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Committee on Legal Affairs and Human Rights

The protection of freedom of religion or belief in the workplace

Information note

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1. Introduction

1.1. Procedure

1. The motion for a resolution entitled "The protection of freedom of religion or belief in the workplace"¹ was forwarded to the Committee on Legal Affairs and Human Rights on 12 October 2018 for report.² The committee appointed me as rapporteur at its meeting in Paris on 13 December 2018.
2. At its meeting in Strasbourg on 1 October 2019, the Committee held a hearing with the participation of:
 - Ms Katayoun Alidadi, Assistant Professor of Legal Studies, History and Social Sciences Department, Bryant University, Rhode Island, United States (via video-conference);
 - Mr Javier Martinez-Torron, Professor of Law, Complutense University, Madrid, Spain, and
 - Ms Nazila Ghanea, Associate Professor in International Human Rights Law, University of Oxford (via video-conference).
3. Moreover, in June 2019 I sent a questionnaire to the European Centre for Parliamentary Research and Documentation (EPCRD) in order to get information on the state of Council of Europe member States' legislation concerning measures aimed at ensuring that the freedom of religion or belief is observed at the workplace. The replies received from national delegations have been summarised and presented in the Appendix to this document.

1.2. Issues at stake

4. The above-mentioned motion for a resolution makes a reference to the Parliamentary Assembly's [Resolution 2036 \(2015\)](#) on "Tackling intolerance and discrimination in Europe with a special focus on Christians".³ The resolution called upon the member States of the Council of Europe to "promote reasonable accommodation within the principle of indirect discrimination so as to 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."⁴ The signatories of the motion are of the view that, three years after the adoption of [Resolution 2036 \(2015\)](#), it is crucial to consider what steps have been taken by member States to implement the recommendations contained in it, whether by introducing policies that would allow for an informal mechanism of reasonable accommodation or laws that would provide a formal mechanism of reasonable accommodation of religion or belief in the workplace. The Assembly should therefore review the progress that has been made, with a view to identifying good practice amongst Council of Europe member States on how best to provide reasonable accommodation in relation to religious belief.

* Document declassified by the Committee on 15 November 2019.

¹ [Doc. 14544](#) of 26 April 2018.

² Reference 4408.

³ Adopted on 29 January 2015. Report of the Committee on Equality and Non-Discrimination, rapporteur: Mr Valeriu Ghiletechi, [Doc. 13660](#) of 7 January 2015.

⁴ Paragraph 6.2 and subparagraph 6.2.1 of the resolution.

5. In today's Europe, the question of the co-existence of members of different religious communities, atheists, agnostics and sceptics has become an issue of vital importance. Although historically Europe might be characterised as a stronghold of Christianity, with many countries having long-standing Jewish communities; it is now increasingly secular and with greater religious diversity, with growing number of Muslims in many States as well as diverse groups representing "new religions". While recognising the role of Christianity in shaping Europe's culture and identity, and acknowledging the contribution of Judaism as well as the influence of Islam, the current situation entails new challenges for policy-makers and faith communities, with an increasing need to find ways of accommodating religious beliefs at the workplace. The wearing of religious symbols such as the cross for Christians or the head scarf for Muslim women has caused controversy in some countries. Moreover, in some societies, believers may encounter difficulties in their everyday lives in relation to religious holidays, prescribed times for prayer, conscientious objection of medical staff to abortion, dietary laws or other requirements stemming from their religious beliefs.

6. The Council of Europe has a body of binding and non-binding standards in the area of religious freedom. The Assembly has taken position on many issues relevant to religious diversity, tolerance and State secularity in a number of resolutions and recommendations.⁵ Therefore, I will only focus on the concepts of freedom of religion and belief and the prohibition on discrimination on the ground of religion, as enshrined in the European Convention on Human Rights and other international legal instruments, as well as on the notion of "reasonable accommodation" to which the motion refers. The committee has already referred to this notion in 2011, when it adopted the report by its former member Mr Tudor Panțiru (Romania, Socialist Group) on "Combating all forms of discrimination based on religion"⁶, which subsequently led to the adoption of [Resolution 1846 \(2011\)](#) and [Recommendation 1987 \(2011\)](#).⁷ In September 2015, the committee considered again issues related to freedom of religion when adopting its opinion⁸ on the report of the Committee on Culture, Science, Education and Media on "Freedom of religion and living together in a democratic society".⁹ On the basis of the latter report, on 30 September 2015, the Assembly adopted [Resolution 2076 \(2015\)](#). As noted above, it was also an important element in Assembly [Resolution 2036 \(2015\)](#).

2. International and European legal framework for freedom of thought, conscience and religion

2.1. Scope of the freedom

7. Freedom of thought, freedom of conscience and freedom of religion are universal human rights enshrined in fundamental international instruments, namely Article 18 of the [Universal Declaration of Human Rights](#) of 1948 and Article 18 of the [International Covenant on Civil and Political Rights](#) of 1966.¹⁰ In Europe, this freedom is protected by Article 9 of the European Convention on Human Rights (the Convention) and Article 10 para. 1 of the [Charter of Fundamental Rights of the European Union](#).

8. The freedoms enshrined in Article 9 para. 1 of the Convention have both an internal and an external aspect. The *internal aspect* protects the right to hold beliefs or not and to change one's religion or belief as a matter of individual conscience. It is an absolute right, which cannot be subject to limitations.

9. The *external aspect* protects the freedom to manifest one's religion or belief alone or in community with others, in public or in private, in worship, teaching, practice and observance. It may be subject to restrictions enumerated in Article 9 para. 2 of the Convention. The restriction must be "prescribed by law" and "necessary in a democratic society" in the interests of pursuing a legitimate public aim. The permissible aims are public safety, the protection of public order, health or morals, or the protection of the rights and freedoms of others.

10. As a qualified right, Article 9 § 2 of the Convention gives States a wide 'margin of appreciation' in deciding whether and to what extent a limitation of the right to manifest one's religion or beliefs is "necessary".¹¹

⁵ See, in particular, [Recommendation no. 1396 \(1999\)](#) of 27 January 1999 on religion and democracy; [Resolution 1510 \(2006\)](#) of 28 June 2006 on Freedom of expression and respect for religious beliefs, [Recommendation no. 1804 \(2007\)](#) of 29 June 2007 on State, religion, secularity and human rights; [Resolution no. 1743 \(2010\)](#) of 23 June 2010 on Islam, Islamism and Islamophobia in Europe or [Recommendation 1957 \(2011\)](#) of 27 January 2011 on Violence against Christians in the Middle East.

⁶ [Doc. 12788](#) of 10 November 2011, see also [Resolution 1846 \(2011\)](#) and Recommendation 1987(2011).

⁷ Adopted by the Standing Committee on 25 November 2011.

⁸ [Doc. 13886](#) of 29 September 2015, rapporteur for opinion: Sir Edward Leigh.

⁹ [Doc. 13851](#) of 6 July 2015, rapporteur: Rafael Huseynov.

¹⁰ In 1993, the Human Rights Committee adopted General Comment no. 22 on the scope of this provision, CCPR/C/21/rev.1/Add.4.

¹¹ S.A.S. v. France, application no. 43835/11, judgment of 1 July 2014 (Grand Chamber, para. 129).

. The extent of the margin of appreciation, whose application in practice remains subject to the supervision of the European Court of Human Rights ("the Court" or "ECtHR"), depends upon the particular circumstances of the case..

11. Issues of religious freedom may come into conflict with other rights guaranteed by the Convention. In relation to Article 10 of the Convention, for example, the Court addressed a situation where the local Roman Catholic diocese objected to the screening of a film that it considered blasphemous, resulting in the authorities seizing and confiscating the film and bringing criminal proceedings against the organisers of the screening (see the *Otto-Preminger-Institut v. Austria*¹² judgment). Other rights might also come into conflict with religious beliefs: the right to respect for private and family life (Article 8 of the Convention), for example in connection with certain medical treatment issues (e.g. the refusal of blood transfusions by many Jehovah's Witnesses); the right to freedom of assembly (Article 11), for example when believers gather at prayer meetings; the right to a fair trial (Article 6 of the Convention), for example in connection with State recognition of decisions of ecclesiastical bodies or the right to education (Article 2 of Protocol No 1), for example when parents consider that the state does not respect their right to ensure that their child's education is in conformity with their own religious convictions (e.g. *Lautsi v. Italy*,¹³ concerning display of the crucifix in state school classrooms).

2.2. *Prohibition of discrimination based on religion or beliefs*

12. Article 26 of the ICCPR enshrines the principle of equality before the law and stipulates that all persons are entitled without any discrimination to the equal protection of the law. According to this provision, "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground", including religion. According to the 1981 Declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief¹⁴, discrimination based on religion constitutes "an affront to human dignity and a disavowal of the principles of the Charter of the United Nations" (Article 3) and the right to freedom of thought, conscience and religion "shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice" (Article 7).

13. Discrimination on the ground of religion or belief is also prohibited under Article 14 of the Convention¹⁵ and Article 1 of Protocol No 12 to the Convention.¹⁶ The State may not, without any objective and reasonable justification, treat in different way persons in substantially similar situations. It enjoys a certain margin of appreciation in assessing whether and to what extent the existing differences justify different treatment; however, the inequality in treatment must pursue a legitimate aim and respect the criterion of reasonable proportionality¹⁷. Moreover, a failure, without an objective and reasonable justification, to treat differently persons whose situations are significantly different may also be contrary to the principle of non-discrimination.¹⁸

14. Within the European Union's framework, the Employment Equality Directive 2000/78 addresses various forms of discrimination in employment, including on the grounds of religion or belief.¹⁹

2.3. *Relevant case-law of the Court*

15. A variety of cases have been examined by the Court under Article 9 of the Convention. They concerned specific issues such as compulsory military service and religious beliefs, the obligation to pay "church tax",

¹² *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, Application no. 13470/87, paragraphs 55-56.

¹³ Application no. 30814/06, Grand Chamber judgment of 18 March 2011.

¹⁴ Proclaimed by the United Nations General Assembly resolution 36/55 of 25 November 1981.

¹⁵ Article 14 of the Convention provides that "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." This article does not automatically confer any autonomous or substantive right: it may only be invoked in conjunction with one or more substantive guarantees established in the Convention.

¹⁶ Article 1 of Protocol No 12 to the Convention introduces a general prohibition on discrimination in the enjoyment of "any right set forth by law" (paragraph 1), which applies to all acts of public authorities (paragraph 2). Religion is mentioned there as one of the possible grounds of discrimination. Unfortunately, this protocol has so far been ratified by only 18 Council of Europe member States (as of 20 May 2019).

¹⁷ *Savez crkava "Riječ života" and others v. Croatia*, application no. 7798/08, judgment of 9 December 2010, paragraphs 85-89.

¹⁸ *Thlimmenos v. Greece*, App. No. 34329/97, judgment of 6 April 2000, para. 44. The applicant was denied admission to the profession of chartered accountant because of his criminal conviction for refusal to perform military service. The reason for his refusal – his conscientious objection, and hence his religious beliefs – was not taken into account, despite this placing him in a 'significantly different situation' to persons convicted of offences committed for different reasons.

¹⁹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Official Journal L 303, 02 December 2000, pages 0016 – 0022.

wearing of religious symbols or clothing, children's education and parents' religious convictions, proselytism or recognition, organisation and leadership of religious communities.²⁰ For the purpose of this report, only cases concerning freedom of religion or belief in the workplace will be considered below.

16. Up until the 1990s, the European Commission of Human Rights²¹ consistently refused to apply Article 9 of the Convention to conscientious objectors. The Commission found that the Convention allowed States to choose whether or not to recognise conscientious objection to military service, since Article 4 of the Convention refers to "conscientious objectors in countries where they are recognised". Since 2011, the Court has developed a new line of jurisprudence. The Court now considers that conscientious objection to military service may fall in the ambit of Article 9 if "it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs".²² The Court examines complaints concerning conscientious objectors in the light of the particular circumstances of the case.²³

17. The Court has also considered various issues relating to manifestation of freedom of thought, conscience and religion at the workplace, although not explicitly from a 'reasonable accommodation' perspective. These cases have included a requirement to take a religious oath in order to start practicing as a lawyer (*Alexandridis v. Greece*²⁴ - violation of Article 9), an obligation to swear an oath on the Christian Gospels in order to take a seat in Parliament (*Buscarini and Others v. San Marino*²⁵ - violation of Article 9), proselytising to air force service personnel (*Larissis and Others v. Greece*²⁶ - no violation of Article 9, as the State was entitled to protect lower-ranking airmen from "improper pressure") or the dismissal of a childcare assistant employed by a Protestant parish but belonging to another religious community (*Siebenhaar v. Germany*²⁷ - no violation). It also considered the issue of religious holidays. For example, in the case of *Kosteski v. "The former Yugoslav Republic of Macedonia"*²⁸, the applicant, a Muslim, complained about having been fined for taking a day's holiday without permission to celebrate a Muslim religious festival (no violation of Article 9 and of Article 14 taken in conjunction with Article 14). In *Francesco Sessa v. Italy*²⁹, the applicant, a member of the Jewish faith and a lawyer by profession, complained about the judiciary's refusal to adjourn a hearing set down for the date of a religious festival; the Court found no violation of Article 9 of the Convention considering that the refusal was justified on grounds of the protection of the rights of others (and in particular the right to proper administration of justice).

18. The judgment *Eweida and Others v. the United Kingdom*³⁰ of January 2013 seems to be the most relevant in the context of determining the scope of the State's positive obligation to secure respect for the rights to freedom of religion in the workplace. In this case, the Court dealt with alleged discrimination against four applicants (all Christians) in the workplace. Two applicants - Ms Eweida, a British Airways employee, and Ms Chaplin, a geriatric nurse - complained about their employers' refusals to allow them to wear necklaces with Christian crosses at work. The other two applicants - Ms Ladele, a marriage registrar, and Mr McFarlane, a relationship counsellor - complained about sanctions taken against them by their employers³¹ for refusing to perform services which they considered to condone homosexuality, a practice they considered incompatible with their religious beliefs. The applicants complained that domestic law had failed adequately to protect their right to manifest their religion and invoked Article 9 of the Convention taken alone and/or in conjunction with the prohibition on discrimination under Article 14 of the Convention. The Court recalled that a

²⁰ For a thorough analysis the Court's case-law, see *Overview of the Court's case-law on freedom of religion*, Research Division of the Court, updated on 31 October 2013.

²¹ Which operated between July 1954 and October 1998 and ceased to exist on 1 November 1998, when the Court became permanent following the entry into force of Protocol no. 11 to the Convention.

²² *Bayatyan v. Armenia*, application no. 23459/03, judgment of 7 July 2011 (Grand Chamber), para. 110. It is the first case in which the Court applied Article 9 to the case of a conscientious objectors and found a violation of that provision.

²³ See also *Erçep v. Turkey*, application no. 43965/04, judgment of 22 November 2011; *Savda v. Turkey*, application no. 42730/05, judgment of 12 June 2012 or *Papavasilakis v. Greece*, application no. 66899/14, judgment of 15 September 2016. In all these judgments, the Court found a violation of Article 9 of the Convention.

²⁴ Application no. 19516/06, judgment of 21 February 2008.

²⁵ Application no. 24645/94, judgment of 18 February 1999 (Grand Chamber).

²⁶ Application no. 23372/94, judgment of 24 February 1998. However, the Court found a violation of Article 9 of the Convention with regard to the measures taken against two of the applicants for the proselytizing of civilians, as they were not subject to pressure and constraints as the airmen.

²⁷ Application no. 18136/02, judgment of 3 February 2011. The Court found no violation of Article 9 of the Convention, having considered that the labour courts had balanced thoroughly the interests of all parties involved.

²⁸ Application no. 55170/00, judgment of 13 April 2006.

²⁹ Application no. 28790/08, judgment of 3 April 2012.

³⁰ Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10, judgment of 15 January 2013.

³¹ The fourth applicant was dismissed from his job. As a result of the impugned disciplinary proceedings, the third applicant also lost her job.

“manifestation” within the meaning of Article 9 of the Convention must be “intimately linked to the religion or belief”.³² On that basis, it considered that all four applicants had indeed been seeking to manifest their religion, in the sense of Article 9; and that their complaints related to interferences with that right. If an individual complains of a restriction on freedom of religion in the workplace, “rather than holding that the possibility of changing job would negate any interference with the right, the better approach would be to weigh that possibility in the overall balance when considering whether or not the restriction was proportionate”.³³ Therefore, the ECtHR examined whether a fair balance had been struck between the “competing interests of the individual and of the community as a whole”³⁴, bearing in mind the margin of appreciation enjoyed by the State.

19. In the case of first applicant (Ms Eweida), the Court found that the domestic authorities had not sufficiently protected her right to manifest religion (violation of Article 9). The domestic courts had given too much weight to the employer’s wish to project a certain corporate image; furthermore, the employer had previously allowed employees to wear items of religious clothing (e.g. turbans and hijabs), and subsequently found itself able to amend its policy so as to allow visible wearing of religiously symbolic jewelry. As regards the second applicant (Ms Chaplin), the Court did not find a violation of the Convention, considering that the obligation on the applicant to remove her cross was not disproportionate to the legitimate public interest in protecting health and safety on a hospital ward. Concerning the third applicants (Ms Ladele), the Court found that the employer’s requirement pursued the legitimate aim of protecting equal opportunities for those of different sexual orientation and recalled that differences in treatment based on sexual orientation required particularly serious reasons by way of justification. Although the requirement to register same-sex unions had been introduced at a later stage, the local authority’s policy aimed to secure the rights of others which were also protected under the Convention. The State enjoyed a wide margin of appreciation in striking a balance between competing Convention rights and, in the circumstances of the case. The courts’ upholding of the disciplinary measures brought against the applicant fell within this margin of appreciation (no violation of Article 14 taken in conjunction with Article 9). Finally, as regards the fourth applicant (Mr McFarlane), the Court noted that, when he had taken up his job, he knew that he would not be able filter his clients on the basis of their sexual orientation. It again found that the employer’s action was aimed at providing services without discrimination and that it was within the State’s margin of appreciation to uphold a measure pursuing this aim that resulted in the applicant’s dismissal (no violation of Article 9 taken alone or in conjunction with Article 14).

20. More recently, in November 2015, the Court gave its judgment in the case of *Ebrahimian v. France*,³⁵ in which the applicant, a hospital social worker, complained under Article 9 of the Convention about the decision not to renew her employment contract because of her refusal to stop wearing the Muslim veil. The Court found no violation of the said provision, considering that the French authorities had not exceeded their margin of appreciation in giving priority to the requirement of neutrality of the State deriving from the principle of secularism set out in Article 1 of the French Constitution and the principle of the neutrality of public services. The Court also accepted the French health and safety regulations which were putting more emphasis on the rights of others (and in particular patients) than on the right to manifest one’s religious beliefs.³⁶ A similar case, concerning the refusal of a German hospital held by a private company to continue the employment of a Muslim nurse wearing a headscarf is now being examined by the Court.³⁷ Interestingly, in a case against France, the United Nations Human Rights Committee has recently taken a different position on the ban on wearing a headscarf in the workplace.³⁸ It is also worth recalling in this context that, as regards complaints by teachers complaining about prohibition to wear head scarfs, the Court has found such cases manifestly ill-founded, and, consequently, inadmissible.³⁹ In particular in *Dahlab v. Switzerland*, the Court found that “in a democratic society the State was entitled to place restrictions on the wearing of the Islamic headscarf if it was incompatible with the pursued aim of protecting the rights and freedoms of others and public order”.⁴⁰ Unfortunately, in *Barik Edidi v. Spain*,⁴¹ a case concerning the wearing of a *hijab* by a lawyer in a court room, the Court has not ruled on the merits for formal reasons (due to the non-exhaustion of domestic remedies).

³² Ibid, para. 82.

³³ Ibid, para. 83.

³⁴ Ibid, para 84.

³⁵ Application no. 64846/11, judgment of 26 November 2015.

³⁶ Ibid, paras. 63-71.

³⁷ *Türk v. Germany*, application no. 61347/16, communicated on 12 September 2018.

³⁸ CCPR/C/123/D/2662/2015 of 24 September 2018. It concerns the non-prolongation by a private institution of the employment contract of a Muslim childhood educator wearing a headscarf.

³⁹ See, in particular, *Dahlab v. Switzerland*, application no. 42393/98, decision of 15 February 2001 and *Kurtulmus v. Turkey*, application no. 65500/01, decision of 24 January 2006.

⁴⁰ *Dahlab v. Switzerland*, supra note 39. See also *Leyla Şahin v. Turkey*, judgment of 10 November 2005, application no. 44774/98.

⁴¹ Application no. 21780/13, decision of 26 April 2016.

3. The notion of ‘reasonable accommodation’

21. The concept of “reasonable accommodation”⁴² is often invoked in debates concerning handling religious diversity at the workplace. It first emerged in the United States and Canada (Québec) in equality laws as means of handling such diversity. In Europe, it has been applied to tackle discrimination against people with disabilities: European Union Directive 2000/78/EC obliges employers to provide reasonable accommodation for this category of persons. Article 5 of the Directive defines ‘reasonable accommodation’ to mean that “employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.”⁴³ The notion of reasonable accommodation refers to that of “indirect discrimination”, which occurs when an apparently neutral rule causes particular disadvantages to a person, or to a group sharing certain characteristics, as compared to others. “Reasonable accommodation” means that, in certain cases, it will be necessary to adopt appropriate measures to prevent superficially neutral rules from being discriminatory in effect, because their application is detrimental to certain categories of persons.⁴⁴ So far as freedom of religion is concerned, it may be applied to religious prescriptions concerning e.g. annual leave, working hours, the wearing of religious clothing and/or symbols, specific dietary needs, etc. The former United Nations Special Rapporteur on freedom of religion or belief Mr Heiner Bielefeld has already found good practices in this field and has advocated for combining a legal approach to reasonable accommodation with a more pragmatic managerial approach.⁴⁵

22. Although the ECtHR has not referred to the concept of reasonable accommodation as such, it has applied analogous reasoning in certain cases. In *Glor v. Switzerland*, the applicant had been penalized for not performing military service, even though this was due to a physical disability. The Court, referring to the UN Convention on the Rights of Persons with Disabilities (see footnote below), found that the Swiss authorities had failed to provide for special forms of civilian service for persons in the applicant’s situation.⁴⁶ In *Vartic v. Romania* (No. 2), the Court found that the prison authorities’ refusal to provide the applicant with a vegetarian diet, as required by his Buddhist religious beliefs, was in breach of Article 9 of the Convention, as the State had not taken steps to strike a fair balance between the interests of the prison authorities and those of the applicant, namely his right to manifest his Buddhist religious beliefs, or provided reasonable justification for its failure to do so.⁴⁷

23. The issue of reasonable accommodation has been referred to by the Assembly on many occasions. In [Resolution 1846 \(2011\)](#) on “Combating all forms of discrimination based on religion”, the Assembly called on member States to “strive to accommodate the needs of different religions and beliefs in a pluralist society, provided that any such measures do not infringe the rights of others”.⁴⁸ [Resolution 2036 \(2015\)](#), mentioned by the signatories of the motion for a resolution being at the origin of my rapporteurship, focused on the situation of Christians in Europe and called on member States to “promote reasonable accommodation within the principle of indirect discrimination”.⁴⁹ In [Resolution 2076 \(2015\)](#), the Assembly again invited member States to seek “reasonable accommodations”⁵⁰ and to “make sure that religious communities and their members are able, in compliance with the law, to (...) manage welfare institutions (hospitals, workshops for persons with disabilities, homes for elderly people, nursery schools, etc.) and schools and places of education” and that they exercise their right to freedom of expression.⁵¹

⁴² See in particular P. Bosset and M.-C. Foblets, *Accommodating diversity in Quebec and Europe: different legal concepts, similar results?*, in ‘Institutional accommodation and the citizen: legal and political interaction in a pluralist society’, Council of Europe Publishing, series ‘Trends in social cohesion’ no. 21, 2009, pp. 37–65.

⁴³ ‘Reasonable accommodation’ is also defined in Article 2(4) of the UN Convention on the Rights of Persons with Disabilities, as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.

⁴⁴ P. Bosset and M.-C. Foblets, *supra* note 3, p. 37.

⁴⁵ See his Interim report, A/69/261 of 5 August 2014, paras. 52 and 62.

⁴⁶ Application no. 13444/04, judgment of 30 April 2009.

⁴⁷ Application no. 14150/08, judgment of 17 December 2013,

⁴⁸ Paragraph 5.5 of the resolution.

⁴⁹ Paragraph 6.2 of the resolution.

⁵⁰ Paragraph 8 of the resolution.

⁵¹ Paragraph 13.1 and sub-paraphraphs 13.1.2 and 13.1.3 of the resolution.

4. Conclusion and proposals

24. Article 9 of the Convention is considered one of the foundations of a “democratic society”, guaranteeing the right to freedom of thought, conscience and religion. It protects all religious groups, as well as non-believers, equally. The scope of its protection of the right to manifest religion or belief varies according to the circumstances and is subject in particular to competing legitimate interests of a “democratic society”(including the protection of the rights of others). The ECtHR has examined various aspects of the right to manifest freedom of thought, conscience and religion at the workplace, but its case-law remains fragmented and does not cover all conflicting situations that may appear in practice. European law and policy makers are increasingly called upon to tackle problems stemming from an ever-greater religious diversity. While the State has to remain neutral vis-à-vis different religions and beliefs, it should seek to accommodate the needs of those who adhere to various religions (including both “majority” and “minority” religions). Individuals and communities holding religious beliefs should not be marginalized. Introducing a formal mechanism for ensuring “reasonable accommodation” of religious or non-religious beliefs at work, as is already an established obligation with respect to persons with disabilities, provides a framework for avoiding discrimination based on religion or belief in the workplace that is both conceptually clear and relatively easy to apply in practice.

25. The 2018 Equinet (European Network of Equality Bodies)⁵² report on ‘Faith in Equality: Religion and Belief in Europe’ indicates that States still have difficulties with striking a balance between individuals’ or groups’ rights enshrined in Article 9 para. 1 of the Convention and the legitimate interests such as public safety, public order, health or morals or the protection of the rights and freedoms of others. The highest number of cases concerning discrimination based on religion have been reported in the field of employment.⁵³ The Court’s analysis in the *Eweida and Others v. the UK* judgment⁵⁴ showed that a majority of the Council of Europe member States did not regulate the wearing of religious clothing or symbols in the workplace, including for civil servants, and that only five States (out of twenty-six studied) prohibited completely the wearing of religious symbols or clothing by civil servants (France, Germany, some cantons of Switzerland, Turkey and Ukraine). I have gathered additional information on the measures taken to ensure “reasonable accommodation” in Council of Europe member States in particular thanks to a questionnaire sent to the EPCRD. Therefore, I will refer to those issues in more detail and will present my conclusions in my draft report, which should be ready for the forthcoming committee meeting.

⁵² It brings together 46 organisations from 34 States (all members of the Council of Europe).

⁵³ P. 7 of the report, available at: <http://www.equineteurope.org/Faith-in-Equality-Religion-and-Belief-in-Europe>

⁵⁴ Supra note 28, para. 47. It concerned twenty-six member States of the Council of Europe.