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Could the Ruling in the Watkins-Singh Case Influence British Policy Towards Islamic Minority?*

Abstract: *This paper examines the court ruling in the Watkins-Singh case by which the right to wear a piece of religious apparel was given to a Sikh girl, whereas the same right was denied in arguably comparable cases regarding Islamic clothing. In the first part of the paper it is established that such a comparison is indeed possible; in the second it argued that a number of reasons in favour of ban are largely unfounded and that the Muslim minority has been put in a de facto unequal position in comparison to Sikhs; third section suggests that the ruling in this case was based on an implicit account of the intrinsic value of culture which is theoretically implausible and practically unsustainable.*

Key words: *Watkins-Singh Case, Sikhs, Muslims, multiculturalism, policy toward minority*

Introduction

Ever since two Muslim girls were expelled from their school in Cheshire in 1990 for wearing hijabs (also called Islamic veils or headscarves), the Islamic dress controversy has become one of the greatest challenges to British society.[1] The government has chosen a cautious approach to the issue of religious apparel, and has never responded to it by enforcing any kind of substantial and concrete nation-wide policy. Specifically, by not interfering, it has given schools the right to make and enforce their uniform regulations, including the right to ban the clothing the school authorities deemed inappropriate. The other source of nation-wide normative decisions, British jurisprudence, has adopted a practice similar to the government's. Namely, the cases regarding Islamic garment that had been brought to court were resolved primarily on case-to-case basis, with explicit remarks about their "fact-sensitivity"[2] that results in non-applicability in making definitive decisions on the Islamic dress issues. For that reason, none of the judgments contained any substantial account of minority rights from which a justification of national policy regarding Islamic clothing could be derived.

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[1] Sebastian Pouter, "Muslim Headscarves in School: Contrasting Legal Approaches in England and France," *Oxford Journal of Legal Studies* 17, no.1 (1997): 43-74.

[2] R, *X v Y School & Ors EWHC 298 (Admin)* (21 February 2007) ¶ 2, http://www.bailii.org/ew/cases/EWHC/Admin/2007/298.html

Notwithstanding that for nearly two decades governmental non-interference has distinguished the British approach to resolving the tensions regarding religious clothing in schools, this policy could change in the near future. Namely, the court has ruled in favour of the claimant in the case of Sarika Angel Watkins-Singh vs. The Governing Body of Aberdare Girls' High School And Rhondda Cynon Taf Unitary Authority (presented on 29 July 2008) which concerned a Sikh girl's right to wear a Kara (a religious bangle). This decision may create a serious precedent, as the court has taken up the right to establish the relevance of one's choice of apparel to her or his religious identity. Since this could not have been done without introducing a substantial account of minority group's identity, the Watkins-Singh judgment has provided grounds for establishing more concrete approach to dealing with minority issues, shifting the emphasis from the case specifics to (re)interpreting minority groups' identity. Furthermore, this case may raise the issue of differential treatment of minorities in Britain.

The goals of this research are to, by comparing the judgment on the Watkins-Singh case to the ones that concern Islamic garment, point out possible implications of the Watkins-Singh case on future cases regarding Muslim apparel. I will proceed by comparing the judgment on the Watkins-Singh case to the ones that concern Islamic garment. Evidently, these research goals rely heavily on the presumption that the connection between the Watkins-Singh case and the ones that deal with Muslim apparel issues can be established. Since this assumption is explicitly contested in the Watkins-Singh judgment, this paper will also attempt to refute the court's claims.

Two judgments regarding issues on Islamic garment in schools will be analyzed in this paper: the House of Lords' landmark decision on Begum vs. Headteacher and Governors of Denbigh High School case (presented on 22 March 2006) and the most recent case of X vs. Y School (presented on 8 and 9 February 2007). The first one deals with Sabhina Begum's claim that the Denbigh High School has denied her rights to education and to manifest her religion by not allowing her to wear a jilbab, which is a "long coat-like garment".[3] The second case discusses X contesting Y School's decision to disallow her to wear a face covering veil called niqab.[4] In both cases, the court has ruled in favour of a ban, arguing that the girls can find an adequate school that allows its pupils to wear such apparel. It is also worth mentioning that the latter case was brought before Mr Justice Silber, the same judge that ruled on the Watkins-Singh case.

[3] Begum, *R. (on the application of) v. Denbigh High School UKHL 15* (22 March 2006). ¶ 2 <http://www.bailii.org/uk/cases/UKHL/2006/15.html>

[4] See note 2 above.

The government's policy of non-interfering normatively

After almost two decades of occasional disputes over the Islamic garment, the British government made only one attempt at regulating this issue when the Department for Children, Schools and Families (DCSF) delivered the Guidance to School Uniform and Related Policies in 2007. In addition to giving some general guidelines, this document explicitly states that there is "no legislation that deals specifically with school uniform or other aspects of appearance",[5] thus giving schools liberty to regulate the dress code. Essentially, that implies that school authorities can impose restrictions on Islamic garment if they consider those items to be harmful to security, health, safety, or to interrupt the teaching and learning process.[6]

One can contend that the guidance provides basis for arbitrary and discriminatory way of enforcing school policy throughout the country. From that perspective, injustice is unavoidable, since there is no common ground for school authorities' specific decisions - just a common right to make them. In practice, if there is a strong local Muslim community, it could influence the school authorities' decisions. On the other hand, if there are just a few Muslim pupils, the school administration could be less considerate to their rights. Nevertheless, this approach proved to be very flexible because it could settle vast number of issues *in situ*, without resorting to legal means. If the cases could not be resolved through a dialogue between the parties, they were eventually brought to court, keeping the governmental interference at a minimum.

The Comparability of the Watkins-Singh Case to the Cases about Muslim Clothing

In his ruling on Watkins-Singh case, Mr Justice Silber clearly states that this judgment cannot be related to the cases that concern Islamic garment. That is, as he claims, for two reasons. Firstly, the legal documents that the claimants were relying on were completely different. Secondly, unlike jilbab or niqab, Kara is not obtrusive. Both of these points are contestable.

In her case against The Governing Body of Aberdare Girls' High School, Sarika Watkins-Singh argued that her rights were infringed when the school authorities decided that she had to remove her Kara, or "be kept socially segregated from the other pupils"[7] because the bracelet was not in compliance with school's uniform policy which prohibited wearing jewellery. Mr Justice Silber ruled in favour of Sarika, basing his judgment on a different set of legal documents than the ones introduced in Islamic garment cases. The most notable difference comes from the fact that Sikhs are recognized as a race by the House of Lords, "for the purpose of the Race Relations Act (RRA)". For that reason, court argued, the RRA could be applied to this case, but not to those that deal with Islamic clothing. The section 1(1A) of the RRA

[5] DCSF, "Guidance to School Uniform and Related Policies," 2, <http://www.teachernet.gov.uk/management/atoz/u/uniform/>

[6] Ibid. 4.

[7] Watkins-Singh *R. (on the application of) v The Governing Body of Aberdare Girls' High School & Anor EWHC 1865* (29 July 2008). 35, http://www.bailii.org/ew/cases/EWHC/Admin/2008/1865.html.

stipulates that discrimination can occur when some practice "puts persons of the same race or ethnic or national origins ... at a particular disadvantage when compared with other persons",[8] and when this action can't be shown to be "a proportionate means of achieving a legitimate aim".[9]

Ironically, Sikhs primarily owe their recognition as a race to court ruling that allowed a Sikh boy to wear his turban in class. Headmaster's arguments were similar to the ones used in both the Watkins-Singh case and the cases concerning Islamic garment. Namely, he contended that: "the school was seeking to minimize the external differences between boys of different races and social classes". Nevertheless, it is not courts stance on the insufficiency of such argumentation that is problematic. The main problem rests in clumsy codification of the House of Lords' decision that lead to Sikhs being considered "a racial group defined by ethnic origins".[10] This is solution is far from being unproblematic since the concept of race is quite ambiguous, especially when amalgamated with ethnicity.[11] Even if we limit the scope of the inquiry to the British judicial system's interpretation of a race, there are still many minority groups that have the same characteristics as Sikhs and that are not acknowledged as a race. The Arabs are the most obvious example because their identity is also constituted by the dense intertwining of its religious and ethnic components. Let us now imagine that the Arabs were granted the same status as Sikhs. Consequently, their women would be allowed to wear Islamic garment in schools. But, if we are to follow the argumentation by which the Watkins-Singh case is fundamentally different than the ones that concern Muslim apparel, we should then, for example, prevent the Iranian women from wearing their religious clothes, while at the same time giving this right to Arabs! That is, until we declare that Iranians form a racial group and before the Indonesians come up with the same request.

Brian Barry[12] calls this practice the rule-and-exemption approach. The most famous example of such an approach is granting Sikhs the right to be excluded from compulsory wearing of helmet while riding a motorcycle. However, Barry also describes a possible situation that parallels the hypothetical one regarding an Iranian woman. Namely, if a Pakistani woman is allowed to wear a headscarf in her workplace because this is a custom of Pakistan, does that mean that a recent convert to Islam should bring some sort of a certificate from a mosque to her employer in order to be allowed to do the same?[13] Barry then goes on to argue that "since there is no non-trivial reason in support of a ban on headscarves, the ban is rightly to be regarded as a denial of equal opportunity".[14] Furthermore, even though the policy of the rule-and-exemption has passed beyond a turning point when it comes to the dichotomy

[8] Ibid. 34.

[9] Ibid. 38.

[10] Ibid. 35.

[11] For a discussion about the idea of race and related concepts, see: Tariq Modood, Richard Berthoud and James Nazroo, " 'Race', Racism and Ethnicity: A Response to Ken Smith," *Sociology* 36, no. 2 (2002): 419-427. and Tariq Modood, Fauzia Ahmad, "British Muslim Perspectives on Multiculturalism," *Theory Culture & Society* 24, no. 2 (2007): 187-213.

[12] Brian Barry, *Culture & Equality* (Cambridge: Polity Press, 2001), 40-50.

[13] Ibid, 57.

[14] Ibid, 59.

between withdrawing the law on traffic safety and taking the right to exemption away from Sikhs, there seems to be no practical reason against broadening the right to wear religious garment to all the affected. Barry also acknowledges that.[15]

The second differing source was the Equality Act 2006 (EA). Unlike the RRA, which concerns the racial or ethnic issues, the EA deals with religious discrimination. The way the discrimination is defined in this document is essentially the same as the one in the RRA.[16] Even if the RRA is unarguably inapplicable to the cases that discuss the issues of Muslim minority, there is no apparent reason why the case of X vs. Y School should not rely on the EA.[17] However, the act is not mentioned in the ruling at all. If it is proven, based on the EA, that Sarika suffered discrimination because of her religious beliefs, why should Muslim girls be forced to change schools in order to accommodate theirs? Comparably, since the uniform policy that prohibits wearing jewellery is not widespread (nor is it a part of DCSF Guidance),[18] there should be no problem for Sarika to find a suitable school where her right to manifest religious beliefs would not be violated. She was, however, given a right that was denied to Muslim girls. On the other hand, if Sarika had been denied the right to wear her bracelet, there would be no legal consequences with regard to other minorities' right to wear religious apparel and the policy of governmental non-interference could be consistently applied.

The argument about the difference in obtrusiveness is also a weak one. Can the physical characteristics be a determining factor when it comes to the established symbols of affiliation to one of the largest and oldest religions? The physical characteristics of a piece of religious garment should be considered significant only if they cause that piece of clothing to be harmful. Neither jilbab, nor niqab poses threat to the person who wears it, or to the others. Jilbab, moreover, cannot possibly obstruct the communication between the student and the teacher in any way, since it does not cover student's face. When obtrusiveness is concerned, the only advantage that Kara has is that it is relatively thin and "made of plain steel".[19]

On the other hand, there is a self-evident similarity between the Watkins-Singh case and the ones that consider Islamic apparel. Namely, all three cases concern a female member of a religious minority and her claim to wear a specific piece of religious garment in school. If the state is to set a liberal and non-discriminatory account of one's right to manifest her or his religion, it should be blind to ethnic affiliation. Therefore, since from the perspective of minority rights it should not matter whether the claimant is a Muslim or a Sikh, the three cases are mutually comparable.

[15] Ibid, 52.

[16] Compare: Watkins-Singh, 34 and Watkins-Singh, 36.

[17] Since the hearings in the Begum case took place before the EA was enacted, it would be unreasonable to expect that the act should be applied to this case.

[18] It is noteworthy that neither judgments dealing with Islamic apparel, nor the judgment on the Watkins-Singh case rely on the Guidance to School Uniform and Related Policies.

[19] Watkins-Singh, 92.

Practical Reasons in Favour of the Bans

There are two sets of practical reasons that support the banning of Islamic clothing in schools: worries about the consequences of inhibiting facial communication in class and the concerns about safety. Namely, it is argued that the wearing of the face-covering garment such as niqab would create difficulties for the listeners to understand the person that is wearing it.[20] This account is largely unfounded. The latest linguistic research shows that: "if the intelligibility of speech produced by a person wearing [a niqab] is relatively difficult for listeners to understand, … the source of the problem lies not in the fabric itself but in interference to articulation caused by wearing the garment, by a disruption to or absence of visual cues available to the viewer-listener, or by some combination of these two factors.".[21] The other causes of communication issues that are mentioned in the research are "the marked non-native accents" that the women wearing niqabs might have, listeners' non-familiarity "with holding conversations with individuals whose faces are not fully visible", as well as prejudice and "dislike or distrust of foreigners and/or foreign cultures".[22] As we can see, this shifts the emphasis from the practical issue of intelligibility of the speaker to the habits and impressions of the listener who is not accustomed to communicating with a person that has her face covered. And even if these results are misguided, there are ways to resolve the possible communication issues. For example, the Muslim girls can take off their niqabs if they attend female-only classes held by female teachers.

The set of practical reasons that concerns safety is mentioned in all of the analyzed cases. However, it is most prominent in the Watkins-Singh case where it is closely connected to the RRA. As it was mentioned before, the principle of non-discrimination advocated in the RRA can only be trumped when it comes to discriminatory practice with "a legitimate aim". As the defendant argued, such an aim is the protection of students' safety, which is the reason why Aberdare Girls' High School prohibits them from wearing jewellery. Consistent and universal application of this particular part of school's uniform policy presupposes a liberal account of minority rights by which the value of one's cultural[23] identity is understood instrumentally. This rationale, famously advocated by Will Kymlicka and implicitly endorsed in the rulings supporting the bans on specific pieces of Islamic religious apparel, recognizes individuals' autonomy and asserts that having the widest possible range of personal choices is intrinsically valuable. Consequently, the legitimacy of any particular policy (such as the protection of minority rights) remains to be measured only by its effectiveness in achieving those intrinsic values.

Indeed, we can see that the instrumental account of culture justifies defendant's claim if we presuppose that policies that ensure personal safety are more

[20] R, 64d.

[21] Carmen Llamas et al, "Effects of Different Types of Face Coverings on Speech Acoustics and Intelligibility," *York Papers in Linguistics*, Series 2, no. 9 (November 2008): 99.

[22] Ibid.

[23] Here I am borrowing definition of culture "as synonymous with 'a nation' or 'a people' ", see in Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), 18 because it presents ethnicity as the constitutive element of culture in a same way it is constitutive of the concept of "ethnic race" found in the RRA.

likely to enhance or protect the autonomy of people than their cultural membership. Therefore, if safety trumped cultural membership as a legitimate aim, Sarika should have never been allowed to wear Kara in school, providing that the enforcement of the ban on jewellery actually leads to more desirable outcomes regarding students' safety. Nevertheless, court ruled otherwise. The decision to apply the rule-and-exemption approach clearly shows that Sarika's wearing of Kara as an integral part of her religious and cultural membership for some reason was considered to be more valuable than the absolute prohibition on wearing jewellery in school. There are at least three possible explanations of court's ruling.

First, it might be the case that the ban on jewellery is not an efficient way of protecting students' safety altogether and that it unnecessarily frustrates the students that would like to wear them. In this case, the policy should be cancelled altogether. However, not only was the school not urged to change its uniform policy, but also the rationale behind the ruling partly relied on Sarika's promise to "to remove or cover the Kara with a wrist sweat band during any lessons such as Physical Education where health and safety might be an issue".[24] Therefore, this explanation is not very likely since it can be said that the ruling judge made no attempt at disregarding, changing or amending the policy itself.

Second explanation is that the court established that wearing the Kara was instrumentally more valuable than adhering to the school's uniform policy regarding jewellery. In this view, the legitimacy of both practices should be evaluated in terms of their contribution to liberal account of a good life, i.e. pursuing one's own "rational long-term plan of life".[25] Therefore, the court should have used an account of such a contribution as a measuring tool for comparing the value of wearing the Kara to the value of wearing a proper school uniform. Alternatively, on a more general level, the court might have ruled on the basis of a similar comparison between the values of safety and the affiliation to a minority group. Nevertheless, the judge did no such thing. The ruling did not mention in any way that wearing a Kara should trump school's uniform policies because of its superior value for pursuing a reasonable conception of the good. Furthermore, it did not stress that cultural membership should override uniform policies or safety regulations, either. Instead, court's decision is founded on an expert's testimony that only confirmed the (instrumental) value of the bracelet to Sikh identity, without considering the value of the identity itself.

Therefore, it is more likely that, by predominantly arguing how Kara is instrumentally valuable for Sikhs and not grounding its decision on any overarching liberal principle, court has implicitly regarded the minority culture as intrinsically valuable. It is worth noting here that the idea of the intrinsic value of cultures in a liberal context is highly debatable and that the ruling in Watkins-Singh case may imply a great shift in governmental policy towards minorities in Britain since the ruling deviates from the decades long liberal practice of governmental non-interference towards minorities. We will deal with these points a bit later.

[24] Watkins-Singh, 87.

[25] John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 2003), 79.

The Possibility of Intra-Minority Coercion and Obtrusiveness as Arguments in Favour of the Bans

In addition to practical reasons, the justification for banning niqab and jilbab arises from concern regarding the possibility of intra-minority coercion problems. Supposedly, wearing those pieces of garment would put pressure on other Muslim girls to substitute their headscarves with such, 'more modest', clothing. In contrast, because of the "unobtrusive nature"[26] of the 50 mm wide steel bracelet, a similar concern wasn't raised in the Watkins-Singh case.[27] In this view, niqab's or jilbab's presumably obtrusive nature by itself might lead to imposing these types of apparel to (more) moderate Muslims. The Muslim girls who prefer to wear headscarves would, not unlike Sarika, suffer "particular disadvantage" or "detriment" if other types of Islamic apparel were to be allowed and, thus, effectively prescribed in schools. However, this is misguided. If wearing obtrusive religious clothing indeed poses such a threat to intra-minority issues, why is it allowed in some schools, but banned in others? On the one hand, there are numerous liberal arguments based on Mill's harm principle that support the right to wear religious apparel, provided that it does not hurt anybody. On the other, there are highly disputable opinions about its obtrusiveness. Therefore, contending that obtrusiveness should be an argument for banning niqabs or jilbabs is quite unconvincing.

The possibility of apparel related intra-minority oppression is also a weak argument for banning any type of religious clothing in schools. Namely, the scholars that deal with minority issues agree that the "right to exit" is the most fundamental liberty that limits the possibility of coercion towards members of "internal minorities"[28]. Indeed, the practice of liberal and democratic states shows that such liberty exists: even if their rights are not directly protected within their minority group,[29] those members that feel coerced can always 'step out' of their community and join the wider liberal society in which their individual autonomy will be guaranteed.

Unarguably, the Muslim girls can exercise their 'right to exit' if they feel oppressed by the other members of their religious community. However, one's actual capacity to make that kind of "meaningful choice"[30] largely depends on her or his

[26] Watkins-Singh, 92 and 162.

[27] It is worth mentioning that the claim about niqab's and jilbab's obtrusiveness was not brought up in two cases regarding Islamic clothing. In fact, this assertion was implied only as a supporting argument for supposed incomparability of the judgment in Watkins-Singh case to the ones that concern Muslim garments.

[28] Leslie Green, "Internal Minorities and their Rights," in *The Rights of Minority Cultures,* ed. Will Kymlicka, 261 (Oxford: Oxford University Press, 1997).

[29] Leslie Green, for example, argues that a liberal state should interfere and directly protect internal minorities from being pressured into assimilation by their groups. Ibid.

[30] Will Kymlicka, "The Rights of Minority Cultures: Reply to Kukathas," *Political Theory* 20, no.1 (1992): 140-146. Also, for a discussion on the connection between the Islamic garment issues and women's autonomy and freedom of choice, see: Jill Marshall, "Conditions for Freedom? European Human Rights Law and the Islamic Headscarf Debate," *Human Rights Quarterly* 30 (2008): 636-643.

education. This actually means that the paramount goal of state's policy toward the minorities should be to involve their members into a public educational system, so that they can at least be aware of the possibilities that wider society offers them. Therefore, imposing a ban on specific pieces of Islamic apparel in order to reduce intra-minority pressures could prove counterproductive and quite dangerous, since it may segregate the 'fundamentalist' from the 'moderate' members of Muslim community by effectively depriving the first of their "right to exit".[31] Consequently, the policy implied in the judgment on Watkins-Singh case may contribute to creating a parallel educational system within Muslim minority that would accommodate the 'more modest' Muslim girls, at the price of their seclusion from the wider (liberal) society.

The other supporting argument for banning jilbabs and niqabs emphasizes the non-compliance of these pieces of apparel to school uniforms' function in "smoothing over ethnic, religious and social divisions"[32] and encouraging "the ethos of equality and cohesion".[33] Nonetheless, the introduction of a judicial expert's testimony in the Watkins-Singh case can prove to be antithetical to achieving this goal. Namely, the testimony was introduced in order to establish the importance of wearing Kara to Sikh identity. Contrary to that, in the two cases regarding Muslim apparel the court did neither provide nor examine any account of Muslim religious identity. However, if the judgment on the Watkins-Singh case contributes to changing this kind of practice in the future, the court will have to examine the importance of particular pieces of garment to practicing Islam. Of course, that estimate is very hard to offer and there is always a potential danger of its misuse. One can, for example, use the 'experts' interpretation' of Qu'ran to widen the gap between the 'moderate' and 'radical' Muslims by imposing a ban on Islamic cloths that cover the large portion of the body. This kind of misuse is not necessarily related to regular court practice, since it can be exercised through the official government policy as well. On the other hand, failing to offer a concrete account of Muslim identity in the same manner it was done in the Watkins-Singh case can lead to practically establishing different set of rules for different minority groups. Either way, after the judgment on the Watkins-Singh case, establishing "the ethos of equality and cohesion"[34] will prove to be increasingly difficult.

[31] The 'moderate' Muslim girls are actually in less danger of being coerced, since they are more integrated into the wider society and better prepared to 'meaningfully chose' to exercise their 'right to exit'. For a discussion of a concept of 'moderate Muslims', see: Modood and Fauzia, "British Muslim Perspectives on Multiculturalism," 187-213.

[32] Begum, 97.

[33] R, 64.

[34] R, 64.

Is Liberalism Compatible With the Intrinsic Value of Culture?

In the end, we should examine the theoretical possibility of a liberal account of the intrinsic value of culture. If it is proven that there is no tension between liberalism and minority cultures' intrinsic value, we may conclude that it is unlikely for the implicit acknowledgment of such a value in the Watkins-Singh case to cause a significant change in British governmental policy towards the Islamic minority. Through his critique of Kymlicka's instrumental view,[35] Stéphane Courtois suggests that cultures should be considered as intrinsically valuable in a liberal context and we will briefly analyze this account.[36]

Both Kymlicka and Courtois agree that one's attitude towards culture is not realized only in the context of choice, but also through the context of identity. However, Courtois argues that, if we are to make any sense of support for group-differentiated rights, culture should assume more fundamental position than Kymlicka is willing to grant it. Consequently, we should acknowledge culture as intrinsically valuable. However, for his account not to stray into communitarianism, Courtois notes that not all goods are intrinsically valuable in the same manner. For that reason, he relies on Joseph Raz's distinction between "ultimate" and "constituent" goods, both of which are to be considered intrinsically valuable. The relation between the two types of goods is "explanatory or justificatory one".[37] Therefore it is possible, Courtois argues following Raz, to provide a strong case for group-differentiated rights in a liberal context if we consider cultural membership to be a constituent good to ultimate good of "a self-directed life (as a central part of human well-being and a worthwhile life in general)". This account gives a more fundamental role to culture, since it is not regarded only as one of the means of accomplishing autonomous existence, but also an inalienable part of it. However, in order to defend against Denise Réaume's critique that this notion is "insufficient to establish the intrinsic value of a *particular* cultural context",[38] Courtois has to modify Raz's argument by adding the premise that "a cultural context that contributes to a self-directed life is intrinsically good and valuable".[39] Therefore, since a culture that nourishes personal autonomy is intrinsically good, there should be no reason for the state not to support it, nor to consider integrating its members into another culture.

Nevertheless, Courtois' account is hardly more convincing than Kymlicka's. A good is not intrinsically valuable if we are to measure its value by relation to another good. This is exactly what Courtois does by saying that some cultural contexts (the ones "that contributes to a self-directed life") are intrinsically good, while others (the ones that fall out of this category) are not. There is no real difference between this "intrinsic" account and the straightforwardly instrumental one that Kymlicka is offering. Both notions of cultural contexts are valued not by themselves, but by their (essentially instrumental) role.[40] This is where the tension between liberalism and

[35] Kymlicka, *Multicultural Citizenship*.

[36] Stéphane Curtois, "A Liberal Defence of the Intrinsic Value of Cultures," *Contemporary Political Theory* 7 (2008)

[37] Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), 200

[38] Curtois, "A Liberal Defence of...".

[39] Ibid.

[40] This could very well be the reason why Raz did not fashion his argument in a similar way to the one that Courtois suggests in the first place.

the intrinsic values of cultures becomes apparent. Generally speaking, in order for a society to remain liberal, it must not tolerate illiberal practices of its members. This especially goes for non-indigenous minorities, since there can be no discussion about remedying historic injustice through exemption from some of the liberal principles. Therefore, it can be concluded that Courtois' account fails to offer an alternative to Kymlicka's instrumental view because of its inability to give a plausible account of treatment of intrinsically valuable illiberal cultures. Therefore, at least with regards to Courtois' argument, acknowledging a culture as intrinsically valuable clashes with the overarching principles of a liberal society.

Conclusion

The ruling in the Watkins-Singh case introduces two sets of effects on the Islamic dress controversy: direct and indirect. There are two aspects of the judgment that could directly influence the future disputes over Islamic apparel. Firstly, in order to stress the specific nature of the Watkins-Singh case, the court has implicitly offered the first characterization of Islamic clothes, implying that wearing Muslim apparel, other than headscarves, could be banned simply on grounds of being obtrusive. Secondly, relying on a court appointed expert's testimony to provide an account of relevance of clothing to religious identity can lead to introducing questionable interpretations of religious texts and practices, which could serve as a ground for imposing discriminatory policies towards 'fundamentalist' Muslims. Consequently, this judgment may put strain on inter-minority relations.

There are also two indirect effects that the ruling might have on both Islamic dress issue and the general treatment of minorities in the United Kingdom. Firstly, if we presuppose that every minority should be treated in an equal way, there is no reason for membership in some minority groups to be considered intrinsically valuable whereas one's association with some other group is deemed instrumentally valuable. The issue becomes even more obvious and dangerous if we consider that this ruling sharply contrasts the judgments in all the previous cases regarding religious apparel of Muslim women in Britain. Secondly, the problem is both founded on and extended by the underlying attempt at providing a substantial account of a culture and "authoritative" examination of the instrumental value of its particular practices. Whereas this approach might not be problematic for Sikhs, it is surely inappropriate for more "fluid" and possibly conflicting religious identities and practices, such as the Islamic ones.

Consequently, British institutions could be forced to choose between ignoring internal inconsistencies in regulating minority issues that could bring up equity problems or providing more substantial regulations that would be moulded upon some abstract "authoritative" account of a specific cultural practice in relation to its (no less abstractly defined) wider cultural context. It will be difficult to decide, for example, if perpetuating the state of unregulated and *de facto* unequal status of Muslim minority in its broadest sense is superior to providing an explicit account of desirable "Muslimness" and judging the legitimacy of a particular practice by comparison to this standard. It seems that whatever the road British government should take in this issue, it is not likely that it will come to a better solution than the policy of non-interference had been. It is even less certain that it will be a (consistently) liberal one.

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Резиме

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Да ли би пресуда у случају Ваткинс-Синг могла утицати на британску политику према исламској мањини?

Кључне речи: *Случај Ваткинс-Синг, Сики, Муслимани, мултикултурализам, мањинска полиитка*

Положај либералне државе је прилично незахвалан када се ради о регулисању права културних мањина које живе на њеној територији. Основни проблем који таква држава мора да разреши пре него што законом уреди положај мањина састоји се у одређивању вредности припадања одређеној култури. Уколико културна припадност има интринсичку вредност, потребно је уредити односе у друштву тако да осликавају ту чињеницу. То значи да се државно законодавство мора прилагођавати свакој културној групи појединачно, као и да се његов домет сужава само на оне ситуације које нису регулисане одређеним културним нормама. Последице оваквог приступа су двојаке и подједнако нелибералне. Прво, изједначавање култура пред законом успоставља фактичку неједанкост између њихових припадника, у зависности од тога којој групи припадају. Друго, држава престаје да гарантује права и слободе својим грађанима, будући да је њен делокруг ограничен на оне односе који нису претходно регулисани културним нормама. На пример, живот у либералној држави не би могао да гарантује политичка права припадницама оних кулутра која таква права експлицитно ускраћују женама. Из ова два разлога сматрам да либерална држава не може заснивати своје законодавство на становишту да је припадност одређеној култури вредност по себи. Уместо тога, она би требало да заснива свој однос према културном припадништву на претпоставци да је оно инструментално вредно, а да врховна вредност остаје либерална концепција ”доброг живота”.

Законодавни систем Уједињеног Краљевства је махом следио овај принцип у споровима који су се тицали положаја мањинских група. То се најбоље види на примеру судских пресуда којима су разрешени спорови између ученица исламске вероисповести којима је забрањено ношење марама и друге религијске одеће у школама. Ниједна пресуда није приморала школе да тако нешто дозволе, посебно због тога што постоје и школе чији прописи дозвољавају ношење религијске одеће. Дакле, све док право на образовање није угрожено, држава нема потребе да приморава поједине школе да мењају своје прописе. Ипак, у случају Ваткинс-Синг, суд је приморао школу да дозволи ношење религијске наруквице ученици која је доказала да је то од највеће важности за њен идентитет као Сика. Ово је опасан преседан будући да је заснован на схватању о припадности одређеној култури као интринсички вредној. Последице оваквог схватања су фактичка неједнакост у правима припадника (мањинских) група (у овом случају муслимана и Сика), као и увођење ”званичног” тумачења културних норми. На

основу таквог тумачења, суд је донео одлуку да је ношење религијске наруквице битно за идентитет Сика. Ипак, ово није могуће установити када се ради о муслиманској религијској одећи, будући да по том питању постоје несугласице између самих муслимана. Дакле, уколико ово питање остане нерегулисано, припаднице исламске вероисповести ће остати у неравноправном положају у односу на Сике. Са друге стране, уколико власти покушају да уведу сопствено тумачење исламског идентитета на основу кога ће приморати школе да дозволе ношење одређене религијске одеће, практично ће прогласити једно виђење исламског идентитета за "важеће" и створити тешкоће припадницима исламске мањине који од њега одступају.