



Provisional Version

## Committee on Equality and Non-Discrimination

### Tackling intolerance and discrimination in Europe with a special focus on Christians<sup>1</sup>

#### Report

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<sup>1</sup> Draft resolution adopted unanimously by the Committee on 3 December 2014 in Paris.

## **A. Draft resolution**

1. Intolerance and discrimination on grounds of religion or belief affect minority religious groups in Europe but also persons belonging to majority religious groups. Numerous acts of hostility, violence and vandalism have been recorded in the recent years against Christians and their worship places. However, these acts are often overlooked by the national authorities. Expression of faith is sometimes unduly limited by national legislation and policies which do not allow the accommodation of religious beliefs and practices.
2. The reasonable accommodation of religious beliefs and practices constitute a pragmatic means of ensuring the effective and full enjoyment of freedom of religion. As it is applied in a spirit of tolerance, reasonable accommodation allows all religious groups to live in harmony in the respect and acceptance of their diversity.
3. The Parliamentary Assembly recalled on several occasions the need for promoting the peaceful coexistence of religious communities in the member States, notably in Resolution 1846 (2011) on "Combating all forms of discrimination based on religion", Recommendation 1962 (2011) on "The religious dimension of intercultural dialogue" and Resolution 1928 (2013) on "Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence".
4. Freedom of thought, conscience and religion is protected by Article 9 of the European Convention on Human Rights (ETS No. 5) and considered as one of the foundations of a democratic and pluralist society. Limitations to the exercise of freedom of religion must be restricted to those prescribed by law and necessary in a democratic society.
5. The Assembly is convinced that measures should be taken in order to ensure the effective enjoyment of the protection of freedom of religion or belief afforded to every individual in Europe.
6. The Assembly therefore calls on the Council of Europe member States to:
  - 6.1 promote a culture of tolerance and "living together" based on the acceptance of religious pluralism, on the contribution of religions to a democratic and pluralist society but also on the right of individuals not to adhere to any religion;
  - 6.2 promote reasonable accommodation within the principle of indirect discrimination so as to:
    - 6.2.1 ensure that the right of all individuals under their jurisdiction to freedom of religion and belief is respected without impairing for anyone the other rights also guaranteed by the European Convention on Human Rights;
    - 6.2.2 uphold freedom of conscience in the workplace while ensuring that access to services provided by law is maintained and the right of others to be free from discrimination is protected;
    - 6.2.3 respect the right of parents to provide to their children an education in conformity with their religious or philosophical convictions, while guaranteeing the fundamental right of children to education in a critical and pluralistic manner in accordance with the European Convention on Human Rights, its protocols and the case law of the European Court of Human Rights;
    - 6.2.4 enable Christians to fully participate in public life;
  - 6.3 protect the peaceful exercise of freedom of assembly in particular through measures to ensure that counter-demonstrations do not affect the right to demonstrate, in line with the guidelines of the Venice Commission and OSCE/ODHIR on freedom of assembly;
  - 6.4 uphold the fundamental right to freedom of expression by ensuring national legislation does not unduly limit religiously motivated speech;
  - 6.5 publicly condemn the use of and incitement to violence, as well as all forms of discrimination and intolerance on religious grounds;
  - 6.6 combat and prevent cases of violence, discrimination and intolerance, in particular by carrying out effective investigations in order to avoid any sense of impunity among the perpetrators;

- 6.7 encourage the media to avoid negative stereotyping and communicating prejudices against Christians no less than other groups;
- 6.8 ensure the protection of Christian minority communities and allow such communities to establish and maintain meeting places and places of worship.

## **B. Explanatory memorandum by Mr Ghiletschi, Rapporteur**

### **1. Introduction**

1. Freedom of thought, conscience and religion is a fundamental right, enshrined not only in Article 9 of the European Convention on Human Rights (ETS No. 5) and Article 18 of the Universal Declaration of Human Rights but also in many national, international and European instruments. It is a basic right of the greatest importance. The right to hold religious beliefs, to change them or abandon them freely, to promote and express them openly, and to expect the State to protect individuals as they exercise their rights is among the most fundamental civil rights.

2. The Council of Europe's legal basis includes the European Convention on Human Rights and the case-law of the European Court of Human Rights. Other relevant international instruments include the 1966 International Covenant on Civil and Political Rights and the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The following documents adopted by the Parliamentary Assembly of the Council of Europe are also relevant in this context: Resolution 1846 (2011) *on combating all forms of discrimination based on religion*, Resolution 1763 (2010) *on the right to conscientious objection in lawful medical care* and Resolution 1928 (2013) *on safeguarding human rights in relation to religion and belief and protecting religious communities from violence*. The inalienable character of freedom of thought, conscience and religion was also recalled by the Committee of Ministers of the Council of Europe in its 2011 Declaration on religious freedom.

3. Cases of discrimination on the grounds of religion and belief which affect minority religious groups in Europe are rightfully condemned and given close attention by the international institutions, including the Council of Europe, the European Union or the Organisation for Security and Cooperation in Europe (OSCE), as they constitute threats to the foundations of a democratic and pluralist society. Likewise, acts of intolerance, discrimination or even violence are sometimes committed against persons belonging to a majority religious group. Any call for or act of intolerance, discrimination and violence should worry us, whatever be the religious group which is targeted. Therefore, it is clear that acts of intolerance and discrimination directed against Christians, be they members of the majority or a minority religious group, strike at the core values of the Council of Europe.

4. In his 2012 Address to the Members of the Diplomatic Corps accredited to the Holy See, Pope Benedict XVI said: "In many countries Christians are deprived of fundamental rights and side-lined from public life; in other countries they endure violent attacks against their churches and their homes. At times they are forced to leave the countries they have helped to build because of persistent tensions and policies which frequently relegate them to being second-class spectators of national life. In other parts of the world, we see policies aimed at marginalising the role of religion in the life of society, as if it were a cause of intolerance rather than a valued contribution to education in respect for human dignity, justice and peace."

5. According to the 2012 inquiry "Clearing the Ground inquiry – Preliminary report into the freedom of Christians", carried out by British Members of the Parliament, some British local authorities "place unnecessary barriers to wider Christian contribution".<sup>2</sup> "Christians are not asking for special treatment, but we are looking for a level playing field and for sincerely held beliefs to be given equal space in our law and in our society. I hope the Government will take this report very seriously", noted MP Gary Streeter.

6. In the "Clearing the Ground" report, British parliamentarians suggested promoting a concept of "reasonable accommodation" for religious beliefs in the public sphere in order to better ensure that Christians, as well as members of other faiths, have the room to articulate and live out their beliefs in all areas of their life, both private and public.

7. In August 2011, the United Kingdom's Equality and Human Rights Commission publicly stated that Christians were more discriminated than other religious groups in the workplace and suggested that, where possible, the concept of reasonable accommodation should be considered. However, the Commission subsequently retracted this statement.

8. It is against this background that, on 29 April 2012, I tabled, with other members of the Assembly, a motion for a resolution on "Tackling intolerance and discrimination in Europe with a special focus on Christianity". This motion for a resolution stated that "in seeking to respect and equality, it is also necessary to shed light on the growing bias against practising Christians". A major challenge in the drafting of this report lies in the absence of any Europe-wide surveys on intolerance and discrimination against Christians.

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<sup>2</sup> Christians in Parliament (United Kingdom), "Clearing the Ground inquiry – Preliminary report into the freedom of Christians in the UK", February 2012.

However, an illustrative cross-section of incidents that have taken place over the past three years are referred to in this report, based on national reports provided by governments, NGOs and civil society organisations. With this report, I intend to shed light on a phenomenon which is largely overlooked. I will examine the best practices and preventive measures, and in particular the concept of “reasonable accommodation” which allows all groups to live in harmony in the respect and acceptance of their diversity.

## 2. Freedom of religion: a fundamental right in a democratic and pluralist society

9. Freedom of religion is regarded by the European Court of Human Rights as one of the foundations of a democratic and pluralist society. The Court underlined in the case *Kokkinakis v. Greece*<sup>3</sup> the fundamental nature of the rights guaranteed in Article 9 of the Convention and has developed an extensive case-law through which it has clarified the scope of the protection afforded by the Convention. The right to freedom of religion encompasses freedom of conscience and freedom to manifest one’s religion or beliefs in worship, teaching, practice and observance, and is closely linked to other fundamental rights such as freedom of assembly, freedom of expression and freedom of choice in education.

### 2.1 Freedom of conscience

10. The right to freedom of conscience is protected by Article 18 of the Universal Declaration of Human Rights, Article 18 of the International Covenant on Civil and Political Rights, Article 9 of the European Convention on Human Rights and Article 10 of the Charter of Fundamental Rights of the European Union.

11. In his 2013 Address to the Members of the Diplomatic Corps accredited to the Holy See, Pope Benedict XVI emphasised that: “in order effectively to safeguard the exercise of religious liberty it is essential to respect the right of conscientious objection. This “frontier” of liberty touches upon principles of great importance of an ethical and religious character, rooted in the very dignity of the human person. They are, as it were, the “bearing walls” of any society that wishes to be truly free and democratic. Thus, outlawing individual and institutional conscientious objection in the name of liberty and pluralism paradoxically opens by contrast the door to intolerance and forced uniformity.”

12. Conscientious objection is a recurrent issue which relates to the place of religions in our societies and the accommodation of religious beliefs. In recent years, issues related to religion and beliefs at workplaces have become increasingly topical in some Council of Europe member States.

13. As regards the health sector, Resolution 1763 (2010) of the Parliamentary Assembly *on the right to conscientious objection in lawful medical care* noted that, in the vast majority of Council of Europe member States, conscientious objection is adequately regulated. In particular, it observed that there is a comprehensive and clear legal and policy framework governing conscientious objection by health-care providers ensuring that the interests and rights of individuals seeking legal medical services are respected, protected and fulfilled.

14. However, there is a need to balance different rights and this should be handled with care in order not to fuel intolerance. The former Secretary of State at the Health Ministry of Norway, Robin Kåss, once stated that: “If you refuse to perform a blood transfusion, you can’t be a surgeon. If you deny a patient contraception or a referral for an abortion, you can’t be a general physician.”<sup>4</sup> Such statements are not helpful because they disregard the need to reconcile different rights.

15. Conscientious objection has also been invoked in several European countries which have authorised same-sex marriage or civil unions. In the United Kingdom, two employees, Ms Ladele and Mr McFarlane, were dismissed from employment for expressing a conscientious objection to performing a duty that they believed would condone, approve or facilitate same sex conduct. In neither case was a person ever refused a service. Ms Ladele and Mr McFarlane appealed through the domestic legal system and ultimately lodged an appeal before the European Court of Human Rights. The Court reiterated the importance of protecting the right to freedom of religion and accepted that, in the case of Ms Ladele, the local authority’s requirement that all registrars of births, marriages and deaths be designated also as civil-partnership registrars had had a particularly detrimental impact on her because of her religious beliefs. However, the Court held that the United Kingdom acted within its margin of appreciation after the domestic courts found against the applicants and dismissed the claim for reasonable accommodation requested by the applicants.<sup>5</sup>

<sup>3</sup> ECHR, *Kokkinakis v. Greece*, 25 May 1993, Series A no. 260-A.

<sup>4</sup> The Local, Norway’s news in English, “Doctors can’t opt out of abortion duties: ministry”, 14 February 2012.

<sup>5</sup> ECHR, *Eweida and others v. United Kingdom*, nos. 48420/10, 59842/10, 51671/10 and 36516/10, 15 January 2013.

16. Despite this judgment of the European Court of Human Rights, in July 2014, in the United Kingdom, Margaret Jones, a senior registrar at the Bedford register office who had been dismissed for gross misconduct for refusing to perform same-sex marriages was reinstated after a successful appeal. The appeal board (the panel of Central Bedfordshire Council Members) considered that ways of accommodating her religious beliefs had not been sufficiently investigated and noted that in other cases informal customs and practice arrangements had been developed in order to accommodate individual staff situations.<sup>6</sup>

17. This decision is a positive development and it is hoped that it will pave the way for more accommodation of religious beliefs in the workplace in the United Kingdom. This is notably due to the fact that this decision had regard to guidance from the United Kingdom's Equality and Human Rights Commission. In March 2014, the Commission issued a series of guidance documents relating to the implementation of the Marriage (Same Sex Couples) Act 2013. The Commission recalled that, while the registrars are not granted by law an exemption from any of their duties, those whose religious beliefs prevent them undertaking all the responsibilities of their public office can explore the potential options with their employer.<sup>7</sup>

18. Such a pragmatic approach was for a long time a characteristic of the Dutch way of dealing with freedom of religion. During my visit to Netherlands (25-26 August 2014), I was informed that until the 1960's, there was a tradition of accommodation called "pillarisation" (*verzuiling*) according to which each religious or political group organised itself into its own schools, political parties, newspapers, trade unions, hospitals, etc. Professor Vermeulen described this system as a peaceful "living apart", a form of voluntary segregation along religious, social and political divides.<sup>8</sup> However, from the 1960's, secularism, individualism and multiculturalism have developed quickly in the Netherlands. As secularism has become the dominant view in the Netherlands, religious groups feel that they have less public space and that their views are sometimes ridiculed and presented as outdated. All of this results in tensions as regards the place of religions in society.

19. In the Netherlands, the law authorising same-sex marriage was adopted in 2001. Like in the United Kingdom, a limited number of civil servants (approximately 80 persons) invoked their religious beliefs for not participating in the performance of same-sex marriages. The practice was that an exemption could be granted to them, at local level, on a case-by-case basis. As from 1 November 2014, such an exemption is no longer allowed. All my interlocutors confirmed that the objection of civil servants to perform same-sex marriages had never prevented a same-sex marriage to take place. However, despite the absence of any practical problem, the initiators of the 2014 law made of this objection a matter of principle. The prohibition of any objection to perform a same-sex marriage was therefore analysed as a symbolic attack against the more traditional Christian minority. The entry into force of this new law implies that the conscience of an individual civil servant is no longer accommodated in the workplace regardless of whether or not their religious beliefs could practically be accommodated.<sup>9</sup> This constitutes a step backward compared to the tradition of pragmatic tolerance which previously prevailed in the Netherlands.

20. Employment is not the only area where freedom of conscience is being challenged. Increasingly, freedom of conscience cases are appearing in other areas of public life, including the provision of goods and services. For example, in the United Kingdom, Bed & Breakfast owners having refused, on the ground of their religious beliefs, to provide double-bedded accommodation to unmarried couples have lost their case before domestic courts.<sup>10</sup>

## 2.2 Freedom of expression

21. Freedom of expression is protected under Article 19 of the Universal Declaration of Human Rights, Article 11 of the Charter of Fundamental Rights of the European Union and Article 10 of the European Convention on Human Rights. However, Christians in some member States are harassed while publically promoting and defending religious values, including traditional marriage. Furthermore, some Christians have been investigated, suspended and dismissed from work for wearing religious symbols in the workplace, in schools or public space, in breach of their right to manifest religion in public.

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<sup>6</sup> Christian Concern, "Victory for Christian registrar dismissed after refusing to conduct same-sex marriages", 1 September 2014.

<sup>7</sup> Equality and Human Rights Commission, "The Marriage (Same Sex Couples) Act 2013: The Equality and Human Rights Implications for Workplaces and Service Delivery", March 2014, p.6.

<sup>8</sup> See Prof. Dr. B. P. Vermeulen, "On freedom, equality and citizenship. Changing fundamentals of Dutch minority policy and law (immigration, integration, education and religion)", in M.-C. Foblets, J.-F. Gaudreault and A. Dundes Renteln (eds.), *The Response of State Law to the Expression of Cultural Diversity*, Bruylant (Editions Yvon Blais), Brussels, 2010, pp. 45-143.

<sup>9</sup> The Christian Institute, "Dutch officials to be quizzed each year on gay marriage", 2 June 2011.

<sup>10</sup> See in particular: UK Supreme Court, *Bull v. Hall and Preddy* [2013] UKSC 73.

22. An important case relating to the wearing of religious signs at the workplace was recently brought before the European Court of Human Rights. This case, *Eweida and others v. United Kingdom* involved two Christian women who were told by their respective employers that they must either cover up or remove their cross necklaces.<sup>11</sup> In the case of Ms Eweida, the European Court of Human Rights ruled that the British court accorded too much weight to the employer's corporate image at the expense of the wish of the applicant to manifest her religion and, therefore, that the criterion of proportionality was not met in this case. In addition, the Court noted that there was no evidence that the wearing of other previously authorised items of religious clothing, such as turbans and hijabs, by other employees, had any negative impact on British Airways' brand or image. As a consequence, the Court concluded to the violation of Article 9 of the Convention. However, in the case of Ms Chaplin, the Court considered that the reason for asking her to remove the cross, namely the protection of health and safety on a hospital ward, was inherently more important than a corporate image. The Court observed that two Sikh nurses had been told they could not wear a bangle or kirpan and that flowing hijabs were prohibited. The Court therefore concluded to the non-violation of Article 9 of the Convention.<sup>12</sup>

23. It is well established that freedom of expression encompasses criticism of others' beliefs and opinions. However, this is not an absolute right and limitations can be imposed in order to protect the enjoyment of other rights, including the right to hold religious beliefs and to express them.

24. The European Court of Human Rights has developed an extensive case-law on freedom of religion and freedom of expression, and has defined the States' duties in this respect. The Court requires the States Parties to be neutral and impartial towards religions and beliefs but also to ensure protection against gratuitous offence, incitement to violence and hatred against a religious community. In the case *Otto-Preminger-Institut v. Austria*, the European Court of Human Rights held that the State has "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 capable of furthering progress in human affairs."<sup>13</sup>

25. In her report on the religious dimension of intercultural dialogue, Ms Brasseur noted that: "in some extreme cases, (...) the effect of particular methods of opposing or disparaging religious beliefs may be such as to inhibit those who hold such beliefs from exercising their freedom to hold and express them. The State has a responsibility to prevent such unreasonable behaviour and to ensure to believers the peaceful enjoyment of the right guaranteed by Article 9. It may therefore consider it necessary to take measures aimed at repressing certain forms of conduct, including the imparting of information and ideas judged incompatible with respect for the freedom of thought, conscience and religion of others".<sup>14</sup>

26. In a report on the relationship between freedom of expression and freedom of religion prepared at the request of the Parliamentary Assembly, the European Commission for Democracy through Law (Venice Commission) expressed the view that "in a true democracy imposing limitations on freedom of expression should not be used as a means of preserving society from dissenting views, even if they are extreme. Ensuring and protecting open public debate, should be the primary means of protecting inalienable fundamental values such freedom of expression and religion at the same time as protecting society and individuals against discrimination. It is only the publication or utterance of those ideas which are fundamentally incompatible with a democratic regime because they incite to hatred that should be prohibited."<sup>15</sup>

27. In recent years there have been a number of cases reported in the media and courts, where Christians have been arrested and even imprisoned because of the expression of their religious view on a number of subjects. For example, several Catholic Bishops have been charged or investigated criminally for alleged hate speech violations for homilies or other expression of doctrinal Christian values.<sup>16</sup> Many more Christian

<sup>11</sup> Ms Eweida, the first applicant, a British Airways employee, was prevented by her employer from remaining in her post while visibly wearing a cross. Ms Chaplin, the second applicant, a geriatric nurse in a State hospital, was also requested to remove her cross while on duty.

<sup>12</sup> ECHR, *Eweida and others v. United Kingdom*, *op. cit.*

<sup>13</sup> ECHR, *Otto-Preminger-Institut v. Austria*, no. 13470/87, 20 September 1994. The applicant, a private association which operated a cinema in Innsbruck, complained against the seizure and forfeiture of the film "*Das Liebeskonzil*" which it had planned to screen. The seizure of this film had been ordered on the basis of Article 188 of the Austrian Criminal Code which prohibits the act of "disparaging religious doctrines". The Court concluded to the non-violation of Article 10 of the Convention.

<sup>14</sup> Doc. 12553, Report on the religious dimension of intercultural dialogue (Rapporteur: Ms Anne Brasseur, Luxembourg, ALDE), 25 March 2011, §80.

<sup>15</sup> CDL-AD(2008)026, "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", adopted by the Venice Commission at its 76<sup>th</sup> plenary session (17-18 October 2008), §46.

<sup>16</sup> For example, see the cases of Bishop André-Mutien Léonard (Belgium), Bishop Philip Boyce (Ireland), Bishop Juan

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preachers have also been arrested for publicly preaching on the streets.<sup>17</sup> It seems the basis for many of these lawsuits is vague or ill-defined so-called “hate speech” laws that allow over-zealous law enforcement officers to stifle public debate.<sup>18</sup>

28. Lastly, I would like to refer to the approach adopted by the United Kingdom which is of particular relevance in this respect. The Public Order Act protects the rights of individuals to express their views on sexual conduct by stating that “for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred.”<sup>19</sup> This provision is in my view well-balanced and should be carefully considered by the member States of the Council of Europe when seeking a balance between potential conflicting rights such as freedom of religious expression and right not to be discriminated against.

### 2.3 Freedom of assembly

29. Freedom of assembly is guaranteed under Article 20 of the Universal Declaration of Human Rights, Article 21 of the International Covenant on Civil and Political Rights and Article 11 of the European Convention on Human Rights. Nevertheless, some Christian events, prayer meetings or services are disrupted by attacking groups which disagree with different standpoints these groups hold. The methods contain verbal insult, incitement to violence, material damage and even physical attacks. Such incidents took place in Austria,<sup>20</sup> Belgium, Germany,<sup>21</sup> Italy, the Netherlands and Spain.

30. I have also been informed that some Oxford Colleges have banned a Christian training conference for young leaders, known as The Wilberforce Academy, for apparently breaching “equality and diversity” codes for stating that marriage is between a man and a woman.<sup>22</sup> Similarly, a major conference was banned in London in 2012 from the Law Society and the UK Government Conference Centre (Queen Elizabeth II Conference Centre) because it promoted the view that marriage should be between a man and a woman.<sup>23</sup>

31. The Guidelines on freedom of peaceful assembly prepared by the Venice Commission and OSCE/ODIHR Panel on Freedom of Assembly recalled that the protection of the freedom of assembly is crucial to creating a tolerant and pluralist society in which groups with different beliefs, practices, or policies can exist peacefully together. As regards counter-demonstrations, the Guidelines provide that: “the right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate. Indeed demonstrators should respect the right of others to demonstrate as well. Emphasis should be placed on the State’s duty to protect and facilitate each event where counter-demonstrations are organised or occur, and the State should make available adequate policing resources to facilitate such related simultaneous assemblies, to the extent possible, within ‘sight and sound’ of one another.”<sup>24</sup>

### 2.4 Acts of vandalism and desecration

32. While this is far from concerning Christians only, hostility in European countries toward religious buildings and property comes across in numerous instances of vandalism, destruction of property, and defamatory displays, including the destruction or defamation of Christian symbols, demolition of places of worship and the desecration of cemeteries or tombs of historical and cultural heritage value. Such incidents directed against Christians are too often overlooked by the public authorities.

33. The Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE/ODIHR) and the Observatory on Intolerance and Discrimination against

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Antonio Reig Plà (Spain) and Cardinal-elect Fernando Sebastian Aguilar (Spain).

<sup>17</sup> See, for example, the cases of Harry Hammond, Dale McAlpine, Tony Miano and Anthony Rollins (United Kingdom).

<sup>18</sup> See Paul B. Coleman, “Censored: How European “hate speech” Laws are Threatening Freedom of Speech”, Kairos Publications: Vienna, 2012.

<sup>19</sup> Section 29JA(2) of the 1986 Public Order Act.

<sup>20</sup> Observatory on Intolerance and Discrimination against Christians, “Violence and Damages in Aggressive Disruption of a Pro-Life Manifestation”, July 2012.

<sup>21</sup> Life Site News, “German pro-life groups complain to UN Human Rights Council about attacks, harassment”, 19 October 2012.

<sup>22</sup> After the 2012 Wilberforce Academy conference, Exeter College prevented the conference from taking place in 2013. The conference moved to Trinity College but, following growing opposition, it prevented future bookings. The conference was therefore held in 2014 in Cambridge. See: Christian Concern, “Wilberforce Academy 2012”, 3 April 2012; Cherwell, “Trinity President apologises for hosting Christian Concern”, 18 April 2013.

<sup>23</sup> John Bingham, “Storm as Law Society bans conference debating gay marriage”, The Telegraph, 11 May 2012.

<sup>24</sup> CDL-AD(2010)020, “Guidelines on freedom of peaceful assembly”, 2<sup>nd</sup> edition, adopted by the Venice Commission at its 83<sup>rd</sup> plenary session (4 June 2010), p. 11.



Christians, based in Vienna (Austria), reported incidents of cemetery desecration, vandalism of churches, damage to property, arson, physical assault in many Council of Europe member States.<sup>25</sup>

34. In France, 84% of the vandalism in 2010 was directed against Christian sites, stated the former French minister of the Interior Brice Hortefeux.<sup>26</sup> In Sweden, official law-enforcement figures recorded in 2012 a total of 785 anti-religious crimes (651 in 2011), of those 200 (162 in 2011) were classified as motivated by bias against Christians.<sup>27</sup> The Italian Observatory “No Cristianofobia” has highlighted Radio Vatican’s report that 2012 has been the worst year for religious freedom in Spain with numerous incidents of attacks against religious symbols or clergy. More recently, in its report of July 2014 on the human rights situation in Ukraine, the Office of the United Nations High Commissioner for Human Rights reported an increasing number of attacks on Protestant and Roman Catholic churches in the areas controlled by the armed groups.<sup>28</sup>

35. In its report published in April 2014, the Observatory on Intolerance and Discrimination against Christians provided information about 158 incidents which took place in 2013 in member States of the European Union as well as in San Marino and Switzerland.<sup>29</sup> During a hearing organised by the Committee on Equality and Non-Discrimination on 5 March 2014 in Vienna, Dr Gudrun Kugler, Director of the Observatory, underlined that vandalism of religious sites was widespread in Europe and that numerous cases concerned Christian sites. Dr Kugler indicated that, while there was no persecution of Christians in Europe, forms of intolerance were emerging and that negative stereotyping of Christians was an issue.

36. In reaction to an increase of acts of vandalism and desecration in many Council of Europe member States, in 2010 the former Council of Europe Commissioner for Human Rights, Thomas Hammarberg, qualified these acts as hate crimes and pointed out that that they “are urgent human rights issues”.<sup>30</sup> The European Commission against Racism and Intolerance (ECRI) also reported attacks against religious sites and property, in particular, in Bosnia and Herzegovina<sup>31</sup>, Poland<sup>32</sup>, “the former Yugoslav Republic of Macedonia”<sup>33</sup> and Turkey<sup>34</sup>. ECRI expressed concern at reports that in some cases such incidents tended to be minimised by the authorities and stressed the need to address such issues squarely by condemning racist attacks whenever they occur and carrying out adequate investigations into every such case. I fully agree that hate crimes against religious groups should be publicly condemned and the authorities should ensure that the perpetrators are identified and prosecuted.

## 2.5 Freedom of choice in education

37. In some European countries, there exist limitations to the right of parents to opt their child out of individual classes or an entire course that the parents deem contrary to their religious, moral and ethical beliefs, for example, certain forms of sex education classes.

38. This was the case in Spain, until 2012, when the government finally decided to discontinue the compulsory class “Education in citizenship”, to which nearly 55 000 parents had conscientiously objected because it included approaches to sexuality and abortion which were unacceptable to them.<sup>35</sup> They had appealed to the European Court of Human Rights to “require the Spanish state to respect ideological neutrality in the educational system to prevent future violations of rights.” “Schools need to recover the tranquillity, consensus and respect for the freedom of all in order to carry out their mission”.<sup>36</sup>

39. In Germany, some parents seeking to educate their children according to a Christian worldview have been prosecuted for trying to exempt their children from state education programs. These parents requested an exemption because they considered that the content of this teaching was contrary to Christian sexual ethics. The school refused their request for exemption arguing that school attendance was mandatory. The

<sup>25</sup> OSCE/ODIHR, “Hate crimes in the OSCE region: incidents and responses”, Annual reports for 2011 and 2012.

<sup>26</sup> Ministry of the Interior of France, Press release, 3 November 2010.

<sup>27</sup> Swedish National Council for Crime Prevention (Brå), Hate crime 2012, Statistics on self-reported exposure to hate crime and police reports with identified hate crime motives, English summary no. 2013:16, p.20.

<sup>28</sup> Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine, 15 July 2014, §156.

<sup>29</sup> Observatory on Intolerance and Discrimination against Christians, Data Collection and Submission to the Office for Democratic Institutions and Human Rights (ODIHR) 2013 Annual Report on Hate Crimes, 9 April 2014, 170p.

<sup>30</sup> Thomas Hammarberg, “Desecrations of cemeteries are hate crimes that exacerbate intolerance”, 30 November 2010.

<sup>31</sup> ECRI report published on 8 February 2011, CRI(2011)2, §56.

<sup>32</sup> ECRI report published on 15 June 2010, CRI(2010)18, §115.

<sup>33</sup> ECRI report published on 15 June 2010, CRI(2010)19, §100.

<sup>34</sup> ECRI report published on 8 February 2011, CRI(2011)5, §137.

<sup>35</sup> Alliance defending freedom, Press release of 2 February 2012, “Spain abandons anti-Christian classes”.

<sup>36</sup> EurActiv, “Catholics sue Spain over sex education classes”, 26 March 2010. The application was dismissed by the European Court of Human Rights in February 2013.

parents prevented their children to attend the state education classes and were fined by the school. The German jurisdictions upheld the fines and subsequently sentenced the parents to imprisonment for non-payment. In 2008, these parents lodged a complaint before the European Court of Human Rights for violation of their right to freedom of religion and to educate their children in accordance with their religious beliefs. However, in its judgment of 2011 (*Dojan v. Germany*), the Court ruled that Germany had not overstepped its margin of appreciation in setting up and interpreting rules for its education system. The Court considered that “there was no indication that the education provided had put into question the parents’ sexual education of their children based on their religious convictions or that the children had been influenced to approve of or reject specific sexual behaviour contrary to their parents’ religious and philosophical convictions.”<sup>37</sup>

40. The mandatory nature of school attendance also implies that home-schooling remains illegal in Germany, regardless of parents’ religious or cultural reasons for wishing to do so. Following a mission to Germany in 2006, the UN Special Rapporteur on the right to education noted in this respect “that distance learning methods and home schooling represent valid options which could be developed in certain circumstances, bearing in mind that parents have the right to choose the appropriate type of education for their children, as stipulated in Article 13 of the International Covenant on Economic, Social and Cultural Rights.” The Special Rapporteur added that “the promotion and development of a system of public, government-funded education should not entail the suppression of forms of education that do not require attendance at a school” and indicated having received complaints about threats to withdraw the parental rights of parents who chose home-schooling methods for their children.<sup>38</sup>

41. However, in the case *Konrad v. Germany* (2006), the European Court of Human Rights did not question the German practice of mandatory schooling and noted that there was no consensus among the Council of Europe member States with regard to compulsory attendance of primary schools.<sup>39</sup> In this decision, the Court supported the German Constitutional Court’s ruling according to which “the general interest of society in avoiding the emergence of parallel societies based on separate philosophical convictions and the importance of integrating minorities in society”. This argument of “parallel societies” has been criticised as fallacious in particular in the light of the fact that fundamental rights and liberties precisely safeguard the option to live in different ways, even separately from society.<sup>40</sup>

42. In Resolution 1904 (2012) on *the right to freedom of choice in education in Europe*, the Parliamentary Assembly recalled that the right to freedom of choice in education is intimately linked to freedom of conscience. This right is enshrined in Article 2 of the Protocol to the European Convention of Human Rights, which provides that: “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

43. In the case *Folgerø and others v. Norway*, the Court recalled that the second sentence of Article 2 of the Protocol “does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind” and that “it does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable”.<sup>41</sup> However, the Court also held in a case against Turkey that the State must refrain from pursuing an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions.<sup>42</sup> In this case, a follower of Alevi faith complained that the compulsory class in “religious culture and ethics” in state-schools only included the teaching of Islam Sunni.

44. In Resolution 1904 (2012), the Assembly recommended the member States to recognise clearly in law, where this has not already been done, the right to establish and run private schools, as well as the possibility for these schools to be part of the national education system. A good model is offered by the Netherlands where freedom and neutrality of education are guaranteed by the Constitution (Article 23). Two

<sup>37</sup> ECHR, *Dojan v. Germany and others*, no. 319/08, 13 September 2011.

<sup>38</sup> Human Rights Council, A/HRC/4/29/Add.3 of 9 March 2007, Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled “Human Rights Council”, Report of the Special Rapporteur on the right to education, Vernor Muñoz, Mission to Germany (13-21 February 2006), §62.

<sup>39</sup> ECHR, *Konrad v. Germany* (dec.), no. 35504/03, 11 September 2006.

<sup>40</sup> Franz Reimer, “School attendance as a civic duty v. home education as a human right”, International Electronic Journal of Elementary Education, Vol.3, Issue 1, October 2010, p.12.

<sup>41</sup> ECHR, *Folgerø and others v. Norway*, no. 15472/02, 29 June 2007.

<sup>42</sup> ECHR, *Hasan and Eylem Zengin v. Turkey*, no. 1448/04, 9 October 2007. The Court upheld its judgment in the case *Mansur Yalçın and others v. Turkey*, no. 21163/11, of 16 September 2014, in which it ruled that, despite the changes introduced in the programme of religious culture and ethics in 2011-2012, the parents’ beliefs are still not fully respected by the Turkish education system.

types of schools exist in the Netherlands: state schools and “special” schools which comprise denominational schools and neutral or general schools (e.g. Montessori schools). Special schools represent the two-third of schools in the Netherlands. They are all State-funded and enjoy a high level of autonomy, in particular as regards the pedagogical content and the choice of teachers. Religious schools are allowed, under the General Equal Treatment Act, to recruit teachers in accordance with their religious beliefs, provided that the requirements imposed on the latter do not lead to discrimination on the “sole” ground of sexual orientation, marital status, political opinion, etc.

45. However, I was informed during my visit to the Netherlands (25-26 August 2014) that a contentious issue was whether Christian schools could dismiss teachers on the basis of their private conduct, specifically, sexual conduct, based on the exemption allowed by the General Equal Treatment Act. A draft law aiming at removing from this Act the “sole fact” principle is under discussion.

### **3. Best practices and preventive measures**

#### **3.1 The OSCE Resolution on combating intolerance and discrimination against Christians in the OSCE area**

46. The Organisation for Security and Cooperation in Europe, including its Office for Democratic Institutions and Human Rights (ODIHR), has drawn close attention to the problem of intolerance and discrimination against Christians. The OSCE Parliamentary Assembly recommended in its Resolution on Combating Intolerance and Discrimination against Christians in the OSCE area, adopted in Belgrade in July 2011, that a “public debate on intolerance and discrimination against Christians be initiated and that the right of Christians to participate fully in public life be ensured” (§12); that “legislation in the participating States, including labour law, equality law, laws on freedom of expression and assembly, and laws related to religious communities and right of conscientious objection be assessed” in view of discrimination and intolerance against Christians, (§13); and “encourage(d) the media not to spread prejudices against Christians and to combat negative stereotyping” (§15).<sup>43</sup>

47. “That hate crimes against individuals based on their real or perceived adherence to Christianity occur in the OSCE region is indisputable”, said Ambassador Janez Lenarčič, the Director of ODIHR. “Such attacks instil fear, not just in the individuals they target directly, but also in the wider community”.<sup>44</sup>

#### **3.2 The Global Charter of Conscience**

48. Observing that “the growing tensions involving religion, worldview and ideology have become a massive global problem”, an international group of leading academics and activists launched the Global Charter of Conscience in June 2012.<sup>45</sup> The Global Charter of Conscience is a declaration reaffirming and supporting Article 18 of the Universal Declaration of Human Rights (on freedom of thought, conscience and religion). It was crafted over the course of three years by people of many faiths and none, including more than 50 academics, politicians of many persuasions and NGOs, all committed to a partnership on behalf of “freedom of thought, conscience and religion” for all. “We need to provide a solution to do away with the polarisations and the aggravating bitterness surrounding religion in public life – as in the so-called culture wars,” said Dr Thomas Schirrmacher, a German sociologist of religion, who oversaw the drafting of the text of the Charter. The Global Charter of Conscience encourages a new culture of civility where robust and noisy public debate is seen as good for society.

49. The articles, values and principles of the Charter, and the promotion of these, have been instrumental already in opening spaces for the understanding, discussion and prevention of attacks to freedom of thought, conscience and religion or belief in Europe for all, including Christians. This has happened in Germany, Sweden and the United Kingdom, since its launch in June 2012. It is paving the way to establishing guidelines to solve issues surrounding religion in the public sphere. It aims at building a civil and cosmopolitan public square which would be hospitable to people’s worldviews and the way they manifest themselves in the public. In this civil public square, people and communities would be mindful of social peace, public order and the rights of others as they manifest their convictions alone or in community with others. Freedom of conscience would be recognised by all as a fundamental right, the enjoyment of which should only be limited as a matter of exception, which demands restrictive conditions prescribed in international instruments such as the International Covenant on Civil and Political Rights.

<sup>43</sup> OSCE Parliamentary Assembly, AS(11)R E, Resolution adopted at the 20th annual session, Belgrade, 6-10 July 2011.

<sup>44</sup> OSCE High-level Meeting “Preventing and Responding to Hate Incidents and Crimes against Christians”: Address by Ambassador Janez Lenarčič, Rome, 12 September 2011.

<sup>45</sup> <http://www.charterofconscience.org>

50. The Charter is also helping the emergence of discussions about promoting education and understanding about various worldviews, including through civic education about religions and beliefs, and related civil liberties. Finally, it has helped to provide training for employees in the public sector in order to understand, rigorously assess and deal with achievements and challenges to freedom of thought, conscience and religion.

51. In a special recommendation for this text, Professor Dr Heiner Bielefeldt, UN Special Rapporteur on freedom of religion or belief, said: “the Global Charter of Conscience is a powerful document. I appreciate its enormous potential to inspire practical commitment on behalf of freedom of thought, conscience, and religion or belief and to contribute to a better understanding of human rights in general. In the spirit of the 1948 Universal Declaration of Human Rights, the Charter underlines the universal validity of freedom of religion or belief as an inextricable part of a holistic human rights agenda in which civil, political, economic, social and cultural rights can mutually reinforce each other.”

### 3.3 The concept of reasonable accommodation for religious reasons

52. The concept of “reasonable accommodation” provides a “common sense” approach to many of the challenges Christians, and indeed other religious groups, face in the workplace. Reasonable accommodation places the onus on the employer to accommodate the religious practice of an employee providing it does not cause the employer an undue burden. In Europe, this concept has been used in disability discrimination for many years and in North America it has been successfully applied to religion or belief.

53. This concept first emerged in the USA and Canada in equality law as a means of handling religious diversity.<sup>46</sup> It was then applied to other grounds of discrimination, and primarily to disability. This concept means that measures need to be taken in order to ensure effective equality and full enjoyment of rights. Professor Stefan Hammer, Department of Legal Philosophy, Law of Religion and Culture of the University of Vienna, explained during the hearing organised by the Committee on Equality and Non-Discrimination, in Vienna, on 5 March 2014, that this concept is not applied to groups or categories of individuals but on a case-by-case basis to persons, taken individually, who are specifically and personally affected by a regulation or measure which prevents the full enjoyment of their rights. The objective pursued by the concept of reasonable accommodation is therefore not to exclude the general application of the law but to remove the barriers faced by persons in situation of discrimination for reasons relating to their religion, age, health or other grounds.

54. In Europe, the duty of reasonable accommodation is generally accepted by the Council of Europe member States when it applies to disability, as a corollary of the prohibition of indirect discrimination. In the case *Glor v. Switzerland*, the European Court of Human Rights developed its understanding of the duty of reasonable accommodation, based on Article 14 of the Convention (prohibition of discrimination) but without expressly naming it as such.<sup>47</sup> In this case, the applicant claimed that he was the victim of discriminatory treatment because he was prevented from doing his military service although willing and, instead, he was obliged to pay the exemption tax because his disability (diabetes) was considered a minor one by the competent authorities. The Court recalled that “Article 14 does not prohibit distinctions in treatment which are founded on an objective assessment of essentially different factual circumstances and which, being based on the public interest, strike a fair balance between the protection of the interests of the community and respect for the rights and freedoms safeguarded by the Convention”. The Court then noted that “special forms of civilian service tailored to the needs of people in the applicant’s situation are perfectly envisageable” and concluded to the violation of Article 14 because of the failure of the Swiss authorities “to strike a fair balance between the protection of the interests of the community and respect for the Convention rights and freedoms of the applicant”.

55. The possible extension of the duty of reasonable accommodation to religion, age or other grounds is not largely accepted by the Council of Europe member States at the moment. Only very few of them formally apply the duty of reasonable accommodation to grounds other than disability (for example Bulgaria and Sweden). In the case before the European Court of Human Rights involving the four British Christians (*Eweida and others v. United Kingdom*), this legal concept was promoted before the Court by the applicants and several third party interveners. On that occasion the Court decided not to consider the legal concept in its decision; however, there is no reason why reasonable accommodation cannot be adopted more broadly in the European setting.

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<sup>46</sup> E. Bribosia, I. Rorive, L. Waddington, *Reasonable Accommodation beyond Disability in Europe?*, European Commission, 2013, p. 5.

<sup>47</sup> ECHR, *Glor v. Switzerland*, no. 13444/04, 30 April 2009. See also the judgment of 6 February 2014 in the case *Semikhvostov v. Russia*, in which the Court held that the conditions of the applicant’s detention in view of his physical disability and the lack of reasonable accommodation amounted to inhuman and degrading treatment.

56. However, it should be noted that in practice accommodation is applied in many member States of the Council of Europe regarding flexible working hours and leave for religious holidays in the field of employment or regarding dietary requirements. As regards this last aspect, the European Court of Human Rights recently found a violation of Article 9 because the prison authorities had refused to provide the applicant with a vegetarian diet as required by his Buddhist convictions, referring in particular to “a positive duty on the State to take reasonable and appropriate measures to secure the applicant’s rights under paragraph 1 of Article 9” of the Convention.<sup>48</sup>

57. Another interesting example of accommodation of religious beliefs was reported to me during my visit to the Netherlands (25-26 August 2014). An orthodox Christian group opposed the payment of compulsory medical insurance on the grounds of its religious beliefs. The arrangement found was that the members of this group would pay an extra income tax or payroll tax (instead of the monthly premiums deducted from the wage) which would be allocated to a special fund. These persons would pay their medical care and would be reimbursed depending on the amount they already contributed. This arrangement was made possible by the State in cooperation with the group concerned. It provides a good example of a successful accommodation of the interests of the public health system, on the one hand, and of the religious beliefs of a minority group, on the other hand. In addition, it is interesting to note that the Dutch people have the possibility to exclude from their medical insurance a number of pre-defined medical care, such as euthanasia or sex reassignment.

58. Lastly, it should be recalled that in its Resolution 1928 (2013) *on safeguarding human rights in relation to religion and belief and protecting religious communities from violence*, the Parliamentary Assembly of the Council of Europe, almost unanimously, called on member States to accommodate religious beliefs in the public sphere; ensure the right to well-defined conscientious objection in relation to morally sensitive matters; respect the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions; change their legal regulations whenever these go against the freedom of association for groups (including religious communities defined by their religion or beliefs); and, where the restitution of church property is not yet concluded, to speed up this process and finish it in the short or medium term.

#### 4. Conclusions

59. Freedom of religion is a fundamental right protected by international treaties and instruments. However, in recent years, hostility towards religion in Europe is to be seen in numerous acts of violence and vandalism as well as in limitations to the expression of faith. This phenomenon concerns minority religious groups and also majority religious groups. It denies the contribution of religion to our societies and undermines the democratic and pluralist nature of our States.

60. While a legal response remains important, legislation is only part of a larger toolbox to respond to the challenge of intolerance and discrimination against Christians. Any related legislation should be complemented by initiatives coming from various sectors of society geared towards a plurality of policies, practices and measures nurturing social consciousness, tolerance and understanding, change and public discussion. This is with a view to creating and strengthening a culture of peace, tolerance and mutual respect among individuals, public officials and members of the judiciary as well as rendering media organisations and religious/community leaders more ethically aware and socially responsible.

61. States, media and society have a collective responsibility to ensure that acts of incitement to intolerance and discrimination, also when targeted at Christians, are spoken out against and acted upon with the appropriate measures in accordance with law.

62. The use of reasonable accommodation in the context of religious beliefs would ensure that the protection afforded to freedom of religion by the international human rights law is effectively implemented in the Council of Europe member States and that the right to practice one’s religion is not an empty word. Pragmatism should prevail in this respect. The accommodation of religious beliefs should be considered by the member States of the Council of Europe in a spirit of tolerance, within the borders defined by law and according to a case-by-case approach. I am convinced that the application of the concept of reasonable accommodation to religious beliefs in the Council of Europe member States would allow all religious groups to live in harmony in the respect and acceptance of their diversity.

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<sup>48</sup> ECHR, *Vartic v. Romania* (no. 2), no. 14150/08, 17 December 2013.