

**THE PROBLEM OF SYMBOLS OF THE RELIGIOUS IDENTITY
IN THE BORDERLANDS
(The Case of Hijab in Bosnia and Herzegovina)**

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Abstract. *A hob of religion circles around the world. Like discussions once focused on communism, nowadays, religion(s) is (are) the focus of discussions, with plenty of controversial views and judgements. One of those discussions is being led about the symbols of religious affiliation that have become current by the expansion of religious pluralism. That issue is particularly current in the borderlands, and Bosnia and Herzegovina is the borderland of different religious cultures.*

The cult of hair in Islam. Different religious cultures have different attitudes towards hair (from its coverage to the shaving of heads). Since the 1990s, a tradition of covering Muslim women's heads has returned to Bosnia and Herzegovina; most often, it refers to the hijab. Differences can be found between a headscarf, niqab, hijab and burqa.

At the beginning of 2016, discussions on wearing a hijab in the courtroom have started. The paper also refers to differences of court practices related to the hijab in some European countries and the USA. There is also the practice of the European court for human rights. A "fear" of hijabs amongst a part of the European intellectuals. The phobia of Islam is born from that "fear".

The reason for the discussion on hijabs in Bosnia and Herzegovina was the Law on courts and the decision of the High Judicial and Prosecutorial Council (HJPC) to ban female judges from wearing the hijab in court. The stances of male/female believers and Bosniacs of different views, of theologians and of the Islamic community on that issue are presented herein. The paper will also reflect upon the attitudes of lawyers expressed in the above polemics. In the end, solutions will be offered.

Key words: *Islam, identity, symbol, hijab, court, judges, jurisprudence.*

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1. INTRODUCTION

The question is if Sloterdijk is right when says that “a hob circles around the western world – the hob of religion. Everywhere we have been assured that it has been back to people of the modern world after a long absence... the forces of the old Europe have been gathered to celebrate welcome pompously – there are various guests: Pope and Islamic scholars, American Presidents and new rulers in the Kremlin, all the Metternichs and the Guizots of our days, French curators and German sociologists“ (Sloterdijk 2015, 11).

Indeed, it would be difficult to find any topic related to religion that has not been discussed over the last twenty years. Like discussions were once held on the topic of communism, nowadays, religion(s) are in the focus of discussions, with plenty of controversial views and judgements. So, let us join those discussions with the topic “A problem of symbols of the religious identity in the borderlands”. As an example, we have taken the discussions on wearing a hijab in Bosnia and Herzegovina.¹ Religious symbols have become a “hot” and very controversial issue of today’s political debate, also thanks to the growing religious pluralism (Ferrari).²

Before proceeding, for those less informed, we remind the reader that during the 1992-1995 war and in the post war time, there have been huge internal (and external) migrations of the population in Bosnia and Herzegovina and three largely national/confessional homogenous areas have been created. However, next to those homogenous areas, at their edges, there are bordering spaces between religious differences. I always indicate the circumstance that Bosnia and Herzegovina is also the borderlands between western (mostly Catholic) and eastern (mostly Orthodox) Europe, as well as “autochthonous” Islam. That border used to be bloody (during wars), closed (in the times of crises) but also permeable (in times of peace, when borders were zones of contacts). The war showed all the connectivity of religious and national identity in Bosnia and Herzegovina. Not to forget, the war of identities did not cease in 1995 and therefore, symbols of religious identity are important (Muftić). It has become known to all that high minarets and church towers in Bosnia and Herzegovina mark the borders between different religious cultures.

In addition, like in the entire region, a conservatism of religious communities dominates, reflected in their views on sex, miscarriage, artificial insemination, same-sex marriages, homosexuals, concealment of paedophilia, inequality of women in institutions of the church etc. It seems as if religious communities want “the control over women and their crotch“ (Simoniti 2014, 5). And “civilising of a society reflects in the way of how it treats those that are different, ethnic, religious and sex minorities: homosexuals, lesbians...” (Simoniti 2014, 68).

Nevertheless, let us return to our principal theme: the way of covering the hair of Muslim women. Let us be reminded that Islam has cherishing the cult of hair through the centuries, which today seems to have turned into the “damnation of hair”, like artist Safet Zec wrote (2016). That artist warns that “we must not forget that on these Balkans areas, and especially in this Bosnia and Herzegovina of ours, we live together and with the

¹ I wrote on clothes as a symbol of the religious identity in my book *Religija u zrcalu teorija* (Cvitković 2016).

² We could indicate more than one example of that assertion; for instance, Serbian and Bosniac delegates in the Livno canton (with a majority of the Croatian population) consider unacceptable that a person in a nun’s dress performs the duty of the director and a teacher in a kindergarten (Livanjski kanton uvodi srpski jezik u škole, in *Oslobodenje*, 4. 3. 2016, 9).

others, Catholics, Orthodoxies, Jewish, and therefore, the measure and the culture – at least it should be – of so called moderation and respect of those different and the others are in all sorts of our religious needs and manifestations”. In that cult of hair, it seems as if it is considered something of shame and therefore, it should not be revealed. Of course, there are those that wonder: why would hair be a measure of the prayer’s value, a measure of devotion to God?

Hair is not a problem only in the Islamic tradition. Different practices of the attitude toward hair were being developed in different religious cultures: from hair cutting to head shaving (the nuns in some Asian religions). Let us be reminded of what Tetullian also used to write: “Faces of women are 'dangerous' and because of that, 'should be hidden'. He warns 'you...who fell into a marriage trap' – a convenient view on a married man – 'do not interrupt ... the discipline of a veil, not for a single movement in an hour ... Let them know that the whole head makes a 'woman'.” In case that some of women that fell into a marriage wonder where the head ends and the body begins, he explains: “The head reaches up to the point from where the gown begins.” Which means, of course, that every millimeter of the neck has also to be covered, as 'the veil is their yoke'. For an ideal, Tetullian proposed that Christian women ignore godless women, almost prostitutes, in their vicinity and instead look up to 'Arab pagan women' that “do not cover only the head but also the face in such a full manner that they are satisfied with only one unveiled eye, preferring to enjoy in a half of the light than to prostitute their whole face“ (According to the English woman Susan Squire in a book „*I don't – A contrarian History of Marriage*“.³

Women in Bosnia used to veil their hair when going to the mosque, to pray for the dead, but it used to be done, like Zec said, on “a modest and dignified, sufficient and even beautiful way“. Since the 1990s, the practice of veiling hair amongst Muslim women (mostly persons of a younger age) has been slowly introduced in Bosnia and Herzegovina. Most often, it relates to the hijab. By wearing a hijab, a message of who I am is emitted. Nermina Kurspahić writes “it is not the coverage for me, but a disclosure at the level of defiance“.

By expanding the practice of veiling, discussions on the extent to which it is an obligation of the Muslim women or whether there is something else at stake have been opened up. In particular, discussions were taking place at the beginning of 2016. In that respect, the Centre for public right Foundation organised expert counselling on use of religious symbols in the courts of Bosnia and Herzegovina (April 2016). Prior to that, theologians and lawyers engaged by that Centre had presented their analyses. In subsequent sections, as per need, those analyses will also be referred to.

2. DIFFERENCES OF THE JURISPRUDENCE IN SOME EUROPEAN COUNTRIES AND IN THE USA

It has to be stressed that posting religious symbols on public places has been the subject of numerous disapprovals. Thereat, the variety of jurisprudence has been exposed.

No matter how different their viewpoints, the authors of the analyses ordered by the Centre for public right from Sarajevo call for Article 9 of the European Convention of human rights, but they interpret it differently, in particular paragraph 2 of Article 9 that

³ Quoted as per Croatian translation *Ne uzimam – sporna povijest braka*. Zagreb: Algoritam, 2012, 103.

stipulates: “The freedom of manifesting one’s faith or belief shall be subject to only those limitations that are foreseen by the law and which are necessary in a democratic society in the interest of the public security, protection of the public property, health or moral or *protection of rights and freedoms of the others* (italics – I. C.)” It seems that doctrinal and ideological views of the analysts are too strongly expressed in interpretations of decisions of the European court for human rights and the examples.

A. Abramović mentions an example of Rpya S, Moora from Alabama (USA) in his analysis, who decided, as a judge, to start a court session with a prayer and who put the plate with the Ten Commandments on the courtroom wall. First the State court banned prayer in the courtroom and then removed the plate with the Ten Commandments. Silvio Ferrari stresses that in 1980, the Supreme Court of the USA in the case of *Stone vs. Graham* decided that by posting plates with the lines of Ten Commandments in public schools in Kentucky, the clause on (non)restitution is violated. However, in the USA, there is no barrier for a Muslim woman with a veil to become a judge. In that respect, in 2015, a woman that wears a hijab was nominated for a judge in New York. In 2006, the Supreme Court of Canada supported the right of Sikh students to wear their ritual kirpan knife in a school (Ferrari). Those are examples of the jurisprudence from USA and Canada. What about the European jurisprudence?

The European Court for Human Rights had different practices. In the case *Lautsi vs Italy*, related to the display of church symbols in state school classrooms, the first instance the Council of the European Court for Human Right reached the verdict on removal of crucifixes from state schools was on December 3, 2009. After an appeal from the Italian government, the Great Chamber of that Court reached a verdict in which it is stated that Italy can keep the right of displaying crucifixes in state schools on March 18, 2011. According to that verdict, there is no violation of Article 9 of the European Convention on Human Rights in displaying crucifixes in Italian public schools (Ferrari).

In the case of *Dahlab vs Switzerland*, the teacher was banned from wearing a headscarf in school and the Court confirmed that decision.

The French prohibited wearing religious symbols in schools, as well as burqas and nijabs in public places by law in 2004, then in 2010.

According to the researches in Turkey undertaken in 1999, 2006 and 2009, 70% of the respondents declared themselves for abolishment of the prohibition of wearing a headscarf that had been issued by Ataturk 90 years ago. In 2013, 12.3 million citizens, supported by the Party of justice and development, signed a petition by which they asked for abolishment of the prohibition of wearing a headscarf in state institutions, schools and faculties. They considered it violence over women.⁴ With the help of politics of the Party of justice and development, the prohibition of wearing a hijab in schools and state institutions was abolished in Turkey. What has remained in force is the ban on wearing a hijab in the army and in security services.

Also, the Constitutional Court of Germany abolished the prohibition of wearing a hijab by female teachers in schools in 2015.

Tarik Radman referred critically to the jurisprudence of prohibition of wearing a hijab in some western European countries in his interview given to the weekly *Stav* from Sarajevo. “They (in western Europe – I. C.) do not want that Muslim be visible and they

⁴ In *Politika*, 18. 3. 2013, 2.

are telling that to us, either explicitly or implicitly. How to be a Muslim if they do not want to see you? Then you are simply disappearing. There are no symbols, no headscarves, nothing. That is silly and it will not fly, but it is the rhetoric which is now taking hold on the West. It is obvious that we have to stand decisively against it, both as Muslims and human beings as well as the people of the West and as Europeans ... And the visibility is not only in the way how you build mosques or how you dress, but also in the way how you behave, how much you are consistent in your principles, in ethnic recognition that is much more important than the appearance. It is more important to behave as a Muslim than to look like a Muslim. And it does not need to isolate but to open up, reach out a hand toward the society."⁵

3. THE LAW AND THE STANCE OF THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL (HJPC) AS A REASON FOR DISCUSSIONS

Before reflecting upon discussions about the prohibition for female judges to wear a hijab in the courtroom, in short, here are a few lines on the differences between a headscarf, nijab, hijab and burqa. Wearing headscarves had its geographical, cultural, political and religious diversity. Headscarves differed in colour and the colour of it used to sending a message on whether a woman was in mourning or in joy. The scarves used to be differently tied, decorated with jewellery or fringes or without it.

Unlike the headscarf, a nijab covers the entire body, even the face, fists and feet. A nijab leaves "a window" for the eyes.

A hijab – covers everything except for the face and fist, a burqa – covers the entire body, face and has a net on the eyes.⁶ Discussions referred to in this paper relate to female judges wearing a hijab in the courtroom. The word hijab is mentioned seven times in the following different meanings in Quran: a wall or a rampart; curtain, pelmet, screen; a hill, mountain. The Fatwa of the Council of muftis, published due to those discussions, states that "strictly, the term hijab is used as a synonym for covering a head with a scarf and in a broader sense, it means a special style of clothing that is in line with Islamic norms." Broadly, a hijab means covering the entire body, except for the face and the fists. Covering a face (nijab, burqa, headscarf) does not fall into the religious obligations of a Muslim woman. Still, it is admitted in the Fatwa that a hijab, a headscarf, is not treated as a special religious symbol and a mark in the Islamic tradition and therefore cannot be covered by the legal prohibition, as the Council of muftis considers. So, a hijab is not a sign, mark, symbol of Islam, but it is one of symbols of the religious identity for a sociologist.⁷

It needs to be stressed that wearing a hijab has not been the tradition of Muslim women in Bosnia and Herzegovina, but instead covering the head with a scarf, veil, shawl or as Muslim women used to call it "šamija", "šamijica", "jemenija". Lately, the practice of wearing a hijab has been more and more present in Bosnia and Herzegovina

⁵ Tarik Ramadan in an interview given to the weekly *Stav*, 21 May 2015, pages 18 and 19.

⁶ More about this in the book *Moj susjed musliman* (Cvitković 2011).

⁷ Views and comments on motives of veiling Muslim women are different. Let us name a few of those: "... one thing is to wear a headscarf because of your direct incorporation into the essential tradition and the other thing is to refuse to wear a headscarf while the third one is to wear a headscarf not because of the essential affiliation but as an act of ethnic-political choice" (Žižek 2015, 38).

like in Europe. It results in not only different interpretations of that practice but to such exaggerations according to which as if a new march and conquest of Europe have been started again by Muslims with a nijab and hijab. P. Bruckner will go as far as to state: “And the only dream of a new slaughterer of the Ottoman empire (Erdogan – I. C.) is to Islamize Europe. Europe should not fall onto its knees in front of Erdogan, a dictator that supports Islamic states, bombards Kurds in his own country, the one that took a half of Cyprus and does not recognise the genocide over Armenians.”⁸ Graham Fueller has right when writes that „... commentators on the right foresee threatening emergence of 'Eurabia' in future” (2015, 250). It is not an intention to say that Bruckner is right, but the stated view is close to it.⁹

The Muslim response to such accusations and those alike that it is the sign of “Islam-phobia” that seizes more and more western Europe. The term “Islam-phobia” appeared in Great Brittan during the 1980s to describe a radical attitude towards Islam and Muslims. It was also “naturalized” in the political sciences of religion by the end of the 1990s and the beginning of the 21st century, especially after September 11, 2011 when the increase of distrust and hostility toward Muslims happened in the West. It is not only about the attitude towards Islam and Muslims but also towards Muslim sacred places (the term sacred has almost fully disappeared from the public life of western European countries) and historical persons (attacks to mosques; burning Quran; caricatures and in general, showing Muhammad in paintings; prohibition of wearing a headscarf; prohibition of building minarets etc.) When intending to write on Islam-phobia, a sociologist of religion finds himself in quite a difficult situation: it is not unclear or at least insufficiently clear what the subject of his interest is. How to stay in the sphere of a society in these circumstances, which is the primary task of a sociologist, and avoid the sphere of ideology?

Nevertheless, let us return to our primary topic of the paper. Article 32, paragraph 3 of the Judicial rulebook of Croatia stipulates: “Working premises must not have signs that could provoke a suspicion of parties into impartiality of a judge, staff or officials that work therein.” (According to Abramović 2016). Similar provision is in Article 13 of the Law on courts in the Federation of B&H form 2003 and it stipulates: “Judges and staff of the court must not expose any religious, political, national or other affiliation during their performance of the official duty.” There is the same provision in the law on courts in the Republic of Srpska and the Brcko District. Based on the above legal provision and for neutrality of the judiciary and prosecution, in September 2015, the High Judicial and Prosecutorial Council (thereafter as HJPC) of Bosnia and Herzegovina issued the decision by which it prohibits that the holders of judicial functions and employees of judicial institutions wear religious symbols as well as practise religion during their working time. All the above (wearing a hijab, cross, etc.) refer to the staff employed in

⁸ Pascal Bruckner in his interview *Nećemo više tolerirati netolerantne muslimane. To su fašisti*. *Globus* 1. 1. 2016, 53.

⁹ Similar might be also said for M. Kasapović that is far away from any right but her review of the mentioned issues is a bit panicked: “Introducing a special way of dressing, food regime and patterns of behaviour in public institutions and public places, requests that elements of sharia law are built into laws of secular European countries, primarily in reference to marital, family and gender relations, requests to prohibit inscriptions, caricatures, books, pictures, theatre performances, films that ‘insult’ Islam and thereby suspend and limit the freedom of expression and speech, creating religious enclaves in the European cities where living according to their own laws and which the state bodies do not practically have access to – all of these are attempts and signs of ‘crawling islamisation’ of secular western societies” (Mirjana Kasapović, *Europa je na udaru puzajuće islamizacije, ali to još ne vidi*. *Globus* 1. 4. 2016, 47.

judicial and prosecutorial bodies, while parties may expose their religious symbols. A strong reaction came to that decision by the Islamic community in Bosnia and Herzegovina. Interestingly, some female Bosniacs, members of the HJPC stood aside the Islamic community while female Serbs and Croats stood firmly aside the decision of the HJPC.¹⁰ It seems that the writer Nermina Kurspahić was the closest to the problem in those discussions, by having written: does a party wish that someone who “annuls” his/her view with his/her views, judges them in a courtroom.

I have not got involved into those discussions nor do I wish to do so. Simply, in a situation when the accusation for Islam-phobia is so easily taken as a response to every criticism, I do not wish to make such possible accusations. They were strongly expressed in the mentioned discussion. Therefore, I have decided to present different views to those discussions and when necessary, to state a few of my stances.

4. ATTITUDES OF MALE AND FEMALE BELIEVERS AND BOSNIACS OF DIFFERENT VIEWS

Believers bring more emotionality into discussions on contemporary religious topics than they possess professional knowledge and reasoning. This has been also shown in discussions about the hijab. It provoked Rešid Hafizović, a professor of the Faculty of Islamic studies to point his criticism to Bosniac religious and political institutions: “that Bosniac religious and political institutions were deadly silent during all this history about a hijab, while the crowd of the know-nothing was lecturing them on the principles of faith, state and law, barely spelling it in the language that, I guess, was supposed to be our Bosnian language.”¹¹

On the occasion of the international day of the hijab, peaceful protest walks with written messages on banners by which the right to wear a hijab was defended, were organised in cities of Bosnia and Herzegovina with a majority Muslim population, mostly females and young women that wear hijabs. Also, the trade union organisation of the Municipal court in Sarajevo threatened with protests if the HJPC decision was not changed.

Expressing views in favour of the legal provision and the HJPC’s stance was answered with harsh polemics including insults. In that respect, the writer and Oriental studies graduate Jasna Šamić faced a series of insults because of her publicly expressed standpoint on the hijab. There were also objections to feminists indicating that they are exclusively focused on their professional career and easy life, neglecting the importance of family life and the role of women in it, that they are not interested in the tradition of Muslim women in Bosnia and Herzegovina.

The artist Safet Zec was also involved in the polemics “I love the way how my sisters cover themselves today, with long, light white veils, thin cottons for noon prayers that do not destroy the image, face, character and emphasise your personality, gracefulness, femininity, being easy to put on and even easier to take off “ (Zec 2016). Zec stresses the example of late Benizar Bhutto, a beautiful woman with a face smartly framed with a white scarf that used to fall down freely and leave her face – the head uncovered. He objects to young female believers for moving from such practice of covering or head

¹⁰ Zabrana hidžaba je diskriminacija. *Oslobođenje* 20 January 2016, page 10.

¹¹ Dr Rešid Hafizović, professor at the Faculty of Islamic studies in Sarajevo, in his interview in daily *Oslobođenje* of March 2016, 24.

scarf to wrapping. He is a supporter of the attitude to the personal identity that would not stand out by anything at gatherings, discussions, socialising events.

5. VIEWS OF THE ISLAMIC COMMUNITY'S THEOLOGIANS

An attitude towards symbols of the religious affiliation often depends upon who exposes the religious symbol (We or They) and who observes him/her (a sociologist, lawyer, politician, theologian etc.).¹² In that sense, what is important is the intention the person who exposes a symbol of his/her religious affiliation has and the kind of perception of those in front of whom the symbol is exposed (Ferrari). The following lines will present how lawyers commented on wearing a hijab as a symbol of the religious identity in the courtroom and what the leadership of the Islamic community and its theologians said on that matter.

The letter of the Riyasat of the Islamic community, signed by Reis-ul-ulama Husein Kavazović stresses that the stance of the HJPC is “racist and in contradiction to international conventions on human rights”. The Muftis’ Council adopted the religious interpretation of wearing a headscarf/hijab on its session held on February 25, 2016 and issued a fatwa on that matter. The Council stresses that the danger from nationally motivated partiality is much more present than from a possible religiously motivated one. The Council of Muftis called for the relevant authority levels to reassess legal provisions on justice, respecting the Islamic community as the only legitimate one for interpreting the rules of Islam. Also, the Council of Muftis earmarks in its fatwa that in reference to the international codifications of human rights, a hijab belongs to the domain of professing faith.

Some members of the HJPC objected, as indicated in the introduction of the fatwa, for being involved in the interpretation of Islamic symbols and marks, which is not in their scope of the authority and competences. The following is indicated in the issued fatwa: “The Hijab, the headscarf that Muslim women wear is a religious obligation and a clothing practice of a Muslim woman proscribed by principal excerpts of Islam i.e. Quran and Sunnah”. The following verse is cited: “And tell the believing men to lower their gaze and let them take care of their modesty” (well, the head is not a private part – I. C.). The fatwa concludes with the stance that there is no “place for fear that wearing a headscarf, as manifesting the right to freedom of faith, may provoke the partiality motivated by religion”.

The question is: how will a party of different (non-Islamic) religions experience the judgement that is reached by a female judge with a hijab? Will he/she wonder if there is also an attitude toward him/her as toward an Orthodox, Catholic etc.? That is the question from the beginning of this section: who exposes a symbol of religious affiliation (We or They) and who and how observes it? For instance, Bosniacs, Muslims, protested the setting of a statue of the Blessed Virgin Mary in a school yard in the settlement of

¹² Sulejman Filipović writes the following in his text *Povodom otkrivanja muslimanki*: “... a stronger process of uncovering Muslim women originates in our area since 1928 ...The most prominent Muslim cultural-educational organisation 'Gajret' took a decisive stance about that issue almost two decades ago, expressing itself for uncovering Muslim women... an old and very respectful Reis Čaušević ...stated that Islam does not proscribe any uniforms to its believers. His understanding and interpretation is that the faith is not reflected in clothes of men or women ...” (*Oslobođenje* 23 July 1947).

Hodovo near Stolac, as it represents exposing the symbol of one religious community in a multi-confessional environment, which may negatively influence inter-confessional relations (with which I agree – it is not appropriate for any symbol of any religious community to be placed in a public school of a multi-confessional society), but they refuse the possibility (at least as far as the leadership of the Islamic community and a part of those who got involved into the discussion on the HJPC's decision are concerned) that wearing a hijab by a female judge may provoke a sense of suspiciousness of the defendant (that is of a different religious identity) in her objectivity (with which I disagree). I would like it if an empirical research on this matter would be carried out, covering an equal number of respondents from all three religious communities from the whole territory of Bosnia and Herzegovina.

The reactions of the institutions of the Islamic community (Reis-ul-ulama and the Muftis' Council) on the HJPC's decision have so far been mentioned. Now to refer to the views of some theologians, professors of the Faculty of Islamic studies in Sarajevo. In that respect, Dr Almir Fatić opens up the question on whether the provision on hijab has referred only to the Prophet's wives of female believers in general. Answers to that question are different in comments of the Quran and also in the Muslim practice. Fatić considers that the context of the verse on that obligation "has referred only to the Prophet's wives due to specific sharia's reasons and special honours". His colleague from the Faculty of Islamic studies, Džemaludin Latić, has aligned the fight for the hijab into the context of a fight for the return of faith to Catholic Europe. Fikret Karčić, a leading theoretician and professor of sharia law in Bosnia and Herzegovina, has wondered if religious symbols "are the key issue of the judicial system in Bosnia and Herzegovina that is jeopardised by public disrespect of decisions of the Constitutional court of BiH, requests for exclusion of foreign judges from its composition and by the attempt to discriminate disrespect of the highest judicial body in the state."

Academic Muhamed Filipović has also reacted in public, and according to him, the HJPC's decision represents a denial of human and religious identity of Muslims.

Unlike them, Rešid Hafizović, professor at the Faculty of Islamic studies in Sarajevo, points in his interview given to the daily *Oslobođenje* (of March 5, 2016) that it is frivolous to put the issue of the hijab into the range of obligations like prayer, zakat, fast, etc. In defense of such a stance, he quotes the following Quran verse: "O children of Adam, we have given you clothing to cover your private parts, and sumptuous suits, but clothing of piety is the best clothes (al-A'araf, 26)." The above verse emphasises the obligation of covering private parts, into which, according to Hafizović, heads of neither men nor women certainly do not fall. Hafizović says that "the head is to be enlightened and not to be covered at all costs". The hijab that a woman wears is not a guarantee that she will not breach some fundamental moral principles of Islam: "Today in Afghanistan, Iraq, Syria, Yemen, Libya and elsewhere, where women under the hijab blow themselves up and kill innocent people".

6. VIEWS OF LAWYERS

The polemic on wearing the hijab by female judges in the courtroom has shown that it is about the defense of plurality of religious symbols in the public space (Ferrari). Lawyers point out that the institutional public space (like parliaments, courts, public

administration) are places where decisions binding to all are made (Ferrari). That space has to be “not only equitable and impartial but it must also be seen as such” (Ferrari).

Lawyers remind the public that the authority is split between legislative, executive and judicial in a democratic state. The judicial authority acts on the principles that are different from those of the legislative and executive authorities. It is independent from both the legislative and executive authority and impartial in decision making. In reference to that, if the state and religious communities are separated and the courts are a part of the state authority, there should be no space for religious symbols in the courtrooms. Particularly when it comes to a multi-confessional environment, religious symbols of one faith in the courtroom are certainly suitable for provoking suspicion in the (im)partiality of the court of a party that is of a different faith (Abramović 2016).

A part of the Bosniac intellectuals that got involved into the discussion o (J. Šamić, E. Šarčević, Nermina Kurspahić, etc.) consider that courts have to be protected from competing with religious symbols in the courtrooms, thereby opening a wider polemic on wearing a hijab.

A judge, B. Perić, is committed to observing separately two levees in the court: the courtroom and the rest of the court space. The courtroom has to remain under the prohibition of exposing religious symbols: “The courtroom is the last inviolable place of equality and justice, common to all, and therefore, it should not be jeopardised with publicly exposing any kinds of identities” (Perić, 2016). It is easy to agree with his stance as it is not the same when, for instance, the cross is in the courtroom or on a square or at the crossroads. The cross in the courtroom may provoke a suspicion in the partiality of jurisprudence. In the latter case, there is no such suspicion (although, personally, I am not for having the cross or any other religious symbol posted on squares in multi-religious societies).

However, the HJPC decision points at two problems: one is wearing religious symbols by those who are the bearers of judicial functions and the second relates to practising religious rituals (prayers) during working hours (outside of the breakfast break defined by the Rulebook).

State attorneys and judges represent the state by following the Constitution and the law(s) and justice, unlike medicine, and do not put up with the objection to conscientiousness (Abramović 2016). It is not sufficient for a judge to be impartial; he also has to look it (Abramović 2016).

The attorney that represents the Islamic community in the Inter-religious Council, Emir Kovačević, first indicates that the HJPC justifies such a conclusion made “from the aspect of *perception of the public* (underlined – I. C.) on existence of religiously motivated partiality in justice”. Kovačević does not accept such an explanation. “*To claim* (italics – I. C.) that persons with religious symbols are partial...” (Kovačević 2016). The HJPC does not “claim” but points at the possible “perception of the public” if judges expose their religious symbols in the courtroom. Those are two completely different matters. Kovačević thinks that allowing for wearing religious symbols in the judicial institutions would only mean that Bosnia and Herzegovina respects the individual rights of its citizens. And “here, it is not about democracy nor it is about individual rights and freedoms, it is about the state, its functions and bodies by which those functions are accomplished” (Bakšić Muftić).

Jasna Bakšić Muftić, a professor at the Law Faculty in Sarajevo consider that “if justice is equal to all, then the face of justice has to be uniform and faceless, only with visible symbols of dignity of the court (court togas and wigs)“, standing for introduction of the obligation of wearing the official uniforms (togas) by which the state’s neutrality, equality

of the parties in the legal proceeding and impartiality of the court would be symbolically expressed. Why is the symbol of justice a blindfolded figure with scales in one hand? It symbolically sends the message on blindness to differences in decision making.

Therefore, a part of the problem may be possibly solved by uniform clothes in the courtroom (togas, wigs). Togas of different colours are prescribed for all (judges, state attorney, lawyers) involved in the judicial processes in Slovenia.

Some lawyers consider that the court clerks working with parties should also refrain from exposing their religious symbols. The rest of the court structure, parts of the court administration that do not have links with the courtroom and parties could be exempt from this decision (like those in the land cadastre, scriptorium) (Perić 2016). There are no limitations for parties. The question is if the prohibition should also relate to the prosecution as it is not a judicial institution but a state body. Perić considers that the prohibition should relate to the work of prosecutors and prosecutorial teams, but not to all other staff members employed in the prosecution offices.

7. CONCLUSION: WHICH ARE THE OFFERED SOLUTIONS?

The polemic has shown that limitations to exposing symbols of the religious identity should not relate to all state institutions, like to the Parliament. Jasna Bakšić Muftić considers that female members of the Parliament may wear symbols and marks of their people (including religious symbols). Muftić specifies that “Male/female members of the Parliament may be or wear characteristic symbols of a group”.

The limitations should not relate to all educational institutions. As a professor of the University of Sarajevo, I had only one case of a female student wearing a burqa. There was a problem of her identification during exams. The photographs in her school books were covered with black paper. She started her studies without a burqa, and she finished them like that as well – she “uncovered” herself. Also the other female students that wore nijabs had difference practices. They did not wear them, then upon getting married, they “covered” themselves, and then experienced a change again – they stopped wearing them. Certainly there were those that remained consistent in their clothing and wearing a nijab. I wish to stress that mostly, they were proper in fulfilling their students’ obligations and they prepared for their exams. There were also no problems (from both students and professors) because there was one female professor at the journalism studies department wearing hijab. On the contrary, students appreciated her professionalism and fairness.

There are also those that consider that exposing a religious symbol in a school can be questionable because by that, the public institution may show that it prefers one particular religion. A teacher in a state school is a civil servant, so he/she cannot afford the same liberties the student can (exposing symbols of religious affiliation on their body). Ferrari thinks that although a religious symbol can be the same, the position of a person that wears it is different. It seems that the majority of lawyers considers that the institutional public space should be neutral, which also implies that there should be an exclusion of religious symbols from it.

Three views have been crystallised in the polemics led over the hijab in the courtroom in Bosnia and Herzegovina and in Europe:

The first ones are for preserving the secular character of the public space. By exposing religious symbols in the judicial institutions, the principle of the secular state

would be ruined and the perception of the public on the impartiality of judges would be questioned.

The second ones are for favouring a dominant religion in the country.

The third ones prohibits exposing religious symbols in public institutions but letting employees wear them (like in Great Britain). Fikret Karčić considers that “with an increased influence of the Anglo-American law in the world, including our law as well, why should not we clearly decide for the American model of the secular state... America, and not Europe, is the cradle of the freedom on faith” (2016, 27). If the American model would be accepted, then there could be no teaching of religion in the state schools.

REFERENCES

- Abramović, Andrej. *Vjerska obilježja u sudovima, da ili ne?* Available at: <http://www.fcjp.ba> (18. 3. 2016.)
- Bakšić Muftić, Jasna. Nije riječ o demokraciji već o državi. *Oslobođenje* 12. 2. 2016.
- Cvitković, Ivan. *Moj susjed musliman*. Zagreb: Školska knjiga, 2011.
- Cvitković, Ivan. *Religija u zrcalu teorija*. Sarajevo: Centar za empirijsko istraživanje religije, 2016.
- Fatić, Almir. Značenje riječi hidžab. *Preporod* 1. 3. 2016.
- Ferrari, Silvio. Vjerski simboli u javnom prostoru. *Oslobođenje* 6. 2. 2016, 25.
- Fetva Vijeća muftija. Mahrama je vjerska obaveza. *Preporod* 1. 3. 2016, 3.
- Fuller, Graham. *Svijet bez islama*. Sarajevo: Dobra knjiga, 2015.
- Karčić, Fikret. Pravosuđe i vjerska obilježja. *Oslobođenje* 13. 2. 2016, 27.
- Kovačević, Emir. *Za ili protiv vjerskih obilježja u pravosudnim institucijama BiH*. Available at: <http://www.fcjp.ba> (18. 3. 2016.)
- Kurspahić, Nermina. Ženski izbor. *Oslobođenje* 15. 2. 2016, 11.
- Perić, Branko. Pravosuđe i vjerska obilježja: izazov i perspektive. Available at: <http://www.fcjp.ba> (18. 3. 2016.)
- Simoniti, Iztok. *Tri boga, dvije kulture, jedna civilizacija*. Zagreb: Naklada Pavičić, 2014.
- Sloterdijk, Peter. *Svoj život promijeniti moraš*. Zagreb: Sandrof & Mizantrop, 2015.
- Zec, Safet. Prokletstvo kose. *Oslobođenje* 12. 3. 2016, 26.
- Žižek, Slavoj. *Islam i modernost*. Zagreb: Algoritam, 2015.

PROBLEM SIMBOLA RELIGIJSKOG IDENTITETA U POGRANIČJU (Na primjeru hidžaba u Bosni i Hercegovini)

Bauk religije kruži svijetom. Kao što se nekad raspravljalo o komunizmu, danas se raspravlja o religiji/ama s mnoštvom kontroverznih pogleda i ocjena. Jedna od tih rasprava vodi se i oko simbola religijskog pripadanja koji su postali aktualni širenjem religijskog pluralizma. Osobito je to pitanje aktualno u pograničju. A Bosna i Hercegovina je pograničje različitih religijskih kultura.

Kult kose u islamu. Različite religijske kulture se različito odnose prema kosi (od njenog pokrivanja do brijanja glave). Od 90-ih godina prošloga stoljeća u Bosni i Hercegovini se vraća tradicija pokrivanja muslimanki, najčešće je riječ o hidžabu. Razlike između marame, nikaba, hidžaba i burke.

Početkom 2016. godine povele su se rasprave o nošenju hidžaba u sudnici. U tekstu se osvrćemo na različitost sudskih praksi oko hidžaba u nekim zemljama Europe i SAD. Tu je i praksa Europskog suda za ljudska prava. „Strah“ od hidžaba kod dijela europskih intelektualaca. Iz tog „straha“ rađa se islamofobija.

Povod za rasprave o hidžabu u Bosni i Hercegovini bio je Zakon o sudovima i odluka Visokog sudskog i tužilačkog vijeća (VSTV) o zabrani sutkinjama da u sudu nose hidžab. Iznosimo stavove o tome vjernika/ca i Bošnjaka/inja različitih svjetonazora, stavove teologa i Islamske zajednice. Naravno, osvrnut ćemo se i na stavove pravnikar iznesene u ovoj polemici. Na kraju, koja rješenja se nude?

Ključne reči: *Islam, identitet, simbol, hidžab, sud, suci, sudska praksa.*