Combating religious discrimination in the workplace

Approaches by the EU Court of Justice and the European Court of Human Rights

Eugenia Relaño Pastor[1]

Abstract

The European Commission, the European Union Agency for Fundamental Rights and the European Network Against Racism agree that religious discrimination in workplaces is becoming a widespread concern for many believers. The Court of Justice of the European Union and the European Court of Human Rights have addressed religious discrimination in employment. A comparison of the two courts' judgements identifies commonalities and differences in weighing the autonomy of religious organizations versus employees' right to be free of discrimination on religious grounds.

Keywords Non-discrimination, religious freedom, religious attire, autonomy of the religious groups, Court of Justice of the European Union, European Court of Human Rights.

1. Introduction

According to the latest Eurobarometer survey, *Discrimination in the European Union in 2019*, discrimination (on various grounds) has been decreasing since the previous Eurobarometer in 2015.[2] However almost half of the respondents think discrimination based on religion or belief is widespread in their country.[3] The European Union Agency for Fundamental Rights (FRA) and the European Network Against Racism (ENAR) have both indicated that religious discrimination in Europe is a widespread problem for many believers, notably Muslims, in the workplace or looking for a job, particularly women who wear visible religious symbols.[4] Other

[1] Eugenia Relaño Pastor is an Assistant Professor at Complutense University (Madrid). She also serves as Scientific Coordinator of the Cultural and Religious Diversity (CUREDI) Database Project in the Law and Anthropology Department, Max Planck Institute for Social Anthropology, Halle (Saale), Germany. Article received: 13 May 2019; accepted: 1 October 2020. Email: pastor@eth.mpg.de; Website: https://www.eth.mpg.de/relano-pastor.

[2] European Commission, *Special Eurobarometer 493: Discrimination in the EU in 2019* (Directorate-General for Communication, 2019).

[3] Almost seven in ten respondents in France (69%), 65% in Belgium and 61% in United Kingdom say discrimination on religion or beliefs is widespread, compared to 12% in Latvia. Ibid, 8.

[4] European Union Agency for Fundamental Rights, *Second European Union Minorities and Discrimina-*

religious groups and faith communities have experienced religious-based discrimination, as well. Dismissals of workers due to their Christian beliefs have also been reported by the Vienna-based Observatory on Intolerance and Discrimination against Christians in Europe.[5]

Conflicts dealing with religious discrimination at the workplace have escalated into legal disputes in the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR), which are the focus of this article.

2. Religious discrimination in EU Law

2.1 European anti-discrimination law

European anti-discrimination law builds on the provisions of the Treaties of the European Union (the Treaties) – particularly the former Article 13 TEU introduced by the Amsterdam Treaty in 1997, now Article 19 of the Treaty on the Functioning of the European Union (TFEU)[6] – and has been further extended through the interplay of jurisprudence on general principles of EU law and on the Equality Directives.[7] Two Directives adopted in 2000, the Racial Equality Directive and the Employment Equality Framework Directive (hereafter Employment Equality Directive), ban discrimination on the grounds of racial or ethnic origin, religion or belief, age, disability or sexual orientation.[8] The European Union's commitment to the principle of non-discrimination was reaffirmed in the Charter of Fundamental Rights (the Charter) in December 2000 and, since the entry into force of the Lisbon Treaty in December 2009, the Charter has gained the same binding legal value as the Treaties.[9] Four articles of the Charter should be taken into consideration as a

tion Survey: Muslims – Selected Findings (2017). Available at: https://bit.ly/2KBABgY; and Đermana Šeta, "Forgotten Women: The Impact of Islamophobia on Muslim Women" (European Network Against Racism, 2016). Available at: https://bit.ly/3p1PQyH.

5 Observatory on Intolerance and Discrimination against Christians in Europe, "Report 2018" (2018), 14. Available at: https://bit.ly/3gVKWR4f.

6 The Treaty on the Functioning of the European Union (TFEU), also called the Lisbon Treaty, amended the Treaty on Establishing the European Community (TEC) and changed its name to the TFEU. Article 19 TFEU was previously Article 13 TEC.

7 The two Directives relating to equality and non-discrimination are the Racial Equality Directive: Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22, and the Employment Equality Framework Directive: Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16 (Employment Equality Directive). The Directives presented profound challenges to the existing approaches to combatting discrimination based on these grounds across Europe. They aimed to ensure that all individuals living in the EU, regardless of their nationality, could benefit from effective legal protection against such discrimination. See Isabelle Chopin, Catharina Germaine-Sahl, and European Commission, *Developing Anti-Discrimination Law in Europe* (Publications Office of the European Union, 2013), 8.

8 Racial Equality Directive and Employment Equality Directive, ibid.

9 Lucia Serena Rossi, "Same Legal Values as the Treaties? Rank, Primacy, and Direct Effect of the EU

framework for analysis. Article 21 prohibits any discrimination based on multiple grounds; Article 22 includes a mandate to respect "cultural, religious, and linguistic diversity" in the EU; Article 16 covers freedom to conduct business; and Article 31 guarantees every worker "the right to working conditions which respect his/her health, safety and dignity."[10]

In addition to this 'pro-diversity' framework, another important step to eradicate discrimination between men and women in the workplace was the Employment Equality Directive 2006/54/EC, implementing the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (also known as the Recast Directive).[11] The Employment Equality Directive prohibits direct and indirect discrimination, harassment, and instructions in the workplace that discriminate against or victimize employees on grounds of religion and belief.[12] Direct discrimination occurs when a person is treated less favourably than others on the grounds of religion or belief; it includes situations in which employers either refuse to employ religious (or non-religious) staff altogether or employ people of one religion on more favourable terms than those of a different religion. It also covers discrimination based on assumptions made about a person's religion (regardless of whether or not this assumption is mistaken) or based on a person's association with people of a particular religion.[13] This kind of discrimination is known as "discrimination by association" and it was first introduced into the EU legal order by the Court of Justice of the European Union (CJEU) in the *Coleman* case.[14] Later, in *Feryn*,[15] the CJEU further expanded its understanding of direct discrimination by shifting away from a comparison of a concrete person in a concrete, real-world situation to the consideration of a hypothetical situation. In its decision in this case, the CJEU stated that direct discrimination also occurs when people *could have* been discriminated against, even when no individual has been identified as a victim of discrimination.[16]

Charter of Fundamental Rights," *German Law Journal* 18, no. 4 (2017):771.

[10] Charter of Fundamental Rights of the European Union [2012] OJ C326/02, Articles 21, 22, and 31(1).

[11] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L204/23.

[12] Employment Equality Directive, Article 2.

[13] Lucy Vickers, "European Network of Legal Experts in the Non-discrimination Field, Religion and Belief Discrimination in Employment – the EU Law, European Commission" (Publications Office of the European Union 2007) 12. Available at: http://bit.ly/3be3tpq.

[14] Case C-303/06, *S. Coleman v Attridge Law and Steve Law* [2008] ECR I-05603, para 38.

[15] Case C-54/07 *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV* [2008] ECR I-05187.

[16] Ibid, paras 25-28.

Indirect discrimination occurs where an apparently neutral requirement would put persons of a particular religion or belief at a particular disadvantage compared with other persons.[17] Such discrimination can, however, be justified when the requirement has a legitimate aim and the means of achieving the aim are deemed appropriate and necessary. Some factors that might be taken into account when making a proportionality judgement in religion or belief cases include whether the employer's requirement would have the effect of limiting employees' religious freedom, whether the accommodation would inhibit the type of business activity (either public or private), and whether the employee's request can be implemented in practice.[18]

Some domestic courts have allowed the prohibition of religious signs in private employment, especially based on the arguments of commercial imperative and so-called neutrality.[19]

2.2 The Court of Justice of the European Union and religious discrimination

The CJEU first addressed discrimination on grounds of religion in *Prais* in 1976.[20] The CJEU carried out a balancing exercise, weighing the interest of the candidate's religious practices against the principle of equality in accessing public administrative jobs. Three landmark cases that fully addressed the balancing of interests and rights when religious discrimination occurs at work were decided in 2017 and 2018. Two of them dealt with religious clothing at the workplace and the third touched on the reconciliation of the autonomy rights of religious organizations with employees' right to be free of discrimination on religious grounds.

3. Religious clothing in the workplace

In *Achbita*[21] and *Bougnaoui*,[22] the CJEU was asked to interpret the Employment Equality Directive,[23] which prohibits discrimination on grounds of religion. In both

---

[17] Employment Equality Directive, Article 2(2)(b).

[18] Peter Edge and Lucy Vickers, *Research Report 97: Review of Equality and Human Rights Law Relating to Religion or Belief* (Equality and Human Rights Commission, 2015), 27.

[19] See Equinet, European Network of Equality Bodies, *Equality Law in Practice: A Question of Faith: Religion and Belief in Europe* (Equinet, 2011). Available at: https://bit.ly/39gqjML. This report analyses religious discrimination on Article 9 issues in the sectors of employment, education, the provision of goods and services and public spaces. It also analyses conflicts that can arise between the rights of religious persons and the rights of other groups defined by sexual orientation, gender or age.

[20] Case 130/75, *Vivien Prais v Council of the European Communities* [1976] ECR 1589.

[21] Case C-157/15, *Samira Achbita and Centrum voor Gelijkheid van Kansen en voor Racismebestrijding v G4S Secure Solutions NV,* EU:C:2017:203 [2017] (Achbita v G4S).

[22] Case C-188/15, A*sma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA* EU:C:2017:204 [2017] (Bougnaoui v Micropole).

[23] Employment Equality Directive, note 7. A reference for a preliminary ruling allows the courts and tri-

cases, the applicants were Muslim women who wear the hijab. They worked for private companies and their respective employers dismissed them for refusing to remove their hijabs, viewing the headscarf as in conflict with the organization's neutrality policy. In both cases, the CJEU interpreted the Directive to imply that limitations on employees wearing religious headscarves can be acceptable if they are based on an internal policy of political, philosophical or religious neutrality set by the employer. These two cases raise fundamental questions about the right to manifest one's religion and belief in the workplace, particularly in light of the divergent views of the Advocates General as to the type of discrimination that occurred.

3.1 Achbita v. G4S Secure Solutions NV

In *Achbita*, the CJEU gave a preliminary ruling that under Article 2(2)(a) of the Employment Equality Directive 2000/78/EC, an internal policy of a private undertaking that prohibits the visible wearing of any political, philosophical or religious signs in the workplace did not constitute direct discrimination based on religion or belief. By contrast, such an internal rule may constitute indirect discrimination within the meaning of Article 2(2)(b) of the Directive if the apparently neutral provision causes persons of a particular religion or belief to be placed at a particular disadvantage – in this case, a Muslim woman who wore a hijab. The rule may be objectively justified, however, by the employer's pursuit of a legitimate aim in his or her relations with customers and when the means of achieving that aim are appropriate and necessary. Those matters are for the referring court to ascertain.[24]

The CJEU noted several points:

> 1. Although the Employment Equality Directive does not include a definition of the concept of religion, it should be interpreted and understood in accordance with the ECHR – that is, as an expression that includes both the fact of having religious beliefs and the manifestation of those beliefs in public.[25]
> 2. The company's internal rule refers only to the wearing of visible signs indicating political, philosophical or religious beliefs, so it does not justify a difference in treatment that is directly based on religion or belief.[26]

---

bunals of the Member States, in disputes which have been brought before them, to refer questions to the CJEU about the interpretation of European Union law or the validity of a European Union act. The CJEU does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

[24] Case C-157/15, *Samira Achbita* (note 21), 34.

[25] *Achbita v G4S,* ibid., paras 25-26.

[26] Ibid, para 30.

3. The CJEU found that such a difference in treatment does not amount to indirect discrimination if it is "objectively justified by a legitimate aim and if the means of achieving that aim [are] appropriate and necessary."[27] Therefore, such a ban is appropriate for the purpose of ensuring that a policy of neutrality is properly applied, provided that the policy is genuinely pursued in a consistent and systematic manner.'[28]

4. The CJEU stated that an employer's desire to "project an image of neutrality" towards both its public and private sector customers is legitimate, as long as the only employees affected are those who come into direct contact with customers. This desire to project an image of neutrality is part of the freedom to conduct a business, which is recognized in the Charter (Article 16).[29]

3.2 Bougnaoui v. Micropole

In *Bougnaoui*, the CJEU gave a preliminary ruling interpreting Article 4(1) of the Employment Equality Directive. In contrast to *Achbita*, the dismissal of the employee in this case, Ms Bougnaoui, was not based on the existence of an internal company rule. Rather, her employer took into account the wishes of a customer who no longer wished to have the employer's services provided by a worker wearing an Islamic headscarf.[30] According to EU law, in limited cases a difference in treatment normally prohibited by the Directive may be justified if the "objective is legitimate and the requirement is proportionate".[31] The requirement must be linked to "the nature of the occupational activities concerned or of the context in which they are carried out."[32] The company's decision in this case could not be considered a genuine and determining occupational requirement within the meaning of the Employment Equality Directive.

4. Autonomy rights of religious organizations

According to Article 4(2) of the Employment Equality Directive, in cases of occupational activities within religious organizations, Member States may allow for difference of treatment based on a person's religion or belief. The same provision affirms that the directive does not prejudice the right of churches and other public or private organizations, the ethos of which is based on religion or belief, to require individuals working for them to act in good faith and with loyalty to the

[27] Ibid, para 35.
[28] Ibid, para 40.
[29] Ibid, para 38.
[30] Case C-188/15, *Asma Bougnaoui* (note 22), 40.
[31] Employment Equality Directive (note 7), para 23.
[32] *Bougnaoui v Micropole* (note 22), paras 38-39.

organization's ethos. The core issue is to determine the nature of the activities and the context in which they are performed.

4.1 Vera Egenberger v. Evangelisches Werk für Diakonie und Entwicklung e.V.

In 2018, the CJEU issued a significant ruling, *Vera Egenberger*, on the balancing of autonomy rights of religious organizations and the rights of workers to be free from discrimination.[33] Vera Egenberger applied for a job advertised by an organization of the Protestant Church in Germany which required membership in a particular type of church. Egenberger was not selected for the job. She lodged a claim with the German Labour Courts, arguing that she had been discriminated against on the basis of belief. The Federal Labour Court asked the CJEU to indicate whether the occupational requirement imposed by the organization, by reason of the nature of the activities concerned or the context in which they are carried out, was genuine, legitimate and justified in view of the organization's ethos. The CJEU also considered whether German law governing religious organisations was compatible with Directive 2000/78.[34]

The CJEU ruled that German law went too far by allowing a wide margin for religious employers to determine whether a job should be reserved for those of a particular religion. It highlighted that the aim of Directive 2000/78, Article 4(2) was to ensure a fair balance between the autonomy rights of religious organizations and the rights of workers, and it provided a guidance to apply a test of proportionality. Specifically, the Court adopted an objective approach, holding that religious organizations should show objectively verifiable "existence of a direct link between the occupational requirement imposed by the employer and the activity concerned."[35] Although a proportionality requirement is not included in Article 4(2), the Court stated that religious organization may impose discriminatory conditions on employees only when it is proportionate to do so.[36] Further, national courts should change their established case law when necessary to ensure that religious employers do not exercise their right to discriminate in a disproportionate way.[37]

5. Religious discrimination in the European Court of Human Rights

The European Convention on Human Rights (ECHR) is considered part of the general principles of EU law, which the CJEU applies pursuant to its task of ensuring

[33] *Vera Egenberger v. Evangelisches Werk für Diakonie und Entwicklung e.V.,* C-414/16, 17 April 2018, ECLI:EU:C:2018:257.
[34] Ibid, para 31.
[35] Ibid, para 63.
[36] Ibid, para 68.
[37] Ibid, para 82.

that EU law is properly applied.[38] The ECHR is in force in all EU Member States and also binds them in situations where they are implementing EU law.[39] The case law of the ECtHR in the non-discrimination field could increasingly influence the position of the CJEU in its interpretation of instruments adopted by the EU.[40] Indeed, the CJEU has already taken into account ECtHR jurisprudence related to the provisions of the Charter that correspond to the rights and freedoms listed in the ECHR.[41]

The ECtHR's case law has established that a difference of treatment is discriminatory within the meaning of Article 14 of the ECHR if it has no objective and reasonable justification.[42] The examination of a discrimination claim requires a two-tiered analysis, focusing first on the aim pursued and second on the relationship between the impugned difference in treatment and the realization of that aim. How this two-part test should be applied may depend on the nature of the criterion on which the difference in treatment is based. If differential treatment is based on a 'suspect' ground, it must be justified by very weighty reasons and the difference in treatment must appear both suitable and necessary for realizing the legitimate aim pursued.[43]

The ECtHR's case law has also distinguished between direct and indirect discrimination. More than twenty years ago, the Court recognized that failure to treat members of certain categories differently could constitute a form of discrimination. In the well-known case of *Thlimmenos v. Greece*, the ECtHR identified a violation

[38] Opinion 2/94, Accession of the European Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms [1996] ECR I-1759 para 33; Case C-274/99 P, *Connolly v Commission* (2001), ECR I-1611 para 37; Case C-112/00, *Eugen Schmidberger, Internationale Transporte und Planzüge v Republik Österreich* (2003), ECR I-5659 para 71; Case C-36/02, *Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn* (2004), ECR I-9609, para 33.

[39] Olivier de Schutter, *The Prohibition of Discrimination under European Human Rights Law: Relevance for the EU Non-Discrimination Directives – an Update* (European Commission, Directorate-General for Justice, 2011), 14.

[40] The CJEU, in interpreting the Charter of Fundamental Rights, has already considered the case law of the ECtHR related to the provisions of the Charter that correspond to rights and freedoms listed in the ECHR. See Article 6(1) of the Treaty on European Union, as amended by the Treaty of Lisbon. Article 52, para 3 of the Charter establishes the rule that, insofar as the rights of the Charter correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorized limitations, are the same as those laid down by the ECHR. Denis Martin, "Strasbourg, Luxembourg et la discrimination: influences croisées ou jurisprudences sous influence?" [2007], *Revue trimestrielle des droits de l'homme,* 107-109.

[41] Article 52(3) of the Charter establishes the rule that, insofar as the rights of the Charter correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorized limitations, are the same as those laid down by the ECHR.

[42] Article 14 of the ECHR states, "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

[43] *Kozak v Poland,* App no 13102/02 (ECtHR, 2 March 2010), para 92.

of Article 14 of the ECHR in the failure to provide effective accommodation for the specific needs of certain categories of people.[44] In the context of employment, if an employer imposes regulations which are apparently neutral, three factors must be taken into account to assess the balance between the freedom of religion of the employees and the interests of the employer:

1. The centrality of a particular religious manifestation to the religious belief in question;[45]
2. The burden of providing an exception to the general rule to accommodate that religious manifestation; and
3. Whether an employee has voluntarily accepted the regulation imposing the restriction upon his or her religious manifestation.[46]

6. Religious attire in the workplace

In January 2013, the ECtHR ruled on four combined cases about religious rights in the workplace, not all of which involved religious attire: *Eweida and Chaplin v the United Kingdom and Ladele and McFarlane v the United Kingdom*.[47] The four cases were brought by Christian applicants who complained that they had suffered religious discrimination at work. Ms Eweida, who worked for British Airways, and Ms Chaplin, who worked as a nurse, both wanted to wear a cross in a visible way with their uniforms.[48] Ms Ladele, a registrar of births, deaths, and marriages, and Mr McFarlane, a counsellor, both of whom believed homosexual relationships are contrary to God's law, complained that they had been dismissed for refusing to carry out certain parts of their duties which they considered to condone homosexuality.[49]

The Court offered a clear analysis of what qualifies as a manifestation of religion or belief for the purposes of Article 9. The applicant does not have "to establish that he or she acted in fulfilment of a duty mandated by the religion in question" in order to have the manifestation of his or her beliefs protected under the ECHR. It is sufficient to establish the existence of a sufficiently close and direct nexus between the act and the underlying belief.[50]

---

[44] *Thlimmenos v Greece,* App no 34369/97 (ECHR, 6 April 2000), paras 46-49.

[45] *Eweida and Others v the United Kingdom,* Apps no 48420/10, 59842/10, 51671/10, 36516/10 and 59842/10 (ECHR, 15 January 2013), para 94.

[46] *Ahmad v the United Kingdom,* App no 8160/78 (Commission Decision, 12 March 1981, D.R. 22), 27 (schoolteacher having converted to Islam when already employed, and then requesting permission from his employer to attend Friday prayers); a similar reasoning was followed by the CJEU in Case 130/75, *Prais v Council,* ECLI:EU:C:1976:142 [1976], paras 15-19.

[47] *Eweida and Others v the United Kingdom.*

[48] Ibid, para 12.

[49] Ibid, para 3.

[50] Ibid, para 82.

The ECtHR in *Eweida* departed from its previous case law regarding the freedom to resign – according to which the availability of this option was sufficient to demonstrate that there was no violation of Article 9.[51] In this case, it recognized that choosing between one's religious principles and one's job can be an unreasonable situation. Therefore, a serious test of proportionality should be carried out in similar cases.[52]

When balancing the competing interests, one needs to consider the applicant's desire to manifest his or her religious belief, on the one hand, and the employer's wish to project a certain corporate image, on the other. For the ECtHR, the company's desire, while certainly legitimate, was given too much weight.[53]

The reasoning in *Eweida* means that another step has been taken in the effective protection of religious freedom at the workplace. The ECtHR grounds reasonable accommodation for religion in the ECHR's framework and reinforces the need for a strict proportionality test when various rights are at stake. Thus, any rule or policy must have a legitimate aim and the means used to achieve this aim must be proportionate. The ECtHR found in *Eweida* that a fair balance had not been struck between Ms Eweida's right to freely manifest her religion and her employer's wish to protect its corporate image; it ruled that the domestic courts had given too much weight to the latter.[54] As the ECtHR concluded, "A healthy democratic society needs to tolerate and sustain pluralism and diversity."[55] One essential part of the fundamental right of religious freedom is "the value to an individual who has made religion a central tenet of his or her life to be able to communicate that belief to others."[56]

The reasoning in *Eweida* was set aside in *Ebrahimian v France,*[57] a case involving the wearing of a headscarf in public institutions. The Court strongly relied on its previous case law on headscarf bans, in particular in *Leyla Şahin*, which dealt with

---

[51] *Konttinen v Finland,* App no. 24949/94 (ECHR, 3 December 1996); *Stedman v the United Kingdom,* App no. 24875/94 (ECHR, 6 September 1996); *Sessa v Italy,* App no. 28790/08 (ECtHR, 3 April 2012). This doctrine meant that if an individual could escape the restriction by resigning from the job and finding another one, there was no interference with his or her freedom of religion.

[52] *Eweida v United Kingdom* (n 49), paras 89-95.

[53] Ibid, para 99.

[54] Ibid, para 94.

[55] Ibid.

[56] Ibid. See Eugenia Relaño Pastor, "The European Court of Human Rights: Fundamental Assumptions That Have a Chilling Effect on the Protection of Religious Diversity" in Katayoun Alidadi and Marie-Claire Foblets (eds.), *Public Commissions on Ethnic, Cultural and Religious Diversity: National Narratives, Multiple Identities and Minorities* (Routledge, 2018), 266-287.

[57] *Ebrahimian v France,* App no. 64846/11, judgement 26 November 2015. See Peter Cumper and Tom Lewis, "'Taking Religion Seriously'? Human Rights and Hijab in Europe – Some Problems of Adjudication," *Journal of Law and Religion* 24, no. 2 (2008-2009):599-627.

religious clothing in public educational institutions.[58] The ECtHR has often emphasized that States enjoy a very extensive margin of appreciation in public education and has made a distinction between religious clothing worn by teachers and that worn by students.[59] Concerning the realm of public services, the general rule is that users of public services are free to express their religious beliefs through clothing when dealing with public authorities, even in courtrooms.[60] However, the situation of officials (civil servants or contractual employees) in the public-service sector is completely different. States may rely on the principles of State secularism and neutrality to justify restrictions on the wearing of religious symbols by civil servants at the workplace.[61]

7. Autonomy of religious groups in employment

Religious organizations enjoy the right to administer their own internal religious affairs and to have their ethos respected by their members.[62] However, this right may be limited so as to protect the rights of others (specifically, employees). In three judgements, *Obst v Germany*,[63] *Schüth v Germany*[64] and *Siebenhaar v Germany*,[65] the ECtHR held that Germany interfered with the applicants' private life and freedom of religion. Such interference was deemed to be proportional in *Obst*

---

58 *Leyla Sahin v Turkey,* App no. 44774/98, judgement of 10 November 2005. See Ivana Radacic, "Religious Symbols in Educational Institutions: Jurisprudence of the European Court of Human Rights," *Religion and Human Rights* 7, no. 2 (2012):133-150; Marcella Ferri, "The Freedom to Wear Religious Clothing in the Case Law of the European Court of Human Rights: An Appraisal in the Light of States' Positive Obligations," *Religion, State and Society* 45, nos. 3-4 (2017):186-202.

59 For teachers, see ECtHR, *Dahlab v. Switzerland,* Admissibility Decision, 15 February 2001; *Kurtulmuş v. Turkey,* App. no. 65500/01, 24 January 2006; Karaduman v. Turkey, Commission decision of 3 May 1993. For students, see *Leyla Şahin v. Turkey* and *Köse and Others v. Turkey,* 24 January 2006 (decision on the admissibility); *Dogru v. France,* App. no. 27058/06, 4 December 2008; *Kervanci v. France,* App. no. 31645/04, 9 December 2009; *Gamaleddyn v. France,* App. no.18527/08, 30 June 2009; *Aktas v. France,* App. no. 43563/08, 30 June 2009; *Ranjit Singh v. France,* App. no. 27561/08, 30 June 2009; *Jasvir Singh v. France,* App. no. 25463/09, 30 June 2009.

60 In two ECtHR cases, *Hamidović v. Bosnia and Herzegovina,* App. no. 57792/15, judgement of 5 December 2017 and *Lachiri v. Belgium,* App. no. 3413/09, judgement of 18 September 2018, the Court found a violation of Article 9 with regard to Muslim women obliged to remove the headscarf in the courtroom.

61 *Ebrahimian v. France* (note 57), para 64.

62 See Carolyn Evans, "Individual and Group Religious Freedom in the European Court of Human Rights: Cracks in the Intellectual Architecture," *Journal of Law and Religion* 26 (2010):321-343; Ian Leigh, "Balancing Religious Autonomy and Other Human Rights under the European Convention," *Oxford Journal of Law and Religion* 1, no. 1 (2012):109-125.

63 *Obst v Germany,* App. no. 425/03, judgement of 23 September 2010. On the German cases, see Gerhard Robbers, "Church Autonomy in the European Court of Human Rights: Recent Developments in Germany," *Journal of Law and Religion* 26, no. 1 (2010-2011):281-320.

64 *Schüth v Germany,* App. no. 425/03, judgement of 23 September 2010.

65 *Siebenhaar v Germany,* App. no. 18136/02, judgement of 20 June 2011.

and *Siebenhaar,* because national judges acknowledged the need for a balancing of religious autonomy against the employees' rights. On the contrary, the interference was not found to be proportional in *Schüth,* because the German judge had failed to balance the interests at stake in detail.[66]

This approach appears to have been challenged in two later ECtHR judgments: *Sindicatul Pastorul Cel Bun v. Romania*[67] and *Fernández Martínez v. Spain.*[68] The deviation from the balancing approach may be more apparent in the latter case than in the former.[69] The *Fernández Martínez* case originated from the non-renewal of a teacher of religion, a married priest, by the Catholic Church. The Church argued that the applicant had incurred a scandal, since he rendered his personal situation as a married priest "public and manifest"[70] and was part of a Movement for the optional celibacy of priests. According to the Court, this case was different from *Obst, Siebenhaar* and *Schüth* because the applicant was a priest and, therefore, his status required increased loyalty on his part. The Court did not apply a proportional balancing or weigh the competing interests in a detailed and comprehensive manner; instead, it relied on the fact that the Spanish courts had sufficiently taken into account all the relevant factors that favoured the autonomy of the Catholic Church.[71]

Several years after *Fernández Martínez*, the ECtHR applied a similar approach in a case brought by a Croatian religious education teacher in *Travas v. Croatia.*[72] The applicant, a layman and not a priest, had been dismissed when he remarried, having obtained a civil divorce but without seeking or obtaining an annulment of his first marriage by the religious authorities. Following a similar approach to *Fernández Martínez,* the Court found that there had been interference with the applicant's private life but that this interference had been prescribed by law, for the protection of rights and freedoms of others, and was thus necessary in a democratic society.

---

66 In a similar case to the three already mentioned, in *Lombardi Vallauri v Italy,* the European Court took a different approach and found a violation of Articles 6 and 10 of the ECHR, arising from the refusal to re-employ a lecturer in legal philosophy at a Catholic university, because the lack of reasons given for the non-renewal impaired the applicant's effective access to a court.

67 *Pastorul Cel Bun v. Romania,* App. no. 2330/09, judgement of 31 January 2012.

68 *Fernández Martínez v. Spain,* App. no. 56030/07, judgement of 15 May 2012. See Ian Leigh, "Reversibility, Proportionality and Conflicting Rights: *Fernández Martínez v. Spain,"* in Stijn Smet and Eva Brems (eds.), *When Human Rights Clash at the European Court of Human Rights: Conflict or Harmony?* (Oxford: Oxford University Press), 218-241.

69 Merilin Kiviorg, "Collective Religious Autonomy versus Individual Rights: A Challenge for the ECtHR?" *Review of Central and East European Law* 39 (2014):315-341.

70 *Fernández Martínez v. Spain,* para 17.

71 Ian Leigh, "Balancing Religious Autonomy and Other Human Rights. under the European Convention", *Oxford Journal of Law and Religion,* vol, 1, no,1 (2012), 109-125.

72 *Travas v. Croatia,* App. no. 75581/13, judgement of 4 October 2016.

8. Concluding observations

The EU anti-discrimination law framework in the labour market seems to be theoretically solid from a formal and theoretical point of view. However, several factors prevent religious discrimination from being completely eradicated in Europe:

1. the disparate implementation of the EU anti-discrimination law in domestic jurisdictions (*Egenberger*);
2. the uncertainty of concepts such as belief or religion (*Achbita* and *Bougnaoui*);
3. the disputed meaning of the expression 'indirect discrimination' (*Achbita*);
4. the narrow judicial interpretation of "secularism"' or "neutrality" (*Achbita* and *Bougnaoui*, *Ebrahimian v France* and *Leyla Sahin v Turkey*);
5. the lack of a "reasonable accommodation duty" as a complementary legal technique in the EU equality legal framework; and
6. an inconsistent approach to the protection of religious manifestation through clothing at work by the ECtHR and the CJEU.

The analysis of the rulings and judgements from the CJEU and ECtHR show the difficulty entailed in providing common standards in a religiously diverse Europe. In view of this fact, the CJEU judgements are very important because of their impact on national case law. Unfortunately, with regard to religious clothing cases, the CJEU leaves a dangerous door open by allowing private companies to ban the wearing of religious signs in the workplace, particularly for employees who interact directly with customers, whereas the ECtHR seems to protect – but only in private employment – the manifestation of religion from supposedly neutral but discriminatory rules. The level of protection in the two courts seems to be reversed in cases dealing with religious autonomy and the right to be free from discrimination. Whereas the CJEU shows a willingness to apply a meticulous balance of rights and interests on a case-by-case basis to resolve disputes between employees and their churches, the ECtHR has not yet developed a consistent trend of jurisprudence in instances of clashes between religious conscience and the right to private life and religious autonomy. Nevertheless, there are reasons to remain optimistic. A duty of reasonable religious accommodation seems to be slowly finding its way into CJEU and ECtHR legal reasoning. Real and effective equality requires adjustment to circumstances and contexts, and resolving these conflicts is an important and delicate task.

Christians under Pressure: Studies in Discrimination and Persecution 2

Kay Bascom

Overcomers

God's deliverance through the Ethiopian Revolution as witnessed primarily by the Kale Heywet Church community

VKW

Christians under Pressure: Studies in Discrimination and Persecution. Vol. 2. Bonn, 2018. 384 pp. ISBN 978-3-86269-162-3, 23 Euro