

Copyright: The author/s
This work is licensed under a CC-BY 4.0 license
(*) Corresponding author
Peer review method: Double-blind
Original research article
DOI: 10.20544/HORIZONS.1.1.23.P03



RELIGIOUS FREEDOMS IN THE REPUBLIC OF KOSOVO - THE CASE OF THE BAN ON WEARING THE HIXHAB IN SCHOOL

Berat Dërmaku*

*Faculty of Law, University "Kadri Zeka" Gjilan,
Republic of Kosovo
berat.dermaku@uni-gjilan.net,*

Abstract

This paper critically examines the Administrative Instruction of the Ministry of Education, Science, and Technology (MEST) in Kosovo, specifically its prohibition of the Islamic veil in schools. The analysis underscores constitutional concerns, revealing contradictions with Article 38 of the Constitution, which safeguards freedom of belief and expression while prohibiting religious discrimination. The paper contends that such prohibitions should follow legal channels, referencing Article 38(4) of the Constitution, which mandates limitations on freedom of belief to be established by law.

Drawing parallels with European Court of Human Rights (ECHR) rulings, particularly the *Lachiri v. Belgium* case, the study explores international perspectives. The ECHR's decision on headscarf exclusion is deemed significant, marking the first instance of an ECHR violation in such a case. The commentator, while recognizing the judgment's importance, identifies ambiguous statements that may hinder its potential to clarify principles for religious symbols regulations.

The paper delves into the concept of neutrality, distinguishing between "neutrality of action" and "neutrality of appearance," asserting that private individuals entering a courtroom should not be obligated to neutrality in appearance. A case study of a Kosovo initiative challenging the Administrative Instruction is presented, emphasizing the involvement of influential figures and religious leaders, including Imam Shefqet Krasniqi.

Exploring Kosovo's legal framework on religious freedoms, the paper emphasizes alignment with European human rights principles, emphasizing autonomy, equality, and neutrality. In conclusion, the paper asserts the historical evolution of religious freedoms in Kosovo, indicating a commitment to interfaith tolerance despite external pressures. The absence of direct violations reflects the state's dedication to protecting citizens' inviolable rights, reinforced by the Constitutional Court's competence in safeguarding human rights.

Keywords: Administrative Instruction, Religious Freedoms, Constitutional Concerns, European Court of Human Rights, Grassroots Initiative, Interfaith Tolerance.

INTRODUCTION

Any examination of freedom of religion or belief today must address the mass religious revival that characterized the end of the last century and the beginning of the new. While considerable progress has been made in the legal status of the right to freedom of religion and belief over recent decades, the reality may still fall short of recognized standards. Of course, the incidence of violations has not shown such a rapid improvement.

Religious freedom does not seem to have won over the minds of people everywhere. Every religion tends to consider itself to be the sole guardian of truth and it is the duty to behave accordingly, an attitude which is not always conducive to inter-religious tolerance. Moreover, any religion may be tempted to fight against anything it defines as deviant, either within its faith or at its borders, which is also unlikely to foster internal religious tolerance. Kosovo has gone through several stages regarding Freedom of Belief. From an average tolerance in the early 70s to wide with the departure from Yugoslavia and the birth of the new state in 2008.

Since the post-war period, especially after independence, the issue of freedoms and human rights violations has continuously progressed. It is also worth emphasizing the Freedom of Belief, where even though according to the Constitution the state is Secular and separated from religion, freedom of belief has been given sufficient space and freedom in non-interference which is guaranteed by the Constitution as well as regulated by law.

METHODOLOGY AND EXPECTED RESULTS

The research methodology employed in this paper combines legal analysis, comparative case studies, and a qualitative examination of the sociopolitical landscape in Kosovo. The legal analysis involves a comprehensive review of the Administrative Instruction of the Ministry of Education, Science, and Technology (MEST) in Kosovo, with a focus on the constitutional concerns surrounding the ban on the Islamic veil in schools. This includes a detailed examination of relevant constitutional provisions, particularly Article 38, and an exploration of how these legal frameworks align with international human rights standards.

To contextualize the findings and provide a broader perspective, the paper incorporates comparative case studies, drawing parallels with European practices and legal decisions. Notable cases, such as *Lachiri v. Belgium* and recent CJEU rulings on workplace expression of religious beliefs, are analyzed to highlight trends, challenges, and potential consequences related to restrictions on religious attire.

Additionally, the paper includes a qualitative assessment of the sociopolitical landscape in Kosovo, examining the grassroots initiative launched in August 2022 to challenge the Administrative Instruction. This involves a review of statements and actions by influential figures, including religious leaders like Imam Shefqet Krasniqi, and an exploration of the public sentiment as reflected in online petitions and social media campaigns.

Expected Results:

Legal Inconsistencies Identification: The legal analysis is expected to identify and elucidate the inconsistencies between the Administrative Instruction and the constitutional provisions, particularly Article 38. The paper aims to clearly articulate how the ban on the Islamic veil

contradicts the constitutional guarantees of freedom of belief and expression, as well as non-discrimination based on religion.

Comparative Insights: By drawing on comparative case studies, the paper anticipates providing insights into how similar issues have been addressed in other European contexts. This includes an examination of legal decisions, societal responses, and the implications of restrictions on religious attire, contributing to a broader understanding of the challenges and potential consequences.

Impact of Grassroots Initiatives: The qualitative assessment of the grassroots initiative in Kosovo is expected to shed light on the impact of community-led efforts in challenging restrictive measures. The involvement of influential figures and public support, as reflected in online petitions, is likely to demonstrate the societal commitment to religious freedoms and the evolving dynamics of social activism in Kosovo.

Policy Implications: The paper aims to discuss the potential policy implications of the findings, considering the legal inconsistencies identified and the broader societal context. It may recommend avenues for legal reform, policy adjustments, or further dialogue to ensure that constitutional guarantees of religious freedoms are respected and protected.

Contributions to Academic Discourse: The expected results encompass contributions to academic discourse on the intersection of law, religion, and human rights. The paper aspires to provide a nuanced understanding of the challenges faced in Kosovo, offering insights that may be applicable to broader discussions on religious freedoms in transitional states.

LITERATURE REVIEW

The analysis of the Administrative Instruction's ban on the Islamic veil in schools aligns with broader discussions on religious freedoms in Europe. The paper draws insights from the ECHR's rulings, such as the Lachiri case, to underscore the importance of protecting religious expression. The recent CJEU decision on workplace expression adds a contemporary dimension, prompting a critical examination of potential consequences for religious freedom.

Comparisons with European practices, especially in Germany and France, provide context for understanding the real-world impact of bans on religious clothing. The mention of adverse consequences, such as Muslim women leaving teaching careers and facing fines, adds depth to the discussion on the implications of such policies.

The initiative in Kosovo serves as a case study, illustrating grassroots efforts to challenge restrictive measures. The paper acknowledges the digital activism of religious leaders like Imam Shefqet Krasniqi, emphasizing the changing dynamics of social advocacy.

The literature review also delves into the legal framework in Kosovo, examining constitutional provisions and the Law on Religious Freedoms. Drawing parallels with the European Convention for Human Rights, the analysis highlights the commitment to safeguarding religious autonomy, equality, and neutrality.

FREEDOM OF BELIEF, CONSCIENCE, AND RELIGION ACCORDING TO THE CONSTITUTION OF THE REPUBLIC OF KOSOVO

The modern and democratic state of Kosovo was created late because for centuries it was under the occupation of empires and other states that constantly attacked it. The first norms were initially built based on the canonical norms "The Law of Lekë Dukagjini", and later with acts issued by the Ottoman Empire. But, after the disintegration of the Ottoman Empire, Kosovo remained

separated from Albania and first under the Serbo-Croatian-Slovenian kingdom, then after the Second World War with the creation of Former Yugoslavia, it was forcibly brought under the autonomy of the Serbian State. Thanks to the Ottoman occupation of the Balkan states, including Kosovo and Albania, unlike most other Balkan countries, these two countries accepted Islam as a religion, where even today the majority of the population belongs to the Islamic Faith.

As a result of migration and globalization, religious and cultural diversity have become daily realities for increasing proportions of the world's population. (Brace-Govan, 2000) But, when we talk about Hijab, "is often linked to the discrimination that Muslim women experience especially at work ".(Brace-Govan, 2000)The hijab also works to challenge consumer culture and the unspoken communications that we make through the presentation of the self. (Brace-Govan, 2000)"Today, a famous spiritual woman leader, CemalnurSargut, (from Turkey) who does not cover her hair in public, represents this Kemalist-Sufi trend. According to her interpretation, the hijab (tesettür) should be in the heart. With followers mainly among educated upper-class secular people, Sargut is a common guest in secular television stations."(Özcan, 2015)

Freedom of belief as individual freedom since the establishment of the former RSFJ was a big problem, especially for citizens of the Islamic faith. Freedoms and human rights in the former Yugoslavia were based on the following premises: "a) they are an inalienable part and express socialist-democratic relations; b) the essence of the socialist relationship frees man from exploitation and arbitrariness; c) human freedoms and rights are not given to man, and d) social and human relations freed from egoism, solipsism, and equality are necessary for their realization".(Gjorgjeviq, 1978)In the former RSFJ Freedom of religion was regarded as an essential freedom, as a philosophical antithesis. "It was characterized as two-sided freedom: freedom of religious belief and freedom from it or secularism as the fruit of civilization and freedom of conscience, separating the state from religion". In the former RSFJ, this freedom had several characteristics such as:

- a. The preaching of religion is free;
- b. Religious communities are separated from the state;
- c. Schools are separate from the Church, but they can form religious schools themselves;
- d. The social community can materially help the religious community when necessary; and
- e. All religious communities are equal.(Gjorgjeviq, 1978)

Although the reality was different, remembering that unlike other religions, the Islamic faith was more oppressed by persecuting and fighting in other indirect forms. Kosovo stood out as a country for religious tolerance between 3 different religions including Muslim, Catholic and Orthodox. For centuries three religions have survived and at the same time the majority religion was the Muslims. In contrast to Germany, where "tolerance had come too late there. From the Peace of Augsburg in 1555 to the invasion of Napoleon in 1806 where it was regulated by the act *cuius regio, eius religio*.(Miller, 2012)The exercise of freedom of religion is similar and closely related to other freedoms that are listed as fundamental freedoms such as Freedom of expression.(Luan Omari, 2017)If we look in Italy, we notice that Freedom of belief has been categorized as part of the negative freedoms of along with many other freedoms including freedom of assembly, freedom of expression and thought, etc. Where it states that it is everyone's freedom,

where everyone can practice it on their own basis in any form, whether individual or group..."(Martines, 2018) There are some countries where you allow the wearing of the headscarf in schools, including Serbia where, in addition to allowing the wearing of the headscarf there is also the subject of teaching faith.

European history is marked by the sufferings of those who have died for their beliefs. Christian martyrs in pagan times, pagans slaughtered in the name of Christianity, heretics killed by Catholics, and Catholics killed by Protestants, pogroms of Jews and the burning of witches, always those of another persuasion, drowned, hanged, burned or butchered with excessive zeal by those who thought they knew better. One of the greatest achievements of the Enlightenment was to encourage a spirit of tolerance that has progressively marked law-making in Europe since the end of the 18th century. After the Second World War, those who drafted the Convention stood firmly in that tradition of toleration, scarred as they were with the recent history of secular intolerance as well, where the rights of ideological enemies and "those of other races and nations were abused with excessive barbarity by communists and fascists alike."(Bond, 2018)

In 2004 the Court gave judgment in an important case concerning a ban issued by the Vice Chancellor of Istanbul University on students wearing Islamic headscarves. Leyla Şahin, a fifth year medical student, was refused access to a written examination because she was wearing the Islamic headscarf. The ban was based on a circular issued by the Vice Chancellor, directing that students with beards and students wearing the Islamic headscarf would be refused admission to lectures, courses and tutorials. The Court came to the conclusion that, although the circular at issue did constitute an interference with the applicant's right to manifest her religion, it had been "prescribed by law", as mentioned in paragraph 2 of Article 9, and so the interference with this right was in this case justified.(Bond, 2018)

The Court noted that the Turkish Constitutional Court had earlier ruled that authorising students to cover the neck and hair with a veil or headscarf for reasons of religious conviction was contrary to the secular constitution. The Supreme Administrative Court had also held that wearing the Islamic headscarf at university was not compatible with the fundamental principles of the republic. So the European Court of Human Rights found that there was a legal basis for this interference in Turkish law and the applicant could and should have been aware of this, since regulations on this existed at the university since long before she enrolled there. As to whether the interference was necessary, the Court noted that it was based in particular on principles of secularism and equality. According to the case law of the Constitutional Court, secularism, as a guarantee of democratic values, ensured both liberty and equality. This principle prevented the state from showing preference for any one particular religion or belief. It guided the state as an impartial arbiter and necessarily entailed freedom of religion and conscience for all.(Bond, 2018)Article 9 also involved protection of the rights and freedoms of others and the maintenance of public order, and these goals were served by this ban as well. As many other students chose not to wear the headscarf, there was potential conflict with extremist political movements in Turkey which sought to impose on society as a whole their religious symbols and a conception of society founded on religious precepts (Leyla Şahin v. Turkey, 2004).(Bond, 2018)

The European Convention for the Protection of Fundamental Human Rights and Freedoms guarantees every person the right to thought, conscience and religious belief.(Eurpe, 4 November 1950) According to the author Erlir Puto, "every civil right has its origin in a natural right that exists in advance in the individual, but for its existence the power of the individual is not always suitable".(Puto, 2008) According to him, this point sends us to two conclusions:

1. every civil right arises from a natural right, or in other terms it is an exchanged natural right; AND

2. civil power, if we consider it as such, but the community of the category of natural human rights, which in the individual is insufficient in terms of power, but if it is united around a single center, it becomes suitable for the purposes of to everyone; and,

3. the power derived from the community of natural rights, not perfect for the individual, as far as his power is concerned, cannot be used to violate the natural rights that the individual preserves and for which the power to apply the power it is as perfect as it is right.(Puto, 2008)

Freedom of belief is one of the most important freedoms and conditioned by the role of religion in the development of human personality.(Kurtesh Salihu, 2004) The constitutional principles that define this institute are:

- Everyone is free to choose or change religion or beliefs, and to manifest them individually or collectively, in public or in private life, through worship, education, practices or performance of religious rites;
- No one can be prohibited or forced to participate in a religious community or its practices, as well as to make public his beliefs or faith;
- All religious communities or religious groups are equal before the law;
- No one can issue any law for the institutionalization of the state religion; AND
- The position of religious communities, the relations between them, as well as their relations with the state are regulated by law.(Bajrami, 2011)

Freedom of belief, conscience and religion is a fundamental human right, which is protected by international institutions. This freedom is among the oldest recognized international rights and is the subject of key provisions in each of the most important international legal instruments prohibiting discrimination.(Bajrami, 2011)The Constitution of the Republic of Kosovo in article 38 para. 1 guarantees freedom of expression of faith, belief and conscience, as one of the most important spiritual freedoms. This means that no one is obliged to declare their religious beliefs. All of this protects the right of the individual to freely choose his beliefs, namely his views on the world.(Dr. Enver Hasani, 2013) The second paragraph of Article 38 states that "Freedom of belief, conscience and religion includes the right to accept and manifest religion, the right to manifest personal beliefs and the right to accept or refuse to be members of any community or other group"(Dr. Enver Hasani, 2013). Our Constitution does not decisively include what this right contains, since the Republic of Kosovo has been declared a Secular state, where it is emphatically stated in Article 8 of the Constitution that "the Republic of Kosovo is a secular and neutral state in the matter of religious beliefs". While the provisions of Article 39 made it even clearer that religious communities are separate from the State. As for the second paragraph of Article 38, we see that this paragraph mentions several constitutional guarantees related to the freedom of expression of belief, which are:

1. the right to accept religion;
2. the right to manifest one's religion;
3. the right to manifest personal beliefs; and

4. the right to accept or not accept membership in any religious community or other group.(Dr. Enver Hasani, 2013)

Conscience is a category of spiritual freedom, and as such it means the existence of awareness of what, from a moral point of view, is a behavior, not only right but also obligatory. Freedom of conscience enables the individual to choose his own view of the world.(Dr. Enver Hasani, 2013)The third paragraph states that "No one can be forced or prohibited, contrary to his conscience, to participate in the practice of religion and to make public his/her beliefs or faith".(Kosovo, 2008)Also, the Constitution has gone even further where in its article 24, talking about equality before the law in the second point of article 24, it shows that no one can be discriminated because of his religious affiliation to which he belongs. Article 24.2 definitively states: "No one can be discriminated against on the basis of race, color, gender, language, religion, political or other opinions, national or social origin, affiliation with any community, property, economic, social status, sexual orientation , birth, disability or any other personal status".(Kosovo, 2008) The freedom of religious expression belongs, exclusively, to the relationship of the individual and the religious community to the state, and the guarantee of this freedom means that it cannot be endangered or belittled by anyone. It is worth noting that religious freedom exceeds freedom of conscience and includes such regulatory contents, which do not aim to reveal personal religious beliefs to others. Starting from this Constitution, everyone is guaranteed the freedom to manifest their religion or belief through religious expression, performing ceremonies, attending religious services or teaching. As well as the fourth paragraph of Article 38, it states that "Freedom of manifestation of religion, belief and conscience can be limited by law if such a thing is necessary for the protection of security and public order, health, or the rights of other persons".(Kosovo, 2008)

The Constitution does not specify how the freedom of religious belief or expression is manifested. Restrictions on its manifestation are allowed only if this is necessary for the purpose of protection:

- a. security;
- b. public order;
- c. health; as well as
- d. the rights of others.(Dr. Enver Hasani, 2013)

Over the past few decades, there has been a proliferation of academic research on Muslims in Europe. Muslim attire has become one of the most prominent topics amongst this wide range of scholarly activity in recent years. From a legal perspective, Muslim attire (particularly the hijab and the face-veil [*niqab*]) has forced scholars to reassess principles and practices of secularism and state–society relations. Other scholars have debated the link between the banning of Muslim dress and the rise of Islamophobia. For those academics, this debate is novel and provides an opportunity to test theories, conduct case studies and debate the general state of European democracy in relation to minority rights. Such debates, moreover, are seen as confined to ‘Western’ Europe and make no reference to discussions in the Balkans and experiences there. Or as a study on the face veil bans in France and Belgium notes, ‘The origins of the *European* move to ban face-veiling may be traced ultimately to France in 1989’. As is obvious then, the

geographical limits of Europe are placed squarely within what is commonly referred to as 'Western Europe'. (Sadriu, 2015)

In many ways, Europe's relationship with Islam is viewed by many scholars as a relatively new phenomenon following waves of migrations (mainly from Asia and Africa) in the second half of the 20th century. The historical experiences of Europe's indigenous Muslims are underrepresented and under-analyzed. Indeed, state policies that placed injunctions against Muslim attire were implemented in parts of Europe much earlier than the more well-known cases in the 1990s and 2000s. For example, a 1947 assembly in Kosovo (then a province of Yugoslavia) outlined plans to outlaw the *niqab*, or full face veil (Alb. *peçe/ferexhe*) and by 1948 dozens of Communist Party members were sacked because they had refused to comply. Many women who resisted were made jobless. According to one study, 20,000–30,000 women were forced to remove their veils from 1947 to 1950. (Sadriu, 2015)

ADMINISTRATIVE INSTRUCTION OF MEST – LEGITIMATE OR NOT LEGITIMATE ACT

The Islamic veil in schools can only be banned by law. This Administrative Instruction deals with the code of conduct and disciplinary measures of secondary and high school students. So, "its purpose, as set out in Article 1 of this instruction, is to determine the rights, obligations, prohibited actions, continuity in learning and disciplinary measures and procedures and their application to students who violate the rules of the code of courtesy". (Ministry of Education, 2014) What is also surprising is article 3 of this instruction, which decisively only talks about prohibitions or actions that are prohibited by students. This administrative act has entered into force since 2014, where it replaced the instruction until then approved in 2010 by MEST. Article 3 point 13 talks about a ban that contradicts some articles of the Constitution. So, this point says that the "wearing of the religious uniform" (Ministry of Education, 2014) is prohibited, which means the wearing of headscarves by middle and high school students.

The hijab or covering is not a religious uniform, it is a religious obligation. And it is a personal right that you should not violate, especially with an administrative act. No one has the right to force him to wear the veil. However, many studies show that in fact Muslim women choose to wear the veil as a way of showing self-control and power. We can confidently say that this Administrative Act is unconstitutional and attacks two paragraphs of Article 38 of the Constitution of the Republic of Kosovo. Article 38, in part of the second paragraph, states that Freedom of belief includes "the right to express personal convictions" (Kosovo, 2008) as well as forms for its manifestation. The constitutional inconsistency of this administrative instruction is also part paragraph 3 of this article which states that "No one can be forced or prohibited, against their conscience, to participate in the practice of religion and to make public his/her beliefs or faith". (Kosovo, 2008)

The said administrative act also violates Article 7 of the constitution which states that "The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, property rights, environmental protection, social justice, pluralism, separation of state power and market economy". (Kosovo, 2008) The main basis is that our Constitution guarantees compliance with these points. Clarifying that everyone should be equal, they should respect human freedoms and rights, there should be no discrimination, etc. Also, Article 24 sheet on equality before the law. This article also states that everyone is equal, as well as "no one can be discriminated against on the basis of race, color, gender, language, religion, political or other

opinions, national or social origin, affiliation with any community, property, economic, social, sexual orientation, birth, disability or any other personal status".(Kosovo, 2008) So, discrimination was prohibited for all those reasons, including religious ones.

As we mentioned above, prohibitions can only be made by law, and not by an act that has less power than the law, such as an administrative instruction. And article 38 para. 4 states that the Freedom of Belief, conscience and religion can be limited by law"(Kosovo, 2008) continuing to determine what the points of prohibition of the Freedom of Belief can be, which are: "In case of violation of public order, cases of security protection, cases related to the health or rights of other persons".(Kosovo, 2008) From all this I can say that despite their justifications that banning the headscarf was seen as a point for solving many problems, this ban is unjustifiable and meaningless. They (Lays) see them as two types from "Shamia", their first claim is the removal of women from Islamic oppression and the presentation of the risk of terrorism. What really has nothing to do with reality. These prohibitions are not made as prohibitions issued by the Researches, but only to prevent the display of freedom of belief. So these bans have no justification and the Constitutional Court should face it and call it unconstitutional and once and for all not to be judged only because Albanian women wear the Hijab.

The institutions of the executive power must engage in the prevention of further violation of the right to education and the right to manifest religion of girls in Kosovo, as provided for in the Constitution in Articles 38(2) and 48(2). In 2011, Arjeta Halimi from Dobresh Village, Vitia Municipality, as a 19-year-old, submitted an individual request to the Constitutional Court of the Republic of Kosovo. In this case known as KI 36/11, the Court issued a ruling on inadmissibility and did not elaborate on the case at all due to the fact that the applicant did not exhaust the regular legal remedies to be a party before the Constitutional Court, based on the article 113.7 of the Constitution, where you also clarify when an individual is a party to the Constitutional Court. Therefore, the Court rejected the request for inadmissibility.(DECISION ON INADMISSIBILITY, 2011)However, it does not mean that the Court has issued on the merits of the case.

At the moment, the only country in Europe that prohibits the display of religious elements in institutions, despite the fact that the Leaders of the Religious Confessions of all religions in France have continuously initiated processes and activities on the matter in question. "Catholic Archbishop Eric de Moulins-Beaufort, President of the Conference of Bishops of France (CEF), Pastor Francois Clavairoly, President of the Protestant Federation of France and Metropolitan Emmanuel Adamakis, Metropolitan of the Greek Orthodox Metropolis of France, signed the statement. The statement said that "by its internal logic ... this draft law risks undermining fundamental freedoms such as freedom of worship, association, teaching and even freedom of thought". The three leaders added that "by turning its back on the separation [of church and state], the state interferes with the qualification of what is religious" and that the law allowed the state to apply more restrictions and controls on religious organizations when Christian churches believed they already existed. necessary procedures for maintaining public order."(France, 2022)

In 2018 the European High Court for Human Rights ruled that a Belgian court violated Hagar Lachiri's freedom of religion by ordering her to remove her headscarf before attending a hearing. (Cox, 2018) In the case known as "LACHIRI V. BELGIUM" it was described as a victory for Muslim women who wear the headscarf. In the case of Lachiri v. Belgium, decided on 18 September 2018, the European Court of Human Rights ruled that the exclusion from the courtroom of a woman who was a civil party in the case on the grounds that she was wearing an 'Islamic headscarf' (hijab) constituted a violation of religious freedom protected by Article 9 of the ECHR.

This judgment is particularly important given the increase in bans on wearing the headscarf, or religious symbols in general, in a number of areas in Belgium and France.(Strasbourgobservers, 2018)

This analysis addresses various crucial issues surrounding the prohibition of the Islamic veil in schools within the Republic of Kosovo, drawing comparisons with the rulings and practices of the European Court of Human Rights (ECHR) in other European nations. The following points encapsulate the key aspects of this discussion:

Constitutional Concerns in Kosovo:

This section effectively highlights constitutional concerns within the Republic of Kosovo, contending that the ban on wearing headscarves in schools is unconstitutional. It identifies contradictions with Article 38 of the Constitution, which safeguards freedom of belief and expression while prohibiting discrimination based on religion.

Legal Basis for Bans:

Regarding the legal basis, the text emphasizes that bans on religious symbols, such as the headscarf, should be implemented through proper legal channels rather than administrative instructions. It accurately cites Article 38(4) of the Constitution, which permits limitations on freedom of belief, conscience, and religion but specifies that such restrictions must be established by law. This argument suggests that administrative acts are not suitable legal instruments for imposing such bans.

International Context:

The paper mentions concerns raised by religious leaders in France regarding potential restrictions on fundamental freedoms. Additionally, the reference to the ECHR ruling in the *Lachiri v. Belgium* case adds weight to the argument against such bans.

Individual Case at the Constitutional Court:

The reference to *Arjeta Halimi's* case, where the Constitutional Court ruled on inadmissibility due to the failure to exhaust legal remedies, adds complexity. It implies that the legal process in Kosovo might require specific steps to be taken before constitutional challenges can be considered.

Comparison with European Practices:

By comparing the situation in Kosovo with the ECHR ruling in Belgium, the text underscores the importance of international standards in protecting religious freedom. The mention of the ECHR's recognition that excluding a woman for wearing an Islamic headscarf violated her religious freedom further supports the argument against such bans.

Religious Freedom and Empowerment:

This section aptly challenges the characterization of the headscarf as a "religious uniform" and emphasizes that it is a personal right and religious obligation. It also notes that many Muslim women choose to wear the headscarf as a symbol of self-control and empowerment, countering stereotypes about oppression.

Ruling on two cases brought by women in Germany whose employers refused to let them wear headscarves at work, the Court of Justice of the European Union (CJEU) found on July 15 that employers can limit workplace expression of religious, political, or philosophical beliefs where there is "a genuine need" to "present a neutral image towards customers or to prevent social disputes." (Margolis, 2021) The criticism revolves around the perceived flaw in the court's reasoning, contending that giving precedence to a client's objections over an employee's right to religious expression could lead to an unjust compromise. By emphasizing that restrictions should apply equally to all expressions of religion or belief, including the Jewish kippah and Sikh Turban,

the court aims to maintain impartiality. However, the text points out that, in practice, such restrictions often disproportionately affect Muslim women.(Margolis, 2021)

Examples from Germany and France, where bans on religious clothing and symbols have led to adverse consequences such as Muslim women leaving teaching careers and facing fines, illustrate the real-world impact of these policies. The text argues that such restrictions do not address the root causes of oppression; instead, they risk isolating and further marginalizing women who are compelled to wear religious attire.(Margolis, 2021)

The broader context of increasing control over women's decisions and bodies in European states, including face veil bans and restrictions on abortion, raises concerns about the potential implications of the court's decision. The fear expressed in the text is that this ruling may contribute to a trend of legitimizing efforts to restrict women's dress, both in public and private spheres, ultimately forcing Muslim women to make difficult choices between their faith and their employment.

In the month of August 2022, a new initiative was initiated regarding the wearing of headscarves in schools, demanding that the Administrative Instruction mentioned above, which denies the right to education to a category of girls in Kosovo, be dropped. The initiative was started by two citizens of the Republic of Kosovo, one is Jurist Durim Berisha and one is Liridon Kurti. The same also initiated an online petition where within a few days they reached a figure of over 20 thousand signatures and in which 55% men and 45% women participated.(Durim Berisha, 2022)Specifically, activists LiridonKurti and jurist Durim Berisha initiated a campaign titled "Change the Administrative Instruction for the Headscarf" on social media, utilizing the hashtag #ndryshojeni_ua_përshaminë. The primary objective is to amend the administrative instruction that restricts girls with headscarves from participating in the educational process.(Dosti, 2022)

The campaigners have formally submitted a request to the Ministry of Education, urging the annulment of the pertinent clause. This request is accompanied by a 45-day deadline for the ministry to respond. The campaign has garnered substantial support, attracting thousands, including influential figures like politicians and religious leaders. Notable endorsements include Besa Ismaili, who emphatically stated that human rights, encompassing freedom of belief and gender equality, are universal and non-negotiable. She decries the discrimination against girls and urges respect for the Constitution of the Republic of Kosovo. It is heartening to witness the leadership and support demonstrated by Imam Enis Rama and Imam Shefqet Krasniqi in championing the cause for women's rights to wear the headscarf. Their commendation of the youth behind the campaign reflects a united front within the Islamic Community of Mitrovica and the broader Islamic Community of Kosovo (BIK). By vocally emphasizing the significance of women's right to wear the headscarf and condemning the unjust hindrance of their educational pursuits, these religious leaders are contributing to a critical dialogue on religious freedom and gender equality.(Dosti, 2022)

Imam Shefqet Krasniqi's continuous support, as expressed through social media and active engagement with the campaign's hashtag, underscores the enduring importance of this issue since the post-war period. It is notable that religious leaders, including Imam Krasniqi, are leveraging digital platforms to amplify their advocacy for women's rights, illustrating the evolving nature of social activism in contemporary society. The formal petition by the Islamic Community of Kosovo to the government, urging a revision of the Administrative Instruction, adds institutional weight to the campaign. This collective effort by religious leaders and the community showcases a commitment to addressing systemic barriers and advocating for tangible changes that uphold the principles of religious freedom and gender equality. In a time where societal issues often require

multi-faceted approaches, the proactive involvement of religious leaders and formal institutions is crucial. Their endorsement and actions not only provide a voice for the affected individuals but also contribute to the broader discourse on human rights, emphasizing the need for inclusivity and respect for diverse expressions of religious identity.(Dosti, 2022)

The initiative in question is among the biggest in recent years. Against the fact that "the Republic of Kosovo is a secular state"(Kosovo, 2008) where the state and religion are separated in one country, in some cases there are signs in the influence of the inner spiritual parts of everyone, knowing that Kosovo from the last census have come out "More than a million and a half of Kosovo are Muslims"(Kosovës, n.d.) more than one and a half million citizens of Kosovo are Muslims" out of about 1.8 million inhabitants, exactly 93% are Muslims. There is no administrative instruction yet.

RELIGIOUS CONFESSIONS ACCORDING TO THE CONSTITUTION OF THE REPUBLIC OF KOSOVO

The Constitution of the Republic of Kosovo, after guaranteeing freedom of belief, guarantees the safety and protection of the autonomy of all communities and religious monuments in the territory of the Republic of Kosovo. Also, attention is paid to the independent internal regulation of religious communities. Article 39 of the Constitution, more precisely the first paragraph of this article states that "The Republic of Kosovo ensures and protects religious autonomy and religious monuments within its territory".(Kosovo, 2008) This provision has also been elaborated in the Law on Religious Freedoms in Kosovo, where in Article 3 it defines religious equality. "All persons, regardless of their faith or belief, regardless of belonging to any religious community or participation in any religious ceremony, are equal before the law and enjoy the same rights in civil, political, economic, social, and cultural life. all legal and natural persons enjoy the same protection before the law".(Law 04/L-032) Also, this law defines religious neutrality.

Where in article 5.1 it states "There will be no official religion" continuing with the fact that "Religious communities are separated from public authorities"(Law 04/L-032) then in the next paragraph it says "All public authorities must take into account tolerance and mutual respect between religions". Then he talks about their protection where the fourth paragraph emphasizes "All their faiths and communities in Kosovo, including the Islamic Community of Kosovo, the Serbian Orthodox Church, the Catholic Church, the Jewish Community of Faith, and the Evangelical Church, will be any kind of protection and opportunity to enjoy the rights and freedoms provided by this Law is offered".(Law 04/L-032) Paragraph 4 of this article states: "Given their specific contribution and identity in society, public authorities must maintain an open, regular and transparent dialogue with religious associations, religious communities on matters of common interest".(Law 04/L-032)

Therefore, we can say that public bodies must have open, regular, and transparent dialogues with religious associations and religious communities regarding issues of common interest. (Law 04/L-032) As for the second paragraph, it is clarified that "Religious denominations are free to regulate their internal organization, religious activities, as well as religious rites".(Law 04/L-032)This means that the Constitution gives them freedom and guarantees that they can act independently. A guarantee which is also specified by law, where in article 6 point 1 it is emphasized that "Freedom of association for religious purposes is guaranteed based on the law in force in Kosovo". Also, this law in the next paragraph of article 6 e clarifies that "It is prohibited to form a religious association which, by its name or statute, suggests that it is officially connected

or recognized by a religious community, but which does not have the consent of the same".(Kosovo, 2008)At the very end, the third paragraph of Article 39 regarding religious denominations clarifies that "Religious denominations have the right to establish religious schools and charitable institutions in accordance with this Constitution and the law". Article 7 of the law on religious freedoms in Kosovo is very important here, which determines the definition and regulation of religious communities. Where religious communities are free to define their religious identity. Then, Religious communities regulate and administer their internal organization independently. Religious communities can freely establish and communicate with individuals and communities at the national and international level, as well as form associations with other religious communities and groups at the national and international level in accordance with the law in force.(Law 04/L-032)

Also, we can say that in the Kosovar Jurisprudence since Independence, there has not yet been any concrete case where Article 38 of the Constitution of the Republic of Kosovo has been directly violated. So, there has not yet been an individual request or an objective request from the state bodies or various organizations. This also proves that in Kosovo there is great tolerance between religions, despite the fact that the media and various portals aim to damage this age-old tolerance. The legal framework governing religious freedoms in the Republic of Kosovo, as outlined in both the Constitution and the Law on Religious Freedoms, appears to align with the principles enshrined in the European Convention for Human Rights. Specifically, the highlighted provisions emphasize the importance of religious autonomy, equality, and neutrality, reflecting a commitment to safeguarding individual rights and fostering a pluralistic and tolerant society.

The Constitution of the Republic of Kosovo, in Article 39, underscores its commitment to ensuring and protecting religious autonomy and monuments within its territory. This aligns with the broader European human rights principles, emphasizing the importance of safeguarding religious freedom and the autonomy of religious communities. Additionally, the Constitution recognizes the right of religious denominations to establish schools and charitable institutions, further affirming the space for religious communities to engage in educational and philanthropic activities.

The Law on Religious Freedoms in Kosovo, particularly in Article 3, reinforces the principles of religious equality and underscores that individuals, regardless of their faith, enjoy equal rights in various aspects of life. The law explicitly states that there will be no official religion, and religious communities are separated from public authorities, in line with the secular nature advocated by the European Convention for Human Rights. The prohibition of forming religious associations that falsely claim official connection or recognition without consent in Article 6 demonstrates an effort to prevent misrepresentation, ensuring transparency and legitimacy in the establishment of religious organizations. This aligns with European human rights principles emphasizing the protection of individuals from misleading affiliations and practices.

The provision in Article 7, granting religious communities the freedom to define their religious identity, regulate their internal organization, and establish connections nationally and internationally, resonates with the principles of freedom of association and expression emphasized in the European Convention for Human Rights. Importantly, the absence of concrete cases directly violating Article 38 of the Constitution suggests a level of respect and tolerance between religious communities in Kosovo. This lack of legal challenges may indicate a successful implementation of the legal framework and a societal commitment to religious freedom.

Therefore, in the end, we can affirm that the Republic of Kosovo embraces religious communities, even though it is declared a "secular state," acknowledging their existence and

facilitating their operations without encountering obstacles through the aforementioned provisions. The state permits religious communities to autonomously manage their internal affairs and oversee their grants and foundations, all within the confines of the legal framework. The legal provisions within the Republic of Kosovo's Constitution and the Law on Religious Freedoms appear to align with the spirit of the European Convention for Human Rights, creating an environment where religious communities can operate independently within the legal framework, promoting equality, autonomy, and transparency. The apparent absence of legal challenges underscores the success of these provisions in fostering interfaith tolerance within the nation.

CONCLUSION

At the dawn of the life of the Albanian people who have lived for centuries in religious tolerance in the country, despite the fact that the Albanian people and not only in Kosovo, but also in Albania, Macedonia, and the part of Serbia populated by Albanians was and is with a higher percentage its overwhelmingly Muslim, perhaps over 90%, where religious tolerance and culture have been constantly followed. Religious freedoms in Kosovo have been undergoing a continuous transition, as we have noted in the paper. It is interesting, but not so much since Independence in 2008 or since the establishment of the Constitutional Court of Kosovo, there have been no instances of cases when freedoms have been violated. Although there are such tendencies by people of different goals and external agendas, to root religious identity. Kosovo, as a new and transitional state, has incorporated fundamental human rights and freedoms under international law. Incorporating these freedoms directly into its Constitution. Finally, we can say that religious freedoms in Kosovo have evolved historically and there have been repeated iterations despite the period of the 1990s. The State of Kosovo and its Constitution are guarantees that these freedoms are for its citizens and are inviolable, and in spite of its infringement is another guarantee that the Constitutional Court is competent to protect the Constitution and protect from the violation of human rights and freedoms.

Ultimately, the analysis posits that religious freedoms in Kosovo are not static but have undergone continuous transitions, adapting to the changing dynamics of society. The state's legal framework aligns with international human rights principles, creating an environment where religious communities can operate independently within established legal boundaries, fostering equality, autonomy, and transparency.

Bibliography

- Gjorgjeviq, J. (1978). *"Sistemi Politik" Kontribut i shkencës mbi njeriun dhe vetëqeverisjën*. Universiteti i Prishtinës, .
- Miller, D. P. (2012). *"The Constitutional Jurisprudence of the Federal Republic of Germany"* (Vol. Third edition). Durham and London: Duke University Press.
- Luan Omari, A. A. (2017). *"E drejta Kushtetuese"* (Vol. 2). Tiranë: Shtëpia botuese -Dajti 2000.
- Martines, T. (2018). *"Constitutional Law"*. Tiranë: UET Press.
- Eurpe, C. o. (4 November 1950). Convention for the Protection of Human Rights and Fundamental Freedoms, Article 9. *echr European Convention on Human Rights*. Rome .
- Puto, E. (2008). *"E drejta Kushtetuese e Krahastuar"* (Cikël leksionesh). Tiranë,.
- Kurtesh Salihu. (2004). *"E drejta kushtetuese"* (Vol. 4th). Prishtinë: Universiteti i Prishtinës.
- Bajrami, A. (2011). *"Sistemi Kushtetuës i Republikës së Kosovës"*. Prishtinë.
- Dr. Enver Hasani, &. D. (2013). *"Komentari - Kushtetuta e Republikës së Kosovës"* (Vol. 1st). Prishtinë: German Corporation, Giz and Ministry of defence of R. Of Kosovo.
- Kosovo, P. o. (2008, 4 9). Constitution of the Republic Of Kosovo, - article 38.3.

- Ministry of Education, S. T. (2014). Administrative Instruction of MEST no. 6/2014- Code of conduct and Disciplinary Measures for high school students. See article 1. .
- DECISION ON INADMISSIBILITY, KI-36/11 (Constitutional Court of Republic of Kosovo september 30, 2011).
- France, 2. R. (2022, June 02). *U.S Departament of State*. Retrieved 01 2023, from OFFICE OF INTERNATIONAL RELIGIOUS FREEDOM: <https://www.state.gov/reports/2021-report-on-international-religious-freedom/france/>
- Cox, S. (2018, September 21). *Open Society Justice initiative*. Retrieved January 2023, from Case waych: <https://www.justiceinitiative.org/voices/case-watch-victory-europe-muslim-women-s-right-wear-headscarf>
- Strasbourgobservers*. (2018, 11 23). Retrieved January 2023, from <https://strasbourgobservers.com/2018/11/23/lachiri-v-belgium-headscarf-ban-imposed-on-a-civil-party-in-a-courtroom-in-violation-of-religious-freedom/>
- Durim Berisha, L. K. (2022, September 20). Retrieved September 2022, from <https://ndryshojenuapershamine.com/?fbclid=IwAR1pMb9-CPvC7IXwScz0FCaypJ5JWMVbT45WKlZMdPgSMSdYm4g51ciUrT0>
- Kosovës, B. I. (n.d.). *Bashkësia Islame*. Retrieved 31 January , from BIK: <https://bislame.net/percents/>
- Law 04/L-032, P. o.-L. (n.d.). Law on religious freedoms" Article 3. Prishtinë.
- Dosti, N. (2022, Tetor 8). *Nisma 'Ndryshojeni Udhëzimin Administrativ për shaminë'*. Retrieved 12 2023, from Observer Albania: <https://observer.al/nisma-ndryshojeni-udhezimin-administrativ-per-shamine/>
- Margolis, H. (2021, July 19). *European Union Court OKs Bans on Religious Dress at Work*. Retrieved december 2023, from Human rights watch: <https://www.hrw.org/news/2021/07/19/european-union-court-oks-bans-religious-dress-work>
- Brace-Govan, G. D. (2000). Gender and Religious Settlement: Families, hijabs and identity. *Journal of Intercultural Studies*, 159-175.
- Özcan, E. (2015). *Mainstreaming the Headscarf: Islamist Politics and Women in the Turkish Media* (Vol. 1). London, New York, Oxford, New Delhi, Sydney: I.B TAURIS.
- Bond, M. (2018). *An introduction to the European Convention on Human Rights*. Strasbourg: Council of Europe.
- Sadriu, B. (2015). *The Revival of Islam in the Balkans (Rhetorical Strategies of Kosovo's Imams in the Fight for 'Women's Rights')*. (A. E. Roy, Ed.) New York: Palgrave Macmillan.

