issuing further judgments is open.

As already indicated, the above freedom may be subject to limitations in accordance with Art. 9 Sec. 2 of the Convention. In the opinion of the Court, states have a margin of appreciation in deciding whether and to what extent it is necessary to interfere with the freedom referred to in Article 9 of the Convention. The concept of the margin of appreciation is of key importance. However, this margin is subject to the supervision of the Court itself, which assesses whether the measures taken at the national level were justified in principle and proportionate.[25] Therefore, one may conclude that the Court's intervention is conditional and depends on violation of legitimacy and the proportion of state or non-state entities' interference.[26] The violation may be directly attributable to the state (negative aspect) or to private entities,

23 As G. Szubtarski points out, an act which is not a manifestation does not enjoy the protection of the Convention, cf. Szubtarski, 2016, p. 188. According to this author, the key to distinguishing between an action that expresses religious beliefs directly and an action that is only inspired by the professed faith is in the determination in the Court's case law of whether a given behaviour is a commonly accepted form of practicing in a given religion. cf. ibid. p. 189. Cf. also https://bit.ly/3kTo5ct

24 Cf. Eweida, § 82. Such a position is not a novelty in the Court's case law, even at the level of the Grand Chamber. Cf. also Şahin, § 78.

25 It is worth noting that such a line of case law was confirmed at the level of the Grand Chamber's judgement, cf. Şahin, § 110, 122. Earlier, such a position can be found in other judgments concerning Art. 9 of the Convention, e.g., religious meetings without the authorities' permission, cf. Manoussakis and Others v. Greece, 18748/91, § 44.

26 It is also worth noting that the restriction should be anchored in national law, which should be available and sufficiently precise to meet the requirement of predictability, cf. Arslan and Others v. Turkey, 41135/98, § 37; Şahin, § 84-94.

or indirectly through the state (positive aspect). In the latter case, when the violation takes place in a private enterprise, it should be considered in the category of state authorities' positive obligation to secure the right under Article 9 of the Convention. In both contexts, regard must be paid, in particular, to the fair balance that has to be struck between the competing interests of the individual and the community as a whole, subject in any event to the margin of appreciation enjoyed by the state.[27]

The discrepancies in the Court's case law are also worth noting. It may be interesting to note that the possibility of resigning from work or changing jobs does not mean interference with religious freedom in the current place of employment.[28] There is also a different position to be found there, indicating that when an individual complains about restriction of religious freedom in the workplace, it is better to consider the proportionality of the restriction.[29] Therefore, there is a conclusion about the changing line of case law and its development toward increasing the protection of religious freedom in the individual aspect.

In summary, it can be said that Article 9 of the Convention is of key importance in the analyzed scope. This is the starting point, and it introduces a cascade structure. Other norms should be interpreted in accordance with this study. They gain independence when their interpretation does not conflict with Article 9 of the Convention.

3.2. Prohibition of discrimination

In the Court's case law on the use of religious symbols in public places, parties' arguments can be found that relate to the violation of the prohibition of discrimination for religious reasons. Pursuant to Article 14 of the Convention, the enjoyment of the rights and freedoms mentioned therein should be ensured without discrimination due to reasons such as sex, race, color, language, religion, political and other beliefs, national or social origin, membership to a national minority, property, birth, or for any other reason. However, the Court emphasizes that this prohibition should be systemically interpreted. This prohibition does not exist independently and applies only to the rights and freedoms safeguarded by other substantive provisions of the Convention and its protocols.[30]

Differences in the treatment of persons require objective and reasonable justifications.[31] Thus, states have a certain margin of appreciation in differentiating the

27 Cf. Eweida, § 84.

28 In the merits of the judgment, a reference was made to previous judgments. Cf. Kosteski v. the former Yugoslav Republic of Macedonia, 55170/00, § 38–39.

29 Cf. Eweida, § 83.

30 Cf. Eweida, § 85.

31 Cf. Eweida, § 87. In this respect, the Court referred to the requirement of objective and reasonable justification, which is also well-established in the case law at the level of the Grand Chamber. Cf. DH and Others v. the Czech Republic [Grand Chamber], 57325/00, § 175.

legal situation.[32] In practice, the allegations of discrimination did not appear to be effective in all cases. For example, in the case of N. Eweida and S. Chaplin (concerning the use of religious symbols at work), despite the Court's different judgments, in both cases, the Court did not find any violation of the prohibition of discrimination. The main reason was the lack of evidence of a broader reference, that is, to the group of people and not just the applicants. The above implies the lack of independence of the prohibition of discrimination which is preceded by the freedom guaranteed in Article 9 of the Convention.

3.3. Parents' right to ensure that their children are raised and educated in accordance with their own religious and philosophical convictions

Another important issue in the analyzed scope is Article 2 of Protocol No. 1 to the Convention, according to which:

> No person shall be denied the right to an education. In the exercise of any functions that it assumes in relation to education and teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions.

There is a wealth of case law regarding the state's exercise of its function in the field of education and teaching.[33]

Regarding the interpretation of law, it should be noted that the Court's case law emphasizes that this article, like the previous prohibition of discrimination, should be interpreted systemically in the light of Articles 8, 9, and 10 of the Convention.[34] In the field of education and teaching, Article 2 of Protocol No. 1 is, in principle, a *lex specialis* in relation to Article 9 of the Convention.[35] Parents' right to provide education and teaching in accordance with their own convictions, referred to in this protocol, should also be interpreted systemically within the same article and Article 9 of the Convention.[36] Apart from the systemic interpretation, it is worth paying attention to the functional interpretation of this norm (*ratio legis*). As emphasized by the Court, educational pluralism is indispensable for the protection of a democratic

32 Cf. Eweida, § 88.

33 Cf. Lautsi, § 47. The Court (and also the Grand Chamber) has repeatedly referred to the famous judgment in the case of Folgerø and Others v. Norway [Grand Chamber] of 29 June 2007, no. 15472/02, § 84. In this judgment (in particular, § 84) one can find a summary of the previous jurisdiction in this respect. Moreover, it should be noted that, apart from the Convention, this right is protected by other multilateral international agreements of universal and regional scope, as well as by bilateral agreements in the form of concordats, cf. Warchałowski, 1998, pp. 29–36.

34 Cf. Lautsi, § 47. Cf. also Folgerø, § 84.

35 Cf. Lautsi [Grand Chamber], § 59. Cf. also Folgerø, § 84.

36 Cf. Lautsi [Grand Chamber], § 60. Cf. also Folgerø, § 84.

society.[37] This shows that while religious freedom is the foundation of such a society, educational pluralism protects this foundation.

States have the duty, on the one hand, to ensure—in a neutral and impartial manner—the exercise of various religions, faiths, and beliefs, and on the other hand, to help maintain public order, religious harmony, and tolerance in a democratic society composed of often opposing groups (relations between believers and non-believers and among adherents of various religions).[38] The state has no right to judge the validity of religious beliefs and the ways in which they are expressed. Neutrality guarantees pluralism.[39]

In its case law, the Court clearly emphasized the absolute prohibition of indoctrination. Information and knowledge contained in curricula should be communicated in an objective, critical, and pluralistic manner.[40] This prohibition is so strict that it may be the basis for judgment. [41] On the other hand, states are not prevented from imparting, directly or indirectly through education, information, or knowledge of a religious or philosophical kind (even against the parents objecting to the integration of such teaching or education in the school curriculum).[42]

There is also Court case law regarding the place of religion in the curriculum.[43] It is the competence of states to define and plan the curriculum. As a rule, the Court does not adjudicate such issues; solutions may legitimately vary according to the country and the era.[44] In view of the above, it can be concluded that according to the Court's case law, the principles in question should be interpreted systemically; preceded by Article 9 of the Convention.

4. Examples of cases related to private entities' use of religious symbols in public space

The manifestation of religious symbols in public spaces is inherently related to the subject performing this activity. The Convention does not limit religious freedom to adherents of a particular religion or non-believers. This issue is complex because the state is not capable of an act of faith, and at the same time, there are examples of states that, for instance, order the placement of religious symbols in school classrooms or use flags with a religious symbol. However, it is difficult to argue that in

37 Cf. Lautsi, § 50.
38 Lautsi [Grand Chamber], § 60. The Grand Chamber expressed a similar position earlier. Cf. Şahin, § 107.
39 Cf. Lautsi, § 47. Cf. also Folgerø, § 84.
40 Lautsi [Grand Chamber], § 62. Cf. also Folgerø, § 84.
41 Cf. Lautsi case.
42 Cf. Lautsi [Grand Chamber], § 62.
43 Cf. ibid. Cf. also Folgerø, § 84.
44 Cf. Lautsi [Grand Chamber], § 62.

such a case, the state would enjoy religious freedom. How can such use be justified in a secular state?

Therefore, attention should be paid to the case law of the ECHR in the context of an entity that has the right to use religious symbols in public space. It is worth presenting the structure of the Court's legal arguments in a few examples.

As already indicated, the case law of the ECHR in this respect can be divided into those concerning the use of religious symbols in public space by 1) private entities or 2) public entities. With regard to private entities' use of religious symbols in public spaces, two specific issues can be distinguished in the Court's case law: 1) the use of religious symbols in state or public institutions (e.g., workplaces, educational establishments, courtrooms and offices, personal control) and 2) the use of religious symbols in generally accessible places (e.g., city squares, etc.). Additionally, common to both of these aspects is the issue related to limiting the manifestation of one's beliefs through images placed in documents (e.g., for inspection at an airport or city square).[45]

In the first case, it is possible to observe the performance of a certain legal obligation (e.g., performing work, appearing as a witness in court to testify), and in the second case, exercising the right to access public places. In earlier ECHR case law, the use of religious symbols *sensu stricto* is essentially focused on the employment-related field. In other cases, the issues relate in principle to the use of religious clothing or their elements, which may potentially be classified as religious symbols in the broad sense. With this in mind, the case law on the use of religious symbols in the workplace is analyzed in this paper, and the case law on the use of religious clothing is presented only as a guide for comparative purposes.

In the case of private entities' use of religious symbols *sensu stricto*, it is worth following the Court's judgment on January 15, 2013 in the case of N. Eweida and others against Great Britain (due to the subject of the study, the cases of the two applicants, i.e., N. Eweida and S. Chaplin are presented).

Electing to use this judgment as an example to present the ECHR's legal argument seems to have been correct, as the facts pertaining to both applicants refer in the first case to employment by a private entity (N. Eweida) and in the second case by a public entity (S. Chaplin). Moreover, the judgment contains a legal argument leading in one case to admission of the complaint and in the other (quite analogous) to its rejection. Both applicants alleged that the domestic law had failed to adequately protect their right to manifest their religion in the form of wearing visible crosses around their neck at their workplace, allegedly in breach of Article 9 of

45 In terms of documentation, there was an issue of the requirements for the photos used for a driver's license. In Mann Singh v. France, the applicant, as a Sikh, complained about the order to take the photograph without headwear. In this case, the Court, in its 13 November 2008 decision, stated that such a requirement results from the care for public safety and the necessity to identify the driver, which constituted a justified restriction of religious freedom within the meaning of Art. 9 Sec. 2 of the Convention and fell within the state's margin of appreciation while observing the principle of proportionality.

the Convention independently and in connection with Article 14 of the Convention. What, then, is decisive for the Court's opposing conclusions?

At this point, it is worth briefly outlining the facts of these two cases and looking for common distinctive features. The facts of Ms. Eweida's case concerned her employment with an airline, which, five years after Ms. Eweida started work, introduced a new uniform design for employees working in direct contact with the public. According to the new instructions, all religious symbols should be uniformly covered. However, if it proved impossible, the wearing of such symbols would require the approval of local management. Violation of the ban resulted in not being allowed to start work and the company's refusal to pay the employee's salary. After two years, N. Eweida decided to no longer hide her cross and wear it openly. First, she was asked to remove the cross, and she was offered administrative work that she refused. Therefore, N. Eweida was not allowed to work. In the face of public criticism, the company soon adopted a new policy, in which the wearing of the cross was allowed *ex lege*. The complainant returned to work after the introduction of the new company policy but had not received remuneration for the previous period. Therefore, she brought a case to the court for payment of compensation for indirect discrimination, alleging a violation of the right to manifest religion in accordance with Article 9 of the Convention. However, the domestic courts did not grant this request.[46] What seems to have escaped the Court's attention at this stage of the proceedings was that the complainant had originally agreed to be employed under other conditions; that is, the wearing of crosses in the workplace had not yet been prohibited.

A similar situation occurred in the case of S. Chaplin, who, as a practicing Christian, wore a cross around her neck as an expression of her faith. In her opinion, removing the cross would be a violation of her faith. Unlike N. Eweida, S. Chaplin was employed at a public hospital. As in the previous case, an internal framework related to clothing was introduced. The hospital banned the use of jewelry to minimize infection. New uniforms were introduced in the hospital, and the applicant was ordered to remove the cross necklace.[47] The applicant had unsuccessfully alleged direct and indirect discrimination in the course of domestic proceedings.[48]

In the aforementioned states of facts, one can find: 1) common threads: a) the Christian faith, b) employment before the company changed its uniform policy, c) the will to wear religious symbols, d) proposing a different job position, and e) raising the allegation of discrimination based on religious beliefs; and 2) separate threads: a) employment in a private and public entity; b) prohibiting the wearing of religious symbols due to the company's image and the safety of the company's customers.

The essence of the dispute in the present case was revealed in the parties' arguments that also relied upon the Court's case law, which proves, on the one hand, its inconsistency and, on the other, subsequent changes. At the same time, it should

46 Cf. Eweida, § 10, 12–13, 16.
47 Cf. Eweida, § 18–20.
48 Cf. Eweida, § 22.

be borne in mind that according to Cicero's famous maxim *non numeranda sed ponderanda sunt argumenta*, the Court weighs the strength of individual arguments, not their number. The Court often does not engage in polemics regarding the parties' individual arguments. In the parties' arguments, however, there are several contentious issues referred to by the Court. First, is the wearing of the cross obligatory or not? Interestingly, in the government's opinion, since wearing religious symbols is not an obligation, it does not fall under the scope of Article 9 of the Convention, which does not protect every act or form of behavior motivated or inspired by religion or belief.[49] As indicated by the applicant and some of the interveners, it is outside the scope of the courts' competence to be involved in a theological dispute.[50] Second, does the possibility of changing jobs exclude the possibility of violating the convention? In this respect, one can see a change in the case law toward an individualized approach to the assessment of the level of restriction. It is worth adding that in this case, both applicants had been employed before uniform policy changes were made. According to N. Eweida, no fundamental rights should be granted through employment. It is therefore necessary to examine the validity of the restrictions in accordance with Art. 9 Sec. 2 of the Convention.[51] Some interveners, however, indicated that forcing them to choose between work and faith was unacceptable.[52] The second applicant, in the context of a change of job, referred to more recent cases heard by the Court relating to the wearing of religious symbols in educational institutions and at work.[53] In addition, there is a dispute regarding the question of proportionality. The parties also exchanged arguments as to whether the objectives of the restrictions (company image and patient safety) were proportionate.

In the Court's argument, it can be noted that within a certain logical scheme, the emphasis is that the first thing to be determined is the nature of the act. The mere wearing of the cross may be a manifestation of religious beliefs in the form of worship, practice, and ritual activities, and is protected.[54] If so, then the refusal of permission to work was an interference with the right to manifest religion. Therefore, it must be determined whether the right to manifest one's convictions was sufficiently secured under the domestic legal order and whether a fair balance was struck between the rights of the applicant and those of others.[55]

The essence of the judgment in the case of N. Eweida was the statement that the domestic authorities, including the courts, acting within the margin of appreciation,

49 Cf. Eweida, § 58.

50 Cf. Eweida, § 64. In this respect, S. Chaplin stated that determining whether the wearing of the cross is a religious obligation raises the threshold for the protection of freedom under Art. 9 of the Convention too much and leads to differences between religions in terms of the level of protection. Cf. Eweida, § 67.

51 Cf. Eweida, § 65.

52 Cf. Eweida, § 77.

53 Cf. Eweida, § 68. The party referred, *inter alia*, to L. Dahlab v. Switzerland, 42393/98 and to the aforementioned L. Şahin v. Turkey.

54 Cf. Eweida, § 89.

55 Cf. Eweida, § 91.

should examine the proportionality of the measures taken by a private company in relation to an employee.[56] In the case at hand, the right balance was not struck between the right to manifest one's faith (which is one of the fundamental rights) and the employer's prerogative to build the company's image. A healthy democratic society must tolerate and sustain pluralism and diversity.[57] In the case of Ms. Chaplin, the essence of the judgment was again to examine the proportionality of the measures taken. In the case of S. Chaplin, the reason for limiting the wearing of jewelry, including religious symbols, was to protect the health and safety of nurses and patients in contact with an open wound.[58] A certain gradation can be noticed in the analyzed judgment because in the Court's opinion, the reason for the restriction in the case of Ms. Chaplin was greater because it concerned health protection, and in this area, the national authorities must have a wide margin of appreciation.

The Court therefore concluded that there had been interference, but it was necessary in a democratic society and that there had been no violation of Article 9 with regard to the second applicant.[59] It is worth mentioning that in both cases, the Court did not find it necessary to investigate the case based on religious discrimination. In summary, it can be concluded that the logic of reasoning in these cases is as follows: 1) determining whether the act is a manifestation of religious beliefs, 2) determining whether there has been interference with the right to manifest religious beliefs, 3) determining whether the interference was proportionate, and alternatively, 4) determining whether the state has ensured through law or case law an adequate level of protection against disproportionate interference.

At this point, it is worth referring to one more previously mentioned issue. In the case of N. Eweida and S. Chaplin, the description of the facts also indicated the application of these principles to Muslims and Sikhs. However, they were not applicable in these cases. It was in the case of C. Ebrahimian v. France,[60] where the applicant's hospital work was not extended due to refusal to stop wearing the hijab. In this case, however, the Court found that the French authorities' margin of appreciation had not been exceeded, in view of the requirement of state neutrality and impartiality in France. It is debatable whether religious symbols are identified each time with religious clothing. Each has its own specific nature. Undoubtedly, the garment itself does not have to be a symbol, but its use in a public place may mean manifesting one's religious beliefs.

In the field of religious clothing, it is worth pointing to the Court's case law regarding the wearing of religious clothing (or their elements) both in public facilities

56 One should agree with A. Abramowicz that the principle of proportionality consists in weighing the value of the protected good and the infringed good as a result of the introduced restriction of the right to freedom of thought, conscience, and religion. Cf. Abramowicz, 2015, p. 18.

57 Cf. Eweida, § 94.

58 Cf. Eweida, § 98.

59 Cf. Eweida, § 100.

60 Cf. Ebrahimian v. France, 64846/11.

and in generally accessible places. In the first case, we can additionally distinguish situations in which the use of religious clothing (similar to religious symbols *sensu stricto*) is permanent (e.g., workplace, educational institutions) or incidental (e.g., personal inspection, courtroom).

As mentioned, the permanent nature of the use of religious clothing may take place in educational institutions, both on the part of teachers and students. In the case of teachers, there is an additional link with employment relationships. Several cases concerning teachers' use of religious symbols, such as the cases of L. Dahlab v. Switzerland[61] and Kurtulmuş v. Turkey,[62] can be found in the Court's case law. The comparison of these two cases is interesting because judgments have been issued, confirming the possibility of prohibiting the wearing of the hijab by educational institution staff. However, the cases concerned separate states of facts and state legal orders. In the first case, the question of wearing concerned the wearing of a headscarf in a primary school, and in the second, in a university. Thus, clothing exerts a different influence on children and students. Consequently, in the case of L. Dahlab, it was found that the prohibition introduced was justified, which made the action inadmissible. On the other hand, in the second case, the Court stated that the state did not exceed the margin of appreciation by limiting the wearing of the hijab in the face of a conflict with the protection of the rights and freedoms of others, as well as the will to maintain the principles of secularism and the neutrality of state education. A similar logic of reasoning can be found in the Court's case law regarding the wearing of Islamic headscarves by pupils[63] and students.[64] Such judgments were issued based on separate legal systems, that is, Turkey and France. The Court has developed a fairly uniform line in such cases, which was undoubtedly influenced by the judgment of the Grand Chamber in the case of L. Şahin v. Turkey. Issuing the judgment boils down to recognizing interference with religious freedom through such a prohibition, however, within the scope of recognizing the state's margin of appreciation in the scope of restricting religious freedom under Article 9 of the Convention.

Apart from cases where the use of such religious clothes in institutions with public access is permanent, there may be incidental cases. On the one hand, it may concern a body search[65] or identification,[66] and on the other hand, showing respect for the court during procedural activities.[67] In the former case, the Court found that the order to remove the turban for security purposes at the airport during passenger

61 Cf. Dahlab v. Switzerland [decision], 44774/98.
62 Cf. Kurtulmuş v. Turkey [decision], 65500/01.
63 Cf. Köse and the Others v. Turkey [decision], 26625/02; Dogru v. France and Kervanci v. France, 27058/05 and 31645/04.
64 Cf. Şahin v. Turkey [Grand Chamber], 44774/98.
65 Cf. Phull v. France [decision], 35753/03.
66 Cf. El Morsli v. France [decision], 15585/06.
67 Cf. Hamidovic v. Bosnia and Herzegovina, 57792/15; Lachiri v. Belgium, 3413/09.

check-in[68] as well as the order to remove the hijab for identification purposes[69] were justified on security grounds and fell within the states' margin of appreciation, which resulted in both complaints being declared inadmissible because of their obvious groundlessness. On the other hand, in the second case concerning the courtroom, the Court's case law developed in the other direction, as it was found that the order for the participants to remove their skullcap[70] and hijab[71] during the proceedings was not proportionate and justified in a democratic society. Not taking them off did not mean a lack of respect for the court. Therefore, the Court concluded that there had been a violation of Article 9 of the Convention.

In addition to the use of religious clothing in public institutions, such clothing may be used in public areas. In such a case, it turns out that the Court's interpretation was often needed. Such matters can be divided into those where the clothing used covered the face (e.g., burqa, niqab)[72] and those where it did not cover the face.[73] In the first case involving the prohibition of covering the face, the Court found in the above judgments that there had been no violation of Article 9 of the Convention, while states (France, Belgium) used their margin of appreciation, striving to guarantee social cooperation rules and the rights and freedoms of others. In the opposite case with no face veil, the issue of proselytism may arise through the use of religious clothing or a threat to public order.[74] The Court, in the absence of proving the above-mentioned proselytism and the threat to public order by using religious clothing that does not cover the face, found it unjustified to introduce such restrictions in public space.

Bearing this in mind, several conclusions can be drawn regarding private entities' use of religious symbols in public spaces. First, theological considerations on the existence of religious obligation seem to be of no great importance for resolution. The Court did not consider such considerations. In the Court's opinion, a relationship with the religion and personal conviction of a given person as well as recognition of such behavior as a manifestation of beliefs are sufficient. Therefore, what matters are the objective and subjective aspects of this relationship. In the current case law, the possibility of finding another job does not exclude the possibility of violating religious freedom, even if the employee voluntarily agreed to the job. The change in the case law is worth emphasizing in this respect.

Moreover, there is a specific gradation of reasons for restricting religious freedom in the workplace and the obligation to maintain appropriate proportionality in such

68 Cf. Phull v. France [decision], 35753/03.
69 Cf. El Morsli v. France [decision], 15585/06.
70 Cf. Hamidovic v. Bosnia and Herzegovina, 57792/15.
71 Cf. Lachiri v. Belgium, 3413/09.
72 Cf. S.A.S. v. France [Grand Chamber], 43835/11; Belcacemi and Oussar v. Belgium, 37798/13; Dakir v. Belgium 4619/12. Definitions of these concepts may even be found in the Court's case law. Cf. Şahin, § 63.
73 Cf. Arslan, § 7.
74 Cf. ibid, § 50–52.

cases. This gradation is also visible in issues related to private persons' use of religious clothing in public places. The basis for introducing restrictions on the use of such clothes is primarily the issue of safety or even care for social life, but not respect for the court. In the case of the juxtaposition of the use of religious symbols in the form of a cross and religious clothing in the Court's case law, one can note an appropriate reference to the traditions arising from individual countries' social conditions, which allows the Court to determine the appropriate scope of the state's margin of appreciation. In the case law in question, an intensification can be observed with respect to countries where a secular state model involving hostile separation is in place (including France).

5. Examples of court cases related to public entities' use of religious symbols in public space

In ECHR case law, one can also find reference to public entities' use of religious symbols in public spaces. An apt example seems to be the famous case of S. Lautsi v. Italy, in which the issue of placing religious symbols in state schools was widely addressed. It is worth recalling that in the present case, Ms. Lautsi brought an application on behalf of herself and two children of hers aged 11 and 13. According to the applicant, placing crosses in the classrooms of the state schools where her children were studying was an interference contrary to: 1) the freedom of religion and belief, 2) the right to education and teaching in accordance with her religious and philosophical convictions, 3) the principle of secularity of the state, and 4) the principle of impartiality of public administration.

The arguments of the parties in the case at hand can be divided into several groups. First, it is worth pointing out a formal aspect. It was argued that the pre-war regulations on the placement of crosses in state school classrooms were tacitly abolished with the adoption of the Constitution. This thread was not of great importance to the Court's decision. Another thread developed in the arguments of the parties concerned the meaning of the cross. On the one hand, it was emphasized that the basic or even the only overtone of the cross is a religious one. The opposing party presented a long argument that the cross is also a universal symbol. Its message is, among others, humanistic and accessible to everyone. The arguments also concerned individual aspects of religious freedom. The point was raised that the cross influenced students and favored a given religion. On the other hand, it was pointed out that the cross is a passive symbol, and its influence cannot be compared with active teaching. The Court explicitly referred to this argument. Another group of arguments concerned the institutional aspects of religious freedom. It has been argued that the state should be neutral. On the other hand, the notions of neutrality and secularism were unclear, and the pluralism of relations existing in Europe was pointed

out. Therefore, the state has a great deal of freedom in the absence of consensus. In this case, the Court explicitly referred to this argument.

In the first judgment, the Court began its substantive argument that the state was forbidden to indoctrinate (even indirectly), particularly in places where people are vulnerable to influence. Such people are children with a diversified level of critical capacity.[75] In the Court's opinion, in applying the above principles to the present case, it was necessary to analyze the issue of whether the respondent state, when imposing the display of crucifixes in classrooms, ensured that in exercising its functions of educating and teaching, knowledge was passed on in an objective, critical, and pluralist manner, respecting parents' religious and philosophical convictions, in accordance with Article 2 of Protocol No. 1.[76]

In the Court's opinion, the manifestation of religious symbols without restrictions as to place and form in a country where there is a religious majority in society may put pressure on students who do not practice this religion or on others professing a different religion. The religious meaning of the cross is dominant. The very location of the cross was such that it was impossible to notice it.[77] The Court concluded that the applicant's apprehension that the state sided with the Catholic religion was, therefore, not arbitrary as regards displaying the sign of the cross.[78] When the cross is seen as an integral part of the school environment, it can be viewed as a powerful external symbol.[79] Such presence of the cross can easily be interpreted by any student as a religious sign, and they may feel that they are being shaped in the school environment marked by the religion in question.[80] Therefore, it does not serve as educational pluralism.[81]

At this stage of the proceedings, the Court also concluded that the placement of the cross could not be justified by the demands of parents wishing to raise their children in accordance with their religious beliefs or the need for a political compromise. The state should respect confessional neutrality as part of public education in compulsory classes. The aim of education should be to support the development of young people's critical capacity.[82]

Summarizing its argument, the Court stated that the presence of the cross in classrooms limited parents' right to raise children in accordance with their beliefs and students' right to believe or not believe. This restriction is inconsistent with the state's obligation to respect neutrality in the performance of public functions,

75 Cf. Lautsi, § 48.
76 Cf. Lautsi, § 49.
77 Cf. Lautsi, § 54.
78 Cf. Lautsi, § 53.
79 In that regard, the Court referred to the case of L. Dahlab v. Switzerland.
80 Cf. Lautsi, § 55.
81 Cf. Lautsi, § 56.
82 Cf. ibid.

particularly in the field of education. Therefore, it was a violation of Article 2 of Protocol No. 1, along with Article 9 of the Convention.[83]

Considering the above, it can be concluded that the essence of the judgment boils down to the fact that the presence of the cross in classrooms was in violation of the prohibition of indoctrination. At the same time, it is worth noting that in this judgment, the Court stated that in order to adjudicate, it is not necessary to weigh the rights of believers and non-believers.

The above judgment was widely echoed in Europe.[84] Many entities, including governments of other countries, joined this case. As a result of the appeal lodged, the case was referred to the Grand Chamber of the Court.

As part of the additional argumentation put forward by the "defenders of the cross," emphasis is placed on tradition, pluralism of relations, lack of consensus, states' margin of freedom and appreciation, and the lack of evidence of the cross's negative impact on young people.

It was also emphasized that in Europe, there is a variety of relations between the state and the church (half of Europe's population lives in non-secular states).[85] Many state symbols are of religious origin and are used in state education. States should not eliminate their cultural identity. The position contained in the challenged decision is an expression of the value of a secular state. Extending this position to all of Europe would be tantamount to rigid separation.[86]

On the other hand, the arguments the opponents of the cross put forward can be divided into those that relate to the individual aspect (the cross interferes with freedom and exerts a special influence; the cross is a religious symbol) and the institutional aspect (the state is obliged to ensure pluralism, minorities must be protected, and the cross contradicts the foundations of Western political thought).

Moving from the historical to the substantive part of the judgment's merits, the Court emphasized that the case concerns only the presence of crosses in state schools.[87] Placing crosses in classrooms is an area where the state is committed to respecting parents' right to educate their children in accordance with their

83 Cf. Lautsi, § 58.

84 Cf. also http://www.istitutoeuroarabo.it/DM/religious-symbols-in-the-european-public-space-the-role-of-the-european-court-of-human-rights/

85 As B. Schanda rightly pointed out, after joining the European Union, the states of Central Europe did not begin to adopt the model of separation (laïcité) or the model of the state church. Central Europe is a region based on a model of "benevolent separation" or "cooperation." Concordats have been concluded in these states, cf. B. Schanda, 2015, p. 236. At the same time, it is worth adding that the data P. Borecki quoted show that at the beginning of the 21st century, 73.5% of Europe's population were Christian, 1.6% were Muslim, 0.3% were Jewish, 0.1% were Hindu, 0.04% were Buddhist, and 0.07% were followers of other religions, while 24.4% were atheists and non-religionists, which is proof that Europe experienced the processes of secularization and privatization of beliefs in religious matters, cf. Borecki, 2016, p. 28.

86 Lautsi [Grand Chamber], § 47

87 Cf. Lautsi [Grand Chamber], § 57.

own religious and philosophical beliefs.[88] Therefore, the placement of crosses should also be assessed in the context of their relationship with the rights of the individual.

Entering into the polemic about the meaning of the cross, according to the Court, the cross is primarily a religious symbol.[89] However, by itself, it is not sufficient to bring the consequences of indoctrination and violation of Article 2 of Protocol No. 1. The Court also referred to the topic of the cross's influence on students. The cross is essentially a passive symbol.[90] It cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities.[91] There is no evidence before the Court that the placement of a religious symbol in classrooms could have an impact on students.[92] The applicant's private perception is not sufficient to establish a violation of Article 2 of Protocol No. 1.[93] Thus, an objective finding is required.

The essence of the Court's analyzed judgment was, however, the adoption of the position that the decision concerning the consolidation of the tradition of the presence of the cross in state school classrooms falls within the state's margin of appreciation. However, reference to tradition cannot absolve a state from its obligation to respect the rights and freedoms set forth in the Convention and its protocols. The Court is obliged to consider the great diversity between the states, including in the sphere of cultural and historical development.[94] There is no European consensus on this question.[95] It is also worth noting that it was only the Grand Chamber that compiled relevant regulations and judgments from all over Europe, as presented in the earlier part of the paper.

The Grand Chamber also referred *mutatis mutandis* to the earlier case law. The issue of teaching subjects in school such as "Christianity, Religion and Philosophy" (Folgerø v. Norway) or "Religious Culture and Ethics" (Zengin v. Turkey) was raised first. In both cases, it was found that such teaching was within the margin of appreciation left in planning and setting the curriculum. The Court considered the place Christianity occupies in Norway's history and traditions and the fact that Islam is

88 Cf. Lautsi [Grand Chamber], § 65.

89 Cf. Lautsi [Grand Chamber], § 66. On the basis of this judgment, R. Torfs distinguishes two perspectives of perceiving the cross, i.e., religious and pluralistic, cf. R. Torfs, 2016, p. 18. Here, for comparison, it is worth referring to A. Romanko's pertinent observation that the jurisprudence of Polish courts also indicates different meanings of the cross and emphasizes, apart from the religious meaning, important cultural values as well, cf. Romanko, 2013, p. 208.

90 The presence of crosses is not related to compulsory teaching about Christianity. The cross opens up the school environment in parallel to other religions, cf. Lautsi [Grand Chamber], § 74.

91 Cf. Lautsi [Grand Chamber], § 72. In terms of this influence, the Court referred, *inter alia*, to the Zengin v. Turkey case, 1448/04, § 64.

92 Cf. Lautsi [Grand Chamber], § 66.

93 Cf. ibid.

94 Cf. ibid. This position was approved by some part of the doctrine. Cf. also J. Sadomski, 2015, p. 235.

95 Cf. Lautsi [Grand Chamber], § 70.

the most practiced religion in Turkey.[96] However, the Grand Chamber disagreed with Chamber's position that the sign of the cross is a powerful external symbol, as understood in the Dahlab case of wearing an Islamic headscarf while teaching.[97] The Court indicated that the facts of both cases were completely different.[98]

In the Court's view, the contracting states therefore enjoy a certain margin of appreciation in education and teaching, while respecting parents' right to provide education and teaching in accordance with their own religious and philosophical beliefs.[99] However, this margin of appreciation comes under the Court's supervision regarding the prohibition of indoctrination.[100] The sign of the cross undoubtedly refers to Christianity, although it also has a secular symbolic value.[101] However, this was insufficient to result in indoctrination and a violation of Article 2 of Protocol No. 1. Thus, in the Court's view, maintaining the presence of crosses in classrooms was within the state's margin of appreciation.[102]

It is worth presenting a few conclusions. First, in the Court's opinion, the earlier position that the presence of crosses in classrooms means indoctrination was incorrect. The Court recognized the pluralism and lack of compromise applicable to Europe in this respect. Accordingly, states are free to perpetuate tradition within their margin of appreciation, albeit subject to constant scrutiny by the Court, which examines possible excess of this margin. In this case, it is also important that the use of religious symbols as part of state recognition does not restrict an individual's freedom.

6. Summary

The analysis of ECHR case law on the use of religious symbols in public spaces also leads to general conclusions.

In formal terms, it should be noted that the relatively small number of judgments concerning religious symbols in a strict sense is quite surprising. A larger number of judgments can be seen in cases of religious clothing. It seems that this can be

96 Cf. Lautsi [Grand Chamber], § 71. It is worth adding that, according to the Court in Turkey, the Islamic headscarves started to be worn at schools and universities in 1980, cf. Şahin, § 35. Such a finding then affects whether or not tradition is invoked. On the other hand, the debate on the use of these headscarves has spread across Europe since the 1990s.

97 Cf. Lautsi [Grand Chamber], § 73.

98 Moreover, it is worth noting that in the Dahlab case itself, the Court acknowledged that it is very difficult to assess the impact of wearing the hijab on very young children's freedom of conscience and religion.

99 Cf. Lautsi [Grand Chamber], § 69.

100 Cf. Lautsi [Grand Chamber], § 70. This supervision relates to the law and the judgments issued on its basis, Cf. Şahin, § 110.

101 Cf. Lautsi [Grand Chamber], § 71.

102 Cf. Lautsi [Grand Chamber], § 76.

explained, among other reasons, by the fact that the use of religious symbols was so entrenched in European legal culture that it did not currently simply raise major disputes on a European scale. Although the history of Europe is turbulent, there is no doubt that Christian symbols themselves have been used appropriately in Europe for nearly two millennia. Moreover, this may be because most Europeans live in non-secular countries. On the other hand, due to the manner of adjudication and the Court's desire to issue judgments that generally take into account the legal order of a given state in the field of religious law concerning religious symbols in the strict sense, the question of issuing subsequent judgments remains open.

Many more conclusions concern substantive issues. In the ECHR's judgments, one can find a specific search for European consensus. At the same time, it should be noted that this consensus on religious symbols has not been developed so far because there are differences in countries' traditions and the nature of relations between the state and the church. One can even note the principle of priority of European consensus. Only if it cannot be found—by analyzing the previously examined legal order and other European countries—does the Court proceed to "individual assessment" of a given case. There is an individualized subsumption of the norms of the Convention and its protocols. In this assessment, the starting point is recognition of European pluralism of state–church relations. Determining the adopted model of the relationship determines the Court's further considerations (e.g., the French or Italian model of separation). The Court therefore examines whether the margin of appreciation enjoyed by the state has been exceeded.

The limits of a state's margin of appreciation are determined by the axiology, tradition, legitimacy, and proportion of limitations, which the Court then compares with the general principles of the Convention. Among these principles, the starting point is the freedom guaranteed by Article 9 of the Convention, along which the other relevant norms of the Convention (e.g., Article 14) that should be interpreted systemically and functionally. Therefore, the Court's legal argument does not come down to a lexical interpretation of the Convention and its protocols only. On the contrary, the Court's case law in the field of religious symbols in public space refers to the tradition, axiology, and state–church relations in a given country and, in a comparative approach, also in other European countries (and sometimes, in addition, even from other continents). This leads to the conclusion that individual states' legal orders in the field of religious law concerning the use of religious symbols in public spaces are highly recognized by the Court. Thus, the pluralism of relations between the state and the church may even be the basis for restricting the freedom of thought, conscience, and religion. It therefore seems that the Court has in mind that the Convention is part of European legal culture but is not exhaustive.

The above restriction of this freedom—in the Court's analyzed judgments– must, however, be justified and proportionate. The Court weighs the reasons for this restriction. As a result, in some cases, the restriction may be groundless (e.g., protection of the company's image under given conditions) or fundamental (protection

of patients' health). Moreover, the Court refers to the relation of these reasons for limitations, indicating which of them are more serious.

Bearing in mind the distinction between private versus public entities' use of religious symbols, other legal grounds for the Court's assessment of the dispute can be noted. In the case of private entities, the Court examines, first, whether the state has adequately secured the protection of an individual with regard to their right to manifest religious beliefs through religious symbols through law and jurisprudence (the courts are an element of power) and whether the proportionality of restrictions has been breached. However, in the case of public entities' use of these symbols, the Court focuses on institutional aspects and whether the state has exceeded its margin of appreciation. At this point, it is worth noting that these two aspects were the essence of the Court's judgment on the use of religious symbols in public space. Therefore, it is precisely this type of argumentation that should be raised and properly justified within the framework of legal measures submitted to the Court.

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