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THE SUBCULTURE OF CLOTHING BETWEEN HUMAN RIGHTS AND THE THREAT OF TERRORISM

ABSTRACT: Although at first glance clothing choices appear to be a matter of individual freedom—subject only to certain exceptions involving unwritten, or more rarely written, norms that typically carry no serious sanctions—there are situations in which this issue is raised to a much higher level. It is often linked to specific garments associated with Muslim women, such as the hijab, niqab, burqa, and others. In line with this, the paper highlights certain challenges related to human rights issues, but also to security concerns, which require a more in-depth and nuanced approach, especially considering numerous instances in which men dressed as women have carried out terrorist attacks or evaded law enforcement. In order to propose a suitable legal solution—a compromise that would respect individual rights while also addressing potential security risks—the paper employs several methodological approaches. A comparative method is used to examine the legal frameworks of different countries. Documentary analysis is applied to judgments of the European Court of Human Rights. Additionally, an analytical approach is used to examine relevant passages

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from the Qur'an that pertain to clothing and the obligation to cover certain parts of the body.

Keywords: *human rights, terrorism, female terrorists, security, European Court of Human Rights.*

1. Introduction

As is the case with many spheres of life, we can say that terrorism is characterized by many prejudices. This especially applies to female terrorists, considering that when terrorism is mentioned in the general public, among the first associations is a man with a distinctive appearance, of the Islamic faith. On the contrary, in the context of terrorism, women were often associated with some other terms, such as, for example, human trafficking as a form of financing terrorism, given the numerous cases in which, for this reason, “they were taken by fraud or force and sold to work in forced prostitution” (Bjelajac, Matijašević & Dimitrijević, 2012, p. 395).

Although in recent years, in the majority of cases, men undertake terrorist attacks, women and children are increasingly mentioned in the context of carrying them out, even though they were traditionally spoken of primarily as victims (Dabić, Spasojević & Radulović, 2023; Prelević Plavšić, Spasojević & Dragojlović, 2023). One must not ignore the fact that Islam, according to certain, extreme interpretations, foresees a “reward” for men, but also for women who undertake a suicidal terrorist attack. Accordingly, men will be welcomed in paradise by seventy-two virgins¹, and women will be massaged with scented oils by young men wrapped in towels (Petrović, 2018, p. 70).

The statement that women's terrorism is a recent phenomenon should be approached with great caution and extremely conditionally. Apart from the numerous examples of attacks undertaken by them, some of which are more than a century old, the component that additionally relativizes the given allegations refers to the question of how broadly “women's terrorism” should be interpreted as a phrase. If we were to approach the mentioned issue to an extremely extensive extent, under this phrase we could subsume the role that women play as mothers in the indoctrination of children, through raising and

¹ In certain situations, the mentioned award is viewed quite sarcastically, as was the case in 2005 in Denmark in the newspaper “Jyllands-Posten”. On that occasion, in the given newspaper, a caricature of the prophet Muhammad was shown, standing on a cloud, telling the suicide bombers who are waiting in line to enter heaven to return, because there are no more virgins in it, so they cannot be admitted (Vuković, 2018, pp. 139–140).

educating them (de Leede, 2018, p. 1). In accordance with this approach, it should be noted that terrorists often see female members of their organizations as targets for rape, and even mere “cannon fodder” (Spasić & Vučković, 2011, p. 263). In contrast, the extremely restrictive approach, which is particularly characteristic of the general public, almost equates female terrorism with suicide bombings.

It would not be correct to equate female terrorism with suicide bombings, especially if we did so because of the specific, conservative dress code of women of the Islamic faith. On the contrary, there are examples of attacks of this type, for which it cannot be said that there is a correlation between the wearing of said clothes and their execution.² Nevertheless, taking into account the frequency of such attacks, which can be directly linked to the misuse of the aforementioned clothing, primarily by female terrorists, but also by male perpetrators, this problem should be approached with a lot of attention.

Accordingly, it needs to be approached from several angles. Apart from the religious aspect, i.e. the review and analysis of the relevant chapters of the Qur’an, certain comparative legal solutions regarding the prohibition of wearing some of the aforementioned items of clothing, as well as the practice of the European Court of Human Rights, deserve special attention. In the search for an adequate, balancing normative approach, we will analyze the comparative legal solutions of individual countries, guided by several criteria when selecting them. On the one hand, we would like to point out the variety of reasons that were guided by the legislators of individual countries, among which those related to the security aspect, as well as those related to women’s equality, stand out. On the other hand, we believe that, bearing in mind the transnational nature of terrorism, we should take into account the normative solutions of individual European countries as well as those from other continents. In other words, the transnational character of terrorism should be viewed not only through the prism of terrorists and their attacks, but also through the prism of the necessity of fighting against them in the normative field, which also knows no borders. At the same time, one should not be prejudiced when it comes to countries whose legal systems are not among the developed ones, since this fact does not necessarily mean that such systems cannot have certain solutions that deserve attention and that can represent a good basis for the action of our legislator. The selection of cases from the practice of the European Court of Human Rights, which we will analyze, was

² In a case dating back to 1985, sixteen-year-old Sana Kudali killed two Israeli soldiers while driving a truck loaded with explosives (Zedalis, 2005).

made considering that they represent an adequate example of the application of the principle of proportionality between respect for religious freedom and respect for the interests of public security, which is dominantly derived from the decisions of the aforementioned court, which also represents a type of balancing approach. Analyzing one of the cases, we will draw attention to the existence of similar problems among members of other religions, which concern the respect of the right to freedom of religion, in the context of the justification of short-term removal of certain items of clothing, for the sake of public safety, as well as to the fact that in this case, continuity can be observed in the observance of the aforementioned principle of proportionality.

2. “Clothing as a terrorist threat”, some comparative legal solutions and a proposal *de lege ferenda* for domestic legislation

As was the case much earlier with Christian states, not even individual Islamic states remained immune to the influence of secularism. However, a large number of cases from practice testify that the aforementioned influence did not lead to a decrease in religiously based terrorism. When it comes to women, among them in recent decades, especially among those of a younger age, an increasing number of those who declare themselves as believers can be observed. Of course, such determination does not necessarily indicate belonging to terrorist organizations in the vast majority of cases. The stated religious determination can be seen in the range from returning to the traditional way of dressing, under which, among others, we can classify the hijab, which since the end of the last century has been seen more and more frequently in certain urban settlements in our country, and up to the cultivation of sympathies or even membership in terrorist organizations.

Problems often arise when distinguishing the hijab from clothing items such as the burqa and the niqab. Hijab is a scarf that covers the hair, head and neck, while the face is completely uncovered. The niqab is a fabric that, apart from the mentioned parts, also covers the face, with a slit at eye level. Burka is a one-piece, the most closed way of dressing, which covers the whole body and face, with a narrow mesh in the area of the eyes.

These items of clothing can represent a convenient way of hiding cold and firearms and explosives, which, among other things, was one of the reasons for banning some of them in certain countries. For example, in 2011, France banned the wearing of the niqab and burka in public places (Družetić, 2013). At that moment, the current French president, Nicolas Sarkozy, found the justification for that step in the need to protect women and ensure equality

(Avolio & del Carpio, 2020). In addition, he cited as a reason the obligation to accept French cultural patterns, saying that those who do not do so are not welcome in France (Milošević, 2012). China, Denmark, Germany, Belgium, Italy and Spain were guided by similar or the same reasons. On the other hand, the Netherlands, Congo, Chad and Cameroon have openly and unequivocally pointed out that the reason for this is the protection of security and national interests (Simić, 2019). In early 2022, the French senate decided on a more radical, prohibitive approach, banning the wearing of the hijab during sporting events, under the rather unconvincing pretext that wearing the garment poses a risk to the safety of female competitors during performances, as reported in *Aljazeera* (2022). Reasons related to religious neutrality, i.e. secularism, are often cited as a justification for the application of a prohibitive approach (Kurtović, 2018). However, in some cases, the prohibitive approach can have a counterproductive effect, manifested in causing revolts among members of a given religion, which can ultimately lead to their radicalization and extremism. In addition to problems related to security, the prohibitive approach triggers some others such as limiting freedoms and privacy (Domazet, Marković & Skakavac, 2024), discrimination (Rašević & Vlajnić, 2022), etc.

The key question that arises is how to find a balancing solution between the right of women of the Islamic faith to be dressed in accordance with the teachings of the religion to which they belong and the need for preventive action in terms of suppressing a possible terrorist threat. When it comes to the burka and chador, their convenience for hiding cold and firearms and explosives is often pointed out in support of their ban, and that thanks to them, identification problems can arise. Regarding the first argument, we believe that it can only be partially accepted. Although this danger exists, it is not manifested to a lesser extent when wearing certain items of clothing that are not specific to members of the Islamic tradition, culture and religion, such as coats, wide and long jackets, etc.³ If, for the purpose of risk assessment, we were to exclusively use as a criterion the suitability of hiding explosives, in that case every person who, for example, wears a coat, would represent a possible terrorist. The solution reached by Sri Lanka is a good attempt to find the aforementioned balance, bearing in mind that it prohibits covering the face, i.e. the use of the burqa and niqab, while allowing the use of the hijab

³ Although cases of wearing suicide belts or vests under clothing that highlights the attacker's body to a greater extent, such as shirts, t-shirts, have been recorded in practice, they are still not the most suitable method of hiding explosives. In one of the cases that happened in Mosul, Iraqi soldiers noticed in time that a six-year-old boy, sent by jihadists in a suicide bombing attack, was hiding something suspicious under his shirt.

and chador. However, it is acceptable in the part concerning the hijab, but not completely in regard to the chador. A chador is a type of wide black cloak, which looks like a tent due to its dimensions. It covers the entire body, except for the face. The problem arises because it is designed in such a way that its parts can be held by hand in the area of the face (Jovanović, 2014), which in certain situations can make face identification difficult.

Unlike the mentioned countries, in the Republic of Serbia, there are no laws prohibiting the wearing of the above items of clothing, which certainly ranks our legislator among the more liberal ones. However, this does not mean that there are no security protocols in accordance with which short-term removal is allowed⁴, which ultimately does not contradict our Constitution, as the highest legal act, nor with international regulations and the views of the European Court of Human Rights. We believe that our legislator should accept a modified version of Sri Lanka's decision, which would mean that wearing hijab, sheila, hijab amira, khimar and similar parts of clothing that do not cover the face, as well as chadors, should be allowed in public spaces, with the prohibition to cover the mentioned part of the body with its ends. Such a solution would represent a significant step forward in terms of security, while it would not be a disruptive factor in the field of exercising religious rights and freedoms.

3. The Qur'an and the subculture of clothing

The opinion that the wearing of hijab, shayla, hijab amirah, khimar⁵ and similar parts of clothing, as well as chadors should be allowed in public spaces, with the prohibition to cover the face with its ends, which satisfies both security reasons and religious teachings, does not contradict the verses of the Qur'an.

⁴ For example, some airports in Serbia, such as Niš and Kraljevo, have security protocols in accordance with which it is necessary to remove certain items of clothing during scanner control, given that, unlike the newer generation scanners that some larger airports have, they cannot scan through clothing. These are religiously neutral items of clothing, such as jackets and coats, but also those that cover the head and face. For Muslim women who do not want to remove the headscarf on the spot, a special examination room is provided, so that the violation of their privacy is reduced to the smallest, necessary measure in order to protect their dignity and integrity (Euronews Srbija, 2023).

⁵ Sheila presents a long rectangular scarf, which is freely wrapped around the head and thrown over the back. Hijab amir is a two-part garment, where the first part, like a cap, covers the head, covering the same area as a classic hijab, while the second part, in the form of a sleeve, covers the back. In the case of a khimar, it is a cloak with a slit in the face, which covers the ears, hair, back and extends to the waist (Steinver, 2016).

It does not directly state which of the mentioned items of clothing are considered adequate, just as face covering is not set as an imperative. In Sura 24, it is stated: “Tell the believers to lower their gaze and take care of their private parts; that is better for them, for verily Allah knows what they do” (verse 30). “And tell the believers to lower their gaze and take care of their private parts; and let them not allow anything to be seen of their ornaments except what is external anyway, and let them lower their veils over their breasts; let them not show their ornaments to others, they can only do so to their husbands, or their fathers, or their husbands’ fathers, or their sons, or their husbands’ sons, or their brothers or their brothers’ sons, or their sisters’ sons, or their female friends, or their female slaves, or men who do not need women, or children who do not yet know what the private parts of women are...” (verse 31) (Korkut, n.d., pp. 162–163). In addition, Surah 33 reads: “O Believer, tell your wives, and your daughters, and the believing women to lower their garments and line up.” That way, it will be easier to recognize them, so they won’t be harassed. And Allah is Forgiving and Merciful” (verse 59) (Korkut, n.d., p. 200).

In the quoted verses, there is no mention of the necessity of covering the face, but only the breasts are directly mentioned as a part of the body, i.e. the necessity of covering them. In addition, it is emphasized that the wearing of dresses is mandatory, but there is no mention of the necessity of covering the face either.

When it comes to children and the question of when they should start wearing the hijab, the Koran does not offer a concrete answer. Experts in this field state several alternative prescribed conditions: ejaculation while awake or in a dream, growth of pubic hair, entering the fifteenth year, getting the first menstruation (Kuduzović, n.d.). Therefore, by fulfilling any of the mentioned conditions, which in the religious context are considered signs of adulthood, it is considered that the obligation to wear the hijab arises.

However, in practice, examples of wearing the hijab, but also somewhat less frequently the burka and niqab, can be found by children of a younger age. It seems that such a phenomenon should not be viewed negatively from a normative aspect, if it is about wearing the hijab, bearing in mind, among other things, the views and interpretations of certain influential Islamic theologians. For example, Kuduzović points out the need for “getting the child used to wearing loose clothes and covering the head with a headscarf”, saying that “a female child should not be forced to wear the hijab, but the Islamic costume should be gradually, in a nice and acceptable way, made to come to her liking, so that when she becomes of age she accepts the obligation to wear the hijab” (Kuduzović, n.d.).

On the other hand, we believe that, as is the case with adult Muslim women, the wearing of burqas, niqabs and similar clothing items that cover the face of children who are not even considered to be of legal age in a religious context should not be viewed favorably by the legislator. Apart from the fact that such behavior has no basis in Islam itself, and for this reason, we cannot speak of a violation of religious rights, there are reasons that can be linked to problems in determining the identity of perpetrators and victims of criminal acts.

If the wearing of the burqa and niqab were allowed, it would open the door to certain types of abuse by non-Muslims as well. Taking into account the innovativeness of juvenile perpetrators, it seems that a potential problem could arise if they adapted their *modus operandi* in such a way that they would use the mentioned items of clothing for camouflage and thus make it difficult for the competent authorities to detect them. This could create potential problems in the field of establishing the identity of the perpetrators of theft, robbery, burglary, etc. primarily in countries where a large number of Muslims live, where the wearing of the aforementioned clothing by the younger population would be a daily occurrence. In addition, problems in the field of establishing identity could also arise when combating child trafficking, which, like human trafficking in general, is one of the most prevalent forms of financing terrorism (Bjelajac, Tepavac & Dašić, 2012, p. 240). When moving, transporting, handing over the victims, the burqa or niqab could represent a suitable means of hiding their identity, as well as possible traces of physical violence, to which they are often exposed. Bearing in mind that it is characteristic of minors and child victims of human trafficking, among other things, that they often move in public places in a group, in the presence of adults, and that they often change locations on a daily basis, crossing long distances (Alempijević, et al., 2010, p. 65), wearing the aforementioned clothing items would be a complicating factor when finding and rescuing them.

4. Practice of the European Court of Human Rights

Proponents and opponents of a complete ban on burqas and niqabs rely on different arguments based on human rights. In other words, what both of them have in common is the fact that they prioritize the protection of women's rights, but from different aspects. On the one hand, such a ban is justified by the need to protect the dignity and equal rights of women (Okin, 1997), as well as by the fact that it contributes to the preservation of public security (Chesler, 2010) and reflects national values, such as official secularism,

but also the so-called “Christian-type secularism” (Malešević, 2007, p. 19), which, although formally based on the separation of church and state, fundamentally tolerates and even sometimes promotes Christian motives in various socio-political fields. On the other hand, such a ban is criticized because it undermines women’s right to equal treatment (Howard, 2012), freedom of religion (Ashni & Gerber, 2014), as well as freedom of movement and access public services (Human Rights Watch, 2009).

The existence of arguments in support of the fact that the wearing of the mentioned items of clothing should be allowed, does not mean that there are no circumstances, due to which it is justified to take them off for a short time, such as checking the identity by the competent authorities, taking photos for the preparation of personal documents, etc.

The European Court of Human Rights is of the same opinion. In the case of *El Morsli v France*, a Moroccan citizen, Fatima El Morsli, married to a French citizen, went to the Consulate General of France in Marrakesh on March 12, 2002 to apply for a visa. She was not allowed to enter the consulate because she did not agree to remove her veil for identity verification. On June 25, 2003, the Board of Appeals rejected the appeal filed on her behalf by her husband, with the explanation that the formal requirements were not met, considering that she did not comply with the regulations governing the visa issuance procedure. In a new appeal that he submitted on her behalf to the Council of State of France, which was rejected, the husband invoked the right to respect for family life, that is, the right to freedom of religion.⁶ The conclusion of the European Court of Human Rights was that there was no disproportionate violation of the mentioned rights, because the measures taken were necessary in the interest of public safety and that the removal of the veil for the purpose of the security check takes a very short time.

The aforementioned opinion of the European Court of Human Rights does not apply exclusively to cases concerning members of the Islamic faith. In the case of *Phull v France*, British citizen Suku Paul, referring to Art. 9 of the European Convention on Human Rights and Art. 2 st. 4 of Protocol no. 4 of this convention, pointed to the violation of the right to freedom of religion and the violation of the right to freedom of movement. Since the person in question is a member of Sikhism, he is obliged to wear a turban on his head in accordance with the principles of this religion. When he was returning from a business trip on October 10, 2003, airport security officers insisted

⁶ Fatima El Morsli v France, application no. 15585/06, judgment ECHR, 4. 3. 2008, par. 9.

that he remove his turban for inspection, despite the fact that he agreed to go through the security scanner and to be checked using a handheld detector. In addition, in accordance with the mentioned article of Protocol no. 4, he pointed out that his right to freedom of movement was violated, considering that the given security procedures should not be applied to him in the territory of the countries that are part of the European Union, given that he is a citizen of Great Britain, which was a member of the same at that time. The court concluded that security procedures at airports are necessary in order to preserve public safety, as well as that the methods of applying security measures in the mentioned case fall within the domain of free assessment of the French state, especially considering that it is a one-time measure. For this reason, this part of the petition is unfounded and, in the opinion of the court, it is necessary to reject it in accordance with Art. 35, paragraph 3 and 4 of the European Convention on Human Rights. The court also came to the conclusion that the security measures to which the passengers are subjected before boarding the plane cannot constitute a restriction of freedom of movement, and for that reason this part of the petition must also be rejected in accordance with the mentioned article.⁷

5. Examples of men using women's clothing for terrorist purposes

In contrast to the specifics of the aforementioned disputed items of clothing and certain human rights in which context we can talk primarily about the potential violation of the mentioned rights of women, when it comes to the mentioned clothing in the context of a security threat, the situation is somewhat more complex. From numerous examples, it can be concluded that this issue can be related, not only to female, but also to male perpetrators of the crime of terrorism in terms of hiding explosives, weapons or identity. There are a large number of examples in which male terrorists disguised themselves as women, both in order to escape and hide, and when carrying out the attacks themselves.

In a case that occurred in 2011, one of the leaders of the Islamic Movement for Uzbekistan, a terrorist organization that collaborated with Al Qaeda, was detained with two other associates in Kunduz, a city located in the northern part of Afghanistan. It was established that, disguised as women wearing a

⁷ Phull v France, application no. 35753/03, judgment ECHR, 11.1. 2005, par. 9.

burqa, they intended to carry out suicide attacks on members of the police and other Afghan security forces (Nezavisne novine, 2011).

In 2015, seventeen Islamic State terrorists unsuccessfully tried to escape from members of the Iraqi security forces from the area around the Diyala River, i.e. the area from Baghdad to the border with Iran, using make-up and a chador (Jovanović, 2015).

During the terrorist attack that was successfully carried out by members of the Islamic State in 2017, four terrorists managed to pass the security measures of the Iranian parliament building dressed in the aforementioned women's clothing. After entering through the entrance designated for visitors, they opened fire first on the security guards, after which they continued to shoot indiscriminately in the lobby. They reached the fourth floor without any problems, where one of them blew himself up (Hrupić, 2017).

6. Conclusion

Although we should not lose sight of the other ways in which women undertake terrorist attacks, suicide bombings are among the most frequent ways of carrying them out. Accordingly, special attention is paid to the analysis of respect for religious freedoms, primarily for members of the Islamic faith, which relate to the traditional way of dressing, that is, the choice of certain items of clothing and the need for normative confrontation with potential security threats. In the search for an adequate normative approach and solution, a review was made of individual comparative law solutions, the views of the European Court of Human Rights and certain cases of misuse of women's clothing for terrorist purposes, as well as an analysis of relevant parts of the Qur'an, as a result of which we drew certain conclusions.

Although both the professional and the lay public can hear opinions that are often polarized when it comes to the right of Muslim women to wear the mentioned clothing items, it seems that it is justified to adopt a middle, compromise solution. In other words, we believe that taking a prohibitive position, that is, a position that implies a complete ban on wearing clothes that are characteristic of women of the Islamic religion, would be inappropriate. Apart from the unnecessary encroachment on human rights, it seems that an extreme point of view like this would have a counterproductive effect, which in some cases could manifest itself in the range of creating or deepening the gap between the mentioned persons and state institutions or even members of other national and religious communities, and ultimately their radicalization. On the other hand, the opposite, permissive approach, i.e. an approach

reflected in the absence of any prohibitions in this regard could lead to problems in the field of security. Although, on the one hand, accepting this position would most likely rule out potential objections related to disregard for human rights, on the other hand, such a move would create opportunities for abuse and identity concealment, not only when it comes to members of terrorist organizations, but also when it comes to male perpetrators of this crime, as evidenced by numerous cases from practice. An approach that we can label as balancing seems to be the most acceptable. In accordance with the same, we believe that the wearing of a sheila, hijab, hijab amira, khimar, and chador should be allowed in public, with the prohibition to cover the face with parts of this article of clothing. By accepting this solution, both the security criteria and the criteria regarding respect for human rights would be satisfactorily respected.

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SUPKULTURA ODEVANJA IZMEĐU LJUDSKIH PRAVA I TERORISTIČKE PRETNJE

APSTRAKT: Iako se na prvi pogled čini da način odevanja, predstavlja stvar potpuno slobodnog izbora svakog pojedinca, uz određene izuzetke koji se tiču poštovanja pojedinih nepisanih ili, ređe, pisanih pravila, iza kojih najčešće ne stoji nikakva ozbiljnija sankcija, postoje situacije u kojima se razmatranje navedenog pitanja podiže na znatno viši nivo. Ono se neretko dovodi u vezu sa pojedinim odevnim predmetima karakterističnim za pripadnice islamske veroispovesti, kao što su hidžab, nikab, burka i drugi. U skladu sa tim, u radu je ukazano na određene probleme koji se odnose

na pojedina pitanja koja se tiču ljudskih prava, ali i onih bezbednosnog karaktera, kojima je potrebno pristupiti ekstenzivnije, imajući u vidu i brojne primere u kojima su muškarci obučeni kao žene izvršili terorističke napade ili pobjegli od nadležnih organa. U cilju predlaganja adekvatnog zakonskog rešenja, koje bi predstavljalo kompromisno rešenje koje bi uzelo u obzir potrebu za poštovanjem pomenutih prava, ali i potencijalne bezbednosne probleme, korišćeno je nekoliko metoda. Korišćen je uporedni metod prilikom sagledavanja normativnih rešenja određenih država. Primenjena je dokumentaciona analiza u pogledu presuda Evropskog suda za ljudska prava. Osim toga, analitički smo prisupili ovom problemu sagledavanjem delova Kur'ana koji se tiču odevanja i potrebe pokrivanja određenih delova tela.

Ključne reči: *ljudska prava, terorizam, teroristkinje, bezbednost, Evropski sud za ljudska prava.*

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