



Provisional version

Committee on Legal Affairs and Human Rights

The protection of freedom of religion or belief in the workplace

Report *

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A. Draft resolution

1. The Parliamentary Assembly recalls that Europe is home to a wide range of religious beliefs and that it promotes the culture of “living together” based on religious pluralism. On many occasions, it has condemned acts of intolerance and discrimination on grounds of religion or belief and has called on Council of Europe member States to take stronger measures to combat such acts.
2. The Assembly recalls its [Resolutions 2036 \(2015\)](#) on tackling intolerance and discrimination in Europe with a special focus on Christians, [2076 \(2015\)](#) on freedom of religion and living together in a democratic society, [1928 \(2013\)](#) on safeguarding human rights in relation to religion and belief, and protecting religious communities from violence and its [Resolution 1846 \(2011\)](#) and [Recommendation 1987 \(2011\)](#) on combating all forms of discrimination based on religion.
3. The Assembly recalls that the freedom of thought, conscience and religion is a universal human right enshrined in Article 18 of the Universal Declaration of Human Rights, Article 18 of the International Covenant on Civil and Political Rights and Article 9 of the European Convention on Human Rights¹ (the Convention). Moreover, discrimination on grounds of religion or belief is prohibited under Article 26 of the International Covenant on Civil and Political Rights, Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention.
4. The freedom of thought, conscience and religion has both an internal and an external aspect. The internal aspect, the right to hold or not to hold a belief and to change religion, as a matter of conscience is an absolute right and cannot be subject to limitations. The external aspect - the freedom to manifest one's religion or beliefs “either alone or in community with others and in public or private” - is not absolute. Any restrictions on it must, however, be “prescribed by law” and “necessary in a democratic society” and must pursue a legitimate aim. This implies, amongst other things, that any interference with manifestation of religion or belief must be proportionate to the legitimate aim being pursued.
5. The Assembly recalls that freedom to manifest one's religion or belief applies also in the workplace and that the European Court of Human Rights has developed an extensive case law on this issue. It also stresses that religion is an essential aspect of one's identity and that religious identity encompasses religious practice as well as belief. Given the fact that many people spend a large share of their daily lives at work, the question of accommodating the manifestation of employees' religion or belief is thus of crucial importance.
6. The Assembly also notes that the presence of members of different religious or non-religious groups may cause challenges in the workplace that some employers may try to resolve with imposing prima facie neutral rules. However, the application of prima facie neutral rules in the workplace – such as those on dress codes, dietary rules, public holidays or labour regulations - can lead to indirect discrimination of representatives of certain religious groups, even if they are not targeted specifically.

* Draft resolution and draft recommendation adopted unanimously by the committee on 10 December 2019.

¹ ETS, No 5.

7. The Assembly concludes that in certain circumstances, “reasonable accommodation” by employers of their employees’ religious practices may be a practical approach towards ensuring the proportionality of any interference with manifestation of religion or belief, thereby avoiding discrimination and violations of employees’ rights in these respects. It is also a step towards ensuring substantive equality of adherents of different religions or beliefs. Whilst a formal mechanism for reasonable accommodation of religion or belief has been explicitly incorporated into the legislation of Canada and the United States of America, so far it has not been the case in any European jurisdiction.

8. The Assembly, therefore, calls on Council of Europe member States to:

8.1. promote a culture of tolerance and “living together” in a religiously pluralist society, in accordance with Articles 9 and 14 of the Convention and other international legal instruments on human rights protection;

8.2. ensure that the right of all individuals under their jurisdiction to freedom of thought, conscience and religion is respected;

8.3. to take all necessary measures to combat discrimination based on religion or beliefs in all fields of civil, economic, political and cultural life.

9. Given the importance of the right to manifest one’s religion or belief in the workplace, the Assembly calls on Council of Europe member States to:

9.1. adopt effective anti-discrimination legislation which covers prohibition of discrimination on grounds of religion or belief and establish appropriate monitoring mechanisms to assess its implementation, in case this has not been done yet;

9.2. consider taking legislative or any other appropriate measures, in order to ensure that employees may lodge requests for reasonable accommodation of their religion or belief;

9.3. establish appropriate adjudication or mediation mechanisms in cases of disputes related to the employer’s refusal to accommodate an employee’s request based on his/her religion or belief;

9.4. provide training and advice to public and private employers in order to sensitise them to the notions of religion and religious diversity, the specific needs of employees belonging to religious groups and how to accommodate the specific needs of such employees;

9.5. encourage dialogue between employers, religious communities, trade unions and non-governmental organisations (NGOs) working for the protection of human rights in order to foster co-operation and tolerance;

9.6. promote the work of national human rights institutions (NHRI) on combating discrimination, including indirect discrimination based on religion or belief, and encourage them to develop training activities for both public and private employers.

B. Draft recommendation:

1. Referring to its Resolution (2020) on the protection of freedom of religion at the workplace, the Parliamentary Assembly recommends that the Committee of Ministers:

1.1. identify and disseminate examples of good practice in respect of religious diversity and ensuring reasonable accommodation of religion or belief in the workplace;

1.2. reflect on the ways in which reasonable accommodation in the workplace can be best introduced in order to ensure everyone's freedom of religion or belief;

1.3. call on those member States which have not yet done so to sign and ratify Protocol No. 12 to the European Convention on Human Rights;

1.4. strengthen cooperation with the European Union, the Organisation for Security and Cooperation in Europe (OSCE) and the United Nations, with a view to promoting coherent interpretations of the freedom of thought, conscience and religion and the implementation of common policies in the field of combating discrimination based on religion or belief in the workplace.

C. Explanatory memorandum by Mr Davor Ivo Stier, rapporteur

1. Introduction

1.1. Procedure

1. The motion for a resolution entitled “The protection of freedom of religion or belief in the workplace”² was forwarded to the Committee on Legal Affairs and Human Rights on 12 October 2018 for report.³ 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 my information note of 6 November 2019; both documents were declassified by the Committee at its meeting in Berlin on 15 November 2019 (AS/Jur (2019)43 and AS/Jur (2019)43 Appendix declassified of 22 November 2019).

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”.⁴ 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.”⁵ 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.

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

² [Doc. 14544](#) of 26 April 2018.

³ Reference 4408.

⁴ Adopted on 29 January 2015. Report of the Committee on Equality and Non-Discrimination, rapporteur: Mr Valeriu Ghiletschi, [Doc. 13660](#) of 7 January 2015.

⁵ Paragraph 6.2 and subparagraph 6.2.1 of the resolution.

in a number of resolutions and recommendations.⁶ 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”⁷, which subsequently led to the adoption of [Resolution 1846 \(2011\)](#) and [Recommendation 1987 \(2011\)](#) by the Assembly’s Standing Committee on 25 November 2011. In September 2015, the committee considered again issues related to freedom of religion when adopting its opinion on the report of the Committee on Culture, Science, Education and Media on “Freedom of religion and living together in a democratic society”.⁸ 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 \(2015\)](#). In my report I will focus only on issues related to freedom of religion or belief in the workplace and will not take into account the discrimination on grounds of religion or belief in the provision of services, although these issues are closely interrelated.

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 1966.⁹ 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 \(the Charter\)](#). Article 10 para. 2 of the Charter also recognises the right to conscientious objection “in accordance with the national laws governing the exercise of this right”.

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 para. 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”.¹⁰ 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

⁶ 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*.

⁷ [Doc. 12788](#) of 10 November 2011, see also [Resolution 1846 \(2011\)](#) and Recommendation 1987(2011).

⁸ [Doc. 13886](#) of 29 September 2015, rapporteur for opinion: Sir Edward Leigh, and [Doc. 13851](#) of 6 July 2015, rapporteur: Mr Rafael Huseynov.

⁹ In 1993, the Human Rights Committee adopted General Comment no. 22 on the scope of this provision, CCPR/C/21/rev.1/Add.4. As reiterated in its paragraph 4, “the freedom to manifest religion or belief may be exercised ‘either individually or in community with others and in public or private’. The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. (...)”. As underlined by Professor Ghanea at the hearing of 1 October 2019, the difference between observance and practice of religion is not always clear and the term ‘in public’ has not been defined.

¹⁰ *S.A.S. v. France*, application no. 43835/11, judgment of 1 July 2014, Grand Chamber, para. 129.

(see the *Otto-Preminger-Institut v. Austria*¹¹ 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*,¹² 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 belief](#)¹³, 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). Moreover, "States shall take effective measures to prevent and eliminate discrimination on grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life" (Article 4 para. 1) and they "shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on grounds of religion or belief in this matter" (Article 4 para. 2).

13. Discrimination on the ground of religion or belief is also prohibited under Article 14 of the Convention¹⁴ and Article 1 of Protocol No 12 to the Convention.¹⁵ 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 proportionality¹⁶. 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.¹⁷

14. Within the European Union's legal framework, the [Employment Equality Directive 2000/78](#) addresses various forms of discrimination in employment, including on grounds of religion or belief.¹⁸ It establishes general rules concerning putting into effect equal treatment in employment and occupation, prohibiting both direct and indirect discrimination on grounds of, *inter alia*, religion or belief (Recital 12, Articles 1 and 2). As defined in the Directive, *direct discrimination* is considered to occur "where one person is treated less favourably than another is, has been or would be treated in a comparable situation" and *indirect discrimination* - "where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief (...) at a particular disadvantage compared with other persons (...)" (Article 2 paras 1 and 2). The Directive also admits the possibility of lawful differentiation based on a "proportionate, "genuine and determining occupational requirement", provided that the objective is legitimate (Article 4 para. 1). Therefore,

¹¹ *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, Application no. 13470/87, paragraphs 55-56.

¹² Application no. 30814/06, Grand Chamber judgment of 18 March 2011.

¹³ Proclaimed by the United Nations General Assembly resolution 36/55 of 25 November 1981.

¹⁴ 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.

¹⁵ 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 20 Council of Europe member States (as of 2 December 2019).

¹⁶ *Savez crkava "Riječ života" and others v. Croatia*, application no. 7798/08, judgment of 9 December 2010, paragraphs 85-89.

¹⁷ *Thlimmenos v. Greece*, application 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.

¹⁸ 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.

it allows a difference of treatment based on a person's religion or belief by churches and other organisations whose ethos is based on religion or belief; such institutions may require individuals working for them to act in good faith and with loyalty to their ethos (Article 4 para. 2).

2.3. Relevant case-law of the European Court of Human Rights

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", wearing of religious symbols or clothing, children's education and parents' religious convictions, proselytism or recognition, organisation and leadership of religious communities.¹⁹ 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 Rights²⁰ consistently refused to apply Article 9 of the Convention to conscientious objectors to military service. The Commission found that the Convention allowed States to choose whether or not to recognise conscientious objection to military service, since Article 4 para. 3 b) of the Convention refers to "conscientious objectors in countries where they are recognised". Since 2011, the Court has developed a new line of jurisprudence. Since the *Bayatyan v. Armenia* judgment, 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". The Court examines complaints concerning conscientious objectors in the light of the particular circumstances of the case and has found violations of Article 9 of the Convention in a number of cases concerning criminal convictions for refusals to perform military service by Jehova's witnesses, non-religious pacifists and people referring only to 'moral values'.²¹

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* - 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* - violation of Article 9) or proselytising to air force service personnel (*Larissis and Others v. Greece* - no violation of Article 9, as the State was entitled to protect lower-ranking airmen from "improper pressure"). It also considered the issue of religious holidays. For example, in the case of *Kosteski v. "The former Yugoslav Republic of Macedonia"*, 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*, 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).²²

18. As regards disputes between religious organisations and their employees, the Court has examined many of such cases under Article 8 of the Convention guaranteeing the right to respect for private and family life and has accepted that an employer whose ethos is based on religion or on a philosophical belief may impose specific duties of loyalty on its employees. According to the Court, "a decision to dismiss based on a breach of such duty cannot be subjected, (...), only to a limited judicial scrutiny exercised by the relevant domestic employment tribunal without having regard to the nature of the post in question and without properly

¹⁹ 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.

²⁰ 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.

²¹ *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. 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 *Papavasiliakis v. Greece*, application no. 66899/14, judgment of 15 September 2016 and *Mushfiq Mammadov and Others v. Azerbaijan*, applications nos. 14604/08, 45823/11, 76127/13, 41792/15, judgment of 17 October 2019 (not final yet).

²² *Alexandridis v. Greece*, application no. 19516/06, judgment of 21 February 2008; *Buscarini and Others v. San Marino*, application no. 24645/94, judgment of 18 February 1999 (Grand Chamber); *Larissis and Others v. Greece*, application no. 23372/94, judgment of 24 February 1998; *Kosteski v. "The former Yugoslav Republic of Macedonia"*, application no. 55170/00, judgment of 13 April 2006 and *Francesco Sessa v. Italy*, application no. 28790/08, judgment of 3 April 2012. However, in the *Larissis and Others v. Greece*, 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.

balancing the interests involved in accordance with the principle of proportionality.”²³ Referring to these principles, in *Siebenhaar v. Germany*²⁴, the Court examined under Article 9 of the Convention the dismissal of a childcare assistant employed by a Protestant parish but belonging to another religious community whose teachings were found incompatible with the Protestant Church doctrine. It did not find a violation of Article 9 of the Convention, having considered that the labour courts had balanced thoroughly the interests of all parties involved.

19. The judgment *Eweida and Others v. the United Kingdom* 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 employers for refusing to perform services which they considered to condone homosexuality, a practice they considered incompatible with their religious beliefs (the fourth applicant was dismissed from his job and, as a result of the impugned disciplinary proceedings, the third applicant also lost her job). 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 “manifestation” within the meaning of Article 9 of the Convention must be “intimately linked to the religion or belief”. 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”. 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”, bearing in mind the margin of appreciation enjoyed by the State.²⁵

20. 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).

21. In November 2015, the Court gave its judgment in the case of *Ebrahimian v. France*, 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.

²³ *Schüth v. Germany*, Application no. 1620/03, judgment of 23 September 2010, para. 69; *Obst v. Germany*, Application no. 425/03, judgment of 23 September 2010, para. 43 and *Fernández Martínez v. Spain*, Application No. 56030/07, judgment of 12 June 2014 (Grand Chamber), para. 22. In *Schüth v. Germany* the Court found a violation of Article 8 of the Convention.

²⁴ Application no. 18136/02, judgment of 3 February 2011.

²⁵ Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10, judgment of 15 January 2013, paras. 82, 83 and 84.

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.²⁶ 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.²⁷ Interestingly, in a case against France (the so-called case of *Baby loup crèche*), the United Nations Human Rights Committee has recently taken a different position on the ban on wearing a headscarf in the workplace.²⁸ 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. 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".²⁹ Unfortunately, in *Barik Edidi v. Spain*,³⁰ 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).

2.4. Relevant case law of the Court of Justice of the European Union

22. Recently, the Court of Justice of the European Union ("the CJEU") delivered several judgments concerning discrimination on grounds of religion or belief following national jurisdictions' references for a preliminary ruling concerning interpretation of Directive 2000/78. Firstly, it examined the issue of wearing an Islamic headscarf at work in the cases of *Samira Achbita & Centrum v. G4S*³¹ and *Asma Bougnaoui & ADDH v. Micropole SA*.³²

23. In the first case, Ms Achbita, a Muslim, who had worked as a receptionist, was dismissed by the defendant company, G4S, after she had decided to wear an Islamic headscarf, which was in contrast with the company's policy of neutrality. The Belgian Court of Cassation referred to the CJEU the question of whether the ban on wearing a Muslim headscarf, imposed by a company which prohibited all employees from wearing outward signs of religious beliefs at work, constituted direct discrimination in light of Article 2 para. 2a) of Directive 2000/78. The CJEU concluded that the ban imposed on the applicant did not constitute direct discrimination, since the company's internal rules were applied in an undifferentiated way to all employees who came into contact with its customers. An employer's wish to project an image of neutrality towards customers falls within the scope of the freedom to conduct a business under Article 16 of the Charter and is, in principle, legitimate. According to the Court of Justice, in this case, the prohibition of wearing religious signs was strictly necessary. The national court could still consider whether GS4 might have offered Ms Achbita a post not involving any visual contact with customers, instead of dismissing her.

24. A second CJEU case, *Asma Bougnaoui & ADDH v. Micropole SA*, arrived at a different outcome. Ms Bougnaoui, a design engineer, had been dismissed from her employment because she wore an Islamic headscarf while in contact with customers of the company. The French Court of Cassation asked the CJEU whether Article 4 para. 1 of Directive 2000/78 could be interpreted as meaning that the wish of a customer of an information technology consulting company no longer to have that employer's services provided by an employee wearing an Islamic headscarf constituted a "genuine and determining occupational requirement", and thus an exception to the prohibition of discrimination. The Court of Justice underlined that only in very limited circumstances may a characteristic such as religion or belief constitute a genuine and determining occupational requirement. Therefore, the willingness of an employer to take into account the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf could not be considered a genuine and determining occupational requirement in the meaning of Article 4 para. 1 of Directive 2000/78.

25. Interestingly, the approaches of the Advocates General in the two cases differed considerably. In her opinion on the *Ashbita* case, Advocate General Kokott made a distinction between certain grounds for

²⁶ Application no. 64846/11, judgment of 26 November 2015, paras. 63-71.

²⁷ *Türk v. Germany*, application no. 61347/16, communicated on 12 September 2018.

²⁸ CCPR/C/123/D/2662/2015 of 24 September 2018. It concerns the non-prolongation by a private institution, which required employees to respect the principle of secularism, of the employment contract of a Muslim childhood educator wearing a headscarf.

²⁹ *Dahlab v. Switzerland*, application no. 42393/98, decision of 15 February 2001. See also *Kurtulmus v. Turkey*, application no. 65500/01, decision of 24 January 2006 (inadmissible) and *Leyla Şahin v. Turkey*, judgment of 10 November 2005, application no. 44774/98.

³⁰ Application no. 21780/13, decision of 26 April 2016.

³¹ CJEU, C-157/15, *Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, judgment of 14 March 2017.

³² CJEU, C-188/15, *Asma Bougnaoui, Association de défense des droits de l'homme (ADDH) v. Micropole SA, formerly Micropole Univers SA*, judgment of 14 March 2017.

discrimination such as gender, age and sexual orientation, related to ‘individuals immutable physical features or personal characteristics’ and ‘modes of conduct based on a subjective decision or conviction, such as the wearing or not of a head covering’.³³ On the other hand, in her opinion on the *Bougnaoui and ADDH* case, Advocate General Sharpston gave greater weight to the consideration of religious identity. She stressed in particular that: “(...) to someone who is an observant member of a faith, religious identity is an integral part of that person’s very being. The requirements of one’s faith – its discipline and the rules that it lays down for conducting one’s life – are not elements that are to be applied when outside work (say, in the evenings and during weekends for those who are in an office job) but that can politely be discarded during working hours. Of course, depending on the particular rules of the religion in question and the particular individual’s level of observance, this or that element may be non-compulsory for that individual and therefore negotiable. But it would be entirely wrong to suppose that, whereas one’s sex and skin colour accompany one everywhere, somehow one’s religion does not.”³⁴

26. In the *Vera Egenberger v. Evangelisches Werk für Diakonie und Entwicklung* judgment³⁵, the CJEU has considered an unsuccessful application for a job advertisement posted by German association which pursued charitable and religious purposes. The requirements for the candidates included inter alia the membership of a Protestant church or a church belonging to the Working Group of Christian Churches and identification with the diaconal mission. The applicant, Ms Egenberger, was of no denomination, and was not invited to an interview. The German Federal Court asked the CJEU, inter alia, whether Article 4 para. 2 of Directive 2000/78 could be interpreted as meaning that an employer, such as the defendant in this case, might itself authoritatively determine whether a particular religion of an applicant, by reason of the nature of the activities or of the context in which they were carried out, constituted a *genuine, legitimate and justified occupational requirement*, having regard to the employer’s ethos. The CJEU replied positively to this question and stressed that, if need be, it must be possible for such an assertion to be subject of effective judicial review.

27. Moreover, in the *Cresco Investigation GmbH v. Markus Achatzi* case³⁶, the CJEU has considered the issue of additional pay for work on Good Friday for an applicant not belonging to any of the churches concerned by an agreement according to which Good Friday is a paid public holiday. Employees who were members of the said churches and who were working on Good Fridays were entitled to special ‘public holiday pay’. Mr Achatzi, an employee of Cresco, was a member of none of those churches. Having worked on Good Fridays, he claimed to be discriminated against by the denial of the public holiday pay. Following a preliminary reference of the Austrian Supreme Court, the CJEU replied that, in light of Articles 1 and 2 of Directive 2000/78, the national legislation allowing such a differentiation constituted direct discrimination on grounds of religion.

3. The notion of ‘reasonable accommodation’

3.1. The scope of the notion

28. The concept of “reasonable accommodation”³⁷ 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. Article 2 of the [UN Convention on the Rights of Persons with Disabilities](#) of 2006 defines it 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”. Moreover, on the basis of Article 5, para. 3, “in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided”. In Europe, this concept 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.” The notion of reasonable accommodation refers to that of “indirect discrimination”, which occurs when an apparently neutral rule causes particular disadvantages

³³ Opinion of Advocate General Kokott, C-157/15, 31 May 2016, para. 45.

³⁴ Opinion of Advocate General Sharpston, C-188/15, 13 July 2016, para. 118.

³⁵ See CJEU, C-414/16, *Vera Egenberger v. Evangelisches Werk für Diakonie und Entwicklung eV*, judgement of 17 April 2018.

³⁶ See CJEU, C-193/17, *Cresco Investigation GmbH v. Markus Achatzi*, judgement of 22 January 2019.

³⁷ 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.

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.³⁸ 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.

29. The former United Nations Special Rapporteur on freedom of religion or belief Mr Heiner Bielefeld has already found good practices in this field. Although he noted that legislators and courts had been reluctant to apply this principle as a legal entitlement and that employers were encouraged to use it as a managerial tool outside the realm of law, he hoped that the UN Convention on the Rights of Persons with Disabilities could serve as ‘a general door opener in this regard’ and advocated for combining a legal approach to reasonable accommodation with a more pragmatic managerial approach.³⁹ In his opinion, reasonable accommodation should be understood as a part of the legal responsibility of States. Its denial could amount to discrimination if taking accommodating measures did not amount to a disproportionate or undue burden, depending on the circumstances of the case. Individuals should be able to resort to legal remedies in order to challenge any denial of reasonable accommodation. The call for adopting practical measures to ensure reasonable accommodation has also been reiterated by the current UN Special Rapporteur on freedom of religion or belief, Mr Ahmed Shaheed, who has stressed that “there is a need for greater sensitivity to more obscure forms of discrimination, such as the prima facie ‘neutral’ rules prescribing certain dress codes in public institutions” or similar problems arising with regard to dietary rules, fasting, public holidays, labour regulations, public health norms or other issues.⁴⁰

30. 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, found that the Swiss authorities had failed to provide for special forms of civilian service for persons in the applicant’s situation. 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.⁴¹

31. 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”.⁴² [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”.⁴³ In [Resolution 2076 \(2015\)](#), the Assembly again invited member States to seek “reasonable accommodations” 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.⁴⁴

3.2. *The pros and cons of reasonable accommodation*

32. The pros and cons of reasonable accommodation have already been analysed by the UN former Special Rapporteur on freedom of religion or belief Mr Bielefeld.⁴⁵ He focused on six typical objections: that reasonable accommodation *a) would privilege minorities at the expense of equality; b) would endanger neutrality; c) would open the floodgates to trivial demands; d) would dilute corporate identity; e) would create a risk of conflicts in the workplace and f) would entail undue economic and managerial burdens for employers.*

33. Objections have been raised to several of the arguments, in particular:

³⁸ Ibid, p. 37.

³⁹ See his Interim report, UN General Assembly, A/69/261 of 5 August 2014, paras. 52, 60 and 62.

⁴⁰ See his report UN General Assembly A/HRC/34/50 of 17 January 2017, para. 46.

⁴¹ *Glor v. Switzerland*, application no. 13444/04, judgment of 30 April 2009, and *Vartic v. Romania (No. 2)*, application no. 14150/08, judgment of 17 December 2013.

⁴² Paragraph 5.5 of the resolution.

⁴³ Paragraph 6.2 of the resolution.

⁴⁴ Paragraphs 8 and 13.1 and sub-paragraphs 13.1.2 and 13.1.3 of the resolution.

⁴⁵ A/69/261, see below, paras. 53-59.

ad a) reasonable accommodation encourages implementation of substantive equality, which is always diversity-friendly and complex; it thus contributes to a more diverse society to the benefit of all;

ad b) although a policy of neutrality is of particular importance for the public service and other State institutions (such as the police or the judiciary), the term 'neutrality' can have very different meanings and can sometimes imply a policy of non-commitment towards, and non-recognition of religion or belief and can lead to restrictive measures in this area, both within public and private institutions. Nevertheless, neutrality can also entail a policy of fair inclusion of people of diverse religious or belief orientation, and from this perspective reasonable accommodation can become a positive factor of 'neutrality';

ad c) reasonable accommodation does not mean that all kinds of personal tastes or preferences should be accommodated, but it should rather help "to avoid situations in which an employee would otherwise be faced with discriminatory treatment and a serious, existential dilemma";

ad d) the interest of maintaining corporate identity is usually reconcilable with accommodating religious diversity, which requires "a degree of flexibility from both employers and employees, as well as tolerance from third parties and the society at large";

ad e) the mere possibility of conflicts between staff members is often taken as a pretext to reject any accommodating measure, while reasonable accommodation "presupposes a more demanding concept of complex equality";

ad f) it results from the definition of reasonable accommodation included in the UN Convention of the Rights of Persons with Disabilities that too far-reaching requests should be rejected, if they cause disproportionate economic or other costs for the employer (which underlines the potential of this approach to help ensure proportionality between any interference and the pursuit of a legitimate aim). Moreover, experience shows that accommodating measures are nearly or totally cost-free. In the long run, they can also enhance the reputation of an institution or company and reinforce the sense of loyalty of the staff.

34. The question of whether a duty of reasonable accommodation should be included in the law has been discussed at length by many commentators.⁴⁶ Especially in the United Kingdom, the supporters of this idea believe that it would be easier to bring claims of discrimination, as the individual concerned will not have to show the 'group disadvantage' required under the legislation on indirect discrimination. The creation of such a duty would also create clarity for employees with a religion or a belief and they would feel more comfortable and less confrontational in making their requests. However, the creation of a 'right to request accommodation' would privilege religion over other protected characteristics. Moreover, it might lead to a risk of conflicting standards as between the right as it applies to religion, and the right to request flexible working for other workers. Although the duty of reasonable accommodation is included in the legislation of Canada and the United States of America, the practice in the two countries differs considerably because of differences in assessing the reasonable character of the accommodation, and in particular of the "undue hardship" to the employer. The standard of the review is lower in the USA: the duty does not apply if the employer will be caused even a minimal hardship by accommodating the employee's religion.⁴⁷

35. At the hearing that took place before the Committee on 1 October 2019, all the invited experts were in favour of introducing a duty of reasonable accommodation for employers. As stressed by Professor Alidadi such a mechanism could ensure a more substantive form of equality and protect minorities. He felt that the opposition to this idea was of political and legal nature. From the political perspective, legislators were not friendly to religion. From the legal one, there was a clash between the progressive and the conservative, as the latter feared that such a mechanism would also be later claimed by LGBTI persons. However, according to Ms Alidadi, there was no conflict between reasonable accommodation for religious minorities and the rights of LGBTI persons. Professor Martinez-Torron stressed that employers had to accommodate their employees' requests because religion was a part of a person's identity. Professor Ghanea underlined that without reasonable accommodation religious minorities might be discriminated.

4. States' practice

⁴⁶ See, for example, K. Alidadi, 'Reasonable accommodations for religion and belief: Adding value to Art.9 ECHR and the European Union's anti-discrimination approach to employment?' *European Law Review* (2012), 37, 6: 693-715, or E. Howard, 'Reasonable accommodation of religion and other discrimination grounds in EU law', *European Law Review* (2013), 38, 3: 360-75.

⁴⁷ The UK Equality and Human Rights Commission, [Research report 97: Review of equality and human rights law relating to religion or belief](#) by P. Edge and L. Vickers, 2015, pp. 50-56.

36. The Court's analysis in the *Eweida and Others v. the UK* judgment⁴⁸ 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). Equinet (European Network of Equality Bodies), which brings together 46 organisations from 34 States, all of which are Council of Europe member States, has collected some data in this respect. Its 2018 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, especially in the area of recruitment and selection, wearing of headgear and religious symbols, religious harassment in the workplace, justified occupational requirement, opting out of certain tasks, work patterns and conflicts of rights.⁴⁹

37. 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. Twenty-seven member States of the Council of Europe - Albania, Belgium, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Montenegro, Norway, Poland, Portugal, Romania, Serbia, the Slovak Republic, Spain, Sweden, Switzerland, Turkey and the United Kingdom - have answered to my questions. Two observer States (to the Assembly) - Canada and Israel - have also replied to my questionnaire. For various reasons, Slovenia has decided not to do so. Since a detailed summary of those answers has been declassified by the Committee (see AS/Jur(2019)43 Appendix declassified), I will only briefly present my conclusions here.

38. Most Council of Europe member States have replied negatively to the question concerning the existence of a formal mechanism for the reasonable accommodation of religion or belief in the workplace. Many States have indicated that 'accommodation' is ensured in practice, although this term is not explicitly mentioned in the law. That is, in particular, due to the fact that a refusal to accommodate may lead to discrimination in some cases. The United Kingdom even referred to a report of the *Equality and Human Rights Commission* (EHRC)⁵⁰ stating that a duty of reasonable accommodation would not lead to substantial additional protection and the existing law enabled employers to make an accommodation and address employee's request sufficiently. The examples of accommodating measures referred mainly to the issues of wearing of religious clothing and/or symbols, religious holidays, providing special food and praying time in the office. Some States (Belgium, France and Switzerland) made a clear distinction between public and private institutions as regards the requirements related to the wearing of religious clothing and/or symbols (with these requirements being stricter in the former institutions). Interestingly, Turkey has recently lifted the ban on wearing such clothes and/or symbols by public officials. In the lack of a formal mechanism for reasonable accommodation, many States have given examples of different complaint mechanisms, often referring to the existing legislation on non-discrimination and/or equal treatment. Some of the replies stressed that it was primarily up to each employer to decide how requests for accommodation should be addressed. Thirteen Council of Europe member States have provided information on cases where questions of reasonable accommodation have been raised before courts (Belgium, Croatia, France, Germany, Hungary, Latvia, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United Kingdom).

39. Canada has provided useful information about the functioning of its reasonable accommodation mechanism. Under the [Canadian Human Rights Act](#), the [Canadian Charter of Rights and Freedoms](#) and under special provincial and territorial human rights legislation - all employers have a duty to ensure reasonable accommodation. The employer's duty to accommodate exists with respect to any ground of discrimination (e.g. religion, sex or disability) and has its limits where accommodation is not possible because it would cause "undue hardship" (fr. *contrainte excessive*) to the employer. For the last thirty years, courts and human rights bodies have examined numerous cases concerning discrimination on grounds of religion and requests for reasonable accommodation in the workplace (see, for example, the case of *Ontario Human Rights Commission v. Simpsons-Sears*⁵¹).

⁴⁸ *Eweida and Others v. the United Kingdom*, *op. cit.*, para. 47. It concerned twenty-six member States of the Council of Europe.

⁴⁹ P. 7 and pp. 30-52 of the report.

⁵⁰ [Equality and Human Rights Commission Report](#), December 2016.

⁵¹ 1985, 2 S.C.R. 536.

5. Conclusion

40. 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. In addition to this, within the European Union, some issues concerning freedom of religion or belief in the workplace have been recently examined by the CJEU under the provisions of Directive 2000/78, which prohibits direct and indirect discrimination in employment. As regards the wearing of the Islamic headscarf at work, the CJEU seems to have adopted an even more cautious approach than the ECtHR and to allow more space for employers to ban the wearing of religious clothing and/or symbols.

41. In contrast with Canada and the United States of America, there is no formal right to reasonable accommodation in any European country. However, depending on the circumstances of the case, Council of Europe member States try to take accommodating measures by using various legal mechanisms, and in particular those based on anti-discrimination or equality laws. In member States of the European Union, such laws implement Directive 2000/78. Therefore, the legal framework in Europe is very complex. Moreover, the need to accommodate employees’ religion differs from country to country, depending on the scope of the presence of certain religious communities (especially that of Muslims). As the replies to my questionnaire show, some countries are much more concerned than others as regards ensuring ‘neutrality’ at the workplace. While over a dozen countries have provided me information about court cases concerning problems in ensuring respect for freedom of religion or belief at work, many countries have not reported such cases at all.

42. 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. However, there are pros and cons as regards introducing a legal obligation of reasonable accommodation, which must be cautiously assessed. States should consider introducing a legal duty to accommodate taking into account existing legal mechanisms, the efficiency of the non-discrimination or equality legislation and employees’ religious needs. Employees should at least have a possibility to request measures that would accommodate their religion or belief and should be given a possibility to contest the denial of such measures before an adjudicating or mediating body. This is of paramount importance as in some situations, the lack of such a mechanism can lead to concealed discrimination of certain religious groups and to violations of their human rights.