

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Religious practice and observance in the EU Member States

STUDY



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Abstract

This study analyzes the relationship between freedom of religion and other fundamental rights in the European Union, the European Convention on Human Rights, as well as the constitutions of the Member States by examining the relevant case law in the Court of Justice of the European Union, the European Court of Human Rights, and state constitutional or supreme courts. The study will highlight present sources of conflict, underline best practices and put forward recommendations to promote both religious practice and observance and the respect of human rights.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

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LIST OF ABBREVIATIONS

CJEU Court of Justice of the European Union

ECHR European Convention on Human Rights

ECtHR European Court of Human Rights

EU European Union

TEU Treaty on the European Union

TFEU Treaty on the Functioning of the European Union

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EU Member States' Constitutions: Most relevant provisions on religion

EXECUTIVE SUMMARY

Background

Religion has played a significant role for individuals and societies throughout history. The place of religion in society and its relationship with the State has evolved over time. Nowadays, the pluralism of ideas and beliefs, religious or not, is paramount in democratic societies. Recent events, such as the displaying of the Catholic crucifix or the prohibition of the Islamic veil in public schools, or the upheavals provoked by the cartoons picturing Mohammed show the pervasive role and potential conflicts between religion and other fundamental rights.

The Constitutions of all EU member states protect the right to freedom of religion. The regulation of religion varies enormously, from States with an established religion, to States that proclaim a principle of strict separation.

The ECHR enshrines the right to freedom of religion in Article 9. Freedom of religion is also protected by the EU Charter of Fundamental Rights in Article 10. As the Explanations to the Charter lay down, Article 10 of the Charter mirrors Article 9 ECHR, and the Charter should be interpreted accordingly (Article 52.3 Charter). The Lisbon Treaty has rendered the Charter legally binding.

Moreover, Declaration 11 *on the status of churches and non-confessional organizations* (Treaty of Amsterdam) has been incorporated in Article 17 TFEU. Paragraph 1 reads: 'The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.' And paragraph 3: 'Recognizing their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organizations.' In addition, the Preamble of the Treaty on the European Union declares to draw inspiration from the 'cultural, religious and humanist inheritance of Europe.'

Religious freedom encompasses a positive and a negative dimension: the right to believe and practice a religion, and the right not to believe. In addition, religious freedom includes an individual and a collective dimension. While religion is a matter of individual conscience, religious freedom also involves public manifestation and collective practice. All these dimensions are present in Article 9(1) ECHR, which sets forth that the right to freedom of religion includes 'freedom to change [one's] religion or belief, and freedom, either alone or in community with others and in public or private, to manifest [one's] religion or belief, in worship, teaching, practice and observance.' All these dimensions need to be taken into consideration when analyzing religious freedom in connection with other fundamental rights.

The right to freedom of religion is not absolute, and as Article 9(2) ECHR explicitly indicates, it might be restricted under certain circumstances: 'Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.'

Aim

The goal of this Study is to develop a comparative analysis of the relationship between freedom of religion and other fundamental rights in the European Union (EU), the European Convention on Human Rights (ECHR) as well as in the constitutions of the Member States by examining the relevant case law in the Court of Justice of the European Union (CJEU), the European Court of Human Rights (ECtHR), and state constitutional or supreme courts.

The Study will highlight present sources of conflict, underline best practices and put forward recommendations to promote both religious practice and observance and the respect of human rights.

First of all, an overview of the constitutional clauses on religion in the 27 EU Member States will be offered. Next, church and state relations will be analysed from a comparative perspective. The following chapters will examine the relationship between religion and other fundamental rights: prohibition of torture and right to physical integrity; the right to respect for private and family life; freedom of expression; freedom of assembly and association; education; equality; and asylum and immigration.

GENERAL INFORMATION

The main findings resulting from the analysis of the relationship between freedom of religion and other fundamental rights are the following.

1. The **overview of the EU Member States' constitutions** shows that all constitutions recognize the right to freedom of religion, some of them refer to one or more churches, and just a few mention God. The content and intensity of the constitutional clauses greatly vary. These clauses can be classified into four main categories: freedom of religion as a fundamental right; non-discrimination on grounds of religion; religion and education; and the relationship between Church and the State.
2. The analysis of **church and state relations** shows that in the EU Member States two main constitutional models have been settled: (a) the **denominational model**, whose main feature is the presence of a state established church and of an official religion and (b) the **separationist model**, based on the liberal principle of separation between state and church(es)/religion(s). Nevertheless, the principle of separation is interpreted quite differently in the Constitutions of the several EU member States, thus making necessary to elaborate a few submodels: the *separationist model tout court*, which states that there is no state religion and that religion is (to be) separated from the state; the *separationist secular state*, this model is to be inferred by the constitutional declaration of secularism; the *separationist multicomunitarian state*, which combines the principle of separation between church and state with a deeply rooted organization of society in communities that are aggregated also by a factor of religious identity; the *separationist and cooperationist state*, which acknowledges or establishes a special relation with one religion (Christianity), or one (or more) explicitly specified denomination(s). The wide consolidation of the principle of non-discrimination is making somehow blur the very distinction between the two main models.
3. The issue of **equality among religious communities** and of the recognition of special status to certain religions has been cautiously approached by the ECtHR case-law. The Convention does not prevent the States from maintaining an established state church. This may explain why the ECtHR has not thus far put into question the privileged status that certain states recognize to their established state churches. Constitutional Courts have admitted that equality among religious groups does not mean that the same regime must be applied to all religions. Thus, differentiation may be accepted as long as it is justified and it pursues legitimate objectives. In any event, when the law provides for a system of registration and when such a registration is a precondition for access to some benefits, the law must be framed in order to have objective criteria of admission and its administrative application must follow substantive and procedural rules that prevent arbitrary discrimination (*Savez crkava 'Riječ života' and Others v. Croatia*, 9 December 2010)
4. The legislation of the Member States criminalizes violence and incitement to violence on grounds of religion, often introducing specific aggravating circumstances whenever a violent act – already autonomously punished – is committed for religion reasons. In *97 members of the Gladni Congregation of Jehovah's Witnesses and 4 others v. Georgia*, 3 May 2007, the ECtHR condemned the State for lack of protection of members of religious communities against violence. The importance of such a decision resides in

the fact that the ECtHR imposed a positive obligation upon the States to intervene both in preventing and sanctioning such form of violence.

5. The practice of **male circumcision** on minors for religious reasons is common in the member States and it has not given rise to much discussion until recently. The non-therapeutic nature of circumcision, the risk of haemorrhages and even death, and the lack of consent have come to the forefront. On 7 May 2012, a German court affirmed that the circumcision, based upon religious grounds, performed by Muslim parents on an underage child, represented a bodily injury. The Court held that the constitutional right of the child to bodily integrity outweighed the parents' freedom of religion. The case was followed by intense reactions from the religious representatives, condemning the alleged assault on freedom of religion and calling for legislative intervention. Eventually, on 20 December 2012, a law was enacted to allow for non therapeutic circumcision, conducted according to the medical profession's art where it does not adversely affect the underage child's health. Also, it authorizes subjects, selected by the religious denomination, who have obtained proper training, even though they may not be physicians.
6. **Female genital mutilation** is not prescribed by religious precepts, but rather by tribal rituals. The approach by the legal systems of the member States is bipartite: first, systems setting up a specific crime and its extraterritoriality, with the supporting intervention of civil society (Sweden, Denmark); and second, systems employing ordinary criminal law, without any extraterritorial extension of the punishment (Luxembourg).
7. In cases concerning the refusal of **blood transfusions by Jehovah's Witnesses**, the main concern expressed by domestic courts is that of ascertaining the authenticity of the patient's refusal. National courts tend to admit the refusal when the patient is an adult. In contrast, when minors are involved, the interference with the freedom of religion is deemed to be necessary in order to protect the life and health of children.
8. On the relationship between **abortion and conscientious objection**, the ECtHR has repeatedly affirmed that States are obliged to organise their health service system in such a way as to ensure that the effective exercise of freedom of conscience by health professionals does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation (*R.R. v. Poland*, 26 May 2011; *P. and S. v. Poland*, 30 October 2012)
9. Religion might interfere with the right to respect for **private and family life** in the workplace. According to the principle of organizational autonomy, religious communities are allowed to impose certain duties of loyalty on their employees. However, employees cannot be required to waive their right to private and family life. The criteria that the ECtHR tends to use in order to balance the several rights and interests at stake are: the function being performed within the religious organization, the impact upon the credibility of the religious message, and the media coverage (*Schüth v. Germany*, 23 September 2010, *Obst v. Germany*, 23 September 2010; *Fernández Martínez v. Spain*, 15 May 2012).
10. In cases concerning **parental rights**, the best interests of children are paramount. A different treatment between the parents on grounds of religion might be justified only if it is proven that the parent's membership to that religion is harmful for the children. General considerations will not be

enough to overcome the proportionality test (*Hoffmann v. Austria*, 23 June 1993).

11. The possibility to restrict the **expression of ideas** that might disturb or offend the members of religious communities is a deeply controversial issue. According to the Venice Commission,¹ blasphemy is an offence in only a minority of the Council of Europe member States (ten) and it is rarely prosecuted. Religious insults are a criminal offence in a little more than half the member States. In order to determine whether the restriction of freedom of expression is necessary in a democratic society, the ECtHR takes into account the specificity of religion in two ways. First, there is an 'obligation to avoid as far as possible expressions that are gratuitously offensive to others.' Second, the ECtHR provides for a wider margin of appreciation in balancing free speech and freedom of religion (*Otto-Preminger-Institut v. Austria*, 20 September 1994). In cases decided in 2006, the ECtHR has emphasized the way in which critical remarks were made and the contribution to the public debate (*Giniewski v. France*, 31 January 2006).

12. With regard to **hate speech**, in 1996, the Council of the European Union required Member States to criminalize 'public incitement to discrimination, violence or racial hatred in respect of a group of persons or a member of such a group defined by reference to colour, race, religion or national or ethnic origin.'² The Venice Commission notes that practically all Council of Europe member States (with the exception of Andorra, Georgia, Luxemburg and San Marino) provide for an offence of incitement to hatred. According to ECtHR case law, hate speech is not covered by the right to freedom of expression and thus the states may enact laws banning expression that incite hatred or violence for religious reasons.

In C-244/10 and C-245/10, *Mesopotamia Broadcast A/S METV and Roj TV A/S v. Bundesrepublik Deutschland*, 22 September 2011, the CJEU had the chance to interpret Council Directive 89/552/EEC of 3 October 1989 *on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities*, regarding the possibility to derogate from the obligation to ensure freedom of reception when the broadcasts contain any 'incitement to hatred on grounds of race, sex, religion or nationality.'

13. According to the ECtHR, **proselytism** involves trying to convince somebody by improper means such as exerting improper pressure on people in distress or in need, or the use of violence or brainwashing. Otherwise, trying to convince others to join a religious community is covered by the freedom of religion (*Kokkinakis v. Greece*, 25 May 1993).

14. The **presence of religion on schools** premises in the EU Member States has been a major source of conflicts affecting the positive and negative dimensions of freedom of religion (Article 9 ECHR; Article 10 EU Charter), the right to education of students, and the right of parents to educate their children according to their religious and philosophical convictions

¹ European Commission for Democracy through Law (Venice Commission), *Preliminary Report on the National legislation in Europe concerning blasphemy, religious insults and inciting religious hatred* (Venice, 16-17 March 2007) CDL-AD(2007)006, para. 25-26.

² Joint action/96/443/JHA of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia. See also the Parliamentary Assembly Recommendation 1805 (2007) on *Blasphemy, religious insults and hate speech against persons on grounds of their religion*, 29 June 2007.

(Article 2 of Protocol No. 1 ECHR; Article 14 EU Charter). The most significant controversies have arisen in areas such as the **display of religious symbols in the walls of public schools** (*Lautsi and Others v. Italy*, 18 March 2011 (GC)). The Grand Chamber stated that there was no evidence that the display of an essentially passive religious symbol on classroom walls might have an influence on pupils. Therefore, the decision whether crucifixes may be present in classrooms was, in principle, a matter falling within the margin of appreciation of the State, particularly in the absence of any European consensus. At the state level, the display of religious symbols in the walls of public schools has become a growing contentious issue particularly in those States with strong religious traditions. Several relevant court decisions in EU Member States have dealt with this issue.

15. The **wearing by students or teachers of religious signs** (clothing and symbols) in public schools has given rise to a growing number of cases before the ECtHR, all of them with holdings which upheld the States' stance. Relying on liberal principles and on the margin of appreciation doctrine, the Court so far has not objected to national regulations constraining the display of such religious signs by pupils or teachers, leaving the solution of conflictive situations to each member state (*Leyla Şahin v. Turkey*, 10 November 2005 (GC)). State courts have tended to uphold the prohibition of religious signs at schools, with some exceptions.
16. Regarding the **organization of religious education** in public schools, the ECtHR case law has settled the minimum threshold of due state neutrality in the organization of religious education to secure freedom of religion and the right to education. The Court has stated as general principles that the **State is forbidden to pursue an aim of indoctrination** and must take care that religious knowledge is conveyed in an objective, critical and pluralistic manner (*Folgerø and Others v. Norway*, 29 June 2007 (GC)). Religious pluralism at the national level has also given rise to contentious requests for religious **exemption to mandatory educative activities**. The ECtHR has dismissed all these complaints stating that when there is a conflict between the parents' right to respect for their religious convictions and the child's right to education, the interests of the child prevail
17. **Directive 2000/78/EC** of the Council of the European Union of 27 November 2000, *establishing a general framework for equal treatment in employment and occupation, bans discrimination on grounds of religion and belief (as well as sexual orientation, age and disability) in employment. The Directive allows religious communities to impose duties of loyalty upon their employees, but differential treatment on grounds of religion is only justified if specific occupational requirements are 'genuine, legitimate, and justified' by reason of the nature of the job or the context in which it is carried out.*
18. The prohibition of **direct discrimination** on religious grounds provides that no one may be subject to unfavourable treatment for belonging –or not belonging– to a specific religion. The protection against direct discrimination on grounds of religion may often overlap with the protection of freedom of religion as such. When this occurs, courts usually base their decisions exclusively on the alleged breach of freedom of religion. An interesting example is the case of **mandatory religious oaths**. This requirement might constitute an infringement of freedom of religion insofar as it compels individuals to disclose their own religious belief. At the same time, mandatory religious oaths might also constitute a form of direct

discrimination, since individuals who do not comply on the basis of their religion or belief will suffer legal consequences.

19. **Indirect discrimination** occurs when an apparently neutral provision puts persons belonging to a protected group at a particular disadvantage. Indirect discrimination is prohibited as well, unless the provision is shown to be proportionate to the legitimate aim pursued. This notion is particularly important in the context of freedom of religion, since it allows challenging rules that, though apparently neutral in terms of religion, actually reflect practices that favour the religious majority.

Nonetheless, with respect to the protection of religious minorities, the ECtHR has traditionally interpreted Article 9 narrowly, claiming that freedom of conscience and religion does not grant a right to be exempted from general rules, if these rules are neutral with respect to religion. The approach taken by the ECtHR in *Thlimmenos v. Greece*, 6 April 2000 (GC), suggests that claims for religious accommodation may also be reviewed in the light of Article 14. This may imply the adoption of a more demanding proportionality test when scrutinising general rules that affect religious minorities.

20. The issue of **leaves of absence for religious purposes** has been considered by the ECtHR under Article 9 ECHR. Traditionally, these claims have been rejected on the ground that, either, the facts did not reveal any interference with the applicant's freedom of religion, or the rules were proven to be necessary in a democratic society.

The problem of accommodating religious holidays in the field of employment has been considered also by the CJEU, in C-130/75, *Vivien Prais v. Council of the EC*, 27 October 1976. The Court acknowledged that it is 'desirable that an appointing authority informs itself in a general way of dates which might be unsuitable for religious reasons, and seek to avoid fixing such dates for the tests.' However, when the date of the exam has already been notified to other candidates, it is not possible to change it, nor to allow certain candidates to take the exam on a different day, regardless of their religious needs, since the exam must take place under the same conditions for all candidates.

Several constitutional courts, in dealing with the supposedly discriminatory character of rules establishing Sunday and the most important festivities of the Christian religion as public holidays, have dismissed these cases, holding that a legislative choice as such is not unreasonable, having regard to the religious and historical traditions of each society, and to the fact that these festivities have acquired, over time, a secular meaning.

21. Another field in which the notion of indirect discrimination on grounds of religion may play a role, as means for accommodating religious pluralism, is the **right to wear religious dresses or to display religious symbols in the workplace**, be it the Islamic veil or the Catholic cross. State courts' decisions are usually in favour of the employer's interest in preserving the neutrality of the workplace, with some exceptions.

In a recent case (*Eweida and Others v. United Kingdom*, 15 January 2013), the Strasbourg Court departed from previous case law and ruled that the dismissal of an employee for wearing the Christian Cross against the employer's policy breached Article 9 and 14. Moreover, the Court held that, in order to count as a 'manifestation' within the meaning of Article 9 ECHR, an act must be intimately linked to the religion or belief, but there is no

requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question.

22. The judicial enforcement of indirect discrimination on grounds of religion or belief may allow derogations to general rules that could hinder certain religious practices. In this way, the prohibition of indirect discrimination because of religion or belief may act as a functional equivalent to **conscientious objection**. The ECtHR traditionally refused to draw from Article 9 ECHR a right to conscientious objection on grounds of religion or belief.

According to the Court, under Article 9 ECHR, the word 'practice' does not denote each and every act or form of behaviour motivated or inspired by a religion or a belief. Thus, for instance, in *Pichon and Sajous v. France*, 2 February 2001, the ECtHR denied Article 9 protection in a case involving two chemists who refuse to sell contraceptives because of their religious convictions. As long as the sale of contraceptives is legal and occurs on medical prescription nowhere other than in a pharmacy, the applicants cannot give precedence to their religious beliefs and impose them on others as a justification for their refusal to sell such products, since they can manifest those beliefs in many other ways, also outside the professional sphere.

In the recent case of *Bayatyan v. Armenia*, 7 July 2011 (GC), the Court has finally accepted to draw from Article 9 ECHR alone a right to conscientious objection in relation to military service, when motivated by a serious and insurmountable conflict with the individual's religious beliefs, in the case of a Jehovah's Witness. The ECtHR took into account that the large majority of the State parties to the Convention provides for alternative or no military service for objectors.

23. In Europe, freedom of religion is a basic right recognized equally to citizens and **immigrants**. An important aspect of the relation between religious freedom and immigration regards the conditions under which the **residence and working permits (or other benefits)** might be obtained when the immigrant is a spiritual leader or the job can be considered to be of a pastoral kind.

A recent case decided by the CJEU, C-502/10, *State Secretary Van Justitie v. Mangat Singh*, 18 October 2012, concerned the possibility to consider eligible for long-term residence a foreigner whose temporary resident permit was granted in relation to his/her work as spiritual leader. The case was about the interpretation of Article 3(2)(e) of Directive 2003/109/EC of 25 November 2003 *concerning the status of third-country nationals who are long-term residents*. Given that the main objective of the Directive is the integration of third-country nationals, the CJEU stated that when the residence permit is formally restricted but the formal limitation does not impede to a third-country national to settle on a long-term basis within the territory of a Member State, this type of residence permit cannot be included in the category of 'formally limited permit', which is excluded ex Article 3(2)(e) from the scope of application of the Directive.

24. One of the main concerns regarding freedom of religion is related to the less favorable treatment a foreigner might experience when his/her religion beliefs, practices or activities are perceived by national authorities as actions posing a **threat to national security**. When national security is the ground to reject the renewal of a residence/working permit or the entry of a foreigner within a State party to the Convention, the Strasbourg Court shall

declare the violation of Article 9 when no evidence is produced in order to corroborate that the applicant's religious activities were capable to pose a threat to national security (*Perry v. Latvia*, 8 November 2007; *Nolan and K. v. Russia*, 12 February 2009).

25. The right to obtain **asylum** for individuals who **fear persecution** in their home-country comes into relation with their freedom of religion when the reasons for which they could be persecuted are connected with their religious beliefs and practices.

The most important recent case for establishing to what extent an interference with freedom of religion could be qualified as an 'act of persecution' within the meaning of Article 9(1)(a) of the Council Directive 2004/83/EC of 29 April 2004 *on minimum standards for the qualification and status of third country nationals or Stateless persons as refugees or as persons who otherwise need international protection*, is represented by the case C-71/11 and C-99/11, *Bundesrepublik Deutschland v. Y and Z*, 5 September 2012.

The CJEU ruled that 'for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union may constitute an 'act of persecution', the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment.'

RECOMMENDATIONS

1. Adaptation to an increased **religious diversity** requires a long process and a rather complex one, as it appears to be developing in a new religion-wise cultural and social atmosphere. It is well founded to acknowledge that mainstream constitutionalism has achieved a well balanced settlement of the divisive potential of the religious question. However, it is just as important to keep the awareness well alive on the old criticalities and on the new challenges which member States of the European Union are facing in the present time.

Among the former, one has to consider that, in spite of the constitutional proclamation of the principle of separation, the contextual constitutional **principle of cooperation may turn out to be just a legal veil that hides and protects a politically dominant church or denomination merely deprived of its constitutional title**. The ambiguous situation here described may be the source of weakening the equal status of other religions and numerically minor denominations, as well as of the area of freedom from religion thus increasing the potential for discriminatory legislation or attitudes by the public administration. Therefore more national and ultimately European litigation – mostly based on the ECHR - is to be expected and, although the ECtHR is unlikely to change its deference to the national **margin of appreciation** doctrine, it might decide to signal at least that it might reduce the area of such deference.

Among the new challenges, the features and the implications of the process of structural and permanent change of the very human and cultural fabric of society in the EU are to be singled out. The changes have inevitably an impact – among other areas – on the religious orientation of the population, with the strengthening, in particular, of those who practice their religious faith according to Islam. Some special commitment to accommodation of European Islam within the European constitutional heritage appears to be necessary. The same applies to religions that are in the process of growing and developing their European identity.

The political institutions of the EU may be expected to start and shape a process of development and accommodation of a wider religious pluralism in a tolerant Europe and ought therefore to act towards that end.

2. Concerning **male circumcision**, the best interests of children should be paramount, while acknowledging the relevance of this practice for Muslims and Jews. Member States should ensure that circumcision of underage children is performed according to the medical profession's art and under conditions that do not put the health of minors at risk. The introduction of regulations by the Member states in order to set the conditions and the appropriate medical training for those called to perform it is warranted.
3. Regarding **female genital mutilation**, it is important and urgent to secure women's protection through criminal law, especially by providing for the extraterritoriality of prosecution and by considering as relevant the specific threat of being subject to that practice. In this way, special protection to migrant women and minors should be granted. Moreover, the provision of a specific felony connected to female genital mutilation is considered to be more effective than the application of ordinary criminal law. Finally, in addition to criminal provisions, it is suggested to foster the involvement of the civil society and the medical sector, following the example of Scandinavian countries.

4. In the legislative decision-making process concerning the **bio-medical sphere**, it should be important to take into account the religious dimension. To this end, it should be advisable to try to implement effective tools (such as consultations with health professionals and the civil society, the collection of relevant opinions during the preliminary law-making phase, the evaluation of moral, philosophical, ethical and religious dimensions) in order to enforce protection of individual rights.
5. The institutional autonomy accorded to religious communities allows them to impose a duty of loyalty upon their employees regarding the observance of the general principles of their doctrine. However, specific occupational requirements related to religion need to be strictly justified on the basis of the job being performed (as Directive 2000/78/CE emphasizes). In particular, when the **right to respect for private and family life** is involved, employees should not be required to conform to religious principles when their private life does not have an impact upon their job performance. In order to assess whether the interference upon the right to private life is justified, a relevant criterion should be the kind of function being performed within the religious community and to what extent private life behavior undermines the performance of the employee's task. Employees with representative functions might have a heightened duty of loyalty from the standpoint of the credibility of the church.
6. **Free speech** is the cornerstone of a democratic society. **Limits should be restrictively interpreted.** In light of the cases examined above, a question emerges as to whether a right to the protection of religious 'feelings' can be derived from the freedom of religion (Article 9 ECHR) against critical or offensive expressions. Religious groups must tolerate, as other groups, critical public statements and debate about their activities and beliefs. It is contended that freedom of religion should not protect 'feelings,' and that it should only be involved when offensive or critical expressions hinder the exercise of the freedom of religion or would entail an incitement to hatred and violence. Otherwise, the analysis of interferences upon freedom of expression should not be different from other expressions that might disturb a specific group of people for reason of their beliefs.
7. Laws that criminalize **blasphemy or religious insults should be abolished**, as the Parliamentary Assembly of the Council of Europe³ and the Venice Commission have recommended.⁴ In the past, blasphemy laws often reflected the position of dominant religions. Given the greater diversity of religious beliefs and of other sorts, this kind of laws is no longer justified.⁵
8. According to the ECtHR case law, the right to freedom of expression does not cover '**hate speech.**' Laws criminalizing the incitement to hatred or violence are compatible with the right to freedom of expression, as set forth by the Parliamentary Assembly⁶ and the Venice Commission.⁷ In practice, however, the dividing line between incitement to hatred and religious offenses is difficult to identify. The **enforcement of hate speech crimes**

³ Parliamentary Assembly, Recommendation 1805 (2007) on *Blasphemy, religious insults and hate speech against persons on grounds of their religion*, 29 June 2007, para. 4.

⁴ European Commission for Democracy through Law (Venice Commission), Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred, 17-18 October 2008, Doc. No. CDL-AD(2008)026.

⁵ Venice Commission, *Preliminary report*, supra n. 1.

⁶ Parliamentary Assembly Resolution 1510(2006) on *Freedom of expression and respect for religious beliefs*, on 28 June 2006.

⁷ Venice Commission, *Report on the relationship...*, supra n. 4.

will need to take into account the risk of overstepping on freedom of expression.

9. The right to freedom of religion (Article 9 ECHR) and the right to freedom of association and assembly (Article 11 ECHR) go hand in hand for the protection of the **collective dimension** of freedom of religion. States should refrain from taking decisions affecting the **internal life of religious associations**, which should be allowed to function free from arbitrary State intervention. **Judicial supervision** of measures adopted by church authorities has to be possible to some extent only in the case of a conflict with fundamental rights and in the light of the proportionality principle.
10. With regard to **religious symbols in schools**, the Chamber ruling in *Lautsi v. Italy*, later overruled by the Grand Chamber, provoked strong political and emotional reactions. Many states and institutions openly decried the decision as illegitimate for disregarding national traditions and states' religious heritage. Such reactions show the complexity of achieving a suitable balance between rights and traditions in religious conflicts. Special attention, nevertheless, is to be placed in public schools where the **state has a protective role** to play in relation to children. In case of dissent, this role is better served when, **instead of adopting compulsory rules on the display of religious symbols, the state encourages local solutions and dialogue within the community of teachers, pupils and parents**. Additionally, when the display of religious symbols is grounded in cultural traditions which favor a mainstream religion, the state should provide for an open school environment which fosters inclusion and protection of religious minorities.
11. As to the **wearing of religious signs at school**, even when the ECtHR has granted States broad discretion to restraint its use, a precautionary approach from the part of the EU member states would be advisable. Taking into account the growing number of conflicts, the risk of polarization, and the fact that regulations mostly affect Muslim women, such **interferences with freedom of religion should be supported by strong countervailing reasons**. Firstly, coercion is to be used as a last resort, favoring negotiated solutions to conflictive situations. Secondly, to avoid indirect discrimination, states should offer more insightful arguments and evidence regarding the principle of secularism, gender equality, public order, health and security in public schools to justify anti-veiling legislation. Finally, the move toward a common EU policy on this issue would be desirable to ensure equal treatment and free movement of people within the EU.
12. The ECtHR **principle of non-indoctrination in the organization of public religious education** appears to be a suitable tool to make compatible state religious traditions with the rights of pupils and parents. However, to assure state religious neutrality and the freedom of religion of non-believers, much attention should be paid to the opt-out systems in those EU states with compulsory religious education. Opt-in systems too call for close supervision in states with strong religious settings. **The efficacy of both systems requires schools to avoid exerting any direct or indirect pressure on pupils, to inform them of the possibilities they have, and to protect them from peer pressure**. At the same time, **public schools should do more to provide for objective, critical and pluralistic religious instruction**.

13. Religious pluralism, which contemporary European societies are increasingly dealing with, requires **adapting general rules to the specific needs of minority religious groups**.

The notion of indirect discrimination may serve the purpose of finding a **reasonable accommodation** between the religious needs of certain groups, on the one hand, and a series of competing interests (like the entrepreneurial freedom of the employer, public safety or public health) on the other. This result may only be achieved on the basis of a case-by-case analysis, in which factual elements are assessed and evaluated under the principle of proportionality; a task that the judiciary, rather than the legislative, is best suited to perform.

14. However, if one considers the relatively few cases of indirect discrimination which have been brought before the courts, and the fact that these cases are very often rejected, the role of the judiciary in enforcing anti-discrimination law on religious ground should at least be questioned. More specifically, though judicial enforcement of anti-discrimination law remains crucial, it may be argued that the **judiciary should be supported and sustained by more specific authorities, having a clear expertise in anti-discrimination law**. In this respect, it is necessary to recall that the EU Race Equality Directive has explicitly required EU member States to introduce Equality Bodies or Equality Commissions in their legal system. A similar solution, however, has not been pursued with Directive 78/2000/EC, which deals with other grounds of non-discrimination, religion included.

There is a need to strengthen the role of the Equality Bodies (or Equality Commissions) in enforcing anti-discrimination law and in issuing legal guidance on the application of anti-discrimination law. Codes of practices issued by the Equality Commissions should then be taken into consideration by the judiciary in enforcing anti-discrimination law, in order to guarantee a better understanding of antidiscrimination law, and a more uniform application of it.

15. The conditions to obtain **residence or working permits** should not be worsened or interpreted more restrictively with regard to specific religious groups or persons who perform pastoral work or are religious leaders.
16. Although the States may freely decide about their migration policies, and, as such, the ECHR does not grant the right to enter or reside in a country, **the performance of religious functions or practices may not be equated with a 'threat to national security'** without additional proof in order to justify the denial of entry or renewal of residence or working permits.
17. Concerning asylum, in order to determine to what extent an interference with freedom of religion could be qualified as an **'act of persecution'**, the interpretation given to Council Directive 2004/83/EC of 29 April 2004 by the CJEU in C-71/11 and 99/11 *Bundesrepublik Deutschland v. Y and Z*, 5 September 2012, should be followed by the competent state authorities.

1. RELIGION IN EU MEMBER STATES' CONSTITUTIONS

References to religion, churches and God are common in EU Member States' written Constitutions. All of them recognize freedom of religion, some refer to one or more churches, and just a few mention God. Obviously, the content and intensity of these references greatly vary. The constitutional clauses might be classified into four main categories: freedom of religion as a fundamental right; non-discrimination on the grounds of religion; religion and education; relationship between Church and State

In what follows, each of these categories will be analyzed separately, and citations to the most relevant constitutional provisions will be included. At the end, a miscellaneous of constitutional clauses will be examined.

1.1. Freedom of religion as a fundamental right

All European Constitutions guarantee the freedom of religion to all persons. Only Article 25 of Chapter 2 ('Fundamentals Rights and Freedoms') of the Swedish Instrument of Government does make it possible to introduce special limitations to the 'freedom of worship' for foreigners.

Article 10 of the French Declaration of the Rights of Man and the Citizen reads as follows: 'No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.' The form of this provision is followed by many Constitutions: a short declaration stating the fundamental right with a reference more or less developed to the limitations that the right may undergo. This is the case, for instance, of the Italian Constitution (Article 19: 'Everyone has the right to profess freely their religious faith in any form, individually or in association, to disseminate it and to worship in private or public, provided that the religious rites are not contrary to public morality'), and the Constitutions of Belgium (Article 19), Luxembourg (Article 19), the Netherlands (Article 6), Estonia (Article 40), Ireland (Article 44(2)(1)) and Spain (Article 16(1) and (2)), among others.

A more detailed definition of the freedom of religion can be found in the Constitution of Poland. Article 53(2) provides: '[F]reedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion shall also include possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services.' This sort of more elaborate definitions is included in the Constitutions of Finland (Article 11), Lithuania (Article 26), Hungary (Article 7(1)), and Cyprus (Article 18).

Many Constitutions incorporate the so-called 'negative' dimension of the freedom of religion. It is the case, for instance, of paragraphs 6 and 7 of Article 53 of the Polish Constitution: '[N]o one shall be compelled to participate or not participate in religious practices', nor 'to disclose his philosophy of life, religious convictions or belief,' obliged by organs of public authority; Article 20 of the Constitution of Belgium: 'No one can be obliged to contribute in any way whatsoever to the acts and ceremonies of a religion or to observe its days of rest,' and, among others, Article 136, paragraphs 3 and 4 of the German Constitution of 1919, which is a part of the current Constitutional Law in the Federal Republic: 'No person shall be required to disclose his religious convictions. The authorities shall have the right to inquire into a person's membership in a religious society only to the extent that rights or duties depend upon it or that a statistical survey mandated by a law so

requires. No person may be compelled to perform any religious act or ceremony, to participate in religious exercises, or to take a religious form of oath.'

Four different Constitutions, those of the Czech Republic (Article 15(1)), Slovakia (Article 24(1)), Hungary (Article 7(1)) and Cyprus (Article 18(4) and (5)) guarantee explicitly the right to change one's religion.

The right to be 'a conscientious objector, as laid down by law' is guaranteed by the Portuguese Constitution (Article 41(6)). The provision on conscientious objection existing in the German Basic Law (Article 4(3)) is only related to military service: 'No person shall be compelled against his conscience to render military service involving the use of arms,' as many other Constitutions do (for instance, Poland, Article 85(3); Estonia, Article 124; or Spain, Article 30(2)).

Some Constitutions provide that religious beliefs may not justify the failure to comply with the laws (Lithuania, Article 27; Greece, Article 13(4); Estonia, Article 41(2); Austria, Article 14 of the 1867 Basic Law on the general Rights of Nationals; and Denmark, Article 70).

Several Constitutions make special provisions for children as holders of the right to freedom of religion according to their maturity. This is the case, for instance, of Article 41(3) of the Slovenian Constitution: 'Parents have the right to provide their children with a religious and moral upbringing in accordance with their beliefs. The religious and moral guidance given to children must be appropriate to their age and maturity, and be consistent with their free conscience and religious and other beliefs or convictions.' There is a similar provision in the Constitutions of Poland (Article 53(3)) and Lithuania (Article 26(5)). The Constitution of Cyprus is much more precise when it provides that under the age of sixteen the decision as to the religion to be professed 'shall be taken by the person having the lawful guardianship of such person' (Article 18(7)).

Finally, two Constitutions protect 'religious identity' of national minorities, Poland (Article 35(2)) and Romania (Article 6(1)).

1.2. Non-discrimination on grounds of religion

The majority of the EU Member States' Constitutions proclaim the principle of non-discrimination on the grounds of religion. Most of these Constitutions do it in an explicit way: 'All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions' (Article 3.1 Italian Constitution). A provision similar to this exists in other Constitutions such as the French (Article 1, and Preamble of the Constitution of 1946), the German (Article 3(3)), the Finnish (Article 6), the Estonian (Article 12), the Czech (Article 3(1)) the Austrian (Article 7(1)), the Irish (Article 44(2)(3)), the Spanish (Article 14), and the Constitution of The Netherlands (Article 1). Other Constitutions do not make any explicit reference to religion when guaranteeing equality before the law or the right not to be discriminated, such as the constitutional texts of Belgium, Luxembourg, Denmark, Latvia, Lithuania, and Poland.

Non-discrimination may be constitutionally ensured to citizens or nationals (for example in the case of France, Spain, Italy, Austria, Article 4(2) of the Romanian Constitution, and Article 6(2) of the Bulgarian Constitution); to all human beings (Preamble of the French Constitution of 1946); to everybody or to all persons (German Basic Law, Article 3(1); Chapter 1, Article 2, of the Swedish Instrument of Government; Constitution of Estonia, Article 15(2) Constitution of Hungary, among others). Article 33(3) of the German Constitution provides that citizenship rights

shall not be dependent upon religious affiliation.

Some Constitutions guarantee also equality before the law to all 'religious confessions' (Article 8(1) of the Italian Constitution), to 'all religions' (Article 18(3) of the Constitution of Cyprus), or 'equal rights' to 'Churches and other religious organizations' (Article 25(1) of the Polish Constitution).

1.3. Religion and education

Almost half of the analysed Constitutions remain silent concerning the relationship between religion and education. All these Constitutions enshrine the right to education without making any reference to religion in schools, such as the French, Bulgarian, Slovakian, Estonian, Latvian, Finnish, Hungarian, Slovenian, Italian, Danish, Swedish and Luxembourgian Constitutions. In some of these cases, an implicit reference to the relationship between religion and education can be read in the constitutional acceptance of private schools. In the Slovak Republic, for instance, Article 42(3) of the Constitution states that '[T]he establishment of and teaching in schools other than public schools shall be possible only under the terms provided by a law; such schools may collect tuition fees.'

The rest of the EU Member States' Constitutions might contain two types of provisions on this subject: the first related to parents' rights, and the second setting some principles on religious education in school, public, eventually private, and sometimes denominational.

The German Basic Law gives a good example of both provisions. According to Article 7 '[P]arents and guardians shall have the right to decide whether children shall receive religious instruction' (second paragraph), and '[R]eligious instruction shall form part of the regular curriculum in state schools, with the exception of non-denominational schools. Without prejudice to the state's right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned. Teachers may not be obliged against their will to give religious instruction' (third paragraph). The right to establish private schools is also guaranteed with the approval of the State and subject to the laws of the Länder (fourth paragraph). Quite similar content might be found in the Constitution of Belgium (Article 24(1) and (3)) or in the Irish Constitution (Articles 42(1) and (4) and 44(2), (4-6)). The Constitution of Poland regulates at length the right to education in public and 'other than public' schools (Article 70) and admits that religion 'may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed thereby' (Article 53(4)).

In the Constitution of the Netherlands (Article 23(3) and (5)) a less detailed regulation is included, as well as in the Spanish (Article 27(3) and (6)), Lithuanian (Article 40(1-3)), among others.

Two very different provisions, in fact opposite, might be read in the Constitutions of Malta and Portugal. According to the former '[R]eligious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education' (Article 2(3)). On the other hand, the Portuguese Constitution prohibits the State to programme education 'in accordance with [...] religious directives' and excludes any link between '[P]ublic education' and 'a religious belief' (Article 43(2) and (3)).

1.4. Church and State

The majority of the European Constitutions enshrine the principle of separation between Church and State. Some of them do it in an implicit manner, as for instance the Belgian Constitution, in which Article 21 provides that '[T]he State does not have the right to intervene either in the appointment or in the installation of ministers of any religion whatsoever or to forbid these ministers from corresponding with their superiors [...]' (see also Luxembourg, Article 22; and Romania, Article 29(5)). Other Constitutions state this principle in a clear cut way: 'The church shall be separate from the State' (Constitution of Latvia, Article 99). The same principle can be found in the Constitutions of Hungary (Article 7(2)), Bulgaria (Article 13(2)), Slovenia (Article 7(1)), and Portugal (Article 41(4)). In the latter, '[T]he separation between Church and State' is a substantive limit to constitutional amendment (Article 288(c)). 'The State and the Catholic Church are independent and sovereign, each within its own sphere', according to Article 7 of the Constitution of Italy; other religious confessions' relations with the State 'shall be regulated by law on the basis of agreements with their respective representatives' (Article 8). The Polish Constitution is very similar to the Italian when regulating the relations between the State and the 'Roman Catholic Church', on the one hand, and the State and the other churches, on the other (Article 25(3-5)).

Another group of state Constitutions declare that there is no State Church or religion, or that the State is not bound to a religion: Germany (Constitution of 1919, Article 137(1)), Estonia (Article 40(2)), Lithuania (Article 43), Czech Republic (Article 2(1)), Slovak Republic (Article 1(1)), Spain (Article 16(3), which explicitly mentions the cooperation of public authorities with the 'Catholic Church and other confessions'). In the cases of Germany and Lithuania, this statement goes hand in hand with a quite developed regulation on religious societies, churches and religious organizations. The Austrian Constitution makes a difference in the status of 'recognized' and 'non-recognized' churches or confessions (Articles 15 and 16 of the Basic Law of 21 December 1867).

The establishment of very different degrees of privileged relations between the State and a religion is made in Denmark (Article 4 of the Constitution: 'The Evangelical-Lutheran Church of Denmark is the established Church of Denmark and, as such, is supported by the State'), where the King 'must belong' to the above-mentioned Church (Article 4); Finland (Article 76 of the Constitution, which relates to the Church Act and the Evangelic Lutheran Church); Sweden, (Article 2(1) of Chapter 8 of the Instrument of Government, on the Church of Sweden, and Article 4 of the Act of Succession, which obliges the King to profess the 'pure evangelical faith'); and Malta (Article 2(1) Constitution, according to which the religion of the country is 'the Roman Catholic Apostolic Religion'). The 'Eastern Orthodox Church of Christ' is defined as the 'prevailing religion in Greece' (Article 3(1) Constitution), and 'Eastern Orthodox Christianity' is considered 'the traditional religion in the Republic of Bulgaria' (Article 13(3) Constitution). In Ireland, the Constitution states that all powers of government 'derive, under God, from people' (Article 6(1)), and Article 44(1) 'acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion'.

Three peculiar cases should be mentioned in this general survey about constitutional provisions concerning Church and State relations: 1) the Constitution of the Netherlands is silent on the issue; 2) the French Constitution is the only one that defines the State as 'secular' (Article 1); and 3) the Constitution of the Republic of Cyprus of 1960, is based upon the existence of 'Communities' whose components can be identified according to religious criteria ('members of the Greek-Orthodox Church' and 'Muslims', Article 3), among others.

1.5. Miscellaneous

A certain number of European Constitutions make specific **references to God, the Holy Trinity or Christianity**. This is the case of the Preamble of the German Basic Law ('Conscious of their responsibility before God and man [...]'); the Act of Succession of Sweden; the Constitution of Poland (Preamble: '[...] those who believe in God [...] our culture rooted in the Christian heritage [...] recognizing our responsibility before God [...]'); the Preamble of the Constitution of Hungary (which sets forth that the country is 'a part of Christian Europe' and recognizes 'the role Christianity has played in preserving our nation'); the Constitution of Greece, whose first words are 'In the name of the Holy and Consubstantial and Indivisible Trinity', and Ireland (Preamble: 'In the Name of the Most Holy Trinity [...] acknowledging all our obligations to our Divine Lord, Jesus Christ [...]').

Incitement to religious discrimination is, in different ways, expressly prohibited by the Constitutions of Estonia (Article 12), Romania (Article 30(7)), Lithuania (Article 25(4)), Bulgaria (Article 44(2)), and Slovenia (Article 63). Religion as a possible limitation to freedom of expression and freedom of information is provided for by the Instrument of Government of Sweden (Article 23, Chapter 2). An offence 'against the Christian or any other known religion' is a reason, under certain conditions, for the seizure of newspapers and other publications, according to Article 143(a) of the Greek Constitution.

In Bulgaria, **political parties** 'on religious lines' are prohibited, and 'religious beliefs' may not be used for political ends' (Articles 11(4) and 13(4) of the Constitution). In Portugal, political parties 'may not employ names that contain expressions which are directly related to any religion or church, or emblems that can be confused with national or religious symbols', and trade unions must be independent of religious beliefs' (Articles 51(3) and 55(4)).

Several Constitutions mention **religious marriage**. In Lithuania, the State shall 'recognise church registration of marriages' (Article 38 of the Constitution). In Romania (Article 48(2)), Belgium (Article 21), and Luxembourg (Article 21), the recognition of the religious wedding must be preceded by a civil wedding.

In Poland 'churches and religious organizations' have **locus standing** to submit an application before the Constitutional Court for the judicial review of legislation (Article 191(1)(5) Constitution).

2. CHURCH AND STATE RELATIONS

2.1. Introduction: religious tolerance and pluralism as the distinguishing features of the European constitutional heritage

Religion has constantly played a crucial role in European history and, although not without conflicts and tensions, it has contributed in shaping the formative process as well as the outcome of nation-states, of western constitutionalism, and of European legal traditions. In fact, the contribution given by religion(s) has been qualified by its own divisions and by its ongoing interaction with competing and conflicting value systems, world views, philosophical theories and ideologies to the extent that, perhaps paradoxically, the prevailing status of tolerance and pluralism that is so typical of Europe and of the European Union may be regarded as the result of such very antagonism(s) and of the inability of any one of such intellectual and spiritual factors to establish themselves and to gain general control over the others as the only and exclusive distinctive feature of European identity (as witnessed in the preamble of the Treaty establishing the European Union, when it states to draw inspiration 'from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law').

The relevance of religion in Europe, in other words, is not rooted in its quest for uniformity but rather in its divisive attitude and effects: the initial formative period of nation-states (between the Peace of Augsburg, 1555 and the Treaty of Westphalia, 1648) does witness the conflict between secular and spiritual powers and the reference to the waning of the Holy Roman Empire as well as to the weakening of the Catholic church in Rome is further emphasized by recalling the schism of the church of England, the Protestant Reformation and the origins of nordic state churches, the use of an *ad hoc* agreement through the conventional method for regulating relations between states and Catholicism (the concordat between France and the Holy See), the strengthening of national sovereignties characterized by the principle of *cujus regio ejus et religio*, which marks both the early phase of (relative) religious freedom of individuals and communities and the existence of an established religion of national monarchies and their kingdoms. Indeed, it has been the conflict with Islam (from Spain to Central Europe and the Balkans) that has contributed to strengthening at least the uniform image of Christianity as representative of Europe.

A further indicator of the relevance of religion as a divisive factor is to be seen in the strong religious component of migration through the Atlantic Ocean and by the emancipation from the heavy burden of the European heritage of religious wars and persecution of confessional minorities⁸. Indeed, pluralism and religious tolerance either bounced back to Europe or independently found their own way on this side of the ocean as well, so that they may be identified as the distinctive features of the role of religion in the western legal tradition.

So briefly outlined the historical premises and looking at member states of the European Union as they are structured nowadays and at the European Union itself, it's easier to understand that the *problematique* of church and state relations is an

⁸ As reflected by Thomas Jefferson in the Virginia Statute for Religious Freedom (1779) with words that are still a cornerstone of religious tolerance and respect for pluralism against forced parochialism and conformism imposed by governments ('And finally, that Truth is great, and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them').

issue that needs a normative settlement⁹ – insofar as such relations have (as they certainly had, at least in the past¹⁰) a conflictive potential and permanently require a safeguard protecting their mutual independence – and that such rules are constitutional in nature¹¹: in fact, they are normally introduced in constitutional sources that have the function of attributing to the state a specific qualification with regard to religion(s) or to its own established church and state religion.

Nevertheless, constitutions also have the function of providing recognition of and protection to an area of self-determination of the individual with regard to the religious factor: it is the area of religious freedom, expanded as to include within its conceptual boundaries also further attitudes concerning the religious phenomenon in the widest sense such as atheism and agnosticism (freedom *from* religion).

Furthermore, as the practice of religion calls for group identity, sharing of value-inspired life styles and collective worship, constitutional rules deal also with the relations of the state with religious organisations or communities, sometime to be identified with religious minorities and in some cases also with national and ethnic minorities. In other words, the constitutional settlement of the potential conflict of state-church relations normally involves three normative areas – religious qualification of the state, freedom of and from religion of individuals, independent self-government of religious organisations and communities –, each one of the latter two calling for recognition, non-interference and protection from and by the state through a fundamental attitude of neutrality, so that the very historical presence of a state's official established religion does not infringe the principle of non-discrimination of those who do not adhere to it.

⁹ It did happen that an agreement on the religion clauses could not be reached at the time of writing a constitution: in Austria in 1920, in the new post-Habsburgs constitutional context it was decided that the Fundamental Law Concerning the General Rights of Citizens enacted in 1867 was to perform the function of a Bill of Rights, as it still does. It is to be recalled, however, that after World War II Austria executed the ECHR by a constitutional act. And it has been as well the case in Germany in 1949, when it was decided to introduce a reference to the previous Weimar Constitution that is therefore still in force (see Article 140 GG: 'The provisions of Articles 136, 137, 138, 139 and 141 of the German Constitution of 11 August 1919 are integral parts of this Constitution').

¹⁰ The constitutional balance achieved may also be the beneficiary of an over-protection by having it encompassed by the eternity clause of the constitution: this is the case of Portugal (see art 288 on the limits to the revision of 'c) the separation of the Churches from the State'; the same be said with regard to Italy as a consequence of the Constitutional Court declaring secularism [*laicità*] to be one of the fundamental principles of the constitutional order (decision n. 203/1989) and warning that such principles cannot be amended and that such revision would be within its own control (decision n. 1146 in 1988). It must be said that the Court has developed the principle of secularism in terms of *laicità positiva* (such that the principle 'implies non-indifference by the state with regard to religions but a state guarantee for safeguarding religious freedom in a régime of denominational and cultural pluralism', translation by the author).

¹¹ The Preamble of the Constitution of Poland is an adequate and emblematic representation of the need for such settlement to incorporate and express a well balanced mediation between conflicting values and aspirations, as it refers to '[...] Both those who believe in God as the source of truth, justice, good and beauty, As well as those not sharing such faith but respecting those universal values as arising from other sources' and further proclaims '[...] Beholden to our ancestors for their labours, their struggle for independence achieved at great sacrifice, for our culture rooted in the Christian heritage of the Nation and in universal human values [...] Recognizing our responsibility before God or our own conscience [...]'. For the permanent task to establish and maintain a much needed balancing commitment by government see also the Constitution of Belgium (Article 20: 'The State shall assist the maintenance of tolerance and respect among the believers from different denominations, and among believers and non-believers'); of Bulgaria (Article 37(1): 'The State shall assist the maintenance of tolerance and respect among the believers from different denominations, and among believers and non-believers'), and of Romania (Article 29: '(4) Any forms, means, acts or actions of religious enmity shall be prohibited in the relationships among the cults').

2.2. Constitutional models of church-state relations

As previously indicated, the variety of historical itineraries of nation-states in Europe has led to a corresponding variety of the constitutional settlement of state-church relations, thus allowing for the elaboration of some constitutional models, which are hereby described. Needless to say, such abstract models are not necessarily mutually and entirely exclusive and it does happen in historical reality that features that are typical of one model are present in another, although with differences or distinct nuances that are due to the diversity of the historical and political context. Furthermore, it is relevant to recall that religion is invariably regarded as a factor affecting the principle of equality and is therefore included, openly or implicitly, in the prohibition of discrimination invariably present in constitutional law sources.

Two main mutually alternative constitutional models of settlement and regulation of church(es)-state relations in the European Union are hereby suggested: (a) the denominational model, whose main feature is the presence of a state established church and of an official religion and (b) the separationist model, based on the liberal principle of separation between state and church(es) and religion(s). Nevertheless, the principle of separation –although expressly mentioned in normative constitutional texts–, is interpreted quite differently in the constitutions of member states, thus making necessary to elaborate still a few submodels that help understanding the plurality of meanings of the very principle of separation. Furthermore, the wide consolidation of the principle of non-discrimination is making somehow blur the very distinction between the two main models, the social and cultural process of secularisation contributing itself to building a common European architecture in the law of state-church relations.

2.2.1. The denominational model: it includes those nation-states that have their own established national church. This is the situation of Denmark¹², England¹³ within the United Kingdom¹⁴, of Finland¹⁵, Greece¹⁶, Malta¹⁷. In general, a national

¹² See the Constitutional Act of Denmark, Part 1, § 4 of ('The Evangelical Lutheran Church shall be the Established Church of Denmark, and as such shall be supported by the State'), Part II, § 6 ('The King shall be a member of the Evangelical Lutheran Church'), and Part VII: '§ 66. The constitution of the Established Church shall be laid down by statute. The Constitutional Act - while ensuring citizens' individual and collective religious rights - makes further reference to the state's legislative power for a detailed regulation of issues related to state-church relations, as provided for in Part VII: '§ 67. Citizens shall be at liberty to form congregations for the worship of God in a manner according with their convictions, provided that nothing contrary to good morals or public order shall be taught or done. § 68. No one shall be liable to make personal contributions to any denomination other than the one to which he adheres. § 69. Rules for religious bodies dissenting from the Established Church shall be laid down by statute. § 70. No person shall by reason of his creed or descent be deprived of access to the full enjoyment of civic and political rights, nor shall he escape compliance with any common civic duty for such reasons'.

¹³ Rules concerning the organization of the Church of England were the object of parliamentary legislation until the enactment of the Church of England Assembly (Powers) Act in 1919; later the Assembly of the Church was granted the power to legislate by a normative source of primary legislation (called 'measure'), subject to the Royal Assent provided that Parliament would not object. Therefore, under the law, Parliament retains the power of enacting primary legislation but by a constitutional convention Parliament wouldn't exercise such power without the consent of the Church of England.

¹⁴ The Church of Scotland is to be regarded as a national church and yet not a state established church; the Church of Wales is not a state established church either (see Welsh Church Act 1914), nor - since the 1869 Irish Church Act - is such the Church of Ireland (Anglican).

¹⁵ In Finland the Evangelical Lutheran Church of Finland and the Finnish Orthodox Church have a special role as both of them are regulated by an act of Parliament (respectively, the Church Act and the Orthodox Church Act), only the former being explicitly mentioned in the Constitution (*Section 76* 'Provisions on the organisation and administration of the Evangelic Lutheran Church are laid down in the Church Act. The legislative procedure for enactment of the Church Act and the right to submit legislative proposals relating to the Church Act are governed by the specific provisions in that Code.'), and subsequent parliamentary modifications of it being nevertheless subject to a previous deliberation by the Synod. Funds to the Church are collected by the state and both churches have the power of taxing their members.

church is established by an act of legislation, has an official status as a public institution or public corporate entity, receives public funds, its ecclesiastical appointments may depend on governmental acts. Attributing a constitutional official status to an established church does not prevent the same constitutional source from ensuring individual and collective religious freedom, freedom from religion, religious pluralism, and non discrimination on religious ground¹⁸.

2.2.2. The separationist model: it refers to those countries whose constitution explicitly rules that there shall be no state religion or state church, without individual and collective religious freedoms being adversely affected but, quite to the contrary, being beneficiaries themselves of a constitutional protection.

In spite of being *per se*, in its literal form, the prevailing constitutional setting in member states of the European Union, the separationist model is subject to a plurality of submodels.

¹⁶ The Constitution of Greece (enacted 'in the name of the Holy and Consubstantial and Indivisible Trinity'), declares in Article 3 that '1. The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and synodal canons and sacred traditions. It is autocephalous and is administered by the Holy Synod of serving Bishops and the Permanent Holy Synod originating thereof and assembled as specified by the Statutory Charter of the Church in compliance with the provisions of the Patriarchal Tome of June 29, 1850 and the Synodal Act of September 4, 1928. 2. The ecclesiastical regime existing in certain districts of the State shall not be deemed contrary to the provisions of the preceding paragraph. 3. The text of the Holy Scripture shall be maintained unaltered. Official translation of the text into any other form of language, without prior sanction by the Autocephalous Church of Greece and the Great Church of Christ in Constantinople, is prohibited'. Further provisions regulate individual and collective religious liberty, although with the unusual restriction of constitutionally banning proselytism: so does Article 13 ('1. Freedom of religious conscience is inviolable. The enjoyment of civil rights and liberties does not depend on the individual's religious beliefs. 2. All known religions shall be free and their rites of worship shall be performed unhindered and under the protection of the law. The practice of rites of worship is not allowed to offend public order or the good usages. Proselytism is prohibited. 3. The ministers of all known religions shall be subject to the same supervision by the State and to the same obligations toward it as those of the prevailing religion. 4. No person shall be exempt from discharging his obligations to the State or may refuse to comply with the laws by reason of his religious convictions. 5. No oath shall be imposed or administered except as specified by law and in the form determined by law'. Furthermore, there is an almost equal criminal protection of all religions (Article 14.3: 'Seizure [of newspapers and other publications before or after circulation] by order of the public prosecutor shall be allowed exceptionally after circulation and in case of a) an offence against the Christian or any other known religion').

¹⁷ See Article 2 of the Constitution of Malta: '(1) The religion of Malta is the Roman Catholic Apostolic Religion. (2) The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong. (3) Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education.

¹⁸ The Danish Constitutional Act - while ensuring citizens' rights - makes further reference to the state's legislative power for a detailed regulation of issues related to state-church relations, as provided for in Part VII: '§ 66. The constitution of the Established Church shall be laid down by statute. § 67. Citizens shall be at liberty to form congregations for the worship of God in a manner according with their convictions, provided that nothing contrary to good morals or public order shall be taught or done. § 68. No one shall be liable to make personal contributions to any denomination other than the one to which he adheres. § 69. Rules for religious bodies dissenting from the Established Church shall be laid down by statute. § 70. No person shall by reason of his creed or descent be deprived of access to the full enjoyment of civic and political rights, nor shall he escape compliance with any common civic duty for such reasons'. The same applies to Malta: see Article 40 of the Constitution: '(1) All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship. (2) No person shall be required to receive instruction in religion or to show knowledge or proficiency in religion if, in the case of a person who has not attained the age of sixteen years, objection to such requirement is made by the person who according to law has authority over him and, in any other case, if the person so required objects thereto: Provided that no such requirement shall be held to be inconsistent with or in contravention of this Article to the extent that the knowledge of, or the proficiency or instruction in, religion is required for the teaching of such religion, or for admission to the priesthood or to a religious order, or for other religious purposes, and except so far as that requirement is shown not to be reasonably justifiable in a democratic society'.

a. **The separationist model *tout court*:** this model states that there is no state religion and that religion is (to be) separated from the state, as in the Czech Republic, in Estonia, in Latvia, in Portugal, in Slovakia, in Slovenia¹⁹. Although only implicitly, the same applies to the Kingdom of the Netherlands and to Sweden²⁰. The rule is invariably complemented by the guaranty of the exercise of individual and collective²¹ religious freedom²².

b. **The separationist secular state:** this model is to be inferred by the constitutional declaration of secularism (*laïcité*), as in France²³.

c. **The separationist multicomunitarian state:** this model combines the principle of separation between church and state with a deeply rooted organization of society in communities that are aggregated also by a factor of religious identity, thus emphasizing the application of the principle of collective equality to the specific circumstances of religious pluralism as historically present, as in the peculiar case of Cyprus²⁴.

¹⁹ See Article 2.1 of the Charter of Fundamental Rights of the Czech Republic ('The State is founded on democratic values and must not be bound either by an exclusive ideology or by a particular religion'; Article 40 of the Constitution of Estonia ('[...]There is no state church'); Article 99 of the Constitution of Latvia ('The church shall be separate from the State'; Article 53 of the Constitution of Portugal ('(4) The churches and religious communities are separate from the State and free to organize and exercise their own ceremonies and worship'), in Slovakia (Article 1: 'The Slovak Republic is a sovereign, democratic, and law-governed state. It is not linked to any ideology or religious belief'); Article 7 of the Constitution of Slovenia ('(1) The state and religious communities shall be separate').

²⁰ The Church of Sweden may be regarded as a national church but not as an established state church.

²¹ See Article 23 of the Constitution of Slovakia ('(2) Everyone has the right to freely express his religion or faith on his own or together with others, privately or publicly, by means of divine and religious services, by observing religious rites, or by participating in the teaching of religion. (3) Churches and religious communities administer their own affairs. In particular, they constitute their own bodies, inaugurate their clergymen, organize the teaching of religion, and establish religious orders and other church institutions independently of state bodies. (4) Conditions for exercising rights according to Sections (1)-(3) can be limited only by law, if such a measure is unavoidable in a democratic society to protect public order, health, morality, or the rights and liberties of others'); Article 7 of the Constitution of Slovenia ('(2) Religious communities shall enjoy equal rights; they shall pursue their activities freely'.

²² See Article 40 of the Constitution of Estonia ('Everyone may freely belong to churches and religious societies'); Article 99 of the Constitution of Latvia ('Everyone has the right to freedom of thought, conscience and religion'; Article 6 of the Constitution of the Netherlands ('1. Everyone shall have the right to profess freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law. 2. Rules concerning the exercise of this right other than in buildings and enclosed places may be laid down by Act of Parliament for the protection of health, in the interest of traffic and to combat or prevent disorders'); Article 53 of the Constitution of Portugal ('(1) Freedom of conscience, religion, and worship are inviolable. (2) No one may be persecuted, deprived of rights, or exempted from civil obligations or duties because of his convictions or religious practices. (3) No one may be questioned by any authority about his or her convictions or religious practices, except for gathering of statistical data that cannot be identified individually, nor shall anyone be prejudiced by his or her refusal to reply [...] 5) The freedom to teach any religion within its own denomination and the use of its own means of public information for the pursuit of its activities, are safeguarded. (6) The right to be a conscientious objector is safeguarded in accordance with the law'; Chapter 1, Article 1 ('Everyone shall be guaranteed [...] freedom of worship: that is, the freedom to practise one's religion alone or in the company of others') and Article 2 of the Constitution of Sweden ('No one shall in his or her relations with the public institutions be coerced to divulge an opinion in a political, religious, cultural or other such connection. Nor may anyone in his or her relations with the public institutions be coerced to participate in a meeting for the shaping of opinion or a demonstration or other manifestation of opinion, or to belong to a political association, religious community or other association for opinion referred to in sentence one').

²³ As clearly stated by Article 1 of the Constitution of France ('France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs [...]).

²⁴ This is the situation in Cyprus, where, on the one hand, Article 18 of the source of constitutional law (Article 18, Part II of Appendix D of an international agreement) declares a *régime* of separation ('1. Every person has the right to freedom of thought, conscience and religion. 2. All religions whose doctrines or rites are not secret are free. 3. All religions are equal before the law. [...] 4. Every person is free and has the right to profess his faith and to manifest his religion or belief, in worship, teaching, practice or observance, either individually or collectively, in private or in public, and to change his religion or belief' – it's noteworthy to single out one provision which may indicative of a previous practice to be eradicated ('5. The use of physical or moral compulsion for the purpose of making a person

d. **The separationist and cooperationist state:** this model – while, on the one hand, declaring separation between church(es) and state²⁵ and, on the other, ensuring protection of individual²⁶ and collective religious freedoms²⁷ – acknowledges or establishes a special relation with one religion (Christianity), or one (or more, rather seldom) explicitly specified denomination(s), which may therefore be regarded as dominant denominations. This is the case of Bulgaria²⁸ and Ireland²⁹.

A partial alternative to separation as such is to be seen in the option involving impartiality and respect, according to the concepts employed by the Constitution of Poland with regard to all religions and denominations³⁰.

change or preventing him from changing his religion is prohibited') -, and, on the other, is made compatible (and consistent as well with the prohibition of discrimination) with a system of organized communitarianism with governmental functions with regard to their own members ('Without prejudice to the competence of the Communal Chambers under this Constitution, no legislative, executive or administrative act of the Republic shall discriminate against any religious institution or religion').

²⁵ As stated in the constitutional law of Germany (by Article 137 of the Weimar Constitution): 'There is no state church'; the same in Lithuania (Article 43(7): 'There shall not be a State religion in Lithuania'), in Spain (Article 16.3: 'No religion shall have a state character'), in Hungary (Article VII of the Fundamental Law: '2. The State and Churches shall be separate. Churches shall be autonomous. (3) The detailed rules for Churches shall be regulated by a cardinal Act'), in Portugal (Article 41(4) The churches and religious communities are separate from the State and free to organize and exercise their own ceremonies and worship'), in Romania (Article 29(5): 'Religious cults shall be autonomous from the State').

²⁶ See Article 19 of the Constitution of Luxembourg ('Freedom of religion and of public worship as well as freedom to express one's religious opinions are guaranteed, subject to the repression of offenses committed in the exercise of such freedoms').

²⁷ See Article 4 of the GG of Germany ('(1) Freedom of creed, of conscience, and freedom to profess a religious or non-religious faith are inviolable. (2) The undisturbed practice of religion is guaranteed') and earlier provisions in the Weimar Constitution: Article 135 ('All Reich inhabitants enjoy full freedom of liberty and conscience. Undisturbed practice of religion is guaranteed by the constitution and is placed under the protection of the state. General state laws are not affected hereby'), Article 136 ('Civil and civic rights and obligations are neither conditioned nor limited by the exercise of freedom of religion. The exercise of civil or civic rights, the admittance to public offices are independent of religious confession'), and Article 137 ('Nobody is obliged to profess his religious confession publicly. Public authority may only ask for religious affiliation as far as rights and obligations derive or an officially decreed census requires. Nobody may be forced to participate in a religious act or festivity, to join in religious practices or to swear a religious oath formula'. In Hungary the Fundamental Law (Article VII) states that '(1) Every person shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change religion or any other persuasion, and the freedom for every person to proclaim, refrain from proclaiming, profess or teach his or her religion or any other persuasion by performing religious acts, ceremonies or in any other way, whether individually or jointly with others, in the public domain or in his or her private life'. See also the Constitution of Spain (Article 16.1: 'Freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than may be necessary to maintain public order as protected by law').

²⁸ See the Constitution of Bulgaria, Article 13.3 ('Eastern Orthodox Christianity shall be considered the traditional religion in the Republic of Bulgaria').

²⁹ Article 44.2 of the Constitution of Ireland (adopted, as the Preamble reads, 'In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred, We, the people of Éire, Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial, Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation, And seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations, Do hereby adopt, enact, and give to ourselves this Constitution') does declare that 'The State guarantees not to endow any religion' but it also states that 'The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion' (Article 44.1).

³⁰ See Article 25 of the Constitution of Poland: '(1) Churches and other religious organizations shall have equal rights. (2) Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression within public life'. (3) The relationship between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good'.

In other cases, the constitutional mandate to state-church cooperation is framed either with regard to denominations traditionally present in the country, as in Spain³¹ or officially recognized (as in Austria³², in Germany³³, in Lithuania³⁴) or to all religions and denominations, without any further indication.³⁵ In some other cases, the constitutional source emphasizes the method³⁶ rather than the objects³⁷

³¹Article 14.4 'The public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other confessions'.

³² According to the 1867 Fundamental Law Concerning the General Rights of Citizens (Article 15) 'Every legally recognized church and religious society has the right publicly to exercise its religious worship; it regulates and administers its internal affairs independently, remains in possession and enjoyment of its establishments, institutions, and property held for religious, educational, and charitable purposes; but is subject, as other societies, to the general laws of the state'; and (Article 16) 'Adherents of a religious confession not legally recognized are permitted to worship privately, in so far as their religious services are not illegal or contrary to public morals'.

³³ As established by the Weimar Constitution: see Article 137 ('Freedom to form religious communities is guaranteed. Regarding the unification of religious communities within the Reich territory there are no limitations. Every religious community administers its own affairs without interference of state or community. Religious communities acquire legal capacity according to general specifications of civil law. Religious communities, as far as they have been, remain public corporations. Other religious societies have to be granted the same rights on application, if they, by the means of their number and constitution, indicate to be lasting. If several religious communities with the status of public corporations form a confederation, the status of public corporation is extended to this confederation. Religious communities with the status of public corporations are entitled to raise taxes based on fiscal records and in accordance with state regulations. Religious communities are given equal status with civic organizations which cultivate a philosophy of life. Inasmuch as the application of these regulations requires further details, these have to be established by state legislation'), Article 138 ('State contributions to religious communities, inasmuch they are based on law, treaty or specific legal claim, are to be handled by state legislation. The Reich provides the principles here for. The religious communities' and organization's right to own institutions serving public welfare, education and religious service, to own respective endowments and other property are guaranteed'), Article 139 ('Sunday and other state holidays are designated as days of rest from work and spiritual collection and are, as such, protected by law').

³⁴ See art 43 of the Constitution: '(1) The State shall recognize traditional Lithuanian churches and religious organizations, as well as other churches and religious organizations provided that they have a basis in society and their teaching and rituals do not contradict morality or the law. (2) Churches and religious organizations recognized by the State shall have the rights of legal persons. (3) Churches and religious organizations shall freely proclaim the teaching of their faith, perform the rituals of their belief, and have houses of prayer, charity institutions, and educational institutions for the training of priests of their faith. (4) Churches and religious organizations shall function freely according to their canons and statutes. (5) The status of churches and other religious organizations in the State shall be established by agreement or by law. (6) The teachings proclaimed by churches and other religious organizations, other religious activities, and houses of prayer may not be used for purposes which contradict the Constitution and the law'.

³⁵ See the Fundamental Law of Hungary (Article VII 'The State shall cooperate with the Churches for community goals'.

³⁶ In the republican Constitution of Italy the bilateral method is emphasised both with regard to the Catholic Church as a sovereign state subject on international law and with other organised denominations: see Article 7 ('(1) The state and the catholic church are, each within their own reign, independent and sovereign. (2) Their relationship is regulated by the Lateran pacts. Amendments to these pacts which are accepted by both parties do not require the procedure of constitutional amendments) and 8 ('(1) Religious denominations are equally free before the law. (2) Denominations other than catholicism have the right to organize themselves according to their own by-laws, provided they do not conflict with the Italian legal system. (3) Their relationship with the state is regulated by law, based on agreements with their representatives'); see also Article 22 of the Constitution of Luxembourg ('The State's intervention in the appointment and installation of heads of religions, the mode of appointing and dismissing other ministers of religion, the right of any of them to correspond with their superiors and to publish their acts and decisions, as well as the Church's relations with the State shall be made the subject of conventions to be submitted to the Chamber of Deputies for the provisions governing its intervention'); and Article 25 of the Constitution of Poland ('(4) The relations between the Republic of Poland and the Roman Catholic Church shall be determined by international treaty concluded with the Holy See, and by statute.(5) The relations between the Republic of Poland and other churches and religious organizations shall be determined by statutes adopted pursuant to agreements concluded between their appropriate representatives and the Council of Ministers.

³⁷ See the Constitution of Croatia, at Article 41 ('(1) All religious communities shall be equal before the law and shall be separated from the State. (2) Religious communities shall be free, in conformity with law, publicly to perform religious services, to open schools, educational and other institutions, social and charitable institutions and to manage them, and shall them, and shall in their activity enjoy the protection and assistance of the State); and of Romania (Article 29(5): 'Religious cults [...] shall enjoy

of cooperation, the public funding of religious activities or organization³⁸, in still further cases areas of non cooperation are spelled out³⁹ and the separation between national politics and religion and religious organizations is also a proper matter for normative settlement.⁴⁰ Protection of individual and collective⁴¹ religious freedom is guaranteed – in some instances with a very detailed list of rules⁴² - as well as freedom from religion.⁴³

2.3. The ECHR and the European Union

Mainstream European constitutional heritage in relation to religious freedom –just as with regard to other issues- has been reinforced by its shaping by the ECHR as interpreted and enforced by the ECtHR in Strasbourg, often in dialogue with national courts. Article 9 of the Convention deals with freedom of religion in the proper context of individual liberties – together with freedom of thought and conscience, to the extent of expressly providing also for the 'freedom to change his religion or belief' - as well as with regard to the implications of its collective enjoyment through a plurality of ways ('freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance').

support from it [the State], including the facilitation of religious assistance in the army, in hospitals, prisons, homes and orphanages').

³⁸ See Article 106 of the Constitution of Luxembourg ('The salaries and pensions of ministers of religion shall be borne by the State and regulated by the law').

³⁹ In fact the Constitution may strengthen areas of separation, as in Bulgaria: see Article 46.1 of the Constitution 'Matrimony shall be a free union between a man and a woman. Only a civil marriage shall be legal'; and on a smaller extent Article 21 of the Constitution of Luxembourg ('Civil marriage must always precede the nuptial benediction').

⁴⁰ This is quite emphasized in the Constitution of Bulgaria, see Article 11.4 ('There shall be no political parties on ethnic, racial or religious lines, nor parties which seek the violent seizure of state power; Article 13.4 ('Religious institutions and communities, and religious beliefs shall not be used to political ends' and Article .

⁴¹ See Article 21 of the Constitution of Belgium: 'The State does not have the right to intervene either in the appointment or in the installation of ministers of any religion whatsoever or to forbid these ministers from corresponding with their superiors, from publishing the acts of these superiors, but, in this latter case, normal responsibilities as regards the press and publishing apply'; Article 16 of the Charter of Fundamental Rights of the Czech Republic ('(2) Churches and religious societies administer their own affairs, in particular appoint their organs and their priests, and establish religious orders and other church institutions, independently of organs of the State'.

⁴² It happens in Poland: see Article 53 of the Constitution: '(1) Freedom of faith and religion shall be ensured to everyone. (2) Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion shall also include possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services.

(3) Parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. [...] (4) The religion of a church or other legally recognized religious organization may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed thereby. (5) The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others [...] (7) No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or belief'.

⁴³ In this context it's worth mentioning Article 20 of the Constitution of Belgium: 'No one can be obliged to contribute in any way whatsoever to the acts and ceremonies of a religion or to observe its days of rest; Article 20 of the Constitution of Luxembourg ('No one may be forced to take part in any way whatsoever in the acts and ceremonies of a religion or to observe its days of rest'; Article 24.1 of the Constitution of Slovakia ('The freedoms of thought, conscience, religion, and faith are guaranteed. This right also comprises the possibility to change one's religious belief or faith. Everyone has the right to be without religious belief'); in Poland, Article 53 ('(6) No one shall be compelled to participate or not participate in religious practices'; in Portugal, Article 29 ('(1) Freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever. No one shall be compelled to embrace an opinion or religion contrary to his own convictions. (2) Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect'), in Spain, Article 16.2 ('No one may be compelled to make statements regarding his or her ideology, religion or beliefs').

The ECtHR does often refer to the national margin of appreciation in dealing with litigation grounded on Article 9, thus acknowledging, although only implicitly, that Article 9 and its own case-law is not meant to radically alter the domestic constitutional settlement reached through mediation and compromise by the contracting states. A model of state-church(es) relation not compatible with Article 9 rights of religious freedom would make a state unfit for membership in the Council of Europe and for being a contracting party to the ECHR.

Basically, the same attitude of non interference with the model of state-church(es) relations of member states has been adopted by the European Union, both with regard to Article 10 on freedom of thought, conscience and religion of the Charter on Fundamental Rights (CFR) - which repeats the very wording of Article 9 of the ECHR - and to Article 17 of the treaty on the Functioning of the European Union⁴⁴.

It is obvious that by maintaining a strict neutrality both with regard to individual religious denominations and to rationalist and philosophical orientations the EU implements its commitment to deepening the solidarity between the peoples of member states 'while respecting their history, their culture and their traditions', as stated in the Preamble of TEU.

However, it is noteworthy that, while there is no scope for establishing a model of state-church(es) relations within the Council of Europe – and in fact Article 9 ECHR is meant to constrain governmental powers that belong only to the contracting states -, the governmental powers attributed to the European Union require their being subject to limits that protect individual and collective fundamental rights. Therefore, Article 10 of Charter concerning rights of religious freedom does entail a general framework of relations between the EU and churches that is to be inferred from it and Article 17 of the TFEU may therefore be seen as having not only the purpose of non interference with member states' models but as well as serving as the rationale for establishing a model of relations of the EU with the realm of religion and of philosophical and spiritual thinking.

This model is inspired by the principles of separation – not incompatible with state and national established churches of some member states inasmuch as it offers the same quality of respect and protection to religious freedom as they themselves do beyond the believers registered with their own established church -, of respect and of dialogue (which is to be interpreted almost as a synonym of cooperation adapted to the peculiarities of the Union as distinct from the characters of its member states that have chosen a cooperationist model). It is noteworthy mentioning that the forthcoming accession by the EU to the ECHR and its submission to the jurisdiction of the ECtHR is likely to enhance these constitutive features and further the EU's sharing the constitutional heritage with its member states.

2.4. The implementation of constitutional models through case law

The short survey of the main features of the European constitutional models of state-church relations carried out above indicates the richness of European history as related to religion – a richness usually acknowledged with regard to art and humanities and quite seldom to law – as well as the variety of formulas that

⁴⁴ According to such provision, '1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. 2. The Union equally respects the status under national law of philosophical and non-confessional organisations. 3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations'.

express the settlement of the religious question in member states of the EU in strict relation with the peculiarity of the historical and contemporary religious, cultural and political setting of each one.

Although it would be hard to deny that religious freedom as such – both individual and collective freedom and freedom from religion – is genuinely protected and practiced and that its enjoyment represents an authentic European common ground, it would be just as hard to say that there is the same common ground when it comes to the identification of a constitutional model of qualification of church(es)-state relations, social and cultural secularisation providing only a sociological and not a legal understanding of the prevailing dynamics.

It would therefore be more accurate to say that there is a common trend, whose features are (i) restricting the option in favour of a state national established church, (ii) supporting the model that combines separation between church(es) and religious communities and state with cooperation based on mutual independence and respect and with regard to a set of given areas of public concern (and therefore not encompassing a sort of a general mandate) to be achieved through employing a conventional method. This model is often framed as positive secularism (*laïcité positive*) and is therefore distinct from secularism *tout court* (*laïcité*). However, the separationist and cooperationist model in a multicomunitarian model needs being kept under strict attention as the furthering of the process of cultural and religious fragmentation as presently experienced in Europe might infringe and put to risk the still prevailing unifying conceptual structure of citizenship.

In spite of the often articulated and detailed normative architecture of the constitutional models, the conflictive potential of the religious question does provoke and does receive judicial answers – by national, international and supranational courts – to the extent that such courts' case law connected to issues belonging to the very qualification of church(es)-state relations provides a necessary complement to the constitutional models as defined by positive law. A short – merely indicative and emblematic - survey of such case-law is offered here below.

2.4.1. The indirect denial of the practice of one's own religion

In *Cyprus v. Turkey*⁴⁵, the case did not involve a direct and *tout court* denial of the religious rights of the Greek-Cypriot population resident in the territory under control by the authorities of the Turkish Republic of Northern Cyprus. However, 'the restrictions placed on the freedom of movement of that population during the period under consideration considerably curtailed their ability to observe their religious beliefs, in particular their access to places of worship outside their villages and their participation in other aspects of religious life.' Therefore, the Court's judgment concludes that 'there has been a violation of Article 9 of the Convention in respect of Greek Cypriots living in northern Cyprus.'

Administrative efficiency in handling files concerning religious communities may turn out to be recognized as an indirect violation of religious freedom, such as in For instance, in the case of *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (2008) – involving a delay of 20 years since the application for having their legal personality granted (see section 6 on the freedom of assembly and association).

⁴⁵ *Cyprus v. Turkey*, 10 May 2001

2.4.2. Discrimination of religious communities

The ECtHR has consistently and systematically qualified freedom of thought, conscience and religion as enshrined in Article 9 of the ECHR as 'one of the foundations of a democratic society within the meaning of the Convention. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it [...] While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to manifest one's religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shares.'⁴⁶

In fact, the enjoyment of collective religious freedom entails the free establishment and organization of a community sharing the same beliefs and wanting to pursue their faith collectively. When the law provides for a system of registration and when such a registration is a precondition for access to some benefits, the law must be framed in order to have objective criteria of admission and its administrative application must follow substantive and procedural rules that prevent arbitrary discrimination.

a. Discrimination of religious communities: registration procedures

An important judgment⁴⁷ by the ECtHR concerned the discrimination imposed on the equal enjoyment of collective religious rights, therefore involving both Article 9 and Article 14 of the ECHR. In particular, the case dealt with the ability of some churches to conclude an agreement with the government of Croatia that by regulating their legal status would allow them to provide religious education in public schools and nurseries, to perform religious marriages with the effects of a civil marriage, or to provide pastoral care to their members in medical and social-welfare institutions and in prisons. The complaint was originated by a group of Reformist churches (*Savez crkava 'Riječ života'* - Union of Churches 'The Word of Life'-, *Crkva cjelovitog evanđelja* (Church of the Full Gospel) and *Protestantska reformirana kršćanska crkva u Republici Hrvatskoj* (Protestant Reformed Christian Church in the Republic of Croatia).

The applicant churches, which already had a legal personality, were refused the agreement with the Government entitling them to provide the religious services at issue while other religious communities, whose number of adherents did not exceed 6,000 either and which thus did not fulfill the numerical criterion set out in the relevant instruction, were granted such agreements. The Government of Croatia failed to justify its denial of an agreement with the applicants in comparison with the agreement concluded with other religious communities that supposedly satisfied the alternative criterion of being 'historical religious communities of the European cultural circle.' The same criterion should have been equally applied to the applicant churches, being of a Reformist denomination. The Court concluded that the criteria were not applied on an equal basis to all religious communities, and that this difference in treatment did not have an objective and reasonable justification, thus violating Article 14 in conjunction with Article 9.

b. Discrimination of religious communities: granting public financial support

The principle of cooperation between state and churches and religious organisations – although separated – normally entails making public financial support available for

⁴⁶ Although the same text is emblematically repeated, the quotation is from *Hasan and Chaush v. Bulgaria*.

⁴⁷ *Savez crkava 'Riječ života' and Others v. Croatia*, 9 December 2010.

carrying on activities regarded as contributing to state's purposes and areas of intervention. It happens that a state may decide to limit allowing the use of such resources only to the most practiced religions or the most relevant (in numbers and historical presence) religious organisations. Constitutional Courts have admitted that equality among religious groups does not mean that the same regime must be applied to all religions. Thus, differentiation may be accepted as long as it is justified and it pursues legitimate objectives. To this extent, a differential treatment among religious groups may be justified or not according to the field to which it applies.

This is clearly expressed in a decision of the Slovenian Constitutional Court (15 April 2010, n. 92/07). The Court had to consider the system of public registration of religious groups, based on the requirement according to which only those groups that had not less than one hundred members and ten years of activity or more than one hundred years of world recognition were entitled to be registered. The Court found the system in breach of the Constitution with regard to the denial of legal personality to non-registered religious communities, as they were prevented from the enjoyment of their constitutional freedom of religion but, on the contrary, considered the system reasonable and objectively justified – therefore consistent with the constitution – if it serves the purpose of setting criteria for obtaining financial support from the state. In other words, equal treatment among religious groups is strongly guaranteed when the state substantially prevents a religious group from manifesting its own religion, whereas, in relation to a differential treatment related to positive public interventions, a margin of discretion is recognised to the State.

Furthermore, when providing public grants to religious communities, states should make sure that the criteria chosen do not even indirectly exclude specific religious groups. In its decision n. 346/2002, the Italian Constitutional Court reviewed a regional statute that granted financial aids for the construction of religious buildings. The statute limited the financial aid to those religious groups that had previously achieved an agreement with the national government. The Court considered that it is reasonable and justified for the regional authorities to limit such a grant to those religious groups which are present with an established organisation. However, according to the Court, the regional statute breached the constitutional principle of equality: in fact, as the national government had no agreement with any Islamic religious community, the said requirement was in fact an indirect way to exclude regional public financing for the construction of mosques, although the well-established presence of Muslims in that regional territory.

c. Discrimination of religious communities: alleged privileges of an established state church

The issue of equality among religious communities and of the recognition of special status to certain religions has been cautiously approached by the ECtHR case-law. It can be noted that, according to the debate that preceded the insertion of the freedom of religion provision in the ECHR, there was a consensus among the contracting states that this clause would have not prevented states to maintain a church of state and the privileges this status entails. This may explain why the ECtHR has not thus far put into question the privileged status that certain states recognised to their established state churches. For instance in the recent *Ásatrúarfélagið v. Iceland* decision, 18 September 2012, the applicant – a religious association – complained that it was discriminated against as compared to the national church of Iceland. While all registered religious association in Iceland, including the applicant association, receive funding in the form of the so-called parish charges which the State collects from every individual, the national church

receives further additional funding. The applicant alleged a violation of Article 9 alone and in conjunction with Article 14 of the ECHR. The Court declared the application inadmissible as there was no appearance of a breach of the applicant's right to practice their religion. The court did not consider the Article 14 claim and thus it did not question the Icelandic courts' view that the National Church treatment cannot be compared to that of the other religious groups, due to the tasks and obligation it performs in the Icelandic society.

2.5. Concluding remarks: the European constitutional heritage and its present challenges

The constitutional dimension of individual and collective freedom of religion and – to a lesser extent⁴⁸ – of freedom from religion is the area of expression of a prevailing and widely shared European constitutional heritage. This statement appears to be presently correct regardless the specificity of the qualification of the state with regard to the various models that may be identified (see below). However, it is fair to admit that the constitutional settlement of the religious question in Europe appears to be quite dependent on its historical origins and development that has to deal mainly with Christianity and within Christian denominations, the Jewish question having been first set aside with centuries of persecution and/or marginalization (at best) and, after the French Revolution, having then experienced a contradictory process of settlement, from the Shoah to various degrees of recognition and protection of their identity and ultimately of integration, although a new growth of antisemitic sentiments shows that the Jewish question is still and always open.

Pluralism and tolerance have been therefore consolidated in a quite limited (both quantitatively and quality-wise) scenario of religious diversity, and such consolidation has undoubtedly been facilitated by a contextual wide and deep process of secularization of European society. However, mostly since the last decades of the 20th century, waves of migration and to some extent also a phenomenon of religious conversion by Europeans have introduced significant segments of the population (irrespective of citizenship) practicing other religious faiths, thus causing two contradictory sorts of demands: on the one hand, claims supporting the need for adapting the consolidated constitutional settlement based on tolerance and pluralism to a wider spectrum of religious realities and, on the other, calls reinforcing the expectation of Christianity to safeguard its own traditional role in nation-states and in Europe. At the same time, the secularly-oriented and rationalist component of the population also feel to be threatened themselves by a social and cultural militant protagonism of all religions⁴⁹.

Adaptation to an increased (again, both in quantity and in quality) religious diversity requires a long process and a rather complex one, as it appears to be developing in a new religion-wise cultural and social atmosphere, characterized by raising aggressiveness shown by all sides, by veins of (relatively successful) nationalistic populism in the political arena (ready to raise, in particular, issues of domestic and international security), by the social condition of most immigrants (that by definition belong to the poorest strata of society) as well as by their cultural and religious identity, reflected in their life styles that are not always compatible with those of the national population. The resulting conflicts do produce either new legislation or judicial litigation or both, in the latter case with the

⁴⁸ The historical experiences of state atheism and religious repression in eastern Europe, although part of the recent history of the continent, are not part of the European constitutional heritage.

⁴⁹ Perhaps the aggressiveness of some religious fundamentalism in the USA contributes to shaping a counterpart in Europe as well.

relevant consequence of allowing for a wide range of case-law that more and more gives new and more detailed and 'updated' meanings to the constitutional framework, which therefore appears to be well under strain. In other words, the established constitutional settlement of the religious question - based on pluralism and tolerance - is being challenged by a wider and different pluralism that tests the strength of tolerance and its ability to control it, thus raising the issue of a sustainable religious pluralism.

The religious component of the social and political system of European nation-states has a presence that from the strictly religious dimension enters into politics and is consequently further reflected onto parliamentary representation and composition of all state institutions, policies and therefore legislation, administrative implementation and judicial interpretation and adjudication.

State-church(es) relations affect therefore a variety of material areas of public intervention, indeed quite more than may be the detailed object of specific positive rules, taking into consideration also the historical circumstance of religious charitable involvement in activities (health, education, social assistance) that have become the object of welfare public policies and of states' direct intervention only at a later stage, thus replacing churches and religious organisations and their value-inspired framework with the rather different conceptual machinery of social rights and entitlements. Therefore, the role of religion in public affairs is rather indirect, somehow veiled by supposedly non-religious but purely ethical concerns, sometime reinforced by inter-faith and non strictly denominational shared attitudes or by reference to national and cultural traditions. In other words, from a legal and constitutional point of view, the religious inspiration or motivation of policies and regulations - and of the consequent judicial litigation - is not always clearly and openly stated, thus veiling the expectation of and constitutional obligation to state neutrality. In a period as the present one when so much emphasis is on the principle of subsidiarity and its supposed ability to better and more efficiently spending public money, transferring areas of public concern to the private might entail a wider although at least indirect involvement of religious organizations and churches in handling public issues.

The quest for truth and answers to the main existential doubts is part of the human condition. Men and women continue searching such answers or have found them. This is the area of religious and philosophical enquiry. The answers ultimately depend on a variety of intellectual and emotional factors. The religious answers are expected to be absolute whereas liberal democracy relies on relative answers, relativism being founded on partial truths and their mutual accommodation. The opposite of relativism is absolutism, which is structurally incompatible with mediation and balancing efforts. States and governments ought to stay far away from this conflictual area, whether the context be religious or ideological, based on faith or theories; but, as in the past, in some cases governments keep trying to support their legitimacy also on their historical and symbolic connections with the manifestation of religions.

It is well founded to acknowledge that mainstream constitutionalism - or the European constitutional heritage - has achieved a well balanced settlement of the divisive potential of the religious question. However, it is just as important to keep the awareness well alive on the old criticalities and on the new challenges which member states of the European Union are facing in the present time.

Among the former, one has to consider that, in spite of the constitutional proclamation of the principle of separation, the contextual constitutional principle of cooperation may turn out to be just a legal veil that hides and protects a politically dominant church or denomination merely deprived of its constitutional title. The

ambiguous situation here described may be the source of weakening the equal status of other religions and numerically minor denominations, as well as of the area of freedom from religion thus increasing the potential for discriminatory legislation or attitudes by the public administration. Therefore more national and ultimately European litigation – mostly based on the ECHR - is to be expected and, although the ECtHR is unlikely to change its deference to the national margin of appreciation doctrine (or, in an extreme case, to start a pilot procedure on Article 9 issues), it might decide to signal at least that it might reduce the area of such a deference. In fact, it is important to stress that the historical national heritage of member states is not and shall not necessarily be also its constitutional identity.

Among the latter – namely, the new challenges, the features and the implications of the process of structural and permanent change of the very human and cultural fabric of society in the EU are to be singled out. The changes have inevitably an impact – among other areas – on the religious orientation of the population, with the strengthening, in particular, of those who practice their religious faith according to Islam. Some special commitment to accommodation of European Islam within the European constitutional heritage appears to be necessary. The same applies to religions that are in the process of growing and developing their European identity. Once again, it is important to stress that the constitutional identity of member states – starting from their very condition of EU membership - is not and shall not necessarily be also their historical national heritage.

It is not for the institutions of the EU to have a direct decision-making role with regard to issues that belong to the history and reserved area of competence of its member states. Nevertheless, the EU has a voice in achieving its own settlements and by doing this the Union will receive an input from some member states and give some outputs on some others (as it has done in the past on cultural attitudes, such as equal opportunities rights for women). In other words, the political institutions of the EU and the European Parliament better than the other institutions the Court of Justice contributing through non political means – may be expected to start and shape a process of development and accommodation of a wider religious pluralism in a tolerant Europe and ought therefore to act towards that end.

3. PROHIBITION OF TORTURE AND PHYSICAL INTEGRITY

In this section, dissimilar cases are analyzed, associated by a common character: coercion and violence together with some religious *ratio*. The degree of uniformity and homogeneity in the legislation of the EU Member States also appears to be dissimilar: from a very consolidated regulation against physical violence due to religious reasons, to a still fluid and evolving adjustment of male circumcision. The increasing rate of immigration plays a key role in the need to define a certain legal *acquis*, since specific cases – which used to be marginal cases – are becoming numerically relevant and surely crucial from the point of view of human rights (i.e. female genital mutilation, quite common in sub-Saharan countries).

3.1. Violence against the members of a religion

The history of European States – characterized by protracted and widespread violence among and against members of different religions – determines a particularly solid and uniform frame for the protection of religious freedom against violence.

In 1996, the Council of the European Union required Member States to fight against 'public incitement to discrimination, violence or racial hatred in respect of a group of persons or a member of such a group defined by reference to colour, race, religion or national or ethnic origin.'⁵⁰ Criminal legislation of the member States bans incitement to violence on grounds of religion,⁵¹ often introducing specific aggravating circumstances whenever a violent act – already autonomously punished – is committed for religion reasons.⁵²

The ECtHR has demarcated the borders of the notion of 'violence', excluding it in the hypothesis of mere petulance, consisting of a recurrent form of proselytism inflicted by a member of Jehovah's Witness upon his neighbour, or by a Pentecostal aeronautic official upon his subordinates (respectively *Kokkinakis v. Greece*, 25 May 1993, and *Larissis and others v. Greece*, 24 February 1998).

The ECtHR has applied Articles 3 and 9 ECHR to the case *97 members of the Gladni Congregation of Jehovah's Witnesses and 4 others v. Georgia*, 3 May 2007. The Congregation had been attacked by a group of Orthodox, without any intervention by police forces and without any following criminal inquiries or prosecution. The ECtHR stated that: 'through their inactivity, the relevant authorities failed in their duty to take the necessary measures to ensure that the group of Orthodox extremists [...] tolerated the existence of the applicants' religious community and enabled them to exercise freely their rights to freedom of religion.' The importance of such a decision resides in the fact that the ECtHR imposes a positive obligation upon States to intervene both in preventing and sanctioning such form of violence.

It is also worth recalling the case of *Milanovic v. Serbia*, 14 December 2010, in which the State was condemned for its passive stance regarding repeated physical violence perpetrated by extreme right-wing militants upon a representative of a national Hare Krishna Hindu Community. The Court recognized the violation of Articles 3 and 14 of ECHR and held: '[...] treating religiously motivated violence on an equal footing with cases that had no such overtones meant turning a blind eye

50 Joint action/96/443/JHA of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia.

51 See, among others: Austrian Criminal Code, para. 283; Belgian Anti-Discrimination law 10th May 2007; Bulgarian Criminal Code, Article 162; Estonian Criminal Code, Article 152; Irish Prohibition of Incitement to Hatred Act 1989; Portuguese Criminal Code Article 240.

52 For example: Spanish Criminal Code, Article 22, para. 4, Luxembourg Criminal Code, Article 377.

to the specific nature of acts that are particularly destructive of fundamental rights [...] although the authorities had explored several leads proposed by Mr. Milanovic concerning the motivation of his attackers these steps amounted to little more than a pro forma investigation'

3.2. Male circumcision

Male circumcision for non-therapeutic reasons appears to be practiced with relative regularity and frequency throughout Europe. Moreover, it is the only scenario, among the topics discussed in the present chapter, in which the outcome of the balancing between the right to physical integrity and religious freedom is in favour of the latter, even if integrity plays a non-marginal (albeit recessive) role (i.e. ECtHR, *Jehovah's Witnesses of Moscow and others v. Russia*, 22 November 2010, para. 144).

Male circumcision is commonly performed by Jews and Muslims, and has been endorsed by the American and British medical practice.⁵³ Generally, non-therapeutic male circumcision has failed to arise any meaningful political debate or the attention of state courts, save very recently and in some narrow contexts. The legislative approach has been mainly abstentionist, avoiding any explicit and direct regulation, and considering the legal protection provided to the minor's health to be adequate.

Prior to the recent case law, followed by some isolated administrative and legislative regional initiatives, the phenomenon came to the consideration of the judiciary almost exclusively in cases of non-therapeutic circumcision practised by a person not licensed to practice medicine resulting in grievous bodily injuries or even the death of a minor. A crude example is a 2005 Irish case concerning a Nigerian citizen exonerated from prosecution for the reckless endangerment in relation to a home circumcision followed by the death of a 29-day-old child due to haemorrhage and shock. Addressing the jury, the judge of the *Waterford Circuit Court*, explicitly invited the jurors 'not to bring their white Western values to bear when they were deciding the case.'⁵⁴

In Sweden, a law entered into force in 2001 which required registration at the *National Board of Health and Welfare* for anyone intending to perform the operation and 'effective pain control for all circumcisions.' Although this legislation aroused sharp objections by Muslims and Jews, to date, no substantial modifications have been made. It was enforced for the first time in October 2010 against an Egyptian national, who was indicted for practicing a circumcision 'without a licence.'

In Finland, the origin of the legal debate on circumcision can be found in the litigation between two spouses, in which the autonomous action of the mother resulting in circumcision of a minor child. In 2008, the Finnish Supreme Court held that: 'circumcision carried out for religious and social reasons and in a medical manner did not have the earmarks of a criminal offence.' Very recently (2 January 2012), the Helsinki District Court imposed a fine of 360 Euros on a man convicted of assault and battery for performing circumcision on two Muslim boys (one of them suffering for a derivative infection) without medical licence. Both parents have also been convicted for instigation of assault and battery. While acquitted of criminal allegations, they were fined with 3.500 Euros.

⁵³ The abovementioned endorsement is nowadays under revision, specially due to reform motion based in Australia, cfr. the *Tasmanian Law Reform Institute's Report*, August 2012, containing the recommendation to impose a general prohibition on the circumcision of minors, except for well-established religious or ethnic reasons.

⁵⁴ Another case involved the disagreement between two parents belonging to different religious communities regarding an underage child (Court of first instance of Padua, 5 December 2007, n. 2046).

Even though the above-mentioned 2008 Finnish Supreme Court's judgment specified that religiously mandated circumcisions were not illegal if performed according to proper medical procedure, Finland has subsequently signed the Convention on Human Rights and Biomedicine of the Council of Europe (30 November 2000). Therefore, an adjustment of the jurisprudential positions might follow: the procedures affecting a person's health must be performed according to applicable professional obligations and requirements. Surgical procedures can be performed on a person incapable of giving informed consent only if there are immediate benefits and if the person performing the procedure is a medical or health care professional (licensed in Finland or elsewhere in the EU).

In Italy, the practice of circumcision finds explicit recognition in Articles 2(1) and 26(1) of the 1987 Agreement with Jewish communities, allowing 'the right to perform, in any collective or individual way, the rites of Judaism.' The only controversies regarding the issue of implementation thereof concern the possibility of performing the operation under the National Health Service (the Courts have given negative replies), and the possibility for religious practitioners, who are not medical professionals, to obtain a specific license.

The Judgment of Italian Supreme Court on 22 June 2011, no. 43646, excluded the *mens rea* in the case of a circumcision performed by a Catholic Nigerian national on her underage child which resulted in a serious haemorrhage. In its ruling, the Italian Supreme Court defined the 'cultural offence' as a crime in which the defendant absorbed in his education the rules of culture and tradition belonging to a specific ethnic group, prior to migration to another territory, where such rules do not exist, and are even criminally punished.

In the United Kingdom, the Courts of Appeal at least twice (1999 and 2005) have rendered judgments on issues of circumcision. In both cases, the legal separation of the parents was followed by the unilateral act of one parent to have the operation performed. The British judges concluded that such an important and irreversible decision cannot be taken against the will of one parent. Therefore, in such cases, the underage child could not be circumcised.

Recently, several issues concerning the harmfulness of the operation and the lack of consent by an underage minor emerged, jointly with the consideration of non therapeutic relevance of the operation. All this has led to attempts to strictly regulate male circumcision, if not even to ban it (i.e. German courts condemned the responsible for performing the circumcision, respectively, on a seven year old boy (first instance Court of Düsseldorf – 26 June 2006) and on an eleven year old boy (Oberlandesgericht Frankfurt – 21 August 2007, judg. 4 W 12/07).

The Landgericht Köln, in a 7 May 2012 judgment (Aktenzeichen 151 Ns. 169/11; NJW 2012, 2128) has affirmed that the circumcision, based upon religious grounds, performed by Muslim parents on an underage child, represents a bodily injury. The juridical reasoning of the Köln Court was anchored on the greater weight accorded to the fundamental constitutional right of an underage child to bodily integrity *vis-à-vis* the freedom of religious belief and the protection of parental responsibility. The Court took in account that circumcision is in conflict with the future freedom of choosing a religious affiliation.

Even though the judgement ended up with an acquittal of the Muslim physician, considering his error of law, the case was followed by intense reactions from the religious representatives, condemning the assumed assault on freedom of religion and calling for legislative intervention, directed at excluding any potential rulings in the future from declaring non therapeutic male circumcision as an unlawful act.

Therefore on 19 July 2012, the Bundestag approved a resolution (17/10331), with the premise that 'Jewish and Muslim religious life must continue to be possible in Germany and circumcision has a central religious significance for Jews and Muslims', inviting the Government to present a bill in parliament, directed at ensuring that 'the circumcision of boys, carried out with medical expertise and without unnecessary pain, is permitted', with regard to the constitutional protection of the underage's welfare, bodily integrity, freedom of religion and of the parent's right to educate their children.

Eventually, on 20 December 2012, the Parliament enacted a law, introducing Article 1631d into the *BGB*, which permits non therapeutic circumcision, conducted according to the medical profession's art where it does not adversely affect the underage child's health. The second paragraph authorizes subjects, selected by the religious denomination, who have obtained proper training, even though they may not be physicians. The Article, and above all the covering reports to the drafts bills, extensively specifies that circumcision is a religious choice and not simply a ritual act, with merely a religious appearance.

Pursuant to the Köln judgment, on June 2012, the Governor of the Austrian Bundesland Voralberg, exhorted physicians to interrupt any circumcision operations. This stance on circumcision, however, was followed by an intervention of the Austrian Minister of Justice reassuring the medical practitioners about the lawfulness of the procedure in Austria.

3.3. Female genital mutilation (FGM)

Hardly might this practice be ascribed to the category of cult activities, since it is not prescribed by religious precepts, but rather by tribal rituals limited by geography. From a theoretical point of view, the practice bears a greater resemblance to ritual scarification than it does to male circumcision, so that a major change has been made in the terminology from 'female circumcision' to 'female genital mutilation' (FGM).

Normative and jurisprudential systems are essentially bipartite: first, systems setting up a specific crime, with extraterritorial effects, and the supporting intervention of civil society, such as women or immigration associations; and second, systems employing ordinary criminal law, without any extraterritorial extension of the punishment.

As to the first system, Sweden has been the first EU member to adopt a specific law, directed at punishing FGM (Law 1982:316, amended in 1998). This piece of legislation has been a fruitful model for legislators from other jurisdictions. Since the entry into force of the 1982 Law to the present time, the complaints before appointed authorities have been more than forty. However, many appear to be unfounded. In other cases, it has not been possible to ascertain whether the FGM was performed before entering Sweden or whether it was decided by relatives living abroad and not by Swedish residents.

Only two criminal trials have ended with a condemnatory decision, both at the district court of Göteborg and both against Somali nationals. In the first case (March 2008), the Göteborg district court found the father and the aunt of a girl guilty of mutilations performed in Somalia. The case gave rise to criticism over an allegedly insufficient preparatory inquiry and investigation of the facts. In the second case (June 2006) a sixteen-year-old girl charged her mother with ill-treatment, including FGM that had taken place in Somalia five years earlier. The court sentenced the mother to three years in prison.

The Swedish model can also be found in Denmark. In 2003, a new law was passed introducing a specific FGM offence: a person who cuts or otherwise removes female genitals, totally or partially, with or without the consent of the person concerned, may be punished with imprisonment of up to six years. If the bodily injuries are serious or if the death follows the operation, the aggravating circumstances section of paragraph 246 can be invoked, increasing the maximum punishment to ten years.

The actual enforcement of Article 245a has been extremely limited: two parents holding Danish citizenship, but of Eritrean heritage, ordered the FGM of two daughters during a trip in Sudan, and attempted to perform the mutilation on a third daughter during later travels. The daughters were given to foster care, while the First instance Court of Golstrup (23 January 2009) sentenced the mother to two years imprisonment. The father was acquitted since he was found not to have committed the act. In defending these acts, there was no reference to religious motives. The mother claimed that she followed this traditional approach for hygienic reasons denying that this was mutilation.

The particularly strict praxis of Luxembourg can be pointed out as an example of the second system of regulation. Luxembourg has not approved any specific legislative act in order to prosecute FGM. Ordinary criminal law is therefore applied. The Law of 16 December 2008, concerning childhood and family protection, includes a mere programmatic rule (without a penalty): 'Inside families and educative communities, the physical and sexual violence, the inhumane and degrading treatments and FGM are forbidden.' Luxembourg is one of the few European countries where extraterritoriality is not enforced.

From the standpoint of the case law, it should be noted that Luxembourg administrative courts have denied a right of asylum or recognized refugee status for immigrants who were exposed in their native countries to potential intervention of FGM for ritual reasons on nineteen occasions.

The Second Chamber of the *Tribunal administratif du grand-Duché de Luxembourg*, n. 27382, 18 January 2011, did not find any reason to prohibit the repatriation of a Guinean national, even if there she received explicit threats by '*traditionalistes musulmane*', due to her involvement in the steering committee of an association for awareness against female mutilations. The Court failed to categorize consideration of Muslim traditionalists as 'agents de persecution.' Rather, it based its decision simply on the completeness of the evidences, the vagueness of the threats and the woman's short-term involvement in the social activity, and ruled that this was irrelevant as regards to the expatriation order.

A judgement of 7 September 2011 (n. 28944) confirmed the inadmissibility of the request for international protection of a Nigerian woman and her daughter, since the Nigerian state of Osun punishes the practice. Therefore, the court considered that they would not run any risk, since they were protected by their own national law.⁵⁵

This restrictive tendency appears to be consolidated, and the mere allegation of a potential risk of mutilation is never considered by itself as an adequate element for the concession of refugee status (judgement n. 21313, 24 April 2006).

⁵⁵The same decision was taken regarding a Cameroon national, on 17th March 2008, n. 24187.

3.4. Jehovah's Witnesses and blood transfusions

In cases concerning blood transfusions in Jehovah Witnesses, although the refusal is clearly based on religious grounds, case-law – even if formally considering the religious argument – focuses its attention on different issues, such as, for example, the right to physical integrity and individual autonomy.

In particular, the concept of individual autonomy – also based on grounds different than religious freedom – seems to be the basic issue at stake in courts' reasoning. The main concern expressed by jurisdictions is that of ascertaining authenticity of the patient's refusal, regardless of the nature of its grounds. The right under scrutiny is that of making choices 'that accord personal views and values, regardless of' their basis and of 'how irrational, unwise or imprudent such choices may appear to others.' In these cases, the 'State's interest in protecting lives and health of its citizens' has to be balanced not directly with religious freedom, but with 'the individual's right to personal autonomy in the sphere of physical integrity and religious beliefs'. In the case of *Jehovah's Witnesses of Moscow and Others v. Russia*, 10 June 2010, the ECtHR, in questioning *inter alia* whether blood refusal represented the expression of a true will, ruled that 'domestic courts did not convincingly show any 'pressing social need' or the existence of 'relevant and sufficient reasons' capable of justifying a restriction on the applicants' right to personal autonomy in the sphere of religious beliefs and physical integrity.'

Similarly in the UK, in the case *In Re T. [1992] EWCA Civ 18 (30 July 1992) (Court of Appeal)*, according to Lord Donaldson 'prima facie every adult has the right and capacity to decide whether or not he will accept medical treatment, even if a refusal may risk permanent injury to his health or even lead to premature death. Furthermore, it matters not whether the reasons for the refusal were rational or irrational, unknown or even non-existent [...]. However, the presumption of capacity to decide, which stems from the fact that the patient is an adult, is rebuttable.'

In peculiar cases involving incompetent patients, even if the religious belief is clearly proved and the right to refuse is acknowledged, it is often difficult to give evidence of that refusal (e.g. Italian Court of Cassation, III Civil section, decision n. 23676/2008, 15 September 2008).

When authenticity of the expressed will is not questionable, both religious freedom and the right to physical integrity (understood as the right to be free from any sort of interference with one's bodily integrity) are generally prevailing on the very strong public interest in preserving the life and health of all people.

In contrast, neither religious freedom, nor the right to physical integrity end up being decisive when minors are at stake. Several States' courts have dealt with cases concerning parents, who are Jehovah's Witnesses, objecting to blood transfer on their children. Usually, domestic courts have ruled that the interference with the freedom of religion is necessary in order to protect the life of children: Cypriot Supreme Court *Titos Charalambous v Director of the Social Welfare Department* (1994); Czech Constitutional Court no. III ÚS 459/03 (20 August 2004); Spanish Constitutional Court 154/2002, 18 July 2002; Irish High Court, *Temple Street -v- D. & Anor*, 12 January 2011, and similar orders in September 2011 and February 2012.

Another crucial point is given by the fact that the right to refusal is sometimes recognized as a merely 'negative freedom', not economically supporting individuals' choices and not requiring States to guarantee specific services (Spanish Constitutional Tribunal, decision n. 166/1996, 28 October 1996, and Spanish Supreme Court, *Arastey Sahun, Maria Lourdes*, rec. n. 3085/2008, 6 October 2009).

3.5. End of life issues

End-of-life decisions do not typically deal directly with religious issues. Even though sometimes applicants base their claim on religious grounds (usually in order to keep alive very severely injured people through artificial ventilation or artificial nutrition and hydration), judges tend to base their decisions on the 'best interest' of the patient, alternatively built on (i) the will of the patient (also in the form of advance directives) or (ii) the clinical result of the treatment (beneficiary or futile).

A recent England case illustrates the issue: a High Court Judge of the Court of Protection in London upheld, at the beginning of October 2012, the decision taken by doctors working at the Pennine Acute Hospitals in Manchester not to resuscitate a Muslim man in minimally conscious state. Contrary to Mr L's family will, arguing that their Muslim faith requires to preserve life as much as possible 'until God takes it away', Justice Moylan said that resuscitation or ventilation could not be imposed upon the doctors clinical judgement because it 'would result in death being characterised by a series of harmful interventions without any realistic prospect of such treatment producing any benefit.'⁵⁶

3.6. Abortion and (sexual) self-determination

The question about the weight of religious belief was raised in a dated Irish Supreme Court case (Irish Supreme Court, *McGee v. A.G. & Anor*, 19 December 1973) concerning the access and use of contraceptives by a Catholic married couple with four children. The judge underlined that in that case religion was not relevant, being the issue focused on the constitutional liberty of spouses and parents to take decisions on family life (Catholic religion does not interfere with their right to decide to have children or not).

On the relationship between abortion and conscientious objection, the ECtHR has repeatedly affirmed that States are obliged to organise their health service system in such a way as to ensure that the effective exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation (*R.R. v. Poland*, 26 May 2011; *P. and S. v. Poland*, 30 October 2012). Even if religion has been recalled by applicants or resisters in this kind of issues, the Courts demonstrated to be willing to separate the religious element from the real core of the case, namely the right to self-determination and the freedom of conscience.

⁵⁶ UK Court of protection, High Court, *Mr L v. Pennine Acute Hospital*, 8 October 2012 – unreported.

4. PRIVATE AND FAMILY LIFE

Religion might interfere with the right to respect private and family life in the context of employment. According to the principle of autonomy, religious communities are allowed to impose certain duties of loyalty to their employees. And yet, to what extent might employees be asked to conform to religious principles and doctrines in their private life? In this context, the right to private and family life is linked to the right to non-discrimination (see chapter 7 on Equality). In this context, Directive 2000/78/EC of the Council of the European Union of 27 November 2000, establishing a general framework for equal treatment in employment and occupation, plays an important role.

On another note, conflicts might emerge when parental rights are restricted as a consequence of membership to a specific religious community the practices of which are deemed to be detrimental for minors.

4.1. The interference with the private and family life of religious communities' employees

The ECtHR has ruled on several occasions about cases in which individuals who worked for a religious community were dismissed as a consequence of activities within the sphere of their private life.

The ECtHR decided two cases on 23 September 2010 in opposite ways. In *Schüth v. Germany*, an organist and choir master of a Catholic parish was dismissed because, after leaving his wife, he had an extra-marital relationship with another woman, who was expecting his child.

The ECtHR approaches this kind of cases from the perspective of the positive obligation of the States under Article 8 ECHR to secure the protection of the right to respect for private and family life. Also, the Court acknowledges that Article 9 ECHR needs to be interpreted in light of Article 11 ECHR, which commands the protection of the organizational autonomy of religious communities.

In *Schüth*, the ECtHR found that domestic courts had failed to weigh the rights of the applicant against those of the employing Church in a manner compatible with the Convention. In particular, the Court argued that while by signing his employment contract, the applicant accepted a duty of loyalty towards the Catholic Church, he had not entirely waived his right to private life and that he could not be required to live a life of abstinence after his separation. Besides, the Court took into account the fact that his functions were not of special significance from a religious perspective and that the case had not received media coverage.

In *Obst v. Germany*, 23 September 2010, the applicant had been employed by the Mormon Church as director of public relations for Europe. He was dismissed after having confided to his pastor that he had had an extramarital affair. In this case, the ECtHR ruled that domestic courts had adequately balanced the different interests at stake, within the margin of appreciation granted to the states. In particular, the ECtHR emphasized the position held by the applicant, as director of public relations, and the importance accorded to the principle of marital faithfulness by the Mormon Church. In this context, the obligations of loyalty derived from the contract were not deemed to be unacceptable. The ECtHR accepted that the measure was needed to preserve the credibility of the Mormon Church. The fact that the case did not have public impact was not considered to be decisive. Thus, the Court declared that Article 8 ECHR had not been breached. The main difference

with *Schüth* lies on the responsibilities of the applicant within the Church as the director of public relations.

In *Fernández Martínez v. Spain*, 15 May 2012, the applicant was a priest who had asked for an exemption of the obligation of celibacy in 1984, got married the following year, and obtained the exemption in 1997. He had been working as a religion teacher in a public secondary school under a renewable one-year contract since 1991. In accordance with the provisions of a 1979 Agreement between Spain and the Holy See, it was the responsibility of the Bishop of the Diocese to confirm, every year, the renewal of the applicant's employment, and the Ministry of Education was bound by the Bishop's decision.

In November 1996, a local newspaper contained an Article about the 'Movement for Optional Celibacy' for priests, which included a photograph showing him, together with his wife and their five children, attending a gathering of the movement, of which he was a member. The Article quoted the comments of a number of participants, naming four of them including the applicant. Thereafter, the Diocese informed the Ministry of Education about the non-renewal of his contract, arguing that the publicity of his personal situation had entailed a breach of the duty to perform his job 'without any risk of scandal' and there was a need to protect the sensitivity of the parents of children. The applicant argued that his situation had been known by the church authorities since his appointment and that he had been dismissed for appearing in the newspapers.

The ECtHR reiterated the need to interpret Article 9 in light of Article 11 ECHR. In particular, the Court held that the principle of religious autonomy prevents the State from obliging a religious community to admit or exclude an individual or to entrust someone with a particular religious duty. Also, the Court admitted that the circumstances to justify the non-renewal were of a strictly religious nature. The ECtHR emphasized the special bond of trust that exists between a religious teacher and the Catholic Church. Thus, the ECtHR ruled that a fair balance had been struck by state courts, taking into account the margin of appreciation and thus ruled that Article 8 ECHR had not been violated.

The ECtHR distinguished this case from *Schüth* and *Obst*, since in those cases the applicants were laymen, whereas the applicant in the present case was a secularised priest. Nonetheless, as the dissenting Opinion pointed out, in contrast to those cases, in *Fernández Martínez* the employer was not the Church, but the State, and public authorities are fully bound by fundamental rights. However, no relevance was accorded to this circumstance.

The ECtHR held that the competent courts adequately demonstrated that the duties of loyalty were acceptable in that their aim was to preserve the sensitivity of the general public and the parents of the school's pupils (quoting *Obst*). Moreover, the duty of reserve and discretion was all the more important as minors were involved. Nonetheless, as the dissenting Opinion argued, the situation of the applicant was already known by the religious authorities, other teachers, parents, and pupils. Thus, the notion of 'scandal' was hardly applicable to a situation that the Diocese had originally regarded as compatible with the teaching of religion and that was publicly known by his circle. Thus, according to the dissenting judge, the domestic courts had failed to balance adequately the right to private life with interests of the Church. This case was brought before the Grand Chamber at the request of the applicant. The hearing was held on 30 January 2013 and the final decision is still pending.

Some constitutional courts have dealt with similar cases. The Spanish Constitutional Court, in STC 51/2011, 14 April 2011, was confronted with the non-renewal of the

contract of a religious education teacher on account of her civil marriage to a divorcee. The Constitutional Court argued that it was not enough with showing that the non-renewal was based upon religious reasons. In the particular case, the Constitutional Court took into account that in performing her duties as a teacher of Catholic religion and ethics the applicant did not call into question the doctrine of the Catholic Church concerning marriage or defended civil marriage. As such, her personal situation was completely separated from her professional activity. Thus, the Constitutional Court declared that the courts had not appropriately balance the different rights and interests at stake and that the decision to dismiss her infringed the rights not to suffer discrimination, to freedom of thought concerning the right to marry and to private and family life.

The German Federal Constitutional Court delivered a leading judgment on 4 June 1985 on the validity of dismissals of church employees on the grounds of a breach of their duty of loyalty (2 BvR 1703/83, 1718/83 and 856/84). The cases before the Court concerned the dismissal of a doctor practicing in a Catholic hospital on account of the views he had expressed on abortion, and the dismissal of a commercial employee of a youth home run by a Catholic monastic order because he had left the Catholic Church. Although this judgment does not concern private life as such, it is relevant from the perspective of the leeway accorded to religious communities when acting as employers. The Federal Constitutional Court argued that religious societies had a right to manage their affairs autonomously within the limit of general law, as enshrined in Article 137 § 3 of the Weimar Constitution. This constitutional guarantee included the right for the Churches to choose the staff they needed for the fulfillment of their mission. While ordinary labor law was also applicable to the contracts of employment, the constitutional guarantee of autonomy affected the contents of those contracts. The Constitutional Court admitted that in the interest of the Church's credibility, the employees could be required to respect the general principles of its dogmatic and moral doctrines and the basic duties applicable to all its members. That did not mean, however, that the legal status of a Church's employee became 'clericalised'.

Next, the Constitutional Court proceeded to balance the different rights and interests, with particular weight being accorded to the Churches' interpretation of their own faith and legal order. Eventually the Federal Constitutional Court, overruled the previous labor courts' judgments, and uphold the autonomy of the Catholic Church.

In this field, one should pay particular attention to Directive 2000/78/EC of the Council of the European Union of 27 November 2000, establishing a general framework for equal treatment in employment and occupation. The Directive is mentioned in all the ECtHR judgments examined before. According to Article 1, the purpose of the Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, among others, as regards employment and occupation.

At the same time, Article 4, entitled 'occupational requirements', in the first paragraph sets forth: 'Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.' This provision refers generally to any kind of employment.

Paragraph 2 refers explicitly to churches and other organizations the ethos of which is based on religion or belief.⁵⁷ The Directive admits that, in the case of occupational activities within churches, a difference of treatment based on a person's religion or belief shall not constitute discrimination when a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, by reason of the nature of those occupational activities or of the context in which they are carried out.

Thus, the Directive acknowledges the possibility of churches to require individuals working for them loyalty to the organization's ethos. At the same time, the possibility to treat employees differently on grounds of religion is limited by requiring that specific occupational requirements are 'genuine, legitimate, and justified' by reason of the nature of the job or the context in which it is carried out. Thus, religious communities cannot just invoke their organizational autonomy, but must show that the specific requirements of loyalty, in terms of compliance with religious doctrines and principles, are justified in light of the specific occupational activities that are carried out.

In addition, it should be noted that Article 4(2) Directive allows Member States to 'maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive', but it does not allow to pass new laws, not based on existing practices, allowing for differential treatment on grounds of religion.

In *Schüth*, the ECtHR explains that on 31 January 2008, the European Commission sent a letter of formal notice to the Federal Republic of Germany concerning the transposition of Directive 2000/78/CE. It noted that, 'whilst the Directive permitted a difference in treatment only if the religion or belief constituted a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos, section 9(1) of the General Equal Treatment Act also provided for different treatment when the religion or belief constituted an occupational requirement on the basis of its right of autonomy and the religious society's or association's own perception, without necessarily having regard to the nature of the activity.' (para. 42). According to the European Commission, the transposition did not comply with the Directive, since it would enable a religious society to define an occupational requirement on account of its right of autonomy, without the requirement undergoing a proportionality test in the light of the actual activity. In addition, while Article 4(2) of the Directive asked for genuine and determining occupational requirements, section 9(1) of the General Equal Treatment Act had reduced that notion to one of justified occupational requirements, which was a weaker standard than that of the Directive.

⁵⁷ Article 4(2): 'Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground.

Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.'

4.2. Parental rights and religious beliefs

On occasions, the parental rights of Jehovah's Witnesses have been restricted by national courts since the parent's membership to this community was considered to be detrimental for the children.

In *Hoffmann v. Austria*, 23 June 1993, the Austrian Supreme Court had granted parental rights to the father taking into account that the mother was a member of the Jehovah's Witnesses. In assessing the interests of the children, the Supreme Court considered the possible negative effects on their social life of being associated with a particular religious minority and the rejection of blood transfusions for the members and their children. The ECtHR held that there had been a difference in treatment on the ground of religion and examined whether there was a 'legitimate aim' and a 'reasonable relationship of proportionality between the means employed and the aim sought.'

The ECtHR held that the aim pursued by the Supreme Court, the protection of the health and rights of the children, was a legitimate one. Regarding the proportionality of the measure, the Court recalled that Article 5 of Protocol No. 7, provides for the fundamental equality of spouses as regards parental rights and makes it clear that the interests of the children are paramount.

The ECtHR found that the decision of the Austrian Supreme Court, which overruled the decisions of lower courts, was primarily based on the Federal Act on the Religious Education of Children and that a distinction based essentially on religion alone was not acceptable. Thus, a violation of Article 8 taken in conjunction with Article 14 was found.

On 16 December 2003, the ECtHR confronted a similar case in *Palau Martínez v. France*. Child custody was granted to the father by the Court of Appeal, which argued that 'The rules regarding child-rearing imposed by the Jehovah's Witnesses on their followers' children are open to criticism mainly on account of their strictness and intolerance and the obligation on children to proselytise. It is in the children's interests to be free from the constraints and prohibitions imposed by a religion whose structure resembles that of a sect.'

As in *Hoffmann*, the Court argued that while the mother had been treated differently on grounds of religion, the aim was legitimate. However, the ECtHR observed that the Court of Appeal asserted only generalities concerning Jehovah's Witnesses, without any concrete evidence demonstrating the influence of the applicant's religion on her two children's upbringing and daily life. Hence, the Court concluded that there was no reasonable and proportionate relationship between the means employed and the legitimate aim pursued.

5. FREEDOM OF EXPRESSION

The possibility to restrict the expression of ideas, whether in spoken, written or artistic form, that might disturb or offend the members of religious communities is a deeply controversial issue. To what extent does freedom of expression stop at the altar? Blasphemy or religious offence laws are in place in several Member States, even grounded on constitutional clauses. In addition, Member States have enacted legislation to ban the incitement of hatred or violence against the members of religious communities (hate speech laws). Recent upheavals in different parts of the world, even deaths, and outrage provoked by a video and cartoons mocking the Muslim prophet Mohammed have spurred the debate about the limits on free speech for the sake of religion. At the other side of the spectrum, the question would be to what extent the speech of the members of a religious community directed to convince others to join their faith may be restricted.

5.1. Blasphemy, religious offenses, and critical views on religion

To what extent does free speech protect the expression of ideas that might offend or be critical of religious beliefs or doctrine? The ECtHR has decided several cases in which the applicants claimed the right to be able to express their views on religious issues through Articles, books, movies, or videos without interferences.

In this kind of cases, the ECtHR has admitted that the restriction of freedom of expression may be justified on the basis of 'the protection of the rights of others', particularly the right to respect for one's religious feelings, and 'the prevention of disorder' (*Otto-Preminger-Institut v. Austria*, 20 September 1994, para. 46). The Court holds that the members of a religion 'must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith.' At the same time, 'the manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the State, notably its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 to the holders of those beliefs and doctrines. Indeed, in extreme cases the effect of particular methods of opposing or denying religious beliefs can be such as to inhibit those who hold such beliefs from exercising their freedom to hold and express them' (*Otto-Preminger*, para. 47). Thus, according to the ECtHR, the right to free speech may be limited on the basis of the right to respect for one's religious feelings and the freedom to hold and practice a religion.

In order to determine whether the restriction of freedom of expression is necessary in a democratic society to protect religious freedom, the ECtHR takes into account the specificity of religion in two ways. First, the ECtHR has declared that although free speech is applicable to ideas that 'shock, offend or disturb', there is an 'obligation to avoid as far as possible expressions that are gratuitously offensive to others, and which therefore do not contribute to any form of public debate.' Second, the ECtHR provides for a wide margin of appreciation in balancing free speech and freedom of religion: 'the absence of a uniform European conception of the requirements of the protection of the rights of others in relation to attacks on their religious convictions broadens the Contracting States' margin of appreciation when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or religion' (*Otto-Preminger* para. 49-50).

Otto-Preminger concerned the showing of a film (based on a play published in 1894, for which back then its director was found guilty of 'crimes against religion' and sentenced to prison). The film mocked God, Christ, and the Virgin Mary, and

portrayed them agreeing with the Devil to punish mankind for its immorality by infecting it with syphilis. At the request of the Innsbruck diocese of the Roman Catholic Church, the public prosecutor instituted criminal proceedings against Otto-Preminger-Institut's manager and the film was seized and forfeited. After stating the principles mentioned above, the ECtHR decided the case by relying on the margin of appreciation doctrine. The Court stated that it could not disregard that the Roman Catholic religion is the religion of the overwhelming majority of Tyroleans and that the Austrian authorities acted to ensure religious peace and to prevent that some people should feel the object of attacks on their religious beliefs in an unwarranted and offensive manner.

In a joint dissenting Opinion, three Judges held that a wide margin of appreciation was not appropriate, since the interferences with the right to free speech had to be interpreted restrictively. A measure of prior restraint, if applied to protect the perceived interests of a powerful group in society, could be detrimental to that tolerance on which a pluralist democracy depends.

Also, they claimed that a right to the protection of religious feelings cannot be derived from the right to freedom of religion, although it might be legitimate from the perspective of Article 10(2) ECHR to protect the religious feelings of certain members of society against criticism and abuse to some extent. Still, the restricting measures must be 'proportionate to the legitimate aim pursued', and, according to their Opinion, the seizure and forfeiture of the film was not considered to be so.

Wingrove v. United Kingdom, 25 November 1996, concerned a video entitled *Visions of Ecstasy*, allegedly based upon the life and writings of St Teresa of Avila, which contained erotically charged scenes. Its showing or commercialization was banned under the English law of blasphemy. The ECtHR followed the principles and reasoning of *Otto-Preminger*, and declared that there was no violation of Article 10 ECHR. In particular, the ECtHR emphasized that the English law of blasphemy did not prohibit the expression, in any form, of views hostile to the Christian religion, but rather 'it is the manner in which views are advocated rather than the views themselves which the law seeks to control' (para. 60). In that case, the video had an overtly sexual nature and its distribution could offend the feelings of Christians.

In *I.A. v Turkey*, 13 September 2005, the owner of a publishing house was fined by publishing a novel entitled *Yasak Tümceler* ('The forbidden phrases'), which conveyed the author's views on philosophical and theological issues in a novelistic style, for a criminal offense of blasphemy against 'God, the Religion, the Prophet and the Holy Book.' The ECtHR ruled that the particular case concerned 'not only comments that offend or shock, or a 'provocative' opinion, but also an abusive attack on the Prophet of Islam.' The Court added that 'believers may legitimately feel themselves to be the object of unwarranted and offensive attacks' through some of the passages.

While in the above cases the ECtHR held that restrictions on freedom of expression were justified in order to protect religious feelings, in two cases decided in 2006, the Court declared the breach of Article 10 ECHR.

In *Giniewski v. France*, 31 January 2006, the applicant published an Article in a newspaper entitled 'The obscurity of error' concerning the papal encyclical 'The Splendour of Truth' (*Veritatis Splendor*), which had been published at the end of 1993. The publishing director and the applicant were fined for an offense of publicly defaming a group of persons on the ground of membership of a religion. The ECtHR recalled the general principles set out in its case-law: the obligation to avoid as far as possible expressions that are *gratuitously offensive* of others, and the existence of a wide margin of appreciation.

The Court argued that the Article criticized a papal encyclical and hence the Pope's position, but not Christianity as a whole. The author sought primarily to develop an argument about the scope of a specific doctrine and its possible links with the origins of the Holocaust. In so doing, he had contributed to an ongoing public debate, without sparking off any controversy that was gratuitous or detached from the reality of contemporary thought. Thus, the ECtHR ruled that Article 10 had been breached.

Also, in *Aydin Tatlar v. Turkey*, 2 May 2006, the applicant was criminally condemned for publishing a book deemed to be offensive to the Islamic faith. The ECtHR pointed out that the book developed a critical standpoint towards religion by a non-believer in the socio-political domain. As a general theme, the applicant claimed that the effect of religion was to legitimize social injustices portraying them as the 'will of God.' The ECtHR did not find an insulting tone against the believers, or an injurious attack against the sacred symbols of Muslims (para 28). Therefore, the Court declared the violation of Article 10.⁵⁸

In contrast to the previous cases, the ECtHR emphasized the way in which critical remarks were made, avoiding gratuitously offensive expressions, and the contribution to the public debate. For the ECtHR it seems to be more difficult to deny the protection of Article 10 ECHR to Articles or non-fiction books that discuss religious doctrines or its implications in society, than personal views in works of art.

Likewise, national courts have confronted cases regarding the application of blasphemy laws. In *Corway v. Independent Newspapers (Ireland) Limited* [2000] 1 IRLM 426, the Irish Supreme Court dealt with an important case concerning the offense of blasphemy in Irish Law. In 1995, in the wake of the divorce referendum, the Sunday Independent published an Article about the implications of that referendum. Associated with the Article was a cartoon which depicted a comic caricature of a Priest offering the host to three prominent politicians, but they were turning away. At the top of the cartoon, one read: 'Hello progress - bye bye Father' followed by a question mark. The applicant argued that this cartoon constituted an offence under the Defamation Act, 1961, which bans blasphemous libel. Indeed, the Constitution provides that: 'The publication or utterance of blasphemous... matter is an offence which shall be punishable in accordance with law' (Article 40.6 paragraph 1 sub-paragraph (i)).

The Supreme Court confronted the lack of a statutory definition of blasphemy: 'The task of defining the crime is one for the Legislature, not for the Courts. In the absence of legislation and in the present uncertain state of the law the Court could not see its way to authorizing the institution of a criminal prosecution for blasphemy against the Respondents' (para. 38). Regarding the specific case, the Supreme Court concluded that no insult to the Blessed Sacrament was intended. The theme of the Article was that, in this occasion, the politicians had resisted the guidance of the Roman Catholic Church, concerning an issue of public debate.

Nonetheless, in 2009, Ireland created for the first time a specific blasphemy offence through the 2009 Defamation Act. Section 36 defines a new offence of 'publication or utterance of blasphemous matter.' The offence consists of uttering material 'grossly abusive or insulting in relation to matters held sacred by any religion',

⁵⁸ In *Klein v. Slovakia*, 31 October 2006, the ECtHR declared the violation of Article 10 for condemning the author of an article criticizing the Archbishop, following the latter's call, in a TV broadcast, for the withdrawal of both the film 'The People vs. Larry Flynt' and the poster accompanying that film. The ECtHR argued that the applicant's strongly worded pejorative opinion related exclusively to the person of a high representative of the Catholic Church in Slovakia, but his statements were not aimed at discrediting a sector of the population on account of their Catholic faith (para. 51).

when the intent and result is 'outrage among a substantial number of the adherents of that religion.'

In the case of *Chief Metropolitan Stipendiary Magistrate, ex parte Choudhury* [1991] 1 QB 429 an attempt was made to bring a prosecution for blasphemy against the author Salman Rushdie following the publication of his book 'The Satanic Verses.' It was argued that the crime of blasphemy should be extended by the courts to cover blasphemy against all religions, including Islam. The Court of Appeal, however, refused to extend an offence for which there had only been two prosecutions in 70 years and which the Law Commission in 1985 had recommended should be abolished.

In Paris, several Islamic organizations brought proceedings against Philippe Val, editor of *Charlie Hebdo*, a French weekly satirical magazine. At issue was the cartoon with Mohammed wearing a bomb in his turban and a new cartoon showing a crying Mohammed saying: 'It's hard to be loved by idiots.' In its reasoning, the Paris *Tribunal de Grande Instance*⁵⁹ referred to Article 10 ECHR. Also, it stated that in France, a laic and pluralist society, the respect for all beliefs is coupled with the freedom to criticize religions. While blasphemy that outrages the divinity or the religion is not banned, injury towards a person or a group of people for reason of their belonging to a religious community is. Also, following the case-law of the ECtHR, the domestic court observed that free speech may be restricted in case of expressions that are gratuitously offensive and do not contribute to the public debate.

With regard to the particular case, the court argued that *Charlie Hebdo* was a satirical journal that nobody had the obligation to read, and that caricatures and irony might be used as an instrument of social and political criticism. Also, the court noted that the cartoons contributed to a public debate of general interest and thus that freedom of expression could not be restricted.⁶⁰

According to the Venice Commission, blasphemy is an offence in only a minority of the member States to the Council of Europe (ten). At present, in those in which it is an offence, it is rarely prosecuted. This may be explained, in part, by the circumstance that in most European States there is less religious homogeneity today than there was at the time when these provisions were established. Religious insults are a criminal offence in a little more than half of the States.⁶¹

5.2. Incitement to hatred and violence on grounds of religion

In its case law, the ECtHR has applied this term to expressions that spread, incite, promote or justify hatred founded on religious intolerance. In *Gündüz v. Turkey*, 4 December 2003, the leader of an Islamic sect was condemned for declarations made during a television programme deemed to incite people to hatred and hostility on the basis of religion.

Nobody disputed that the interference with free speech had pursued legitimate aims, namely the prevention of disorder or crime, the protection of morals and, in particular, the protection of the rights of others. Next, the ECtHR reproduced the

⁵⁹ TGI Paris 17e ch. Corr. Mar. 22 2007.

⁶⁰ Concerning the Danish cartoons, an application was brought before the ECtHR against Denmark claiming that the public authorities had not protected the applicants against insult and blasphemy, but the application was declared inadmissible due to the Court's lack of jurisdiction (*El Mahdi and others v. Denmark*, 2006).

⁶¹ European Commission for Democracy through Law (Venice Commission), *Preliminary Report on the National legislation in Europe concerning blasphemy, religious insults and inciting religious hatred* (Venice, 16-17 March 2007) CDL-AD(2007)006, para. 25-26.

general principles about the obligation not to utter expressions gratuitously offensive and the wide margin of appreciation accorded to the states. At the same time, the Court pointed out that in this case the applicant was punished for statements classified by the domestic courts as 'hate speech'. Quoting *Jersild v. Denmark* (23 September 1994, par. 35), the Court held that concrete expressions constituting hate speech are not protected by Article 10. The Court ruled that: 'as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any 'formalities', 'conditions', 'restrictions' or 'penalties' imposed are proportionate to the legitimate aim pursued (with regard to hate speech and the glorification of violence, see, *mutatis mutandis*, *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 62, ECHR 1999-IV).'

During the programme, the applicant was profoundly critical of concepts such as secularism and democracy and openly campaigned for sharia. The ECtHR argued that although the applicant formulated several remarks against the Convention's underlying values, the mere fact of defending those values, without calling for violence to establish them, could not be regarded as 'hate speech'. In addition, the Court took into account the particular context. The aim of the programme was to present the sect, since it had attracted public attention and this was a matter of general interest. The applicant's extremist views were already known and had been discussed in the public arena, and were counterbalanced by the intervention of other participants in the programme. Thus, the Court concluded that Interference with Article 10 was not justified.

In sum, according to ECtHR case law, hate speech is not covered by the right to freedom of expression and thus the states may enact laws banning expression that incite hatred or violence for religious reasons. In the case of *Gündüz*, however, the Court did not find that in the circumstances of the case his statements entailed incitement to violence.

In C-244/10 and C-245/10, *Mesopotamia Broadcast A/S METV and Roj TV A/S v. Bundesrepublik Deutschland*, 22 September 2011, the CJEU resolved a preliminary reference concerning the interpretation of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997.

The goal of the Directive is to remove obstacles to the freedom to provide broadcasting services within the EU and generally to safeguard the free movement of services. The CJEU pointed out that the law applied to the broadcasting and distribution of television services is a specific manifestation of the freedom of expression as enshrined in Article 10(1) of the ECHR. Also, pursuant to Article 6(2) TEU the EU needs to respect the rights laid down in the Charter of Fundamental Rights. Any measure aimed at restricting the reception or retransmission of television broadcasts must be compatible with freedom of expression.

The Directive allows Member States to derogate from the obligation to ensure freedom of reception on their territory of television broadcasts from other Member States under specific conditions. Reception may be restricted if the television broadcast 'manifestly, seriously and gravely' infringes Article 22a, which lays down that Member States shall ensure that broadcasts do not contain any 'incitement to hatred on grounds of race, sex, religion or nationality.'

The case concerned a Danish holding company, Mesopotamia Broadcast, with its registered office in Denmark, which operates the television channel Roj TV. The latter broadcasts programmes by satellite, mainly in Kurdish, throughout Europe and the Middle East. In 2006 and 2007 government authorities in Turkey lodged complaints with the Danish Radio and Television Board, which ensures, in that Member State, the application of the national rules implementing the provisions of the Directive. The Turkish authorities complained that, by its programmes, Roj TV supported the objectives of the Kurdistan Workers Party, which is classified as a terrorist organisation by the European Union. The Board ruled that Roj TV did not incite hatred on grounds of race, sex, religion or nationality.

By a decision of 13 June 2008, addressed to Mesopotamia Broadcast and Roj TV, the German Federal Interior Ministry prohibited the retransmission of Roj TV in Germany. The reason was that Roj TV television channel by Mesopotamia Broadcast conflicted with the 'principles of international understanding', within the meaning of legislation governing the public law of associations, in light of the Basic Law,

The reference submitted to the Court questioned whether the ground of prohibition based on infringement of the principles of international understanding, may be regarded as being included in the concept of 'incitement to hatred on grounds of race, sex, religion or nationality' within the meaning of the Directive. The CJEU observed that the definition of what 'incitement to hatred' means was lacking and proceeded to interpret it. According to the CJEU by using the concept 'incitement to hatred', the Directive is designed to 'forestall any ideology which fails to respect human values, in particular initiatives which attempt to justify violence by terrorist acts against a particular group of persons.'

In that case, the court admitted that a broadcasting that plays a role in stirring up violent confrontations between persons of Turkish and Kurdish origin in Turkey and in exacerbating the tensions between Turks and Kurds living in Germany is covered by the concept of incitement to hatred. Therefore, the CJEU held that 'Article 22a of the Directive must be interpreted as meaning that facts such as those at issue in the main proceedings, covered by national legislation prohibiting infringements of the principles of international understanding, must be regarded as being included in the concept of 'incitement to hatred on grounds of race, sex, religion or nationality' laid down in that Article.'

With regard to the Member States, in 1996, the Council of the European Union required Member States to criminalize 'public incitement to discrimination, violence or racial hatred in respect of a group of persons or a member of such a group defined by reference to colour, race, religion or national or ethnic origin.'⁶² Also, the Parliamentary Assembly, recommended that national law should 'penalise statements that call for a person or a group of persons to be subjected to hatred, discrimination or violence on grounds of their religion as on any other grounds'⁶³.

The Venice Commission observed that practically all Council of Europe member States (with the apparent exception of Andorra, Georgia, Luxemburg and San Marino) provide for an offence of incitement to hatred.⁶⁴ The term 'hatred' in the

⁶² Joint action/96/443/JHA of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia.

⁶³ Recommendation 1805 (2007) on *Blasphemy, religious insults and hate speech against persons on grounds of their religion*, 29 June 2007, para. 17.

⁶⁴ Venice Commission, *Preliminary Report*, supra n. 61, para. 23. In *European Commission for Democracy through Law (Venice Commission), Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred*, 17-18 October 2008, Doc. No. CDL-AD(2008)026, the Commission confirmed that incitement to hatred, including religious hatred, is properly the object of criminal sanctions in almost all European States.

domestic legislation generally covers racial, national and religious hatred in the same manner. The forms of expression might include the display or publishing of written material, public performances, or broadcasting programmes. Penalties usually include imprisonment.⁶⁵

5.3. Proselytism

In *Kokkinakis v. Greece*, 25 May 1993, the applicant had been arrested more than sixty times for proselytism and he was also interned and imprisoned on several occasions. Article 13 of the 1975 Constitution forbade proselytism in respect of all religions without distinction. The ECtHR recalled that while religious freedom is primarily a matter of individual conscience, it also implies freedom to 'manifest [one's] religion'. Thus, 'according to Article 9, freedom to manifest one's religion is not only exercisable in community with others, 'in public' and within the circle of those whose faith one shares, but can also be asserted 'alone' and 'in private'; furthermore, it includes in principle the right to try to convince one's neighbour, for example through 'teaching', failing which, moreover, 'freedom to change [one's] religion or belief', enshrined in Article 9, would be likely to remain a dead letter.' (para. 31)

According to the ECtHR, proselytism involves trying to convince somebody by improper means such as exerting improper pressure on people in distress or in need, or the use of violence or brainwashing. The ECtHR concluded that the domestic courts did not sufficiently specify in what way the accused had attempted to convince his neighbour by improper means and thus declared the breach of Article 9. The applicant had also complained about the violation of Article 10, but the ECtHR considered it unnecessary to examine this complaint.

⁶⁵ For instance, incitement to hatred or violence on religious grounds is prohibited by the Criminal Code in Bulgaria (Article 162, 165), Austria (Article 283), the Netherlands (Article 137), Luxembourg (Article 457.1), Spain (Article 510, 522), Hungary (Article 269), Lithuania (Article 170), Poland (256).

6. FREEDOM OF ASSEMBLY AND ASSOCIATION

When Article 9 ECHR is raised together with the freedom of association and assembly enshrined in Article 11 ECHR, the Court usually considers the case under the latter. In other words, Article 11 ECHR prevails as *lex specialis*. Nonetheless, there is an exception to this well-established principle of the Court's case-law: when the organisation and functioning of a religious community is at stake, Article 9, read in the light of Article 11, is the conventional provision applied by the ECtHR.

6.1. Democracy, pluralism, and religious associations

As the ECtHR stressed in *The Moscow Branch of the Salvation Army v. Russia*, 5 October 2006, democracy, being 'the only political model contemplated in the Convention and the only one compatible with it,' is a 'fundamental feature of the European public order,' and the Convention 'was designed to promote and maintain the ideals and values of a democratic society.'

The importance of Article 11 ECHR for pluralism and democracy has often been recalled by the Court (*Gorzelik v. Poland*, 17 February 2004 (GC)), insisting on the essential role played by political parties and also by 'associations formed for other purposes, including those protecting cultural or spiritual heritage, pursuing various socio-economic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness,' which are also important to the proper functioning of democracy. 'For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.' Freedom of association 'is particularly important for persons belonging to minorities [...]. Indeed, forming an association in order to express and promote its identity may be instrumental in helping a minority to preserve and uphold its rights.'

In particular, the ECtHR has recognised both the associative dimension of the freedom of religion and the immediate relationship between freedom of religion and democracy: 'While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to 'manifest [one's] religion' alone and in private or in community with others, in public and within the circle of those whose faith one shares. Since religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention' (*Jehovah's Witnesses of Moscow and Others v. Russia*, 10 June 2010). On the other hand, the Court has recalled 'that freedom of thought, conscience and religion is one of the foundations of a democratic society within the meaning of the Convention. The pluralism, indissociable from a democratic society, which has been dearly won over the centuries, depends on it' (*Hasan and Chaush v. Bulgaria*, 26 October 2000 (GC)).

6.2. The recognition of religious communities

In *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, 31 July 2008, the Court insisted on its previous case-law, according to which, 'the ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any meaning.' In this context 'a refusal by the domestic authorities to grant legal-entity status to an association of individuals amounts to an interference with the applicants' exercise of their right to freedom of association.' The Court leaves to Contracting States a certain margin of appreciation 'in deciding whether and to what extent an interference is necessary, but that goes hand in hand with European supervision of both the relevant legislation and the decisions applying it. The Court's task is to ascertain whether the measures taken at national level are justified in principle and proportionate' (*Metropolitan Church of Bessarabia and Others v. Moldova*, 13 December 2001). States have a right to supervise that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions (*Sidiropoulos and Others v. Greece*, 10 July 1998).

In a democratic society with religious pluralism, the Court considers that it might be necessary to place restrictions on the freedom of religion in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (*Kokkinakis v. Greece*, 25 May 1993), however 'in exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial' (*Metropolitan Church of Bessarabia and Others v. Moldova*, 13 December 2001). This principle of State neutrality prevents public authorities from assessing the legitimacy of religious beliefs or the way in which these beliefs are expressed.

If the State put in place a framework 'for conferring legal personality on religious groups to which a specific status is linked, all religious groups which so wish must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner' (*Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, 31 July 2008). Any difference in treatment must have an objective and reasonable justification, that is, the Court has to determine whether the national measure pursued a 'legitimate aim' and whether there was a 'reasonable relationship of proportionality' between the means employed and the aim sought to be realised, as the Court stressed in the case *Savez Crkava "Rijec Zivota and Others v. Croatia*, 9 December 2010.⁶⁶

In Spain, the Constitutional Court granted protection to the Unification Church's freedom of religion. The Unification Church lodged a constitutional complaint once its registration was initially denied by the Department of Justice according to the 'public order as protected by law' clause (Article 16.1 of the Spanish Constitution). The Constitutional Court declared that freedom of religion had been violated and that the Unification Church had the right to be registered as a 'religious entity'.⁶⁷

6.3. The organization of religious associations

In *Hasan and Chaush v. Bulgaria*, 26 October 2000 (GC), the events under consideration related to the organization and leadership of the Muslim community in Bulgaria. In its judgment, the Strasbourg Court recalled 'that religious communities traditionally and universally exist in the form of organised structures.

⁶⁶ On discrimination of religious communities, see section 2 above.

⁶⁷ Judgment of the Spanish Constitutional Court 46/2001, 15 February.

They abide by rules which are often seen by followers as being of a divine origin. Religious ceremonies have their meaning and sacred value for the believers if they have been conducted by ministers empowered for that purpose in compliance with these rules. The personality of the religious ministers is undoubtedly of importance to every member of the community. Participation in the life of the community is thus a manifestation of one's religion, protected by Article 9 of the Convention. [...] Seen in this perspective, the believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention [...]. Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable.' The Court concluded that the failure by the authorities to remain neutral, having favoured one leader of a divided religious community, constitutes an interference with freedom of religion: 'In democratic societies the State does not need to take measures to ensure that religious communities are brought under a unified leadership.' In other words: autonomous organization, peaceful functioning, and State's neutrality are the basic criteria in the relationship between religious associations and public authorities.

The Convention does not guarantee 'a right of dissent' within the religious organization, 'it being sufficient that dissenters should be free to leave the community.' But the fact that the ECHR does not enshrine such a right 'does not mean that it gives unfettered discretion to the authorities to take sides in an intra-religious dispute and use State power to suppress one of the opposing groups in the dispute' (*Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, 22 January 2009).

is The Church, religious or ecclesiastical body 'may, as such, exercise on behalf of its adherents the rights guaranteed by Article 9 of the Convention' (*Cha'Are Shalom Ve Tsedek v. France*, 27 June 2000). The possibility of ensuring judicial protection of the community is one of the means of exercising the freedom of religion, so that Article 9 must be seen in the light of Article 6 (*Canea Catholic Church v. Greece*, 16 December 1997).

The decision whether to admit new members, the criteria for membership as well as for the election of the governing bodies, depend on the internal rules of the religious community. For Article 9 ECHR, read in the light of Article 11, all these are 'private-law decisions, which should not be susceptible to interference by State bodies, unless they interfere with the rights of others or the restrictions specified in Articles 9(2) and 11(2) of the Convention. In other words, the State cannot oblige a legitimately existing private-law association to admit members or exclude existing members. Interference of this sort would run counter to the freedom of religious associations to regulate their conduct and to administer their affairs freely. [...] religious associations are free to determine at their own discretion the manner in which new members are admitted and existing members excluded. The internal structure of a religious organisation and the regulations governing its membership must be seen as a means by which such organisations are able to express their beliefs and maintain their religious traditions' (*Svyato-Mykhaylivska Parafiya v. Ukraine*, 14 June 2007).

State neutrality means that the Convention excludes, 'but for very exceptional cases', any discretion on the part of the public authorities to determine whether religious beliefs or the means used to express such beliefs are legitimate (*Hasan and Chaush v. Bulgaria*, 26 October 2000, (GC)). Nevertheless, it accepted that Article 9 'does not protect every act motivated or inspired by a religion or belief' (*Metropolitan Church of Bessarabia and Others v. Moldova*, 13 December 2001) and that 'an association's programme may in certain cases conceal objectives and intentions different from the ones it proclaims. To verify that it does not, the

content of the programme must be compared with the actions of the association's leaders and the positions they embrace' (*The Moscow Branch of the Salvation Army v. Russia*, 5 October 2006).

The Constitutional Court in Italy gave protection to liberty from mandatory religious affiliation when it declared to be in violation of the principle of equality (Article 3 Constitution), and of the freedom of non association (Article 18 Constitution), parliamentary legislation enacted in 1930 (and never reformed since the republican Constitution came into force) that had made compulsory for Jews to register with the Jewish community in the place of their residence as members with all rights and duties (including paying a Community tax for various religious services).⁶⁸

6.4. Religious communities and freedom of assembly

According to the judgment in *Kuznetsov and Others v. Russia*, 11 January 2007, Article 9 ECHR 'protects acts of worship and devotion which are aspects of the practice of a religion or belief in a generally recognised form.' As the Court recalled, the collective study and discussion of religious texts by the members of the religious group of Jehovah's Witnesses is a recognised form of manifestation of their religion in worship and teaching. In this case, a community of Jehovah's Witnesses was using some rented facilities to hold a meeting open to the public for predominantly hearing-impaired Jehovah's Witnesses to study the Bible and join in public worship. The applicants claimed that their meeting was disrupted by some public officials who called for the meeting to be stopped. The Court found that the termination of the religious assembly ahead of time was an interference with the applicants' freedom of religion, and that the interference was not prescribed by law. The applicants relied on Articles 8, 9, 10 and 11 ECHR, but once declared the violation of freedom of religion, the Court did not consider it to be necessary to examine Articles 8, 10 or 11.

In *Boychev and others v. Bulgaria*, 27 April 2011, the applicants, followers of the "Moon" movement, were attending a religious meeting of approximately ten people at the home of one of them when it was interrupted by a police identity check and search, authorised by the public prosecutor. Various objects and documents were seized. The aim of the police intervention and search was to interrupt the meeting, which was regarded as an unlawful meeting, since the religious movement concerned was not registered as such in Bulgaria. The ECtHR ruled that the police intervention constituted an interference with the exercise of the right to manifest one's religion. In order to be compatible with the Convention, such intervention needed a legal basis in domestic law. The Court found that the interference lacked a legal basis and thus did not meet the requirements of Article 9 of the Convention. What is important in this case is that the applicants complained about a violation of Articles 8 and 9 of the Convention, but the ECtHR put aside Article 8 and decided only on the basis of freedom of religion.

In *Ahmet Arslan and Others v. Turkey*, 23 February 2010, the members of a religious group, known to its members as Aczimendi tarikatı, met in Ankara for a religious ceremony. They toured the streets of the city while wearing the distinctive dress of their group. Following various incidents on the same day, they were arrested and placed in police custody. They were convicted for a breach of the law on wearing a headgear and of the rules on wearing certain garments, specifically religious garments, in public other than for religious ceremonies. This case concerned punishment for the wearing of particular garments in public areas that were open to all, as opposed to previous cases in which the ECtHR decided about the regulation of wearing religious symbols in public buildings, where religious

⁶⁸ Corte costituzionale, sentenza n. 239/1984.

neutrality might take precedence over the right to manifest one's religion. There was no evidence that the applicants represented a threat for the public order or that they had been involved in proselytism by exerting inappropriate pressure on other people during their gathering. The Court declared the violation of Article 9 ECHR.

6.5. Trade unions and church employees

Sindicatul "Pastorul Cel Bun" v. Romania, 31 January 2012, is the first ECtHR's judgment in which the Court had to decide on the compatibility with Article 11 ECHR of a national decision banning to Church employees (priests and lay staff) the right to form a trade union aimed at defending the economic, social and cultural rights and interests of salaried employees of the Church. All the members of the applicant union carried out their duties within the Romanian Orthodox Church under individual employment contracts. They received salaries that were mainly funded by the State budget and they were covered by the general social-insurance scheme. National authorities based its refusal to register the applicant union on an ecclesiastical rule set forth in the Church's Statute that prohibited the clergy from engaging in any form of association without the consent of the Church hierarchy. The state authorities found that banning justified, among other reasons, by the need to protect the Orthodox Christian tradition.

The Court accepted that, under the Convention, an employer whose ethos is based on religion may impose special duties of loyalty on its employees. It also acknowledged that when signing their employment contract, employees bound by such a duty of loyalty may accept a certain restriction of some of their rights, but at the same time the Court considers that a relationship based on an employment contract cannot be 'clericalised' [*sic*] to the point of being exempted from all rules of civil law, and therefore it reiterates that a civil court reviewing a penalty imposed following a breach of such duties cannot, on the basis of the employer's autonomy, refrain from carrying out a proper balancing exercise between the interests at stake in accordance with the principle of proportionality.

The Court declared itself aware of the position occupied by the Orthodox faith in the history and tradition of Romania. However, this cannot by itself justify the need for the interference, especially as the applicant union did not seek to challenge that position in any way and the right of Orthodox Church employees to join a trade union has already been recognised on at least two occasions by the domestic courts. Although such recognition predated the entry into force of the Statute of the Orthodox Church, the fact remains that the establishment of two unions within the Orthodox clergy had been permitted and not deemed unlawful or incompatible with democracy.

The decision of the Chamber declaring that Article 11 had been breached, with two judges dissenting, has been referred to the Grand Chamber at the Romanian Government's request. A hearing was held on the 7 November 2012. The Grand Chamber's judgment is expected in the coming months.

7. RELIGION AND THE RIGHT TO EDUCATION IN THE EU MEMBER STATES

The presence of religion on schools premises in the EU Member States has been a major source of conflicts affecting the positive and negative dimensions of freedom of religion (Article 9 ECHR; Article 10 EU Charter), the right to education of students, and the right of parents to educate their children according to their religious and philosophical convictions (Article 2 of Protocol No. 1 ECHR; Article 14 EU Charter). The most significant controversies have arisen in areas such as the display of religious symbols in the walls of public schools, the wearing by students or teachers of religious signs, and the requirements of state neutrality in the organization of religious education in public schools. Religious pluralism at the national level has also given rise to contentious requests for religious exemption to mandatory educative activities.

The accommodation of religious tensions in the sphere of education is a particularly sensitive issue since schooling is vital and compulsory for children, and Member States have diverging traditions, regulations and understandings. The case law analysis in this field mirrors the pervasive pluralism currently existing in Europe, pluralism which in turn explains the deferential approach adopted by the ECtHR in most of its rulings regarding religious conflicts in public schools.

7.1. The display of religious symbols in the walls of public schools

As to the presence of religious symbols at schools, the ECtHR has settled a wide framework for the States to autonomously decide the best way of reconciling their cultural traditions with the requirements of freedom of religion, the right to education, and religious state neutrality.

The landmark case in this area is *Lautsi and Others v. Italy*, 18 March 2011 (GC). The applicant alleged in her own name and on behalf of her children that the mandatory presence of the sign of the cross in Italian public schools constituted interference incompatible with the right to educate her children according to her religious and philosophical convictions, and their freedom of religion in its negative dimension. The Chamber held that there had been a violation of Article 2 of Protocol No. 1, taken together with Article 9 of the Convention; whereas the Grand Chamber reversed this decision and found no violation of the Convention. The Chamber had ruled that the display of a religious symbol might be emotionally disturbing for pupils and it was incompatible with the state's duty of neutrality. In contrast, the Grand Chamber stated that there was no evidence that the display of an essentially passive religious symbol on classroom walls might have an influence on pupils. Therefore, the decision whether crucifixes may be present in classrooms was, in principle, a matter falling within the margin of appreciation of the State, particularly in the absence of any European consensus. That margin of appreciation went hand in hand with supervision by the Court, whose task was to ensure that the display of crucifixes did not amount to a form of indoctrination. Taking further into account that the presence of crucifixes in Italian state-schools is not associated with compulsory teaching about Christianity, and that Italy opens up the school environment in parallel to other religions, the subjective perception of the applicant was not sufficient to establish a breach of the Convention.

At the state level, the display of religious symbols in the walls of public schools has become a growing contentious issue particularly in those states with strong religious traditions. Several relevant court judgments in the EU Member States have dealt with this issue.

In Germany, the most important case is known as the 'Kruzifix-Urteil' (BVerfGE 93, 1 1 BvR 1087/91, 16 May 1995). The case concerned a Bavarian law making crucifixes in classrooms mandatory. The Federal Constitutional Court found that equipping of schoolrooms with crosses and crucifixes infringed the State's duty of religious and philosophical neutrality, and thus the Bavarian law was in breach of Article 4 Basic Law (freedom of religion)⁶⁹.

In Romania, a 2006 National Anti-Discrimination Council (CNCD) decision asking the Ministry of Education to remove religious symbols from public schools was brought before the High Court of Cassation and Justice. In its ruling No. 2393, 11 June 2008, the Court overturned the CNCD's decision and stated that the presence of religious icons in public schools was lawful because the decision to display them is a matter for the community of teachers, pupils and parents.

A parallel stance was adopted in Spain by the High Court of Justice of Castile and Leon, STSJ CL 6638/2009, 14 December 2009. In a holding influenced by the Chamber Judgement of the ECtHR in *Lautsi v. Italy*, 3 November 2009, the Court pointed out that there is no conflict between the presence of the crucifix and the Spanish constitutional framework unless parents make a petition to remove it. The removal of the crucifix from a particular classroom was hence interpreted as conditional upon the existence of a request of withdrawal from the part of the parents, and for a certain period of time.

While the Grand Chamber decision in *Lautsi v. Italy* was still pending, the Austrian Constitutional Court, G-287/09, 9 March 2011, ruled that the display of crucifixes in classrooms of state-run nursery schools did not violate Austria's constitution. The Court thus rejected the complaint of two applicants who alleged a violation of Article 9 ECHR and Article 2 of Protocol No. 1 because according to the Lower Austria Kindergarten Act a crucifix is to be affixed given the majority of children attending are members of a Christian denomination.

7.2. The wearing by students or teachers of religious signs

The wearing of religious signs (clothing and symbols) in public schools has given rise to a growing number of cases before the ECtHR, all of them with holdings which upheld the state's stance. Relying on liberal principles and on the margin of appreciation doctrine, the Court so far has not objected to national regulations constraining the display of such religious signs by pupils or teachers, leaving the solution of conflictive situations to each member state.

In *Leyla Şahin v Turkey*, 10 November 2005 (GC), the applicant was refused access to a written examination on one of the subjects she was studying for wearing the Islamic headscarf. Subsequently the University of Istanbul's authorities refused on the same grounds to register her on a course, or to admit her to various lectures and a written examination. The ECtHR did not find any violation of the Convention (the complaint relied on Articles. 8, 9, 10, 14 ECHR, and Article 2 of Protocol No. 1). In the Court's view, the circular banning the use of the Islamic headscarf in the University, even when amounted to interference in the applicant's freedom to manifest her religion, was proportionate to the legitimate aims pursued by the national authorities. Using the margin of appreciation doctrine, the Court held that

⁶⁹ The contrary view had been previously adopted by the Constitutional Court of Poland (No. U 12/32, 20 April 1993). According to the Court, insofar the presence of crucifixes in public schools is possible but not compulsory it is compatible with freedom of religion and with the separation of Church and State. After the German crucifix decision, Bavarian schools continued to display the crucifix in classrooms. However, in case of parents' opposition a more flexible procedure to get a negotiate solution was provided.

the banning might be necessary, on the one hand, to preserve constitutional secularism and the democratic system in Turkey. On the other hand, such regulation contributed to the maintenance of public order in the University, and might be necessary to protect gender equality and the rights of other students.

In the twin decisions *Dogru v. France* and *Kervanci v. France*, 4 December 2008, the complaints before the ECtHR concerned the expulsion of female students of a state secondary school for repeatedly refusing to remove their headscarf in physical education classes. The Court accepted the conclusion reached by the national authorities that the wearing of a veil, such as the Islamic headscarf, was incompatible with sports classes for reasons of health, hygiene and safety. At the same time, it held that the decision of the school's disciplinary committee to expel the pupils for not satisfying the duty of assiduity was proportionate and not in breach of Article 9 ECHR and Article 2 of Protocol No.1.

The religious clothing controversy, especially after the 2004 French Law banning conspicuous religious symbols in primary and secondary public schools, has given rise to other complaints before the ECtHR on the same grounds. In *Aktas v. France*, *Bayrak v. France*, *Gamaleddyn v. France*, *Ghazal v. France*, *J. Singh v. France*, and *R. Singh v. France*, six decisions rendered on 30 June 2009, the Court declared the applications inadmissible as manifestly ill-founded. All these cases involved the expulsion of pupils from school for wearing conspicuous symbols of religious affiliation. In the last two cases the contentious symbol was a *keski* (a Sikh short turban). The Court again emphasised the importance of the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs. It also reiterated that a spirit of compromise on the part of individuals was necessary in order to maintain the values of a democratic society. The ban on all conspicuous religious symbols in all classes of state schools was based on the constitutional principle of secularism, which was consistent with the values protected by the Convention and the Court's case-law.

A parallel stance has been adopted by the ECtHR in the case of national regulations which forbid teachers from wearing religious signs. The benchmark case is *Dahlab v. Switzerland*, 15 February 2001. The application was lodged before the Court by a primary-school teacher who had converted to Islam and who had been prohibited from wearing a headscarf while teaching. She had previously worn a headscarf in school for a few years without causing any noticeable disturbance. The Court dismissed the application as manifestly ill-founded, upholding the reasoning of the Swiss Federal Court. Such limitation on the use of religious clothing was justified since the applicant had the status of civil servant in a school system guided by the principle of denominational neutrality. The ECtHR stated that the banning was within the national authorities' discretion, taking into account as well that such symbol might influence her early age pupils and its wearing was difficult to reconcile with the message of tolerance and gender equality in public schools.

Several Member State's high courts have issued judgments on conflicts regarding the wearing of religious signs in public schools. In Germany, the headscarf controversy has generally focused on its use by teachers. A very influential case is known as the *Ludin case*, which involved a teacher that applied for a position in Baden-Württemberg state's school system. Her application was rejected because she insisted on wearing the Islamic headscarf while teaching. The German Constitutional Court (BVerfG, 2 BvR 1436/02, 24 September 2003) ruled that the refusal had violated her constitutional rights since any restriction of the freedom of religion should be clearly stated in the Regional legislation. The Court, however, opened up the possibility for the *Länder* to forbid teachers from wearing headscarves in school with a proper statutory foundation.

The most important case to date concerning students wearing of religious signs in the United Kingdom is the case of the House of Lords *R (on the application of Begum (by her litigation friend, Rahman)) v. Headteacher and Governors of Denbigh High School*, [2006] UKHL 15, 22 March 2006. The complaint concerned a Muslim girl who was denied to attend school wearing a jilbab (a full length garment also covering the legs and arms). The school uniform policy allowed female pupils to wear blue head scarves, but the jilbab was not included. She lost almost two year's schooling. The House of Lords held that there had been no violation of her freedom of religion and her right to education. According to the majority opinion, the school uniform policy had been inclusive in meeting the needs of a diverse religious community. The applicant knew this policy in advance and she could have attended other schools in the area where the jilbab was permitted. At the same time, the school's decision to not accommodate such religious requirement was proportionate taking into account gender equality and the rights of those girls who wished to avoid pressure to have a more demanding religious dress code.

Another relevant controversy in United Kingdom involved a Muslim girl wanting to wear a niqab (a face veil) to school. In the case *R (on the application of X (by her Father and Litigation Friend)) v Headteachers and Governors of Y School*, [2006] EWHC 298, 21 February 2007, the High Court of Justice dismissed the claim. Applying the same logic than the above mentioned House of Lords ruling, the Court stated that her freedom of religion had not been violated.

In France, where, unlike Germany, conflicts have focused on pupils wearing religious signs, the Conseil d'État has clearly reoriented its case law after the 2004 banning of conspicuous religious symbols in primary and secondary schools⁷⁰. With the ground that wearing non-discrete religious symbols by itself expresses conspicuous religious adherence incompatible with the principle of laïcité, the judgments of the Conseil d'État (No. 285394, No. 285395, No. 285396 and No. 295671, 5 December 2007) upheld expulsions for wearing any kind of Islamic headscarf and the Sikh Keski.

In Belgium, the Conseil d'État has also issued two judgments on this issue (No. 191.532 and No. 191.533, 17 March 2009). In these cases, an anti-discrimination association (M.R.A.X.) had brought a complaint against the decision by the French community and two high schools to ban the wearing of headscarves at school. The claims were dismissed on formal grounds. The Court stated that the M.R.A.X. lacked standing because the association and both the schools and the French community had the same aims of promoting equality and fraternity. Hence, there were no contrasting interests at play.

The dress codes of public and private religious schools have also raised tensions in the Netherlands. The highest Courts have still not rendered judgments on these issues but the Dutch Equal Treatment Commission expressed its reservations to these restrictions in several decisions (2007-61, 16 April 2007; 2011-95, 21 June 2011; 2011-2, 7 January 2011).

⁷⁰ Previously, the Conseil d'État had issued several correlative judgments (No.170209, 170210, 172663, 172719, 172723, 172724 and 172726, 27 November 1996) holding that the wearing of a headscarf for religious reasons did not present by nature a conspicuous character.

7.3. The requirements of state neutrality in the organization of religious education in public schools

The ECtHR case law in this area has settled the minimum threshold of due state neutrality in the organization of religious education to secure freedom of religion and the right to education. The Court has stated as general principles that the State is forbidden to pursue an aim of indoctrination and must take care that religious knowledge is conveyed in an objective, critical and pluralistic manner. These principles were applied in two seminal cases rendered in 2007.

The first is *Folgerø and Others v. Norway*, 29 June 2007 (GC). In the autumn of 1997, the Norwegian primary school curriculum was changed, with two separate subjects – Christianity and philosophy of life – being replaced by a single subject covering Christianity, religion and philosophy, known as KRL. Under the previous system, parents had been able to apply for their children to be exempted from Christianity lessons; however, it was only possible to request exemption from certain parts of KRL. The applicants and other parents made unsuccessful requests to have their children entirely exempted from KRL. The applicants complained that the refusal to grant full exemption from KRL prevented them from ensuring that their children received an education in conformity with their religious and philosophical convictions. The Court first held that the qualitative preponderance given to Christianity in KRL did not meet the requirements of religious state neutrality in regard to education and teaching. At the same time, the Court found that the complex system of partial exemption provided was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of their private life, and that the potential for conflict was likely to deter them from making such requests. In certain instances, notably with regard to activities of a religious character, the scope of a partial exemption might even be substantially reduced by the notion of differentiated teaching. This could hardly be considered consistent with the parents' right to respect for their convictions for the purposes of Article 2 of Protocol No. 1, as interpreted in the light of Articles 8 and 9 ECHR. Therefore, the Court found a violation of the Convention.

A similar holding was rendered in *Hasan and Eylem Zengin v. Turkey*, 09 October 2007. Mr Zengin, a follower of the Alevist branch of Islam requested for his daughter to be exempted from attending classes in religious culture and ethics at the state school where she was a pupil. His request was dismissed. Having examined the Turkish Ministry of Education's guidelines for lessons in religious culture and ethics and school textbooks, the Court found that the syllabus gave greater priority to knowledge of the mainstream branch of Islam than to that of other religions and philosophies, and provided specific instruction in the major principles of the Muslim faith, including its cultural rites. While it was possible for Christian or Jewish children to be exempted from religious culture and ethics lessons, the lessons were compulsory for Muslim children, including those following the Alevist branch.

The lack of religious state neutrality in education has given rise to other related applications before the ECtHR. In *Grzelak v. Poland*, 15 June 2010, the applicants complained that the school authorities failed to organize a class in ethics for their son, failed to give him a mark in his school report in the place reserved for 'religion/ethics', and that their son was harassed and discriminated against for not following religious education classes. The Court found a violation of Article 14 in conjunction with Article 9 ECHR.

At the state level, case law shows the difficulties in achieving a balance between freedom of religion in public schools and special church-state relationships.

In *Arvanitakis and Others v. The Republic* [1994] 3 CLR 859, 21 April 1994, the Supreme Court of Cyprus issued a judgment on a case concerning a school which had refused to exempt from religious education pupils who were Jehovah's Witnesses. The Court held that the School had exercised its competencies in an unlawful manner.

The Constitutional Court of Poland, in the case 163/11/A/2009, 2 December 2009, was asked to examine the constitutionality of the Regulation of the Minister of National Education of 13 July 2007, which amended the Regulation concerning the terms and methods of grading, classifying, promoting pupils and students, and conducting tests and examinations in state schools. The Regulation was challenged arguing that public authorities may not support religious education, and therefore the Regulation did not conform to the principle enshrined in Article 25(2) of the Constitution. The applicant held that – despite the obligation of public authorities to remain neutral in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life – the public authorities supported religious education, motivating pupils to make more effort in this regard. The Constitutional Court declared the Regulation consistent with the Constitution and the Act of 17 May 1989 on the Guarantees of Freedom of Conscience and Religion.

7.4. Requests for religious exemption to mandatory educative activities

Religious pluralism at the national level has also given rise to contentious requests for religious exemption to mandatory educative activities. The ECtHR has dismissed all these complaints stating that when there is a conflict between the parents' right to respect for their religious convictions and the child's right to education, the interests of the child prevail. At the same time, such dismissals are in line with the ECtHR general tendency to grant states broad discretion to enforce secular laws which may interfere with individuals' right to manifest their religious convictions. Recent examples are the ECtHR holdings in *Appel-Irrgang v. Germany*, 6 October 2009, and *Dojan and Others v. Germany*, 13 September 2011. In the first case, the applicants, a pupil and her parents, disagreed with a 2006 law making it mandatory for pupils of grade 7 to 10 in Berlin to attend ethics classes in school, because they considered the instruction's secular character contrary to their Protestant belief. In the second case, the applicants complained about the authorities' refusal to exempt their children from mandatory sex education classes and other school activities which they alleged had constituted a disproportionate restriction of their right to educate their children in conformity with their religious convictions.

Similar grounds for dismissal were offered by the ECtHR in the cases *Konrad and Others v. Germany*, 11 September 2006, and *Casimiro and Ferreira v. Luxembourg*, 12 April 1999. The first concerned Christian home-schooling and the refusal of a parents' petition to obtain exemption to German compulsory education laws based on religious belief. The second involved members of the Adventist Church and their request for their children to be exempted from classes held on Saturdays.

The ECtHR has also issued judgments on exemptions to more unusual school obligations. The twin holdings *Valsamis v. Greece*, and *Efstratiou v. Greece*, 27 November 1996, involved the penalty of some days suspension from school for failure to take part in a school parade on ground of religious beliefs. The pupils were Jehovah's Witnesses. The Court considered that the presence of military representatives at the parade did not affect its commemorative nature. The obligation to take part in the school parade was not such as to offend the parents' religious convictions and to violate the pupil's right to freedom of religion.

The possibility of opting out of School obligations for religious reasons has raised some other cases at the states level. In France, for instance, the Conseil d'État assessed a request for exemption to attend classes on Saturdays. In CE (Ass.) *Consistoire central des israélites de France et autres, M. Kohen*, 14 April 1995, the Council stated that pupils in public schools might be entitled to obtain authorizations of non-attendance for religious reasons, though the appeal was rejected. According to the Council, attending on Saturdays was necessary for the schooling of that student because relevant examinations were organized on that day of the week.

8. RELIGION AND EQUALITY

In human rights law, the individual's religious sphere is protected primarily by the right to freedom of religion. However, the principle of equality and that of non-discrimination (specifically non-discrimination on grounds of religion or belief) offer an additional and complementary protection.

In this respect, the ECHR guarantees both freedom of religion (Article 9) and equal treatment on grounds of religion (Article 14). This type of framework may also be found in several national Constitutions, which protect the religious sphere of individuals and groups by relying both on freedom of religion provisions, and on anti-discrimination provisions.⁷¹

As for the EU, the non-discrimination principle has become particularly relevant, as means for protecting the individual's religious sphere, after the introduction of Article 13 TEC in the Amsterdam Treaty (now Article 19 TFEU), which gave the EU the power to take measures against discrimination, on several grounds, including religion and belief. Relying on this clause, the EU passed Directive 2000/78/EC, which prohibits discrimination on the basis of religion and belief (as well as sexual orientation, age and disability) in the field of employment.

This chapter will examine three types of cases in which the principles of equality and of non-discrimination play a role in the context of religious protection. The first case is that of direct discrimination, i.e. when certain individuals are treated less favourably than others, explicitly because of their religion or belief. Direct discrimination is normally prohibited, but it may be admitted in very specific situations.

In EU law, for instance, Directive 2000/78 provides for an exception to the prohibition of direct discrimination on grounds of religion in the case of churches and other public or private religious-based (or belief-based) organizations, which are allowed to discriminate on grounds of religion or belief, to the extent that they do it on the basis of a genuine, legitimate and justified occupational requirement. In the ECHR context and in that of national constitutions, discriminatory measures are only allowed subject to a strict proportionality test.

The second case is that of indirect discrimination, which occurs when an apparently neutral provision puts persons belonging to a protected group at a particular disadvantage. Indirect discrimination is prohibited as well, unless the provision is shown to be proportionate to the legitimate aim pursued.

This notion is particularly important in the context of freedom of religion, since it allows challenging rules that, though apparently neutral in terms of religion, actually reflect practices that favour the religious majority. Think, for example, of the rule establishing Sunday as the weekly day off from work, which may negatively affect religious minorities observing a different day of rest.

In Europe, the notion of indirect discrimination has been elaborated primarily by EU law and by the CJEU case-law, in the field of non-discrimination against women and EU nationals. National constitutional courts, however, have accepted with difficulty the idea that discrimination may also occur when applying rules or provisions which have a general and apparently neutral character.

Only recently, has the ECtHR admitted that Article 14 of the ECHR is breached in such cases. In particular, the Court did so in *Thlimmenos v. Greece*, 6 April 2000

⁷¹ See section 1 above.

(GC) (see below), a decision involving a case of conscientious objection on the ground of religion. Subsequently, in *D.H. and Others v. Czech Republic*, 13 November 2007 (GC), the Court further elaborated on the application of indirect discrimination for the purposes of Article 14.

In most cases, however, the ECtHR protects religious practices under Article 9(2) ECHR, which establishes that limitations to the right to manifest one's religion or belief in worship, teaching, practice and observance are allowed only insofar as they are necessary in a democratic society, in the interests of public safety, for the protection of public order, health or moral, or for the protection of the rights and freedoms of others.

Nonetheless, with respect to the protection of religious minorities, the ECtHR has traditionally interpreted Article 9.2 narrowly, claiming that freedom of conscience and religion do not grant a right to be exempted from general rules, if these rules are neutral with respect to religion.

The new approach by the ECtHR, including indirect discrimination within the purview of Article 14, suggests that claims for religious accommodation may also be reviewed in the light of Article 14. This might imply the adoption of a more demanding proportionality test when scrutinising general rules that affect religious minorities.

Although the principle of non-discrimination, including both direct and indirect discrimination, protects freedom of religion in numerous ways, it does not support, *per se*, claims for positive interventions in the field of religion. With respect to positive interventions, therefore, public authorities are free to decide whether to adopt them or not, provided that, in doing so, they respect the principle of equality among religious groups.

8.1. Direct discrimination and the cases of religious oath and mandatory disclosure of religious affiliation on official documents

The prohibition of direct discrimination on religious grounds provides that no one may be subject to unfavourable treatment for belonging –or not belonging– to a specific religion. The protection against direct discrimination on grounds of religion may often overlap with the protection of freedom of religion as such. When this occurs, courts usually base their decisions exclusively on the alleged breach of freedom of religion.

An interesting example is the case of mandatory religious oaths. This requirement may constitute an infringement of freedom of religion insofar as it compels individuals to disclose their own religious belief (which concerns their inner sphere). Recently, in *Dimitras and others v. Greece (no. 2)*, 3 November 2012, the applicants took part in a number of criminal cases as witnesses. At each hearing the competent judicial authority would ask the applicants to place their right hand on the Bible and take the oath. The applicants would then inform the judicial authorities that they were not Orthodox Christians and would make a solemn declaration instead. They complained they had been obliged to reveal their religious beliefs, and that there was no remedy in domestic law by which to have this complaint examined. The ECtHR declared the breach of Articles 9 and 13 ECHR.

At the same time, mandatory religious oaths may also constitute a form of direct discrimination, since individuals who do not comply on the basis of their religion or belief will suffer legal consequences. For instance, in certain cases the refusal to swear is considered a crime (see Italian Constitutional Court, n. 117/1979, 10

October 1979 on the unconstitutionality of the religious oath before bearing witness). In others, refusal to swear excludes from practicing a given profession. For instance, in *Alexandridis v. Greece*, 21 February 2008, the ECtHR ruled that requiring a religious oath as a condition for practicing law constituted a violation of Article 9. Also, in *Buscarini and Others v. San Marino*, 18 February 1999 (GC), the Court found that the requirement of taking a religious oath as a condition for taking office in Parliament constituted a violation of Article 9 ECHR.

In some cases, instead of exclusively examining freedom of religion, judges consider, as well, the risk of suffering an unfavourable treatment, or social stigmatization, as an additional ground for deciding in favour of the claimant. An example can be found in two interesting decisions (one from the ECtHR, and the other from the Greek Council of State) on the case of mandatory indication of religious affiliation on official documents.

In *Sinan Isik v. Turkey*, 02 February 2010, a member of the 'Alivi' religious community unsuccessfully applied to a national court requiring that his identity card mentioned 'Alivi' as his religion, rather than Islam. He then submitted a complaint before the ECtHR, alleging a violation of Articles 9, 6 and 14 ECHR, and the Court ruled in favour, finding that there had been a violation of Article 9 of the Convention. According to the Court, the breach had arisen, not from the authority's refusal to indicate Mr. Isik's faith on his identity card, but from the very fact this indication was required by law. The Court stated that no one should be obliged to disclose his or her religion. Even though the Court did not frame the claim under Article 14 explicitly (equal treatment on grounds of religion), it underlined that the indication of religious affiliation on identifying documents could expose individuals to discrimination by the public authorities.

In similar terms, the Greek Council of State (n. 2283/2001, 27 June 2001) held that compulsory reference to religion on identity cards, imposed by legislation, was incompatible with freedom of religion, as enshrined in Article 13 of the Greek constitution, since it requires to reveal an aspect of one's personal religious convictions. Furthermore, the Court also stressed that the indication of religious affiliation on identity cards provides grounds for possible discrimination, favourable or unfavourable, and thus carries the risk of infringing the principle of religious equality, enshrined in art 13.1 of the Greek Constitution.

In addition to cases like these, in which non-discrimination on grounds of religion overlapped with the right to freedom of religion, in other cases discrimination on grounds of religion interferes with the enjoyment of rights or situations other than freedom of religion. In these cases, therefore, the principle of non-discrimination constitutes the principal ground for protection.

Situations like these may frequently occur in the private sector, as a recent case from the UK Supreme Court has effectively shown (*R v. JFS School*, [2009] UKSC 15, 16 December 2009). A well-known school, that received a much higher number of applications than places available, established an admission policy giving preference to prospective students who were recognised as Jews by the Chief Rabbi of the United Hebrew Congregation of the Commonwealth (that is to say, children of Jewish mothers or of mothers who are Jews by conversion, according to orthodox standards). The Supreme Court ruled that, even though the school's policy was not racially/religiously motivated, it constituted, nevertheless, an unlawful act of direct discrimination, since the claimant had been treated less favourably for the fact of not being recognised as a Jew by the Chief Rabbi, and there seemed to be no justification for the school's behaviour.

8.2. Indirect discrimination and conscientious objection

As anticipated, the notion of indirect discrimination allows challenging legal provisions that, though neutral on their face, have the effect of discriminating minorities on grounds of religion, unless these provisions are proportionate to the legitimate aim pursued.

The judicial enforcement of indirect discrimination on grounds of religion or belief may allow derogations to general rules that could hinder certain religious practices. In this way, the prohibition of indirect discrimination because of religion or belief may act as a functional equivalent to conscientious objection. The problem of conscientious objection, in particular, is very relevant in the ECHR context.

The ECtHR traditionally refused to draw from Article 9 ECHR (protecting the right to manifest one's religion or belief, in worship, teaching, practice and observance) a right to conscientious objection on grounds of religion or belief.

According to the Court, under Article 9 ECHR, the word 'practice' does not denote each and every act or form of behaviour motivated or inspired by a religion or a belief. Thus, for instance, in *Pichon and Sajous v. France*, 2 February 2001, the ECtHR denied Article 9 protection in a case involving two chemists who refuse to sell contraceptives because of their religious convictions. As long as the sale of contraceptives is legal and occurs on medical prescription nowhere other than in a pharmacy, the applicants cannot give precedence to their religious beliefs and impose them on others as a justification for their refusal to sell such products, since they can manifest those beliefs in many other ways, also outside the professional sphere.

However, the notion of indirect discrimination, which the Court has drawn from Article 14 ECHR, has offered an alternative ground for protecting the right to conscientious objection. For instance, in *Thlimmenos v. Greece*, 6 April 2000 (GC), a case involving conscientious objection to military service, the Court relied on Article 14 ECHR in order to hold that the non-discrimination principle prohibits States from failing to 'treat differently persons whose situations are significantly different' without an objective and reasonable justification.

The applicant, a Jehovah Witness, was convicted of a felony offence for having refused to enlist in the army at a time when Greece did not offer alternative service to conscientious objectors to military service. A few years later, the Greek authorities refused to appoint Mr Thlimmenos as chartered accountant because of his previous conviction, (since existing legislation prohibited people convicted of a crime to become chartered accountants). According to the Greek authorities, since the legislation had general application, the applicant could not be exempted, and the fact that he had been convicted for being a conscientious objector did not put him in a considerably different position from other convicted individuals.

The ECtHR did not accept this argument, and held that the Greek authorities had discriminated against Mr Thlimmenos on grounds of religion 'by failing to introduce appropriate exceptions to the rule barring persons convicted of serious crimes for the profession of chartered accountants.'

In the recent case of *Bayatyan v. Armenia*, 7 July 2011 (GC), the Court has finally accepted to draw from Article 9 ECHR alone a right to conscientious objection in relation to military service, when motivated by a serious and insurmountable conflict with the individual's religious beliefs. This interpretation was based on a comparative law argument: namely the fact that the large majority of the State

parties to the Convention provides for alternative or no military service for objectors.

While the *Bayatyan* decision might suggest that Article 9 ECHR applies only to conscientious objection to military service, it may be argued that the indirect discrimination argument, drawn from an extensive reading of Article 14 (which the Court gave in the *Thlimmenos* case, and then confirmed in *D.H. v. Czech Republic*), may constitute a ground for recognising freedom of conscience in fields other than the military service.

In two joint cases (*Ladele v. UK* and *McFarlane v. UK*, 15 January 2013) the ECtHR rejected the applications lodged by two practising Christians who had been dismissed because they refused to carry out certain duties in the course of employment, which they felt would condone homosexuality. *Ladele* was a registrar of births, deaths and marriages, an orthodox Christian, who opposed same-sex relationship on religious grounds, while *McFarlane* was a relationship counsellor employed in a UK charity, who refused sex therapy to same-gender couples. Both claimants had argued before the domestic courts to have been indirectly discriminated because of their religion, but their claims were unsuccessful. The Court of Appeal of England and Wales held that employers are entitled not only to require employees to carry out their duties, but also to refuse to accommodate their religious needs, when their views contradict principles of non-discrimination (on grounds of sexual orientation), protected by UK legislation. In *Ladele*, in particular, the Court of Appeal referred to Article 9(2) ECHR, noting that it does not provide an unqualified right to practice one's religion at any time.

The ECtHR approached both cases from the point of view of the guarantee of the freedom of religion and of non-discrimination, and did not rely explicitly on the notion of conscientious objection. The Court stated that it needs to determine whether the decision not to make an exception for the applicant, and for others in her same situation, amounted to an indirect discrimination in breach of Article 14. In order to do so, the Court considers whether the authority's policy pursued a legitimate aim and was proportionate to that goal. In this case, the Court found that the aim was legitimate and that the means were proportionate, having regard to the fact that the State did not exceed the wide margin of appreciation left available to it when it comes to striking a balance between competing Convention rights, i.e., in this case, the right to manifest one's religious belief, on the one hand, and the employer's interest in securing the rights of others and equal opportunities, on the other.

The legal recognition of same-sex marriage or partnership gave way to several cases concerning civil servants who opposed to perform their duties on religious grounds. The *Consejo General del Poder Judicial* denied a Spanish judge the right to object on religious grounds in relation to the duties he would have to perform in issuing marriage certificates. The Spanish Supreme Court (Recurso n. 69/2007, 11 May 2007) rejected the appeal and found that, neither under the Constitution, nor under European law, is there a general right to conscientious objection, (which only the legislator has the power of granting). This conclusion follows from the principle of primacy of the law, and from the judiciary's function of safeguarding the legal system and the rights of individuals.

Exemptions for civil servants were recently dealt with by the Dutch Council of State on 9 May 2012, in an advisory opinion to the Government (published as parliamentary paper, Kamerstukken II 2011/12, 32 550, nr. 35). In the Netherlands conscientious objection is not regulated by law, but some municipalities have adopted policies accommodating the needs of objecting civil servants. The Council of State finds that this pragmatic approach is in line with the

Dutch tradition of tolerance for deviant opinions, and suggests that reasonable accommodation should continue to be guaranteed, also in the absence of *ad hoc* legislation. Explicit prohibitions, on the contrary, may raise issues (among others) of indirect discrimination based on religious grounds.

A comparative overview of the European legal context shows that there has been a clear rejection of conscientious objection to the detriment of sexual minorities, and that only a few Dutch municipalities have, to some extent, embraced a *de facto* policy of accommodation, which still remains, however, a highly contentious issue.

8.3. Indirect discrimination and religious holidays

In all European countries Sunday is the weekly day off from work. This rule allows Christians to respect their religious precepts and take part in the Sunday Mass. At the same time, however, it represents an obstacle for religions observing a different day of worship.

The issue of leaves of absence for religious purposes has been considered by the ECtHR (and by the European Commission of Human Rights, beforehand) under Article 9(2) ECHR. Traditionally, these claims have been rejected on the ground that, either, the facts did not reveal any interference with the applicant's freedom of religion, or the rules were proven to be necessary in a democratic society.

An interesting example is the case of *X. v. UK*, 12 March 1981 (Comm), in which the applicant was a primary school teacher in a London public school who complained against the refusal by the school authorities to accommodate his working hours, so as to allow him to take a 45 minute break on Friday afternoons, to pray at the mosque. The Commission dismissed the case under Article 9(2), noting that the applicant 'on his own free will accepted teaching obligations under his contract with the Inner London education Authorities and that it was a result of this contract that he found himself unable to work with the Ilea and to attend Friday prayers'. A similar reasoning was followed in *Konttinen v. Finland*, 3 December 1996 (Comm).

Therefore, in these cases, no real attempt was made to verify the proportionality of the challenged measures and to establish whether alternatives were available in order to accommodate religious needs. Nonetheless, the new approach of the ECtHR with regard to indirect discrimination could lead to expect a more demanding proportionality test, with respect to the accommodation of religious needs.

Indeed, this has been the case in *Jakóbski v. Poland*, 7 December 2010, in which the Court ruled in favour of the claimant, a practising Buddhist, who was serving a jail sentence and complained that he was unable to get a meat-free diet in prison. For the Court, the applicant's decision to adhere to a vegetarian diet could be considered as motivated or inspired by religion (Buddhism), and was not unreasonable. Consequently, the refusal of the prison authorities to provide him with such a diet fell within the scope of Article 9.

However, with respect to leaves of absence for religious purposes, the ECtHR has been more restrictive and has not changed its previous case law. For instance, in *Kosteski v.. The former Yugoslav Republic of Macedonia*, 13 April 2006, the ECtHR seems to adhere to the previous case-law set by the Commission, stating that sanctioning an employee for leaving the workplace to celebrate a religious holiday did not constitute an impairment of religion.

In the recent decision on *Sessa v. Italy*, 3 April 2012, the ECtHR decided a case concerning a judge's refusal to adjourn a court hearing which was scheduled on the

date of a Jewish holiday. The ECtHR held that, even supposing that there had been an interference with the applicant's right under Article 9, such interference was prescribed by law and was justified on the grounds of protection for the rights and freedoms of others, in particular the public right to the proper administration of justice. In other words, the Court admitted that the refusal to postpone a hearing may constitute a form of interference with religious freedom, even though, in this case, the Court rejected the claim since the refusal was found justifiable in the light of the competing public interests at stake.

The problem of accommodating religious holidays in the employment field has been considered also by the CJEU, in the well-known case of *Vivien Prais* (Case C-130/75, *Vivien Prais v. Council of the EC*, 27 October 1976). The Council of the European Communities had issued an open competition for hiring translators, and Ms Prais had presented her candidacy; however, when she was informed that the written test would take place on the date of a Jewish holiday, which prevented her from travelling and writing, she asked for a postponement of the date, which was refused by the authorities.

Ms Prais then took action against the EC Council, claiming that such refusal amounted to religious discrimination and was prohibited, as such, by Article 27(2) of the Staff Regulations, according to which candidates are chosen without distinction of race, religion or sex. The Court eventually rejected the claim, but, in doing so, it did not adhere to the idea of the Commission and of the Council, according to which the European authorities would have been substantially free to disregard any request based on religion. The Court acknowledged, instead, that it is 'desirable that an appointing authority informs itself in a general way of dates which might be unsuitable for religious reasons, and seek to avoid fixing such dates for the tests.' However, when the authority has already scheduled the date of the examination, and when this date has been notified to the other candidates (as it was in that case), it is not possible to change it, nor to allow certain candidates to take the test on a different day, regardless of their religious needs, since the test must take place under the same conditions for all candidates.

In a similar case, instead, a Portuguese Court ruled in favour of the claimant. An Adventist intern attorney had required the date of her exam to be changed for religious reasons, and the *Tribunal Central Administrativo Norte* (n 01394/06, 8 February 2007) ruled that the date should have been changed, by virtue of Article 13 and Article 41 of the Portuguese Constitution (principle of equality and freedom of religion, respectively).

The issue of leaves of absence for religious purposes has been raised frequently before the judiciary of the European states. In this regard, it should be noted that some States (Italy and Spain) have concluded bilateral agreements with some well-established religions in the country, in order to provide (among other things) for the right of workers to take leaves of absence on days other than Sunday. Problems arise, however, when States decide not to enter into an agreement with certain well-established religious groups, as it has been the case for the Islamic community in Italy.

Several constitutional courts, in dealing with the supposedly discriminatory character of rules establishing Sunday and the most important festivities of the Christian religion as public holidays, have dismissed these cases, holding that a legislative choice as such is not unreasonable, having regard to the religious and historical traditions of each society, and to the fact that these festivities have acquired, over time, a secular meaning.

A particularly interesting example is the Hungarian Constitutional Court decision, n. 10/1993, 27 February 1993. In this case, leaders of the Jewish religious community had complained that the greatest Jewish holidays were not considered public holidays as the Christian ones were. The Court held that this circumstance did not amount to discrimination on the grounds of religion, noting that, nowadays, the most important Christian holidays have a secularised and general social character. In other words, they are recognized not for their religious content, but because of economic considerations, and because they comply with the expectations of society. Furthermore, the Court noted that under Hungarian labour law citizens have the right to go on leave at least five days per year, without the consent of the employer. This provision serves primarily religious interests, and is meant to provide an effective guarantee of the free exercise of religion.

In 1992, the Belgian Arbitration Court (Constitutional Court) was asked to rule whether a provision prohibiting to employ salary workers on Sunday, while allowing autonomous workers to choose a different day of weekly rest, was in breach of the principle of equality. The Court stated that autonomous workers can not be compared to employees, and that the legislator's choice of setting Sunday as weekly day of rest was reasonable, having regard to religious and domestic traditions, and to cultural and sportive practices of Belgian society (decision n. 70/92, 12 November 1992)

8.4. Indirect discrimination and the right to wear religious garments and to display religious symbols in the workplace

Another area in which the notion of indirect discrimination on grounds of religion may play a role, as means for accommodating religious pluralism, is the right to wear religious dresses or to display religious symbols in the workplace.

The most frequent subject of debate is the wearing of the Islamic veil at work, which conflicts with the employers' interest to preserve religiously neutral policies *vis à vis* their customers. More recently, however, as a consequence of the adoption of dress-codes banning any visible display of religious symbols, various cases have emerged on the wearing of the crucifix.⁷²

Court decisions are usually in favour of the employer's interest in preserving the neutrality of the workplace. In this line of argument, for instance, we can refer to a Danish Supreme Court decision (n. 22/2004, 21 January 2005) in which the Court held that the prohibition of wearing headgear was not an infringement of the antidiscrimination law. According to the judges, the legislative history of the discrimination act reported as an example of admissible discrimination. The very fact of requiring employees to wear uniforms, or specific clothing, if this is part of the company's appearance policy *vis-à-vis* the customers, and if it is a consistent requirement which applies to all employees in the same position is allowed.

A different solution, in favour of the employee, has been given, instead, by the German Constitutional Tribunal (BvR 792/03, 30 July 2003). In this case, a 'shop assistant' had informed her employer that, due to a change in her religious beliefs, she no longer wanted to appear in public without wearing a headscarf. The employer dismissed arguing that selling staff is obliged to dress in accordance with the style of the department store. The shop assistant brought action against her employer and won the case in the third instance, where the federal labour court declared that her dismissal was unjustified.

⁷² An interesting example, presenting various specificities, is that of employees in the field of education, as already examined in the previous section.

Then, the employer brought a constitutional complaint before the Constitutional Court claiming that he had suffered a violation of his entrepreneurial freedom according to Article 12(1) of the Basic Law, but the Constitutional Court confirmed the decision of the third instance. In particular, the Court observed that Article 12(1) of the Basic law protects the employer's interest in employing only workers who comply with his requirements. However, this right has to be weighted with the competing interest of employees to profess their faith, according to Article 4(1) of the Basic Law. The Constitutional Court concluded that the federal labour court had weighted the two interests in a reasonable manner, and that the employer did not sufficiently show that the employee's behaviour would result in a disruption of business. In this respect, the complainant could not rely on the usual practices in his line of business or on knowledge of everyday life, especially since, as an alternative to being dismissed, the employee could have also been assigned to other less exposed departments, to work as a shop assistant there.

As already mentioned, the adoption of neutral uniform rules and the prohibition of wearing ostensible religious symbols has also affected religious majorities, such as the Christian one, in relation to the prohibition of wearing a cross in a visible way.

A case as such has been decided, for instance, by the Court of Amsterdam (14 December 2009), in relation to the clothing requirement of the city transportation company, which forbade the wearing of necklaces (regardless of their religious significance), not only to maintain the professional appearance of the staff, but also for safety reasons. A tram driver claimed that the wearing of a cross in a visible way was important for his belief, and argued that the supposedly uniform rule of the company, in fact allowed religious garments, permitting Muslim women to wear a headscarf. The Court dismissed the claim by observing that the clothing requirement was not unreasonable. The situation of the claimant was not comparable to that of a Muslim woman wanting to wear headscarf, since this garment cannot be worn in an invisible way. Moreover, a cross could be worn on a bracelet or on a ring just as well.

A similar case has also been decided by the UK courts. Ms Eweida, a devout Christian, was an employee of the British Airways, where she worked as a member of the check-in staff. British airways uniform policy allowed an employee to wear any item of jewellery, provided that it was not visible. Employees who, for religious reasons, wore religious clothing which could not be concealed under the uniform (such as hijab or turbans) were exempted. In 2006 Ms Eweida began wearing a silver Christian Cross on a necklace outside her uniform and, since she refused to conceal it underneath, she was suspended.

Ms Eweida then brought a complaint against British Airways claiming indirect discrimination. On appeal, the Employment Appeal Tribunal-EAT (20 November 2008) rejected the claim on the ground that the claimant had not proven that the practice disadvantaged a specific group on the ground of religion. According to the Court there was no evidence that other persons of Christian faith shared her strong view that wearing the cross was indeed required by the Christian religion. Thus the indirect discrimination claim was rejected. The finding of the EAT in the abovementioned case is interesting since it suggests that when a religious belief is particularly subjective, and is not widely shared among a specific religious group, discrimination on grounds of religion will be more difficult to establish.

After the Court of Appeal of England and Wales dismissed MS Eweida's case, endorsing the approach of the EAT, and the Supreme Court of UK refused her appeal, Ms Eweida brought an action before the ECtHR claiming a violation of Articles 9 and 14 ECHR and won (*Eweida and Other v UK*, 15 January 2013).

The Court departed from its previous case-law (*X v. UK* and *Kontinnen v. Finland*, examined earlier in the text) according to which the possibility of resigning from the job and changing employment meant that there was no interference with the employee's freedom of religion. Moreover, the Court held that, in order to count as a 'manifestation' within the meaning of Article 9 ECHR, an act must be intimately linked to the religion or belief, but there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question. The Court then scrutinised the uniform rule according to a proportionality test, and balanced, on the hand, Ms Eweida's desire to manifest her religious belief, and on the other, the employer's wish to project a certain corporate image. The Court concluded that while the aim was undoubtedly legitimate, the domestic courts had accorded it too much weight.

8.5. Equality among religious communities

Thus far, we have examined the protection that the principles of equality and of non-discrimination offer to the individual religious dimension. These principles, however, may offer protection to religious communities as well.

Religious pluralism is present in every democratic society, and requires that States should remain neutral in terms of religion, and treat religious communities equally. The principle of equality among religious communities might be apparently contradicted by the fact that, at the constitutional level, differentiations among religious communities are often allowed. This is particularly true when Constitutions provide for the existence of a State church (see section 1 and 2).

The problem of the equal treatment of religious groups should be assessed bearing in mind that in most European countries the notion of separation between Church and State is not understood in terms of hostility towards religion or as a declaration of State indifference towards the religious dimension. On the contrary, secularism is often conceived by Constitutional Courts as having a positive meaning, i.e. as a duty for the State to cooperate with religious groups in order to allow citizens to fully express their religious feelings

However, the implementation of the idea of positive secularism (*laïcité positive*) may come into conflict with the equal treatment of religious groups. This is especially the case when the State provides for positive actions, for example by means of direct or indirect financial support, or by providing financial resources for religious spiritual care in prisons, hospitals or in the army.

Because of the costs, States have an interest in limiting these services to the most well represented religions, and Constitutional Courts have recognized that equality among religious groups does not require to apply the same regime to all religions. Therefore, differentiations are accepted, as long as they are justified and pursue legitimate objectives. To this extent, a differential treatment of religious groups may be justified, or not, depending on the case (see, extensively, the section on Church and State in this report).

9. ASYLUM AND IMMIGRATION

In the EU, freedom of religion is considered to be a basic right, both for citizens and foreigners, i.e. asylum seekers or immigrants. However, there might be cases in which belonging to one religious group might influence the conditions in which entrance or residence permits are granted. In other words, individuals might receive a less favourable treatment in light of their religious beliefs, e.g. in relation to their right to marry and/or the possibility to obtain a working permit. In addition, for asylum seekers religion might become crucial in the qualification of an 'act of persecution' in order to obtain international protection.

9.1. Right to marry

The right to marry is one of the rights that could undergo restrictions in case of foreigners. Belonging to a specific religious group or, more generally, belonging to the non-majoritarian religious groups might influence the relation between freedom of religion and the status of migrants or asylum seekers. In this context, an interesting case was decided by the ECtHR in 2010 (*O'Donoghue and Others v. United Kingdom*, 14 December 2010).

The applicants, a couple formed by a Nigerian national and a dual British and Irish national, both belonging to the Roman Catholic Church, complained that the request for the Certificate of Approval violated, among others, Article 12 (right to marry) and 14 (prohibition of discrimination) of the ECHR. This certificate is a document needed for persons subject to immigration control and who have not an entry clearance expressly granted for the purpose of enabling them to marry in the United Kingdom. The purpose of this national law was to impede marriages of convenience.

The ECtHR found that, even if States may legitimately impose certain limitations to the right concerned, in the specific case, there was a breach to right to marry since: (a) it was impossible to submit information about the genuineness of the proposed marriage; (b) there was a blanket prohibition imposed on certain categories of individuals to exercise their right to marry without considering whether the marriage was or not of convenience; (c) the required fixed fee was too high for a person in need. In addition, according to the Strasburg Court, the fact that those belonging to the Church of England were not bound by the same obligation to fulfil these requirements, created an unjustified discriminatory treatment among religious groups. Therefore, the Court concluded that the UK was in violation of Article 14 read in conjunction with Article 9 ECHR.

Another remarkable case on this issue is the decision No. 14 of 2003 of the Italian Constitutional Court, 16 January 2003. This case originated in the refusal by an Italian public officer to provide the necessary document to get married for two couples. The denial stemmed by the absence of a certificate that foreigners need to provide under Italian law – released by the home country – attesting that there is no reason to impede the marriage.

In one of the cases, the lack of this certificate was due to the fact that, under Tunisian law, marriages between Tunisian nationals and foreigners who are not Muslim are not allowed. Moreover, under Italian law, a foreigner does not have the chance to present a substitutive declaration to certify that there are no reasons for which the marriage should not be authorized. The case was dismissed by the Court for procedural reasons, in particular, because the judge who made the constitutionality question had not taken into account national case-law according to

which, by giving a different interpretation of legislation, allowed issuing the above-mentioned document.

9.2. Residence and working permits for religious work

An important aspect of the relation between religious freedom and immigration regards the conditions under which a working permit and the corresponding right to reside in the territory of a Member State might be obtained when the migrant is a spiritual leader or his job can be considered of pastoral kind.

In *El Majjaoui and Stichting Touba Moskee v. the Netherlands*, 20 December 2007, the ECtHR examined the case of a Moroccan national complaining about the violation of Articles 9 and 18 ECHR, since Dutch authorities refused to grant him a working permit as imam in a mosque run by a Foundation. Dutch law recognizes a range of immigration statuses: five primary types and others which include migrants involved with a religious organization. National authorities denied the permit because in that case there was no compliance with certain requirements established by Dutch law for the employment of foreigners. The case was thus dismissed by Dutch authorities because, according to their interpretation of Article 9 of the Convention, this provision could not be construed as entitling a religious community to employ foreign teachers and ministers of religion who did not meet statutory requirements set for the purpose of preserving peace and public order.

The ECtHR did not have the chance to decide the case on the merits because a working permit had eventually been issued to the applicant, enabling him to work as an imam after a successful application submitted by the Foundation. In the light of the last developments, the Court stated that the applicants could no longer claim to be the 'victim' of a violation, and thus the case was struck out. An important aspect of the case, which was not examined by the Court, but emerged in the joint dissenting Opinion, concerned the fact that the same requirements for the admission of foreigners to the domestic labour market should be equally applied when the employer is a religious association or when the foreigner will work as religious minister.

Another very recent case, decided by the CJEU, C-502/10, *State Secretary Van Justitie v. Mangat Singh*, 18 October 2012, concerned the possibility to consider eligible for long-term residence a foreigner whose temporary resident permit was granted in relation to his/her work as spiritual leader or as religious teacher.

The case concerned the interpretation of Article 3(2)(e) of Directive 2003/109/EC, of 25 November 2003 *concerning the status of third-country nationals who are long-term residents*, and originated by the refusal from the Dutch State Secretary for Justice of an application submitted by an Indian national - who held a temporary residence permit to work as a spiritual leader - for a permit as a long-term EC resident. The national court established that the residence permit should have been included in the category of 'resident permit which has been formally limited.' According to the national court, this type of work permit is excluded from the scope of application of the Directive 2003/109/EC and, consequently, the applicant could not obtain a long-term residence permit.

Given that the main objective of the Directive 2003/109/EC is the integration of third-country nationals, the CJEU stated that when the residence permit is formally restricted but the formal limitation does not impede to a third-country national to settle on a long-term basis within the territory of a Member State, this type of residence permit cannot be included in the category of 'formally limited permit', which is excluded ex Article 3(2)(e) from the scope of application of the Directive. As a consequence, the period of residence of a holder of this type of residence

permit has to be taken into consideration in the procedure of acquisition of the long-term residence permit.

Another important case is represented by the ECtHR's case *Jehovas Zeugen in Österreich v. Austria*, 25 September 2012. As a preliminary premise, it is important to underline that under the Austrian Basic Law of 1867, Article 15, 'recognized churches and religious communities have the right to manifest their faith collectively in public, to organise and administer their internal affairs independently', [...] 'however, they are, like all other societies, subordinated to the law'. As for those non-recognized religious groups, Article 16 provides that 'supporters of non-recognised religious communities [are entitled] to domestic manifestation of their faith unless it is unlawful'.

In the case brought before the ECtHR – after the case was dismissed by the Austrian Constitutional Court – Austria has been found in violation of the Convention (Article 9-14 ECHR). This case was about the exclusion of a couple of Philippine citizens, who were engaged with pastoral work in the Austrian Jehovah's Witnesses community, from the benefits enshrined in the Austrian Employment of Aliens Act according to the Austrian Religious Communities Act of 1998 (ARC Act). The claim was dismissed by Austrian national authorities arguing that only ministers performing pastoral duties belonging to a recognized religious society – which was not the case of the Jehovah's Witnesses in Austria – were exempted from the provisions of the AE Act. According to Austrian authorities, the aim of this differentiation was to prevent abuses of the exemption for pastoral work, and thus it represented a necessary instrument for the control of the employment of foreigners and the labour market.

The ECtHR was not persuaded by this argument and found Austria in violation of the Convention. According to the Strasbourg Court, the differentiation between religious groups is discriminatory if it has no objective and reasonable justification. As the ECtHR noted in the case of *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, 31 July 2008, if a State regulation does not pursue a legitimate aim or there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized, the Convention is breached.

9.3. Religious beliefs or practices as a threat to national security

One of the main concerns regarding freedom of religion is related to the less favorable treatment a foreigner might experience when his/her religion beliefs, practices or activities are perceived by national authorities as actions posing a threat to national security. Indeed, after the terrorist attacks occurred in the U.S. on 11 September 2001, extremist religious groups, particularly Islamic communities, have been targeted as potentially dangerous religious groups, raising social concern within Western societies.

In the case *Perry v. Latvia*, 8 November 2007, the applicant, a U.S. citizen who was a religious leader of the Morning Star International, had obtained a temporal residence permit to develop religious activities. In 2000, the state authorities refused to renew his residence permit on the grounds of danger for national security and public order. The applicant lodged a complaint for the violation of Articles 9 and 14 ECHR.

According to the ECtHR, even if the Convention does not protect the right to enter and reside in a State, nor the right to be employed, Article 9, however, safeguards the various ways in which freedom of religion could be exercised, including being a spiritual leader, founding a religious community or preaching the doctrine.

The ECtHR held that the refusal to renew a residence permit for the exercise of religious activities, taking into account that initially a permit of that type was granted to the applicant and that he was a spiritual leader, amounted to an interference with the right to freedom of religion. Indeed, the Court stated that the interference was not prescribed by law, and thus there was no need to examine whether the interference pursued a 'legitimate aim', or whether it was 'necessary in a democratic society', to find a violation of Article 9 of the Convention.

Later on, the Strasbourg Court decided about a similar case in *Nolan and K. v. Russia*, 12 February 2009. The case concerned a member of the Unification Church and his son, both U.S. citizens, whom lived in Russia. The first moved to Russia in 1991 to assist the activities of the above-mentioned Church, and he received from the national authorities an initial leave to stay which was renewed annually. When, in 2002, the applicant travelled to Cyprus leaving his son in Russia, at his return he was denied entry in Russia. Subsequently, the applicant tried to re-enter Russia with a new visa but the entry was again denied. Finally, after ten months of separation, he reunited with his son in Ukraine. The Russian national authorities based the ban on the re-entry of the applicant on a report produced by the Federal Security Service from which emerged that the activities of the applicant, though non-religious, have posed a threat to national security.

The ECtHR observed that the applicant was only involved in activities strictly linked with his religious beliefs, which were clearly a manifestation of his freedom of religion. Therefore, the ban posed on his re-entry in Russia was an interference with his right to religious freedom. As such, the Court found a violation of Article 9 of the Convention because no evidence was produced in order to corroborate the State's allegation that the applicant's activities were capable to pose a threat to national security. Moreover, no independent investigation was conducted by a Court on the reasonableness of the State's allegations. Furthermore, the list of exceptions to religious freedom in Article 9(2) does not include national security as a lawful limitation to freedom of religion. Therefore, Russian authorities did not provide any 'plausible legal and factual justification for the applicant's exclusion from Russia on account of his religious activities.'

9.4. The right to asylum: persecution for religious reasons

The right to obtain asylum for individuals who fear persecution in their home-country comes into relation with their freedom of religion when the reasons for which they could be persecuted are strictly connected with their religious beliefs and practices.

A relevant case on this issue was decided by the ECtHR in *Razaghi v. Sweden*, 25 January 2005. The applicant was in a relationship with an Iranian married woman whose husband was a *mullah*. For this reason, he feared he could be persecuted whether he went back to his home country.⁷³ Thus, he based his complaint on the assumption he would have exposed him to a serious risk in violation of Articles 2, 3, 9 and Article 1, Protocol No. 6 of the Convention.⁷⁴ Before the case was decided by the ECtHR, Swedish authorities revoked the expulsion order and granted the applicant a permanent resident permit for humanitarian reasons. Accordingly, once the risk to be expelled from Sweden disappeared, the case was struck out.

⁷³ After the first refusal by Swedish authorities, followed by an order of expulsion, the applicant appealed stating that he might be persecuted for having offended public moral, even if not for adultery. In addition he claimed he had also converted to Christianity, a sufficient reason leading to a death sentence in his home country. After the rejection of the appeal for the lack of evidence, the applicant submitted an application for a residence permit and brought the case before the ECtHR.

⁷⁴ The application was considered admissible (11 March 2003) only in relation to Article 3 ECHR.

The most important recent case for establishing to what extent an interference with freedom of religion could be qualified as an 'act of persecution' within the meaning of Article 9(1)(a) of the Council Directive 2004/83/EC of 29 April 2004, *on minimum standards for the qualification and status of third country nationals or Stateless persons as refugees or as persons who otherwise need international protection*, is represented by the joined Cases C-71/11 and C-99/11, *Bundesrepublik Deutschland v. Y and Z*, 5 September 2012.

The case concerned the request of refugee status made by two Pakistani citizens who fled to Germany because, as members of the Muslim Ahmadiyya community, an Islamic reformist movement, they feared they could be persecuted if they continued to practice their religion in public.

The CJEU held that, according to the 'broad definition of religion'⁷⁵ given by the Directive, national authorities have to consider all kinds of acts which, for their nature, repetition and consequences may constitute a sufficiently severe violation of the applicants' freedom in all its components, taking into account their personal circumstances and the public practices that for those persons and for that particular religion take part of their religious identity. Finally, in considering the applicants' personal circumstances, national authorities, with the aim to establish if the fear of persecution is well-founded, 'cannot reasonably expect the applicant to abstain from those religious practices.'

Following the above-mentioned CJEU decision and other two relevant judgements of the UK Supreme Court on the right of asylum⁷⁶, the Upper Tribunal (Immigration and Asylum Tribunal) of the United Kingdom, in the case *MN and Others v. Secretary of State of the Home Department*,⁷⁷ established a new country guidance⁷⁸ for cases in which it is necessary to establish what could be considered an 'act of persecution' when the fear of persecution is related to the applicant's religious freedom.

In particular, the judgement regarded *Ahmadis* followers in Pakistan, a country where this religion is banned and prohibited by national legislation. All the applicants claimed that because they were *Ahmadis* and they wanted to practice their religion in public, they feared to be persecuted once returned to their home country. The UK court stated that if asylum seekers who are *Ahmadis* from Pakistan demonstrate that the public practice of their religion will still be a fundamental part of their religious identity once back to Pakistan, notwithstanding the prohibitions of the Pakistan legislation, they are in need of international protection. Therefore, it would not be reasonable to ask the applicants to abstain from public religious practice in order to avoid the risk of persecution (para. 120).

⁷⁵ Article 10(1)(b), Directive 2004/83/EC: 'the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief.'

⁷⁶ Although they did not directly concern religious freedom, see UK Supreme Court, *HJ (Iran) v. Secretary of State for the Home Department*, 7 July 2010, on the circumstances that have to be taken into consideration when a person, who is gay, claims asylum because he fears to be persecuted in his country of origin for his membership to a specific group. The Court stated that it cannot be asked to the applicant to conceal his sexual orientation in order to avoid persecution. See also, *RT (Zimbabwe) and others v. Secretary of State for the Home Department*, 25 July 2012, concerning the case of an asylum seeker of neutral political opinions coming from a country where people who do not swear loyalty to the regime could be persecuted.

⁷⁷ United Kingdom Asylum and Immigration Tribunal, *MN and Others v. Secretary of State of the Home Department*, 14 November 2012.

⁷⁸ Replacing the previous country guidance based on what was stated in UK Asylum and Immigration Tribunal, *MJ & ZM v. Secretary of State for the Home Department*, 4 April 2008; see also, United Kingdom Asylum and Immigration Tribunal, *IA and Others v. Secretary of State for the Home Department*, 23 October 2007.

On 10 December 2012⁷⁹, again on the basis of the CJEU's case *Bundesrepublik Deutschland v. Y and Z*, the Italian National Commission for the right of asylum (within the Ministry of Home Affairs), has communicated to all the national authorities involved in the procedures for the recognition of international protection that the above-mentioned Commission recognizes the principles announced by the CJEU in the aforementioned case as valid means of interpretation when it is needed to decide whether it is necessary to provide international protection in similar cases.

9.5. Freedom of religion and immigration: other relevant issues

Religious beliefs of a foreigner might become relevant in cases in which a religious institution regulates situations that in other countries are reserved to secular law. This might be the case in fields such as family law.

An interesting case on this issue was decided by the Italian *Court of Cassation*⁸⁰ in relation to the relevance of the *kafala*⁸¹ - an institution of Islamic law through which a married couple, with an official declaration made in front of a judge, oblige themselves to take care of an abandoned minor (*makful*) - regarding the release of a visa for family reunification.⁸² The case originated in the appeal submitted by the Italian Ministry of Foreign Affairs against the release of a visa in favor of a Moroccan minor to allow his reunification with a Moroccan citizen and his wife who had obtained the custody of the minor through the institution of the *kafala* as it is regulated in Morocco.⁸³

According to the Court of Cassation, which issued a constitutionally oriented interpretation of the institution of family reunification, in the balancing between the protection of the minor and the right of the State to defend the national territory and to control immigration, the protection of the minor prevails.

Moreover, according to the Italian judge, another interpretation of the provision would penalize all minors coming from Islamic countries where the *kafala* is the only institution which protects unlawful, abandoned or orphan children. For these reasons, it cannot be excluded the comparability between the Italian guardianship and the *kafala* in order to obtain family reunification.⁸⁴

Religious beliefs of foreigners could become crucial also when they want to acquire the citizenship of a Member State. In particular, when a certain degree of **integration/assimilation** in the hosting State is required, specific religion beliefs or practices could justify a refusal.

⁷⁹ Ministry of Home Affairs, National Commission for the right of Asylum, Prot. 5765, Rome, 10 December 2012.

⁸⁰ Court of Cassation, decision No. 19734/08, 10 June 2008

⁸¹ This institution is expressly recognized by Article 20, para. 3, UN Convention on the Rights of the Child, New York, 20 November 1989.

⁸² Article 29, Law n. 286/1998 (and subsequent amendments) on immigration and the status of foreigners.

⁸³ Law No. 1-93-165 of 10 September 1993, and subsequently d.p.l. n. 1-02-172 of 13 June 2002.

⁸⁴ A similar case was decided by the ECtHR in *Harroudj v. France*, 4 October 2012. The case concerned the refusal by French authorities to a French national to adopt an Algerian child who was already in her care under the *kafala*. The Court stated that, taking into consideration the margin of discretion that States have in this field, a fair balance had been found between the public interest and the right to private and family life of the applicant. Accordingly, the Court held that there had been no violation of Article 8 of the Convention.

In 2008, the French State Council⁸⁵ refused to grant the French citizenship to a woman married to a French citizen, because she was not 'sufficiently French.'⁸⁶ This decision was based on the argument that the applicant has adopted a radical practice of her religion which was incompatible with basic French values. In other words, this person was not considered to comply with the assimilation condition.

⁸⁵ French State Council, No. 286798, 27 June 2008.

⁸⁶ Article 21(4) French Civil Code.

TABLE 1

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- *Otto-Preminger-Institut v. Austria*, 20 September 1994
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- *Cha'Are Shalom Ve Tsedek v. France*, 27 June 2000
- *Hasan and Chaush v. Bulgaria*, 26 October 2000 (GC)
- *Pichon and Sajous c. France*, 2 February 2001
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- *Gorzelik v. Poland*, 17 February 2004 (GC)
- *Razaghi v. Sweden*, 11 March 2005
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- *Leyla Şahin v Turkey*, 10 November 2005 (GC)
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- *The Moscow Branch of the Salvation Army v. Russia*, 5 October 2006
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- *97 members of the Gladni Congregation of Jehovah's Witnesses and 4 others v. Georgia*, 3 May 2007
- *Svyato-Mykhaylivska Parafiya v. Ukraine*, 14 June 2007
- *Folgerø and Others v. Norway*, 29 June 2007 (GC)
- *Hasan and Eylem Zengin v. Turkey*, 09 October 2007
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- *D.H. and Others v. Czech Republic*, 13 November 2007 (GC)
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- *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, 31 July 2008

- *Dogru v. France*, 4 December 2008
- *Kervanci v. France*, 4 December 2008
- *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, 22 January 2009
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- *Grzelak v. Poland*, 15 June 2010
- *Schüth v. Germany*, 23 September 2010
- *Obst v. Germany*, 23 September 2010
- *Jehovah's Witnesses of Moscow and others v. Russia*, 22 November 2010
- *Jakóbski v. Poland*, 7 December 2010
- *Savez crkava "Riječ života" and Others v. Croatia*, 9 December 2010
- *Milanovic v. Serbia*, 14 December 2010
- *O'Donoghue and Others v. United Kingdom*, 14 December 2010
- *Lautsi and Others v. Italy*, 18 March 2011 (GC)
- *Boychev and others v. Bulgaria*, 27 April 2011
- *R.R. v. Poland*, 26 May 2011
- *Bayatyan v. Armenia*, 7 July 2011 (GC)
- *Dojan and Others v. Germany*, 13 September 2011
- *Sindicatul "Pastorul Cel Bun" v. Romania*, 31 January 2012
- *Jehovas Zeugen in Österreich v. Austria*, 25 September 2012
- *Harroudj v. France*, 4 October 2012
- *P. and S. v. Poland*, 30 October 2012
- *Fernández Martínez v. Spain*, 15 May 2012
- *Ásatrúarfélagið v. Iceland* (decision), 18 September 2012
- *Ladele v. UK, McFarlane v. UK and Eweida v. UK*, 15 January 2013

Court of Justice of the European Union

- C-130/75, *Vivien Prais v. Council of the EC*, 27 October 1976
- C-244/10 and C-245/10, *Mesopotamia Broadcast A/S METV and Roj TV A/S v. Bundesrepublik Deutschland*, 22 September 2011
- C-502/10, *State Secretary Van Justitie (the Netherlands) v Mangat Singh*, 15 May 2012
- C-71/11 and C-99/11, *Bundesrepublik Deutschland v. Y and Z*, 5 September 2012

National cases

Austria:

- Constitutional Court, G-287/09, 9 March 2011

Belgium:

- Arbitration Court – now Belgian Constitutional Court, decision n. 70/92, 12 November 1992
- State Council, No. 191.532 and No. 191.533, 17 March 2009
- State Council, n. 210.000/10, 21 December 2010
- Constitutional Court, No. 145/2012, 6 December 2012

Cyprus:

- Supreme Court, *Titos Charalambous v Director of the Social Welfare Department*, 1994
- Supreme Court, *Arvanitakis and Others v. The Republic*, 3 CLR 859, 21 April 1994

Czech Republic:

- Constitutional Court, no. III ÚS 459/03, 20 August 2004

Denmark:

- Supreme Court, n. 22/2004, 21 January 2005

France:

- State Council, (Ass.) *Consistoire central des israélites de France et autres, M. Kohen*, 14 April 1995
- State Council, No.170209, 170210, 172663, 172719, 172723, 172724 and 172726, 27 November 1996
- Tribunal de Grande Instance, TGI Paris 17e ch. Corr., 22 March 2007
- State Council, No. 285394, No. 285395, No. 285396 and No. 295671, 5 December 2007
- State Council, No. 286798, 27 June 2008
- Constitutional Council, No. 2010 - 613 DC, 7 October 2010

Germany:

- Constitutional Court, 2 BvR 1703/83, 1718/83 and 856/84, 4 June 1985
- Constitutional Tribunal, BvR 792/03, 30 July 2003
- Constitutional Court, BVerfG, 2 BvR 1436/02, 24 September 2003
- Constitutional Court, BVerfGE 93, 1 1 BvR 1087/91, 16 May 1995
- First instance Court of Düsseldorf – 2006
- Oberlandesgericht Frankfurt , judg. 4 W 12/07, 21 August 2007
- Landgericht Köln, Aktenzeichen 151 Ns. 169/11; NJW 2012, 2128, 7 May 2012

Greece:

- Council of State, 2283/2001, 27 June 2001

Hungary:

- Constitutional Court, n. 10/1993, 27 February 1993

Ireland:

- Supreme Court, *McGee v. A.G. & Anor*, 19 December 1973
- Supreme Court, *Corway v. Independent Newspapers (Ireland) Limited* [2000] 1 IRLM 426, 30 July 1999

Italy:

- Constitutional Court, n. 117/1979, 10 October 1979
- Constitutional Court, n. 239/1984, 30 July 1984
- Constitutional Court, n.346/2002, 16 July 2002
- Constitutional Court, No. 14/2003, 16 January 2003
- Court of first instance of Padua, n. 2046, 5 December 2007
- Court of Cassation, No. 19734/08, 10 June 2008
- Court of Cassation, III Civil section, decision n. 23676/2008, 15 September 2008
- Supreme Court (VI criminal chamber), n. 4364622, June 2011

Luxembourg:

- *Tribunal administratif du grand-Duché de Luxembourg*, n. 27382, 18 January 2011

The Netherlands:

- Equal Treatment Commission, 2007-61, 16 April 2007
- Court of Amsterdam, 14 December 2009
- Equal Treatment Commission, 2011-95, 21 June 2011
- Equal Treatment Commission, 2011-2, 7 January 2011
- Council of State, advisory opinion, Kamerstukken II 2011/12, 32 550, nr. 35, 9 May 2012

Poland:

- Constitutional Court, n. U 12/32, 20 April 1993
- Constitutional Court, 163/11/A/2009, 2 December 2009

Portugal :

- Tribunal Central Administrativo Norte, n 01394/06, 8 February 2007)

Romania:

- High Court of Cassation and Justice, n. 2393, 11 June 2008

Slovenia:

- Constitutional Court, n. 92/07, 15 April 2010

Spain:

- Constitutional Court, n. 166/1996, 28 October 1996
- Constitutional Court, n. 46/2001, 15 February 2001
- Constitutional Court n.154/2002, 18 July 2002
- Supreme Court, n. 69/2007, 11 May 2007
- Supreme Court, rec. n. 3085/2008, 6 October 2009
- High Court of Justice of Castile and Leon, Spain, STSJ CL 6638/2009, 14 December 2009
- Constitutional Court, 51/2011, 14 April 2011

United Kingdom:

- Court of Appeal, *Chief Metropolitan Stipendiary Magistrate, ex parte Choudhury* [1991] 1 QB 429
- House of Lords, *R (on the application of Begum (by her litigation friend, Rahman)) v. Headteacher and Governors of Denbigh High School*, [2006] UKHL 15, 22 March 2006
- High Court of Justice (Queen's Bench Division), *R (on the application of X (by her Father and Litigation Friend)) v Headteachers and Governors of Y School*, [2006] EWHC 298, 21 February 2007
- Asylum and Immigration Tribunal, *IA and Others v. Secretary of State for the Home Department*, 23 October 2007
- Asylum and Immigration Tribunal, *MJ & ZM v. Secretary of State for the Home Department*, 4 April 2008
- Supreme Court, *R v. JFS School*, [2009] UKSC 15, 16 December 2009
- Supreme Court, *HJ (Iran) v. Secretary of State for the Home Department*, 7 July 2010
- Supreme Court, *RT (Zimbabwe) and Others v. Secretary of State for the Home Department*, 25 July 2012
- Court of protection, High Court, *Mr L v. Pennine Acute Hospital* – 8 October 2012 – unreported
- Immigration and Asylum Tribunal, *MN and Others v. Secretary of State of the Home Department*, 14 November 2012

TABLE 2

EU Member States' Constitutions 1:

AUSTRIA

Article 7

1. All nationals (Austrian citizens) are equal before the law. Privileges based upon birth, sex, estate, class or religion are excluded. No one shall be discriminated against because of his disability.

[...].

Article 10

1. The Federation has powers of legislation and execution in the following matters:

[...]

13 [...]; religious affairs; [...].

Article 14

[...]

(6) [...]. Admission to public school is open to all without distinction of birth, sex, race, status, class, language and religion, and in other respects within the limits of the statutory requirements. The same applies analogously to kindergartens, centres and student hostels.

[...]

[Art. 149. (1) In addition to the present law, the following laws, with the modifications necessitated by this law, shall within the meaning of Art. 44 para. 1 be regarded as constitutional law:

Basic Law of 21 December 1867, RGBl. No. 142, on the general rights of nationals in the kingdoms and Länder represented in the Council of the Realm...

Section V of Part III of the Treaty of Saint-Germain of 10 September 1919, StGBL. No. 303 of 1920]

Basic Law of 21 December 1867 on the General Rights of Nationals in the Kingdoms and Länder represented in the Council of the Realm.

Article 14

Everyone is guaranteed complete freedom of conscience and creed. The enjoyment of civil and political rights is independent of religious belief. Nevertheless duties incumbent on nationals may not be prejudiced by religious beliefs. No one can be forced to observe a ritual act or to participate in an ecclesiastical ceremony in so far as he is not subordinate to another who is by law invested with such authority.

Article 15

Every Church and religious society recognized by the law has the right to joint public religious practice, arranges and administers its internal affairs autonomously, and retains possession and enjoyment of its institutions, endowments and funds devoted to worship, instruction and welfare, but is like every society subject to the general laws of the land.

Article 16

The members of a legally not recognized confession may practice their religion at home, in so far as this practice is neither unlawful, nor offends common decency.

Article 17

Knowledge and its teaching are free. Every national who has furnished in legally acceptable manner proof of his qualification has the right to found establishments for instruction and education.

Instruction at home is subject to no such restriction.

The Church or religious society concerned shall see to religious instruction in schools.

The right to supreme direction and supervision over the whole instructional and educational system lies with the state.

State Treaty for the Re-establishment of an Independent and Democratic Austria*) [*] Arts. 4, 7 para. 2 to 4, 8, 9 and 10 have pursuant to the Federal constitutional law, BGBl. No. 59/1964, the force of a constitutional law.]

Article 8

Democratic Institutions

Austria shall have a democratic government based on elections by secret ballot and shall guarantee to all citizens free, equal and universal suffrage as well as the right to be elected to public office without discrimination as to race, sex, language, religion or political opinion.

BELGIUM

Article 19

Freedom of worship, its public practice and freedom to demonstrate one's opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished.

Article 20

No one can be obliged to contribute in any way whatsoever to the acts and ceremonies of a religion or to observe its days of rest.

Article 21

The State does not have the right to intervene either in the appointment or in the installation of ministers of any religion whatsoever or to forbid these ministers from corresponding with their superiors, from publishing the acts of these superiors, but, in this latter case, normal responsibilities as regards the press and publishing apply. A civil wedding should always precede the blessing of the marriage, apart from the exceptions to be established by the law if needed.

Article 24

1. Education is free; any preventive measure is forbidden; the punishment of offences is regulated only by the law or federate law.

The community offers free choice to parents.□

The community organises non-denominational education. This implies in particular the respect of the philosophical, ideological or religious beliefs of parents and pupils. Schools run by the public authorities offer, until the end of compulsory education, the choice between the teaching of one of the recognised religions and non-denominational ethics teaching.

[...]

3. Everyone has the right to education with the respect of fundamental rights and freedoms. Access to education is free until the end of compulsory education. All pupils of school age have the right to moral or religious education at the community's expense.

[...].

BULGARIA

Article 6

1. All persons are born free and equal in dignity and rights.
2. All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status or property status.

Article 11

[...].

4. There shall be no political parties on ethnic, racial or religious lines, nor parties which seek the violent seizure of state power.

Article 13

1. The practicing of any religion shall be unrestricted.
2. Religious institutions shall be separate from the State.
3. Eastern Orthodox Christianity shall be considered the traditional religion in the Republic of Bulgaria.
4. Religious institutions and communities, and religious beliefs shall not be used to political ends.

Article 37

1. The freedom of conscience, the freedom of thought and the choice of religion and of religious or atheistic views shall be inviolable. The State shall assist the maintenance of tolerance and respect among the believers from different denominations, and among believers and non-believers.
2. The freedom of conscience and religion shall not be practised to the detriment of national security, public order, public health and morals, or of the rights and freedoms of others.

Article 44

1. All citizens shall be free to associate.
2. The organization/s activity shall not be contrary to the country's sovereignty and national integrity, or the unity of the nation, nor shall it incite racial, national, ethnic or religious enmity or an encroachment on the rights and freedoms of citizens; no organization shall establish clandestine or paramilitary structures or shall seek to attain its aims through violence.
3. The law shall establish which organizations shall be subject to registration, the procedure for their termination, and their relationships with the State.

Article 53

1. Everyone shall have the right to education.

[...]

5. Citizens and organizations shall be free to found schools in accordance with conditions and procedures established by law. The education they provide shall fit the requirements of the State.

[...].

CZECH REPUBLIC

Charter of Fundamental Rights and Freedoms

Article 2

1. Democratic values constitute the foundation of the state, so that it may not be bound either to an exclusive ideology or to a particular religious faith.

[...]

Article 3

1. Everyone is guaranteed the enjoyment of her fundamental rights and basic freedoms without regard to gender, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status.

[...]

Article 15

1. The freedom of thought, conscience, and religious conviction is guaranteed. Everyone has the right to change her religion or faith or to have no religious conviction.

[...]

3. No one may be compelled to perform military service if such is contrary to his conscience or religious conviction. Detailed provisions shall be laid down in a law.

Article 16

1. Everyone has the right freely to manifest her religion or faith, either alone or in community with others, in private or public, through worship, teaching, practice, or observance.

2. Churches and religious societies govern their own affairs; in particular, they establish their own bodies and appoint their clergy, as well as found religious orders and other church institutions, independently of state authorities.

3. The conditions under which religious instruction may be given at state schools shall be set by law.

4. The exercise of these rights may be limited by law in the case of measures necessary in a democratic society for the protection of public safety and order, health and morals, or the rights and freedoms of others.

CYPRUS

Article 2

For the purposes of this Constitution:

1. the Greek Community comprises all citizens of the Republic who are of Greek origin and whose mother tongue is Greek or who share the Greek cultural traditions or who are members of the Greek-Orthodox Church;

2. the Turkish Community comprises all citizens of the Republic who are of Turkish origin and whose mother tongue is Turkish or who share the Turkish cultural traditions or who are Moslems;

[...]

Article 18

1. Every person has the right to freedom of thought, conscience and religion.

2. All religions whose doctrines or rites are not secret are free.

3. All religions are equal before the law. Without prejudice to the competence of the Communal Chambers under this Constitution, no legislative, executive or administrative act of the Republic shall discriminate against any religious institution or religion.

4. Every person is free and has the right to profess his faith and to manifest his religion or belief, in worship, teaching, practice or observance, either individually or collectively, in private or in public, and to change his religion or belief.

5. The use of physical or moral compulsion for the purpose of making a person change or preventing him from changing his religion is prohibited.

6. Freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person.

7. Until a person attains the age of sixteen the decision as to the religion to be professed by him shall be taken by the person having the lawful guardianship of such person.

8. No person shall be compelled to pay any tax or duty the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.

Article 20

1. Every person has the right to receive, and every person or institution has the right to give, instruction or education subject to such formalities, conditions or restrictions as are in accordance with the relevant communal law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or the standard and quality of education or for the protection of the rights and liberties of others including the right of the parents to secure for their children such education as is in conformity with their religious convictions.

[...]

Article 22

1. Any person reaching nubile age is free to marry and to found a family according to the law relating to marriage, applicable to such person under the provisions of this Constitution.

[...]

3. Nothing in this Article contained shall, in any way, affect the rights, other than those on marriage, of the Greek-Orthodox Church or of any religious group to which the provisions of paragraph 3 of Article 2 shall apply with regard to their respective members as provided in this Constitution.

Article 28

1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution.

[...].

DENMARK

Article 4

The Evangelical-Lutheran Church of Denmark (Folkekirken) is the established Church of Denmark and, as such, is supported by the State.

Article 6

The King must belong to the Evangelical-Lutheran Church.

Article 66

The Constitution of the Evangelical-Lutheran Church of Denmark is regulated by an Act.

Article 67

Members of the public are entitled to associate in communities to worship God according to their convictions, but nothing may be taught or done that contravenes decency or public order.

Article 68

Nobody is under an obligation to make personal contributions to any form of worship other than his or her own.

Article 69

The affairs of religious communities other than the Evangelical-Lutheran Church of Denmark are regulated by an Act.

Article 70

Nobody may be deprived of access to the full enjoyment of civil and political rights or evade the fulfilment of any general civic duty on the grounds of his or her profession of faith or descent.

Article 71

1. Personal liberty is inviolable. No Danish citizen may be subjected to any form of imprisonment on the grounds of his or her political or religious convictions or his or her descent.

[...].

ESTONIA

Article 12

Everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds.

The incitement of national, racial, religious or political hatred, violence or discrimination shall, by law, be prohibited and punishable. [...]

Article 40

Everyone has freedom of conscience, religion and thought.

Everyone may freely belong to churches and religious societies. There is no state church.

Everyone has the freedom to exercise his or her religion, both alone and in community with others, in public or in private, unless this is detrimental to public order, health or morals.

Article 41

Everyone has the right to remain faithful to his or her opinions and beliefs. No one shall be compelled to change them.

Beliefs shall not excuse a violation of the law.

No one shall bear legal liability because of his or her beliefs.

Article 124

Estonian citizens have a duty to participate in national defence on the bases of and pursuant to procedure provided by law.

A person who refuses to serve in the Armed Forces for religious or moral reasons has a duty to perform alternative service pursuant to procedure prescribed by law.

[...].

FINLAND

Chapter 2 - Basic rights and liberties

Article 6

Everyone is equal before the law.

No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.

Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.

[...]

Article 11

Everyone has the freedom of religion and conscience.

Freedom of religion and conscience entails the right to profess and practice a religion, the right to express one's convictions and the right to be a member of or decline to be a member of a religious community. No one is under the obligation, against his or her conscience, to participate in the practice of a religion.

Article 76

Provisions on the organisation and administration of the Evangelic Lutheran Church are laid down in the Church Act.

The legislative procedure for enactment of the Church Act and the right to submit legislative proposals relating to the Church Act are governed by the specific provisions in that Code.

FRANCE

Article 1

France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. [...]

The Declaration of the Rights of Man and the Citizen 1789

10. No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.

Preamble to the Constitution of 27 October 1946

In the morrow of the victory achieved by the free peoples over the regimes

that had sought to enslave and degrade humanity, the people of France proclaim anew that each human being, without distinction of race, religion or creed, possesses sacred and inalienable rights. They solemnly reaffirm the rights and freedoms of man and the citizen enshrined in the Declaration of Rights of 1789 and the fundamental principles acknowledged in the laws of the Republic.

GERMANY

Preamble

Conscious of their responsibility before God and man, Inspired by the determination to promote world peace as an equal partner in a united Europe, the German people, in the exercise of their constituent power, have adopted this Basic Law. [...]

Article 3

1. All persons shall be equal before the law.

[...]

3. No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability.

Article 4

1. Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.

2. The undisturbed practice of religion shall be guaranteed.

3. No person shall be compelled against his conscience to render military service involving the use of arms. Details shall be regulated by a federal law.

Article 7

1. The entire school system shall be under the supervision of the state.

2. Parents and guardians shall have the right to decide whether children shall receive religious instruction.

3. Religious instruction shall form part of the regular curriculum in state schools, with the exception of non-denominational schools. Without prejudice to the state's right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned. Teachers may not be obliged against their will to give religious instruction.

4. The right to establish private schools shall be guaranteed. Private schools that serve as alternatives to state schools shall require the approval of the state and shall be subject to the laws of the Länder. Such approval shall be given when private schools are not inferior to the state schools in terms of their educational aims, their facilities, or the professional training of their teaching staff, and when segregation of pupils according to the means of their parents will not be encouraged thereby. Approval shall be withheld if the economic and legal position of the teaching staff is not adequately assured.

5. A private elementary school shall be approved only if the educational authority finds that it serves a special pedagogical interest or if, on the application of parents or guardians, it is to be established as a denominational or interdenominational school or as a school based on a particular philosophy and no state elementary school of that type exists in the municipality.

[...]

Article 33

[...]

3. Neither the enjoyment of civil and political rights, nor eligibility for public office, nor rights acquired in the public service shall be dependent upon religious affiliation. No one may be disadvantaged by reason of adherence or nonadherence to a particular religious denomination or philosophical creed.

[...]

Article 140

The provisions of Articles 136, 137, 138, 139 and 141 of the German Constitution of 11 August 1919 shall be an integral part of this Basic Law.

Excerpts from the German Constitution of 11 August 1919 (Weimar Constitution)

Article 136

1. Civil and political rights and duties shall be neither dependent upon nor restricted by the exercise of religious freedom.

2. Enjoyment of civil and political rights and eligibility for public office shall be independent of religious affiliation.

3. No person shall be required to disclose his religious convictions. The authorities shall have the right to inquire into a person's membership in a religious society only to the extent that rights or duties depend upon it or that a statistical survey mandated by a law so requires.

4. No person may be compelled to perform any religious act or ceremony, to participate in religious exercises, or to take a religious form of oath.

Article 137

1. There shall be no state church.

2. The freedom to form religious societies shall be guaranteed. The union of religious societies within the territory of the Reich shall be subject to no restrictions.

3. Religious societies shall regulate and administer their affairs independently within the limits of the law that applies to all. They shall confer their offices without the participation of the state or the civil community.

4. Religious societies shall acquire legal capacity according to the general provisions of civil law.

5. Religious societies shall remain corporations under public law insofar as they have enjoyed that status in the past. Other religious societies shall be granted the same rights upon application, if their constitution and the number of their members give assurance of their permanency. If two or more religious societies established under public law unite into a single organisation, it too shall be a corporation under public law.

6. Religious societies that are corporations under public law shall be entitled to levy taxes on the basis of the civil taxation lists in accordance with Land law.

7. Associations whose purpose is to foster a philosophical creed shall have the same status as religious societies.

[...]

Article 138

1. Rights of religious societies to public subsidies on the basis of a law, contract or special grant shall be redeemed by legislation of the Länder. The principles governing such redemption shall be established by the Reich.

2. Property rights and other rights of religious societies or associations in their institutions, foundations, and other assets intended for purposes of worship, education or charity shall be guaranteed.

Article 139

Sunday and holidays recognised by the state shall remain protected by law as days of rest from work and of spiritual improvement.

Article 141

To the extent that a need exists for religious services and pastoral work in the army, in hospitals, in prisons, or in other public institutions, religious societies shall be permitted to provide them, but without compulsion of any kind.

GREECE

In the name of the Holy and Consubstantial and Indivisible Trinity

[...]

Article 3

1. The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and synodal canons and sacred traditions. It is autocephalous and is administered by the Holy Synod of serving Bishops and the Permanent Holy Synod originating thereof and assembled as specified by the Statutory Charter of the Church in compliance with the provisions of the Patriarchal Tome of June 29, 1850 and the Synodal Act of September 4, 1928.

[...]

3. The text of the Holy Scripture shall be maintained unaltered. Official translation of the text into any other form of language, without prior sanction by the Autocephalous Church of Greece and the Great Church of Christ in Constantinople, is prohibited.

Article 5

[...]

2. All persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law [...].

Article 13

1. Freedom of religious conscience is inviolable. The enjoyment of civil rights and liberties does not depend on the individual's religious beliefs.

2. All known religions shall be free and their rites of worship shall be performed unhindered and under the protection of the law. The practice of rites of worship is not allowed to offend public order or the good usages. Proselytism is prohibited.

3. The ministers of all known religions shall be subject to the same supervision by the State and to the same obligations toward it as those of the prevailing religion.

4. No person shall be exempt from discharging his obligations to the State or may refuse to comply with the laws by reason of his religious convictions.

5. No oath shall be imposed or administered except as specified by law and in the form determined by law.

Article 14

1. Every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State.

2. The press is free. Censorship and all other preventive measures are prohibited.□

3. The seizure of newspapers and other publications before or after circulation is prohibited.□ Seizure by order of the public prosecutor shall be allowed exceptionally after circulation and in case of:

a) an offence against the Christian or any other known religion.

b) [...]

Article 16

1. [...].

2. Education constitutes a basic mission for the State and shall aim at the moral, intellectual, professional and physical training of Greeks, the development of national and religious consciousness and at their formation as free and responsible citizens.□ [...].

HUNGARY

WE THE MEMBERS OF THE HUNGARIAN NATION, [...], declare the following:

We are proud that one thousand years ago our king, Saint Stephen, built the Hungarian State on solid foundations, and made our country a part of Christian Europe.

[...]

We recognize the role Christianity has played in preserving our nation. We value our country's different religious traditions.

[...]

Article 7

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change one's religion or other conviction, and the freedom to manifest or abstain from manifesting, to practice or teach, either alone or in community with others, in public or in private, one's religion or other conviction through religious acts or ceremonies, or in any other way.

2. The State and the churches shall operate separately. Churches shall be autonomous. The State shall cooperate with the churches for the attainment of community goals.

3. The detailed rules relating to churches shall be laid down in a cardinal Act.

Article 14

[...]

3. Non-Hungarian citizens – upon their request and if neither their country of origin nor another country provides protection for them – shall be granted asylum by Hungary if they are persecuted in their native country or in the country of their habitual residence for reasons of their belonging to a race, nationality or a particular social group, or for reasons of their religious or political convictions, or if they have a well-founded fear of such persecution.

Article 15

1. Everyone shall be equal before the law. Every human being shall have legal capacity.

2. Hungary shall guarantee the fundamental rights to everyone without any discrimination, in particular on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.
[...].

IRELAND

In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred,
We, the people of Éire,
Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial,
Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation,
And seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations,
Do hereby adopt, enact, and give to ourselves this Constitution.

Article 6

1. All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good.

[...].

Article 40

[...]

6. [...] 2°. Laws regulating the manner in which the right of forming associations and unions and the right of free assembly may be exercised shall contain no political, religious or class discrimination.

Article 42

1. The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

[...]

4. The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.

Article 44

1. The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.

2. 1° Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

2° The State guarantees not to endow any religion.

3° The State shall not impose any disabilities or make any discrimination in the ground of religious profession, belief or status.

4° Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

5° Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.

6° The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.

ITALY

Article 3

All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.

[...].

Article 7

The State and the Catholic Church are independent and sovereign, each within its own sphere. Their relations are governed by the Lateran Pacts. Changes to the Pacts that are accepted by both parties shall not require a constitutional amendment.

Article 8

All religious confessions enjoy equal freedom before the law.

Religious confessions other than Catholicism have the right to organise themselves in accordance with their own statutes, to the extent that these are not in conflict with the Italian legal system.

Their relations with the State shall be regulated by law on the basis of agreements with their respective representatives.

Article 19

Everyone has the right to profess freely their religious faith in any form, individually or in association, to disseminate it and to worship in private or public, provided that the religious rites are not contrary to public morality.

Article 20

No special legislative limitation or tax burden may be imposed on the establishment, legal capacity or activities of any association or institution on the ground of its ecclesiastical nature or its religious or worship purposes.

Article 117

Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU-legislation and international obligations.

The State has exclusive legislative powers in the following subject matters:

[...]

c) relations between the Republic and religious denominations; [...].

LATVIA

Article 99

Everyone has the right to freedom of thought, conscience and religion. The church shall be separate from the State.

LITHUANIA

Article 25

[...] Freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation.

[...]

Article 26

Freedom of thought, conscience and religion shall not be restricted.

Each human being shall have the right to freely choose any religion or belief and, either alone or with others, in private or in public, to profess his religion, to perform religious practices, to practice and teach his belief.

No one may compel another person or be compelled to choose or profess any religion or belief.

Freedom of a human being to profess and spread his religion or belief may not be limited otherwise than by law and only when this is necessary to guarantee the security of society, the public order, the health and morals of the people as well as other basic rights and freedoms of the person.

Parents and guardians shall, without restrictions, take care of the religious and moral education of their children and wards according to their own convictions.

Article 27

A human being's convictions, practiced religion or belief may not serve as justification for a crime or for failure to execute laws.

Article 38

[...]

The State shall register marriages, births, and deaths. The State shall also recognize church registration of marriages.

[...]

Article 40

State and municipal establishments of teaching and education shall be secular. At the request of parents, they shall provide religious instruction.

Non-state establishments of teaching and education may be founded according to the procedure established by law.

[...].

Article 43

The State shall recognize the churches and religious organizations that are traditional in Lithuania, whereas other churches and religious organizations shall be recognized provided that they have support in society and their teaching and practices are not in conflict with the law and public morals.

The churches and religious organizations recognized by the State shall have the rights of a legal person.

Churches and religious organizations shall be free to proclaim their teaching, perform their practices, and have houses of prayer, charity establishments, and schools for the training of the clergy.

Churches and religious organizations shall conduct their affairs freely according to their canons and statutes.

The status of churches and other religious organizations in the State shall be established by agreement or by law.

The teaching proclaimed by churches and religious organizations, other religious activities and houses of prayer may not be used for purposes which are in conflict with the Constitution and laws.

There shall not be a State religion in Lithuania.

LUXEMBOURG

Article 19

Freedom of religion and of public worship as well as freedom to express one's religious opinions are guaranteed, subject to the repression of offenses committed in the exercise of such freedoms.

Article 20

No one may be forced to take part in any way whatsoever in the acts and ceremonies of a religion or to observe its days of rest.

Article 21

Civil marriage must always precede the nuptial benediction.

Article 22

The State's intervention in the appointment and installation of heads of religions, the mode of appointing and dismissing other ministers of religion, the right of any of them to correspond with their superiors and to publish their acts and decisions, as well as the Church's relations with the State shall be made the subject of conventions to be submitted to the Chamber of Deputies for the provisions governing its intervention.

Article 25

Luxembourgers have the right to assemble peaceably and unarmed in compliance with the laws governing the exercise of this right which may not require prior authorization. This provision does not apply to open-air political, religious, or other meetings which are fully governed by laws and police regulations.

MALTA

Article 2

1. The religion of Malta is the Roman Catholic Apostolic Religion.
2. The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong.
3. Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education.

Article 40

1. All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship.
2. No person shall be required to receive instruction in religion or to show knowledge or proficiency in religion if, in the case of a person who has not attained the age of sixteen years, objection to such requirement is made by the person who according to law has authority over him and, in any other case, if the person so required objects thereto:
Provided that no such requirement shall be held to be inconsistent with or in contravention of this article to the extent that the knowledge of, or the proficiency or instruction in, religion is required for the teaching of such religion, or for admission to the priesthood or to a religious order, or for other religious purposes, and except so far as that requirement is shown not to be reasonably justifiable in a democratic society.
3. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subarticle (1), to the extent that the law in question makes provision that is reasonably required in the interests of public safety, public order, public morality or decency, public health, or the protection of the rights and freedoms of others, and except so far as that provision or, as the

case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.

Article 45

[...]

3. In this article, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

[...]

(9) A requirement, however made, that the Roman Catholic Apostolic Religion shall be taught by a person professing that religion shall not be held to be inconsistent with or in contravention of this article.

THE NETHERLANDS

Article 1

All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted

Article 6

1. Everyone shall have the right to profess freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law.

2. Rules concerning the exercise of this right other than in buildings and enclosed places may be laid down by Act of Parliament for the protection of health, in the interest of traffic and to combat or prevent disorders.

Article 23

1. Education shall be the constant concern of the Government.

2. All persons shall be free to provide education, without prejudice to the authorities' right of supervision and, with regard to forms of education designated by law, their right to examine the competence and moral integrity of teachers, to be regulated by Act of Parliament.

3. Education provided by public authorities shall be regulated by Act of Parliament, paying due respect to everyone's religion or belief.

[...]

5. The standards required of schools financed either in part or in full from public funds shall be regulated by Act of Parliament, with due regard, in the case of private schools, to the freedom to provide education according to religious or other belief.

6. The requirements for primary education shall be such that the standards both of private schools fully financed from public funds and of public-authority schools are fully guaranteed. The relevant provisions shall respect in particular the freedom of private schools to choose their teaching aids and to appoint teachers as they see fit.

7. Private primary schools that satisfy the conditions laid down by Act of Parliament shall be financed from public funds according to the same standards as public-authority schools. The conditions under which private secondary education and pre-

university education shall receive contributions from public funds shall be laid down by Act of Parliament.
8. The Government shall submit annual reports on the state of education to the States General.

POLAND

PREAMBLE

[...] We, the Polish Nation - all citizens of the Republic,
Both those who believe in God as the source of truth, justice, good and beauty,
As well as those not sharing such faith but respecting those universal values as arising from other sources,
[...], for our culture rooted in the Christian heritage of the Nation and in universal human values,
[...] Recognizing our responsibility before God or our own consciences,
Hereby establish this Constitution of the Republic of Poland [...]

Article 25

1. Churches and other religious organizations shall have equal rights.
2. Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression within public life.
3. The relationship between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good.
4. The relations between the Republic of Poland and the Roman Catholic Church shall be determined by international treaty concluded with the Holy See, and by statute.
5. The relations between the Republic of Poland and other churches and religious organizations shall be determined by statutes adopted pursuant to agreements concluded between their appropriate representatives and the Council of Ministers.

Article 35

- [...]
2. National and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity

Article 53

1. Freedom of faith and religion shall be ensured to everyone.
2. Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion shall also include possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services.
3. Parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. The provisions of Article 48, para. 1 shall apply as appropriate. [Art. 48.1: Parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions]
4. The religion of a church or other legally recognized religious organization may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed thereby.

5. The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others.

6. No one shall be compelled to participate or not participate in religious practices.

7. No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or belief.

Article 70

1. Everyone shall have the right to education. Education to 18 years of age shall be compulsory. The manner of fulfillment of schooling obligations shall be specified by statute.

2. Education in public schools shall be without payment. Statutes may allow for payments for certain services provided by public institutions of higher education.

3. Parents shall have the right to choose schools other than public for their children. Citizens and institutions shall have the right to establish primary and secondary schools and institutions of higher education and educational development institutions. The conditions for establishing and operating non-public schools, the participation of public authorities in their financing, as well as the principles of educational supervision of such schools and educational development institutions, shall be specified by statute.

[...]

Article 85

1. It shall be the duty of every Polish citizen to defend the Homeland.

[...]

2. Any citizen whose religious convictions or moral principles do not allow him to perform military service may be obliged to perform substitute service in accordance with principles specified by statute.

Art. 191

1. The following may make application to the Constitutional Tribunal regarding matters specified in Article 188 [The Constitutional Tribunal shall adjudicate regarding the following matters:

1) the conformity of statutes and international agreements to the Constitution;

2) the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute;

3) the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes;

4) the conformity to the Constitution of the purposes or activities of political parties;

5) complaints concerning constitutional infringements, as specified in Article 79, para. 1.]:□

[...]

5) churches and religious organizations;

[...]

Article 233

The statute specifying the scope of limitation of the freedoms and rights of persons and citizens in times of martial law and states of emergency shall not limit the freedoms and rights specified in Article 30 (the dignity of the person), Article 34 and Article 36 (citizenship), Article 38 (protection of life), Article 39, Article 40 and Article 41, para.4 (humane treatment), Article 42 (ascription of criminal responsibility), Article 45 (access to a court), Article 47 (personal rights), Article 53 (conscience and religion), Article 63 (petitions), as well as Article 48 and Article 72 (family and children).

[...].

PORTUGAL

Article 13

1. All citizens possess the same social dignity and are equal before the law.
2. No one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation.

Article 19

[...]

4. In no case may a declaration of a state of siege or a state of emergency affect the rights to life, personal integrity, personal identity, civil capacity and citizenship, the non-retroactivity of the criminal law, accused persons' right to a defence, or the freedom of conscience and religion.

Article 38

[...]

2. Freedom of the press implies:

a) Freedom of expression and creativity on the part of journalists and other staff, as well as journalists' freedom to take part in deciding the editorial policy of their media entity, save when the latter is doctrinal or religious in nature;

[...]

Article 41

1. The freedom of conscience, of religion and of form of worship is inviolable.
2. No one may be persecuted, deprived of rights or exempted from civic obligations or duties because of his convictions or religious observance.
3. No authority may question anyone in relation to his convictions or religious observance, save in order to gather statistical data that cannot be individually identified, nor may anyone be prejudiced in any way for refusing to answer.
4. Churches and other religious communities are separate from the state and are free to organize themselves and to exercise their functions and form of worship.
5. The freedom to teach any religion within the ambit of the religious belief in question and to use the religion's own media for the pursuit of its activities is guaranteed.
6. The right to be a conscientious objector, as laid down by law, is guaranteed.

Article 43

1. The freedom to learn and to teach is guaranteed.
2. The state may not programme education and culture in accordance with any philosophical, aesthetic, political, ideological or religious directives.
3. Public education shall not be linked to a religious belief.
4. The right to create private and cooperative schools is guaranteed.

Article 51

[...]

3. Without prejudice to the philosophy or ideology that underlies their manifestoes, political parties may not employ names that contain expressions which are directly related to any religion or church, or emblems that can be confused with national or religious symbols.

Article 55

[...]

4. Trade unions shall be independent of employers, the state, religious beliefs, and parties and other political associations, and the law must lay down the guarantees that are appropriate to that independence, which is fundamental to the unity of the working classes.

Article 59

1. Regardless of age, sex, race, citizenship, place of origin, religion and political and ideological convictions, every worker has the right:

[...]

Article 288

Constitutional revision laws must respect:

[...]

c) The separation between church and state;

[...].

ROMANIA

Article 4

[...]

2. Romania is the common and indivisible homeland of all citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, gender, opinion, political affiliation, wealth, or social origin.

Article 6

1. The State recognizes and guarantees for persons belonging to national minorities the right to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity.

[...]

Article 7

The State shall support the strengthening of ties with Romanians who live abroad and shall act accordingly for the preservation, development and expression of their ethnic, cultural, linguistic and religious identity, while abiding by the legislation of the State of which they are citizens.

Article 29

1. Freedom of thought, opinion, and religious beliefs may not be restricted in any form whatsoever. No one may be compelled to embrace an opinion or religion contrary to his own convictions.

2. Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.

3. All religions shall be free and organized in accordance with their own statutory rules, under the conditions set out by the law.

4. Any form, means, act or action of religious enmity in the relations between cults shall be forbidden.

5. Religious cults are autonomous of, and shall enjoy support from the State which includes the facilitation of religious assistance in the army, in hospitals, prisons, homes and orphanages.

6. Parents or legal tutors are entitled to ensure for children under their responsibility the upbringing which accords with their own convictions.

Article 30

[...]

7. Defamation of Country and Nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination,

territorial separatism, or public violence, as well as any obscene conduct contrary to morals are forbidden by law.

Article 32

1. The right to education is ensured by compulsory general education, education in high schools and vocational schools, higher education, as well as other forms of instruction and post-graduate training courses.

[...]

7. The State ensures freedom of religious education, subject to the specific requirements for each denomination. In public schools, religious education is organized and guaranteed by the law.

Article 42

1. Forced labour is prohibited.

2. Forced labour shall not include:

a) activities in carrying out the military service as well as activities performed in lieu thereof, according to the law, due to religious or conscience-related reasons;

[...]

Article 44

[...]

4. Nationalisation or any other measure of forcible transfer of assets into the public property on account of the owners' social, ethnic, religious, political affiliation or any other discriminative feature is prohibited.

[...]

Article 48

[...]

2. The terms for entering into marriage, dissolution and annulment of marriage are established by law. Religious wedding may be celebrated only after civil marriage.

[...].

SLOVAK REPUBLIC

Article 1

1. The Slovak Republic is a sovereign, democratic state governed by the rule of law. It is not bound to any ideology or religion.[...]

Article 12

[...]

2. Fundamental rights shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds.

Article 24

1. Freedom of thought, conscience, religion and belief shall be guaranteed. This right shall include the right to change religion or belief and the right to refrain from a religious affiliation. Everyone shall have the right to express his or her mind publicly.

2. Everyone shall have the right to manifest freely his or her religion or belief either alone or in association with others, privately or publicly, in worship, religious acts, maintaining ceremonies or to participate in teaching.

3. Churches and ecclesiastical communities shall administer their own affairs themselves; in particular, they shall establish their bodies, appoint clericals, provide

for theological education and establish religious orders and other clerical institutions independent from the state authorities.

[...].

Article 25

[...]

2. No one shall be forced to perform military service if it is contrary to his or her conscience or religion. A law shall lay down the details.

Article 42

1. Everyone shall have the right to education. [...]

3. The establishment of and teaching in schools other than public schools shall be possible only under the terms provided by a law; such schools may collect tuition fees.

SLOVENIA

Article 7

The state and religious communities shall be separate.

Religious communities shall enjoy equal rights; they shall pursue their activities freely.

Article 14

In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability or any other personal circumstance.

All are equal before the law.

Article 41

Religious and other beliefs may be freely professed in private and public life.

No one shall be obliged to declare his religious or other beliefs.

Parents have the right to provide their children with a religious and moral upbringing in accordance with their beliefs. The religious and moral guidance given to children must be appropriate to their age and maturity, and be consistent with their free conscience and religious and other beliefs or convictions.

Article 63

Any incitement to national, racial, religious or other discrimination, and the inflaming of national, racial, religious or other hatred and intolerance are unconstitutional.

[...]

Article 123

[...]

Citizens who for their religious, philosophical or humanitarian convictions are not willing to perform military duties, must be given the opportunity to participate in the national defence in some other manner.

SPAIN

Article 14

Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

Article 16

1. Freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than may be necessary to maintain public order as protected by law.
2. No one may be compelled to make statements regarding his religion, beliefs or ideologies.
3. There shall be no State religion. The public authorities shall take the religious beliefs of Spanish society into account and shall consequently maintain appropriate cooperation with the Catholic Church and the other confessions.

Article 27

1. Everyone has the right to education. Freedom of teaching is recognized.
2. Education shall aim at the full development of the human character with due respect for the democratic principles of coexistence and for the basic rights and freedoms.
3. The public authorities guarantee the right of parents to ensure that their children receive religious and moral instruction that is in accordance with their own convictions.
4. Elementary education is compulsory and free.
[...]
6. The right of individuals and legal entities to set up educational centres is recognized provided they respect Constitutional principles.
[...].

SWEDEN

The Instrument of Government

Chapter 1. Basic principles of the form of Government

Article 2

[...]

The public institutions shall combat discrimination of persons on grounds of gender, colour, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the individual. The opportunities of the Sami people and ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own shall be promoted.

Chapter 2. Fundamental rights and freedoms

Article 1

Everyone shall be guaranteed the following rights and freedoms in his or her relations with the public institutions:

[...]

freedom of worship: that is, the freedom to practise one's religion alone or in the company of others.

Article 2

No one shall in his or her relations with the public institutions be coerced to divulge an opinion in a political, religious, cultural or other such connection. Nor may anyone in his or her relations with the public institutions be coerced to participate

in a meeting for the shaping of opinion or a demonstration or other manifestation of opinion, or to belong to a political association, religious community or other association for opinion referred to in sentence one.

Article 21

The limitations [to rights and freedoms] referred to in Article 20 may be imposed only to satisfy a purpose acceptable in a democratic society. [...] No limitation may be imposed solely on grounds of a political, religious, cultural or other such opinion.

Article 23

Freedom of expression and freedom of information may be limited with regard to the security of the Realm, the national supply of goods, public order and public safety, the good repute of the individual, the sanctity of private life, and the prevention and prosecution of crime.

[...]

In judging what limitations may be introduced in accordance with paragraph one, particular attention must be paid to the importance of the widest possible freedom of expression and freedom of information in political, religious, professional, scientific and cultural matters.

Article 25

For foreign nationals within the Realm, special limitations may be introduced to the following rights and freedoms:

1. [...]

freedom of expression, freedom of information, freedom of assembly, freedom to demonstrate, freedom of association and freedom of worship [...]

The Act of Succession

We CARL, by the Grace of God, King of Sweden, [...] accept and confirm this Act of Succession approved by the Estates of the Realm exactly as follows word for word:
Act of Succession

[...]

Article 4

[...] The King shall always profess the pure evangelical faith [...], princes and princesses of the Royal House shall be brought up in that same faith and within the Realm. Any member of the Royal Family not professing this faith shall be excluded from all rights of succession.

The Freedom of the Press Act

Article 4

With due regard to the purpose of freedom of the press for all under Chapter 1, the following acts shall be deemed to be offences against the freedom of the press if committed by means of printed matter and if they are punishable under law:

[...]

11. agitation against a population group, whereby a person threatens or expresses contempt for a population group or other such group with allusion to race, colour, national or ethnic origin, religious faith or sexual orientation; [...].

REFERENCES

Bibliography

- K. Alidadi, M.-C. Foblets, J. Vrielink, *A Test of Faith? Religious Diversity and Accommodation in the European Workplace* (Farnham, Ashgate Publishing Limited, 2012)
- G. Barberini, *Stato e religione nel processo di democratizzazione dei Paesi europei post-comunisti*, in www.statoechiedese.it, aprile 2009
- E. Bribosia, J. Ringelheim, I. Rorive, *Reasonable accommodation for religious minorities – A Promising Concept for European Anti-Discrimination Law*, (2010) *Maastricht Journal for European and Comparative Law Review*, 137
- N. Colaianni, *Diritto pubblico delle religioni – Eguaglianza e differenza nello stato costituzionale* (Bologna, il Mulino, 2012)
- S. Ceccanti, *Una libertà comparata. Libertà religiosa, fondamentalismi, società multietniche* (Bologna, Il Mulino, 2001)
- G. C. Denniston, F. M. Hodges, M. F. Milos (ed.), *Understanding Circumcision: A Multi-Disciplinary Approach to a Multi-Dimensional Problem*, (New York, Kluwer Academic/ Plenum Publishers, 2001)
- G. C. Denniston, P. G. Gallo, F. M. Hodges, M. F. Milos, F. Viviani (ed.), *Bodily Integrity and the Politics of Circumcision, Culture, Controversy, and Change* (New York, Springer, 2006)
- G. C. Denniston, F. M. Hodges, M. F. Milos, *Circumcision and Human Rights* (New York, Springer, 2009)
- J. van Der Ven, H. G. Ziebertz (ed.), *Tensions within and between Religions and Human Rights* (Leiden, Brill, 2012)
- N. Doe, *Law and Religion in Europe: a Comparative Introduction*, (Oxford, Oxford University Press, 2011)
- M. El Berhoumi, *Les juridictions suprêmes contre le voile: commentaire de deux arrêts engagés*, in J. Ringelheim (ed.), *Le droit et la diversité culturelle* (Bruxelles, Bruylant, 2011)
- S. Ferrari, I. Iban, *Diritto e religione in Europa occidentale* (Bologna, Il Mulino, 1997)
- S. Ferrari, *Il "burqa" e la sfera pubblica in Europa*, in *Quaderni di diritto e politica ecclesiastica*, 2012/1, 3
- S. Ferrari, *I simboli religiosi nello spazio pubblico*, in *Quaderni di diritto e politica ecclesiastica*, 2012/2, 317
- S. Ferrari, S. Pastorelli (eds.), *Religion in Public Spaces: A European Perspective* (Aldershot, Ashgate, 2012)

- M.V. Gallardo, *Libertad de conciencia y derecho a la asistencia sanitaria pública (Particular conflicto en el caso de los testigos de Jehová)*, in www.statoechiese.it, giugno 2009
- L. Garlicki, *Perspectives on freedom of Conscience and Religion in the Jurisprudence of Constitutional Courts*, in *Brigham Young University Law Review*, 2001, 467
- A. Guazzarotti, 'Articolo 9', in S. Bartole, De Sena, V Zagrebelsky (eds.), *Commentario breve alla Convenzione Europea dei Diritti dell'Uomo*, (Milano, CEDAM, 2012)
- M. Haas, *International Human Rights A Comprehensive Introduction* (New York, Routledge, 2012)
- J. Hallet, 'The Status of Muslim Minority in Belgium' in B.P. Aluffi and R.G. Zincone (eds.), *The Legal Treatment of Islamic Minorities in Europe* (Leuven, Peeters, 2004)
- M. Hunter-Henin (ed.), *Law, Religious Freedoms and Education in Europe* (Aldershot, Ashgate, 2012)
- S. Lariccia, 'Articolo 9', in S. Bartole, B. Conforti, G. Raimondi, *Commentario alla Convenzione europea per la tutela dei diritti dell'uomo e delle libertà fondamentali*, (Milano, CEDAM, 2001)
- L. López Guerra, 'Blasphemy and religious insult: offenses to religious feelings or attacks on freedom?' in *Freedom of Expression. Essays in honour of Nicholas Bratza, President of the European Court of Human Rights* (Oisterwijk, Wolf Legal Publishers, 2012)
- J. Martínez Torron, 'Freedom of expression v. freedom of religion in the European Court of Human Rights' in A Sajo (ed.), *Censorial Sensitivities: Free Speech and Religion in the European Court of Human Rights* (Utrecht, Eleven International Publishing, 2009)
- J. Martínez Torrón, 'The (Un)protection of Individual Religious Identity in the Strasbourg Case Law' (2012) 1 (2) *The Oxford Journal of Law and Religion*, 363
- A. Matušinová, 'The concept of religious Freedom in the European Union', Master's Thesis, Faculty of Social Studies, Masaryk University, 2011
- R. McCrea, *Religion and the Public Order of the European Union* (Oxford, OUP, 2010)
- D. McGoldrick, 'Religion in the European Public Square and in European Public Life – Crucifixes in the Classroom?', (2011) 11 (3), *Human Rights Law Review*, 451
- S. Miettinen, *Criminal Law and Policy in the European Union* (New York, Routledge, 2012)
- N. Nathwani, 'Religious Cartoons and Human Rights—a Critical Legal Analysis of the Case Law of the European Court of Human Rights on the Protection of Religious Feelings and its Implications in the Danish Affair

Concerning Cartoons on the Prophet Muhammad' (2008) 4 *European Human Rights Law Review* 488

- G. Puppinc, 'El 'principio de autonomía' de la Iglesia Católica ante el Tribunal Europeo de Derechos Humanos. El caso Fernández Martínez contra España' (2012) 28 *Revista General de Derecho Canónico y Derecho Eclesiástico* – Iustel
- J.-F. Renucci, *Article 9 of the European Convention on Human Rights*, (Strasbourg, Council of Europe Publishing, 2005)
- F. Rigaux, L. L. Christians, 'La liberté de culte', in M. Verdussen, N. Bonbled, *Les droits constitutionnels en Belgique* (Bruxelles, Bruylant, 2011)
- J. Rivers, *The Law of Organized Religions between Establishment and Secularism* (Oxford, Oxford University Press, 2010)
- J. Robbes (ed.), *Religion in Public Education*, European Consortium of Church and State Research, Germany, 2011
- M. Sabatello, *Children's Bioethics The International Biopolitical Discourse on Harmful Traditional Practices and the Right of the Child to Cultural Identity* (Leiden, Martinus Nijhoff Publishers, 2009)
- O. de Schutter, 'Human Rights in Employment Relationships' CRIDHO Working 2012/03
- J. Temperman (ed.), *The Lautsi Papers: Multidisciplinary reflections on Religious*
- *Symbols in the Public School Classroom* (Leiden, Martinus Nijhoff Publishers, 2012)
- R. Uitz, *Freedom of Religion: In European Constitutional and International case law* (Strasbourg, Council of Europe Publishing, 2007)
- P. Wachsmann, 'La liberté de religion et le droit de critique' (2009) 4 *Annuaire international des droits de l'homme* 245
- P. Wachsmann, 'La religion contre la liberté d'expression: sur un arrêt regrettable de la Cour européenne des droits de l'homme: l'arrêt Otto Preminger Institute de 20 septembre 1994' (1994) 6 *Revue Universelle des droits de l'homme*, 441
- L. Zucca and C. Ungureanu (eds.), *Law, State and Religion in the New Europe: Debates and Dilemmas* (Cambridge, Cambridge University Press, 2012).

Reports

- Bulgaria, Office of the Bulgarian Ombudsman (Омбудсман на Република България) (2011); 2010 Annual report
- Bulgaria, Ministry of Labour and Social Policy (2011), Written reply 01 39/15.08.2011 for FRA Annual Report, signed by Valentine Simeonova, Deputy Minister of Labour and Social Policy
- Equinet Secretariat, *Equality Law in Practice – A question of Faith: Religion and Belief in Europe*, An Equinet Report 2011, December 2011
- European Agency for Fundamental Rights, FRA Annual Report 2011
- Human Rights Watch, *Discrimination in the name of neutrality. Headscarf Bans for Teachers and Civil Servants in Germany*, Human Rights Watch Report, February 2009
- International Religious Freedom Report for 2011, available at <http://www.state.gov/j/drl/rls/irf/religiousfreedom>
- Venice Commission, *Questionnaire on domestic law concerning the Prohibition of Blasphemy, religious insults and incitement to religious hatred*, Collection of replies, Study no. 406 / 2006, CDL-FR(2007)002.
- Venice Commission, *Blasphemy, Insult and Hatred. Finding Answers in a Democratic Society*, Council of Europe Publishing, 2010

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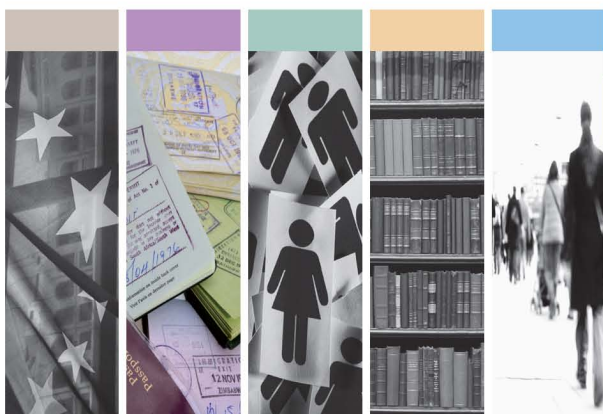
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