



## Joint Factsheet

# Freedom of religion in the workplace ECtHR and CJEU Case-Law

(Last updated: 28/02/2026)

This factsheet has been prepared by the Registry of the European Court of Human Rights (“ECtHR”)<sup>1</sup> and the European Union Agency for Fundamental Rights as part of a collaborative effort to highlight jurisprudence in selected areas where European Union (“EU”) law and that of the European Convention on Human Rights (“ECHR” or “the Convention”) interact.

## I. Introduction

Freedom of thought, conscience and religion, as enshrined in Article 9 of the ECHR, is one of the foundations of a “democratic society” within the meaning of the ECHR. This freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it<sup>2</sup>. The right to freedom of conscience and religion, enshrined in Article 10(1) of the Charter of Fundamental Rights of the European Union (“the Charter”) corresponds to the right guaranteed in Article 9 of the ECHR and, under Article 52(3) of the Charter and has the same meaning and scope<sup>3</sup>, including the freedom to believe, to change or not belong to a religion, to manifest one’s beliefs, and to associate for religious purposes.

The ECtHR and the CJEU have been called on to rule on several cases concerning freedom of religion in the workplace. Some of these cases concerned dismissals<sup>4</sup>, transfers<sup>5</sup> and exclusions from specific professional activities<sup>6</sup> which were allegedly or openly based on the employees’ religious beliefs or belonging to a religious movement<sup>7</sup>. Other cases concerned requests for special arrangements concerning working time<sup>8</sup> and the wearing of religious symbols at work<sup>9</sup>. In their extensive case law on these matters, the ECtHR and the CJEU have balanced the rights of employees with the rights of

---

<sup>1</sup> The content of this factsheet is not binding on the Court.

<sup>2</sup> ECtHR, *Advisory opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to or belonging to a religious movement*, request no. P16-2023-001, the *Conseil d’État* of Belgium, § 66, 14 December 2023, and the cases cited therein.

<sup>3</sup> CJEU (Grand Chamber), judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, § 48.

<sup>4</sup> ECtHR, *Ivanova v. Bulgaria*, no. 52435/99, 12 April 2007; ECtHR, *Sert v. Turkey* (dec.), no. 47491/99, 8 July 2004; ECtHR, *Pitkevich v. Russia* (dec.), no. 47936/99, 8 February 2001.

<sup>5</sup> ECtHR, *Sodan v. Turkey*, no. 18650/05, 2 February 2016.

<sup>6</sup> ECtHR, *Advisory opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to or belonging to a religious movement*, cited above.

<sup>7</sup> See below in section IV.A.

<sup>8</sup> See below in section IV.B.

<sup>9</sup> See below in section IV.C.

others<sup>10</sup> and principles such as state religious neutrality<sup>11</sup>. They have recognised the right of an employer to control the appearance of employees to a certain extent, particularly with respect to customer-facing duties<sup>12</sup>, and limited the possibility to invoke religion as a basis to obtain special time arrangements for professional activities<sup>13</sup>.

The ECtHR and the CJEU have also adjudicated cases where religious employees and employers claimed a right to treat differently certain individuals or groups in the name of religious freedom. In some of these cases, employees have invoked freedom of religion to justify their refusal to perform duties protecting the rights of others<sup>14</sup>. In others, religious entities have claimed a right to autonomy when operating organisations with significant secular functions, such as schools and hospitals, under which they should be allowed to treat differently employees on grounds such as religious beliefs or marital status<sup>15</sup>.

## II. Freedom of religion in the workplace in the case-law of the ECtHR

The ECtHR has analysed restrictions to freedom of religion in the workplace primarily from the standpoint of Article 9 of the ECHR.

In this regard, it has reiterated that Article 9 § 1 of the ECHR encompasses two discrete aspects, on the one hand, the right to *hold* a personal belief<sup>16</sup> (a matter of each person's inner conviction or *forum internum*), which is an absolute right and cannot be subject to any restriction or limitation and, on the other, the right to *manifest* such a belief (an individual's outward expression of a belief or *forum externum*), which is not an absolute right. Since the manifestation by one person of his or her religious belief may have an impact on others, the drafters of the Convention qualified this aspect of freedom of religion in the manner set out in Article 9 § 2<sup>17</sup> of the ECHR.

In order to be compatible with this provision of the ECHR, an interference with the right to manifest a personal belief must be "prescribed by law", pursue one or more of the legitimate aims listed in Article 9 § 2, and be "necessary in a democratic society" for the relevant aim to be achieved. The enumeration of the legitimate aims in Article 9 § 2 is exhaustive and the definition of the permitted exceptions to the individual's freedom to manifest his or her religion or beliefs is restrictive<sup>18</sup>.

Where the impugned acts are carried out by private companies and are not therefore directly attributable to the respondent State, the ECtHR has considered the issues in terms of the positive obligation on the State authorities to secure the rights under Article 9 to those within their jurisdiction. The ECtHR has held that the applicable principles in the context of negative and positive obligations

<sup>10</sup> ECtHR, *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, ECHR 2013 (extracts); CJEU (Grand Chamber), *WABE and MH Müller Handel*, cited above.

<sup>11</sup> ECtHR, *Ebrahimian v. France*, no. 64846/11, ECHR 2015; CJEU, judgment of 28 November 2023, *Commune d'Ans*, C 148/22, EU:C:2023:924.

<sup>12</sup> CJEU, judgment of 14 March 2017, *Achbita v G4S Secure Solutions*, C-157/15, EU:C:2017:203.

<sup>13</sup> CJEU, judgment of 27 October 1976, *Prais v Council*, C-130/75, EU:C:1976:142; ECtHR, *Francesco Sessa v. Italy*, no. 28790/08, ECHR 2012 (extracts).

<sup>14</sup> See below in section IV.D.

<sup>15</sup> See below in section IV.E.

<sup>16</sup> And, deriving therefrom, the right to change religion or belief and the freedom not to belong to a religion and not to practice it; ECtHR, *Advisory opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to or belonging to a religious movement*, cited above, § 69, and ECtHR, *Alexandridis v. Greece*, no. 19516/06, § 32, 21 February 2008.

<sup>17</sup> ECtHR, *Advisory opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to or belonging to a religious movement*, cited above, §§ 67, 69, 71.

<sup>18</sup> ECtHR, *Advisory opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to or belonging to a religious movement*, cited above, § 78.

are in any case similar. In both contexts regard must be had, in particular, to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole subject, in any event, to the margin of appreciation enjoyed by the State<sup>19</sup>.

The ECtHR has also analysed complaints raised under Article 14 taken in conjunction with Article 9 of the ECHR. It has recalled that “religion” is specifically mentioned in the text of Article 14 of the ECHR as a prohibited ground of discrimination, and that a difference of treatment between persons in relevantly similar positions – or a failure to treat differently persons in relevantly different situations – is discriminatory if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment<sup>20</sup>.

In cases where applicants complained about interferences with their professional activities based on their religious beliefs<sup>21</sup> or resulting from the exercise of autonomy of religious employers<sup>22</sup>, the ECtHR has also characterised them as limitations to the applicants’ private life and family to be assessed under Article 8 of the ECHR. When carrying out the balancing exercise between the applicants’ right to private and family life, on the one hand, and the right of religious organisations to autonomy, on the other, the ECtHR has held that the State is called upon to guarantee both rights and, if the protection of one leads to an interference with the other, to choose adequate means to make this interference proportionate to the aim pursued. In this context, the State has a wide margin of appreciation. An interference will be considered “necessary in a democratic society” for a legitimate aim if it answers a “pressing social need” and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are “relevant and sufficient”. The ECtHR has clarified that, while it is for the national authorities to make the initial assessment in all these respects, the final evaluation of whether the interference is necessary remains subject to review by the ECtHR for conformity with the requirements of the ECHR<sup>23</sup>.

### III. Freedom of religion in the workplace in EU law

---

Article 10 of the Charter guarantees freedom of thought, conscience and religion<sup>24</sup>. According to the text of the Explanatory Note on Article 10<sup>25</sup>, the right guaranteed in the first paragraph of that provision corresponds to the right guaranteed in Article 9 of the ECHR. Limitations must therefore respect Article 9(2) of the ECHR. The right guaranteed in the second paragraph of Article 10 of the Charter corresponds to national constitutional traditions and to the development of national legislation on this issue.

Article 21 of the Charter (non-discrimination) prohibits discrimination based, *inter alia*, on “religion or belief”.

<sup>19</sup> ECtHR, *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, § 84, ECHR 2013 (extracts).

<sup>20</sup> ECtHR, *Kosteski v. the former Yugoslav Republic of Macedonia*, no. 55170/00, § 44, 13 April 2006.

<sup>21</sup> ECtHR, *Sodan v. Turkey*, no. 18650/05, 2 February 2016.

<sup>22</sup> ECtHR, *Fernández Martínez v. Spain* [GC], no. 56030/07, ECHR 2014 (extracts); ECtHR, *Țîmpău v. Romania*, no. 70267/17, 5 December 2023.

<sup>23</sup> ECtHR, *Fernández Martínez v. Spain* [GC], no. 56030/07, §§ 123-25, ECHR 2014 (extracts).

<sup>24</sup> That provision reads as follows: “1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. 2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right”.

<sup>25</sup> Explanations relating to the Charter of Fundamental Rights, OJ C 303, 14 December 2007, pp. 17–35.

EU secondary law, specifically anti-discrimination legislation<sup>26</sup>, ensures the protection of these rights in the workplace. In particular, the Employment Equality Directive<sup>27</sup> prohibits discrimination on the ground of “religion or belief” in the area of employment and occupation. Article 1 of the Directive protects both the holding of religious beliefs and their outward manifestation. The CJEU clarified that this ground of discrimination covers both religious beliefs and philosophical or spiritual ones<sup>28</sup>. The Employment Equality Directive forbids both direct (“where one person is treated less favourably than another is, has been or would be treated in a comparable situation” on religious grounds<sup>29</sup>) 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”<sup>30</sup>). Indirect discrimination may be “objectively justified by a legitimate aim” if “the means of achieving that aim are appropriate and necessary”<sup>31</sup>.

According to article 4(1) of the Employment Equality Directive Member States may provide that a difference of treatment based on religion or belief shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate<sup>32</sup>.

Article 4(2) of the directive specifically addresses religious organisations, taking into account the right of autonomy of churches and other public or private organisations whose ethos is based on religion or belief. It allows Member States to maintain legislation pursuant to which, in the case of occupational activities within those organisations, a difference of treatment based on a person’s religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person’s religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation’s ethos. Such organisations may also require individuals working for them to act in good faith and with loyalty to the organisation’s ethos.

The CJEU has taken into account, when assessing whether a certain difference in treatment was objectively justified, the need to reconcile the requirements of the protection of the principle of non-discrimination enshrined in Article 21 of the Charter and the right to freedom of thought, conscience and religion guaranteed in Article 10 of the Charter with other rights and principles, such as the principle of neutrality of the public service<sup>33</sup>, the fundamental rights of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions recognised in Article 14(3) of the Charter, and the freedom to conduct a business recognised in Article 16 of the Charter<sup>34</sup>. The CJEU has recognised that the Employment Equality Directive allows Member States to take into account the diversity of their approaches as regards the place accorded to religion and beliefs within their respective systems. The margin of discretion thus afforded to the Member States in the absence of a consensus at EU level must,

---

<sup>26</sup> On the development of anti-discrimination law in the EU see the [Handbook on European non-discrimination law](#) published by FRA, the ECtHR and the Council of Europe, 2018 edition, pp. 20-23.

<sup>27</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Employment Equality Directive), OJ L 303, 2 December 2000, pp. 16-22.

<sup>28</sup> CJEU, judgment of 15 July 2021, [WABE and MH Müller Handel](#), C-804/18 and C-341/19, EU:C:2021:594.

<sup>29</sup> Article 2(2)(a) of the Employment Equality Directive.

<sup>30</sup> Article 2(2)(b) of the Employment Equality Directive.

<sup>31</sup> Article 2(2)(b)(i) of the Employment Equality Directive.

<sup>32</sup> This is a general occupational requirement exception, applicable across all protected grounds in the directive, including not only religion or belief, but also disability, age and sexual orientation.

<sup>33</sup> CJEU, judgment of 28 November 2023, [Commune d'Ans](#), cited above.

<sup>34</sup> CJEU, judgment of 15 July 2021, [WABE and MH Müller Handel](#), C-804/18 and C-341/19, EU:C:2021:594.

however, go hand in hand with supervision, by the EU judiciary, as to whether the measures taken at national level were justified in principle and proportionate<sup>35</sup>.

When assessing the right of autonomy of religious organisations under Article 4(2) of the Employment Equality Directive, the CJEU has also considered Article 17 of the Treaty on the Functioning of the EU (“TFEU”), which provides that the UE respects and does not prejudice the status under national law of churches and religious associations or communities, as well as philosophical and non-confessional organisations, and requires EU institutions to maintain with them an open, transparent and regular dialogue.

## IV. Relevant case-law of the ECtHR and CJEU

### A. Measures against employees given their religious beliefs or their belonging to a religious movement

**ECtHR, *Advisory opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to or belonging to a religious movement*, request no. P16-2023-001, the *Conseil d’État* of Belgium, 14 December 2023**

*The facts* – An individual, considered by the State Security Service to be a supporter of the “scientific” Salafist ideology, deemed to be incompatible with the Belgian model of society, undermining the essential democratic values of the rule of law and constituting a medium- and long-term threat to the country, brought proceedings against the Minister of the Interior’s authorisation denial for him to work as a security guard or officer. The Belgian *Conseil d’État* requested to the ECtHR an Advisory Opinion on whether “the mere fact of being close to or belonging to a religious movement that, in view of its characteristics, is considered by the competent administrative authority to represent a threat to the country in the medium to long term, constitute a sufficient ground, in the light of Article 9 § 2 [ECHR], for taking an unfavourable measure against an individual, such as a ban on employment as a security guard”.

*The law* – First, the ECtHR clarified that it was called to assess the matter solely in terms of the right to *manifest* one’s beliefs.

It acknowledged that when an individual exercising sensitive duties belonged to a “religious movement” which, in view of its characteristics, was regarded by the competent administrative authority as representing a risk for democratic society and its values, that fact could, in principle, justify the taking of a preventive measure against the individual concerned.

Such a measure, in order to be compatible with Article 9 of the ECHR, had to comply with the following requirements:

(1) The *Conseil d’État* had to ensure that the impugned measure had a legal basis which met the quality-of-law requirements of accessibility and foreseeability.

(2) It had to also ensure that the impugned measure pursued at least one of the legitimate aims enumerated in Article 9 § 2.

(3) The measure had to be necessary in a democratic society. In that respect, consideration had to be given to the following criteria:

(a) *A pressing social need* – The relevant proceedings did not concern an ordinary employee, but rather an individual who, in the context of his employment, was vested with a degree of authority

<sup>35</sup> CJEU, judgment of 15 July 2021, *WABE and MH Müller Handel*, C-804/18 and C-341/19, EU:C:2021:594, § 86.

and was bound by an administrative authorisation procedure. In carrying out the risk analysis the requesting court had to take into account the nature of that specific role.

The assessment of the nature, reality, scale and immediacy of the risk was a matter for the competent natural authorities which enjoyed a wide margin of appreciation, subject to review by an independent judicial authority.

More specifically:

(i) *Nature of the risk* – The risk had to be subject to an individual and detailed assessment, in the light of, *inter alia*, the substance of the beliefs or ideology in question and the character of the person concerned and his or her actions, role and degree of adherence to the relevant religious movement.

As to the ideology in question, the specific risk identified by the State Security Service was a risk to the democratic and constitutional order, together with a serious threat to fundamental rights and freedoms, stemming from the influence exerted by supporters of scientific Salafism. The *Conseil d'État* had to satisfy itself, if need be, by consulting the classified and other material gathered by the State Security Service, that the risk anticipated by that Service, in relation to the Salafist ideology, was sufficiently concrete and substantiated in terms of the means used and the process through which the risk might ultimately materialise.

The character analysis had to be based on any evidence capable of revealing whether or not there was a risk of acts or conduct on the individual's part that would be harmful to persons or institutions and be prompted by Salafist ideology. That analysis therefore would have to take into account, among other factors, the individual's criminal record, professional background, any administrative public-order measures, role in the religious movement and conduct in society in general, including on the internet and social networks.

It would also be appropriate to take account of the nature of the tasks assigned to the post of security guard or officer that the individual in question wished to hold.

In carrying out their assessment the authorities had to avoid any form of discrimination prohibited by Article 14 of the ECHR in terms of access to employment, especially discrimination on grounds of religion, under the guise of protecting the values of a democratic society.

Furthermore, that personalised assessment could not entirely disregard the general context for which it was intended, in particular the degree to which the religious movement in question had spread and established itself in society and any risk it might represent for the latter. Accordingly, if it were to be accepted that a religious movement itself posed a significant risk to society, the question would arise whether it was possible that its followers, taken individually, represented such a risk.

Lastly, the absence of professional misconduct or complaints against the person concerned, as well as the absence of repressive measures (dissolution or banning) against the movement, were factors to be taken into account but would not necessarily be decisive.

(ii) *Reality and scale of the risk* – There had to be a real risk, namely, one that was sufficiently established, it had to be serious and even carry a certain gravity.

(iii) *Immediacy of the risk* – Where the acts of a political party, an association or a group were regarded as representing a risk for all or part of society, such a risk had to be assessed taking account of the fact that the risk in this sort of case would not usually take shape immediately but would emerge from a rather gradual and ongoing process. In such cases, the State could not be required to wait, before intervening, until a political or other movement had taken action to undermine democracy or has had recourse to violence.

According to the State Security Service, the ideology of the religious movement of which S.B. was said to be a supporter represented a threat to the State in the medium to long term. It would nevertheless be for the requesting court to ascertain whether the religious movement had started to take concrete steps to implement a policy that was incompatible with the values of a democratic society. If so, the next question would be whether, as a follower of the movement and its ideology, the person concerned was likely, if employed as a security guard or officer, to act or behave in a manner that was incompatible with those values or with the duties of the profession.

(iv) *Review by a judicial authority* – The review of the legality of preventive measures by an independent judicial authority, having access to the totality of the file compiled by the competent body in matters of national security, including to any classified documents, was a very weighty safeguard in terms of ensuring that measures based on confidential information complied with the ECHR requirements. According to the information available to the ECtHR concerning Belgian law, the *Conseil d'État* might be given access to the classified documents in the file compiled by the State Security Service, as could the *auditeur* at that court. Such access could therefore be seen as a means of enabling that court to perform an effective review of the impugned measure, and that review, in order to meet ECHR requirements, had to concern the reality of the risk identified, its scale, its nature and its immediacy.

(b) *Proportionality* – To be proportionate the measure first had to be regarded as not limiting the individual's rights under Article 9 of the ECHR beyond what was necessary to achieve the legitimate aim or aims pursued, which meant ensuring that it or they could not be achieved by any less intrusive or radical means. Further, the measure had to be surrounded by appropriate procedural safeguards, such as to avert any risk of arbitrariness. In particular, there was a need for the person concerned to be involved in the decision-making process, taken as a whole, to a degree that was sufficient to ensure the requisite protection of his or her interests.

The ECtHR reiterated that where a measure that was unfavourable to the individual concerned had been based on classified information, only measures restricting procedural rights which did not affect the very essence of those rights were permissible. In cases where evidence had not been disclosed to one of the parties on grounds of a duly justified public interest, the ensuing difficulties for that party had to be sufficiently counterbalanced by the procedure followed by the judicial authorities to ensure that, as far as possible, it complied with the requirements to provide for adversarial proceedings and an equality of arms and it incorporated appropriate safeguards to protect the interests of the person concerned. Those counterbalancing factors included a review by the relevant court of the content of the classified information and its use in the reasoning of the decision appealed against, while, if appropriate, to the extent compatible with maintaining the confidentiality and proper conduct of investigations regarding an individual, informing that person, at the very least summarily, of the substance of the accusations against him or her.

It was therefore for the *Conseil d'État* to ensure that adequate counterbalancing measures, sufficient to mitigate the effects of the limitations of the person's procedural rights, had been applied or would be applied when the domestic proceedings resumed.

**ECtHR, *Sodan v. Turkey*, no. 18650/05, 2 February 2016**

*The facts* – At the material time the applicant was deputy governor of Ankara. An inspector in the governor's office was instructed to carry out an investigation into the applicant's general conduct, in particular on the basis of two circulars, one concerning separatism and the other fundamentalism, among senior officials in the governor's office. The inspector's report mentioned the applicant's well-known religious beliefs and stated that the applicant's wife wore the Islamic veil. Drawing in particular on a decision by the National Security Council relating, *inter alia*, to fundamentalist activities, the report proposed transferring him to another department or to a post

in central administration not entailing any public role. The applicant was transferred to a post of deputy governor in a less important town. His appeals were dismissed.

*The law* – The ECtHR assessed the applicant's complaints under Article 8 read in the light of Article 9 of the ECHR.

The central question in the case was whether the applicant was transferred solely on account of his qualifications and the requirements of the post, as the Government argued, or rather, as the applicant submitted, of his religious beliefs and private life.

The ECtHR noted that the internal investigation concerning the applicant was ordered on the basis of a decision which had no bearing on the capacity of senior officials to embody authority and show initiative when discharging their duties. It related exclusively to the place of religion in society and within the institutions and to how people dressed. Moreover, although the inspector's report did mention certain aspects of the applicant's character, it attached considerable importance to his religious beliefs and the fact that his wife wore an Islamic veil. If the applicant's transfer had been exclusively or primarily based on his qualifications, it would be difficult to understand why the authorities placed so much emphasis on his religious beliefs, his wife's clothing and, more broadly, the decision by the National Security Council. The ECtHR considered that the facts of the case as a whole suggested that there was an evident causal link between the applicant's private life and beliefs, on the one hand, and his transfer, on the other. The applicant's transfer amounted to a kind of disguised penalty. It therefore constituted interference in his private life. However, the Government had failed to provide any legal basis or to mention any legitimate aim or reasons to explain why that interference might be considered necessary in a democratic society.

As the inspector's report itself acknowledged, the applicant had been impartial in the performance of his duties, and no activities relating to religious fundamentalism had ever been noted. The mere actual or assumed proximity to or membership of a religious movement could not constitute sufficient grounds in itself for adopting an unfavourable measure unless it had been clearly demonstrated that the applicant did not act impartially or received instructions from members of that movement, or that the movement in question represented a genuine threat to national security. Furthermore, even supposing that that were actually the case, the ECtHR noted that it would be difficult to understand how that threat could be countered by merely transferring the applicant to another town rather than removing him from office. As regards the fact that the applicant's wife wore the Islamic veil, the concern to preserve the neutrality of the public service did not justify taking that fact into account in the decision to transfer the applicant, since that was a private matter for those concerned and was not covered by any legislative or statutory provision.

*Conclusion* – Violation of Article 8 of the ECHR.

**ECtHR, *Ivanova v. Bulgaria*, no. 52435/99, 12 April 2007**

*The facts* – The applicant, employed as swimming pool manager in a public school, was a member of a Christian Evangelical Group pursuing clandestine activities due to the authorities' refusal to register it. Its meetings were periodically thwarted by the police and media waged a campaign against it, calling for the dismissal of its members and naming, among others, the applicant in this respect. Following the inquiries by the regional prosecutor's office and the National Security Service, the regional governor and a Member of Parliament threatened the educational inspector with dismissal unless he took radical measures to curb the religious activities at the school and dismiss the principal. The principal was dismissed for, *inter alia*, not having dismissed members of staff who were followers of the Christian Evangelical Group and for tolerating its activities. Later on, the applicant was put under pressure to resign or renounce her faith as the education inspector threatened her with dismissal irrespective of her work performance. She refused. In a radio

interview the Member of Parliament singled out the applicant's post as still being occupied by a member of that Group. A new principal dismissed her on the ground of not meeting the requirements for the post. A new roster of posts for the school was approved, which transformed the applicant's post into a new one, with essentially the same duties and responsibilities, but requiring a university degree. The applicant brought proceedings before the district court claiming that her dismissal had been unlawful and had amounted to religious discrimination. The court dismissed her claims and she appealed unsuccessfully.

*The law* – At the heart of the case was the question whether the applicant's employment had been terminated solely as a result of the school's need to change the requirements for her post, as the Government had claimed, or whether, as she argued, she had been dismissed because of her religious beliefs. The Government's submissions on that point had been somewhat ambiguous and contradictory. By assessing the sequence of events in their entirety, the ECtHR reached the conclusion that the applicant's employment had been terminated, in reality, because of her religious beliefs and affiliation with the Christian Evangelical Group. That constituted an interference with her right to freedom of religion at variance with Article 9. The fact that the applicant's employment had been terminated in accordance with the applicable labour legislation – by introducing new requirements for her post which she failed to meet – did not eliminate the substantive motive for her dismissal. The ECtHR considered the State's responsibility to be engaged by the fact that the applicant was employed as a non-academic staff member at the school, which was under the direct supervision of the Ministry. Moreover, it noted that a policy of intolerance on the part of the authorities existed during the relevant period towards that Group, its activities and followers. The dismissal of the applicant soon after the appointment of a new principal appeared to have resulted directly from the implementation of that policy.

*Conclusion* – Violation of Article 9 of the ECHR. No need to examine separately the complaint under Article 14 of the ECHR.

#### **ECtHR, *Sert v. Turkey* (dec.), no. 47491/99, 8 July 2004**

*The facts* – The applicant, a non-commissioned officer, was a member of the Süleymanlık group of the Nakşibendi sect. The Supreme Military Council decided to discharge him from the army on grounds of acts of insubordination and immoral conduct. The applicant complained under Article 9 of the ECHR that the implicit reason for the decision of the Supreme Military Council was based on his religious convictions and his wife's Islamic scarf.

*The law* – The ECtHR reiterated that States may adopt for their armies disciplinary regulations forbidding this or that kind of conduct, in particular an attitude inimical to an established order reflecting the requirements of military service. While members of the armed forces could perform their religious duties within the limits imposed by the requirements of military life, it appeared from the evidence before it that a committee of nine members of the armed forces examined the applicant's assessment reports – which listed the disciplinary offences he had committed and stated that he was a member of sects known to have fundamentalist tendencies – and found that he did not have the profile of an army officer or a non-commissioned officer. The committee concluded that the applicant had breached military discipline and should be discharged from the army. The ECtHR further noted that the Supreme Military Council's order was based not on the applicant's religious beliefs and opinions, nor on the fact that his wife or relatives wore an Islamic scarf, nor on the manner in which he performed his religious duties, but on his conduct and activities in breach of military discipline and the principle of secularism.

*Conclusion* – Inadmissible as manifestly ill-founded.

**ECtHR, *Pitkevich v. Russia* (dec.), no. 47936/99, 8 February 2001**

*The facts* – The applicant, a judge, was dismissed from her post for failing in the obligations inherent in the judiciary and undermining the latter’s authority. The dismissal decision reported that she had misused her office to pursue religious activities in the interests of the Living Faith Church (a religious group which was part of the Russian Union of Evangelical Christian Churches), *inter alia* by recruiting as Church members several officials of her court and certain third persons, including parties to proceedings under her examination. It was also found that the applicant had unsuccessfully attempted to enrol a number of other persons, that she had prayed publicly during court hearings, and that she had promised certain parties to proceedings a favourable outcome of their cases if they joined the Church. The Judiciary Qualification Panel noted that that had resulted in numerous challenges against the applicant, and that a number of cases had been delayed as a result.

*The law* –The ECtHR considered that the applicant had not been dismissed on the basis of her belonging to the Church or having any other “status”, but by reason of her specific activities, which had been incompatible with the requirements for judicial office and infringed the principle of the rule of law. The ECtHR therefore decided that there had been an interference in the applicant’s exercise of her rights under Articles 10 and 9 but that that interference had been proportionate to the legitimate aims pursued.

*Conclusion* – Inadmissible as manifestly ill-founded.

**B. Special arrangements for religious holidays****ECtHR, *Francesco Sessa v. Italy*, no. 28790/08, ECHR 2012 (extracts)**

*The facts* – The applicant, who was Jewish and a lawyer by profession, represented a complainant at a hearing before the investigating judge on the production of evidence. As the judge was prevented from sitting, his replacement asked the parties to choose between two dates for the adjourned hearing in accordance with a timetable previously determined by the investigating judge. The applicant submitted that both dates fell on Jewish holidays and that his religious obligations would prevent him from attending the hearing. The judge set the hearing down for one of the proposed dates. The applicant lodged an application with the investigating judge for an adjournment of the hearing and also lodged a criminal complaint against the judge. His application was rejected. The applicant’s criminal complaint was discontinued on the ground that there was no evidence in the case of an intention to infringe his right to freely manifest his Jewish faith or to offend his dignity on grounds of his religious belief.

*The law* – Article 9: The investigating judge decided not to allow the applicant’s request for an adjournment, basing his decision on the provisions of the Code of Criminal Procedure according to which an adjournment of hearings concerning the immediate production of evidence was justified only where the prosecutor or counsel for the defendant was absent (the presence of counsel for the complainant not being necessary). The ECtHR was not convinced that setting the case down for hearing on a date which coincided with a Jewish holiday and the refusal to adjourn it to a later date amounted to a restriction on the applicant’s right to freely manifest his faith. First, it was not in dispute between the parties that the applicant had been able to perform his religious duties. Furthermore, the applicant, who should have expected that his request for an adjournment would be refused on the basis of the statutory provisions in force, could have arranged to be replaced at the hearing in question to ensure that he complied with his professional obligations. He had not shown that pressure had been exerted on him to change his religious belief or to prevent him from manifesting his religion or beliefs. In any event, even supposing that there had been an interference with the applicant’s right guaranteed under Article 9 § 1 of the ECHR, such interference, which was

prescribed by law, had been justified on grounds of the protection of the rights and freedoms of others – and in particular the public’s right to the proper administration of justice – and the principle that cases be heard within a reasonable time. The interference had observed a reasonable relationship of proportionality between the means used and the aim pursued.

*Conclusion* – No violation of Article 9 of the ECHR.

**ECtHR, *Kosteski v. the former Yugoslav Republic of Macedonia*, no. 55170/00, 13 April 2006**

*The facts* – The applicant, an employee of the Electricity Company of Macedonia, a public utility company, was fined for absence from work on a Muslim holiday.

*The law* – Article 9: the ECtHR was not persuaded that absence from work was a manifestation of the applicant’s beliefs in the sense protected by Article 9 of the ECHR or that the penalty imposed on him was an interference with those rights. It recalled that the courts’ decisions on the applicant’s appeal against the disciplinary punishment imposed on him made findings effectively that the applicant had not substantiated the genuineness of his claim to be a Muslim. The ECtHR did not find it unreasonable that an employer could regard absence without permission or apparent justification as a disciplinary matter. Where the employee sought to rely on a particular exemption, it was not oppressive or in fundamental conflict with freedom of conscience to require some level of substantiation when that claim concerns a privilege or entitlement not commonly available and, if that substantiation is not forthcoming, to reach a negative conclusion.

*Conclusion* – No violation of Article 9 of the ECHR. No violation of Article 14 taken in conjunction with Article 9 of the ECHR.

**CJEU, judgment of 27 October 1976, *Prais v Council*, C-130/75, EU:C:1976:142**

*The facts* – The applicant, a Jewish candidate in a EU Council competition for recruitment of a translator, asked to be allowed to take the written tests in a different date, as the fixed date corresponded to the Jewish feast of Shavuot, when it was forbidden to travel or write. Having the EU Council replied that it was not possible to offer an alternative date, since it was essential that all candidates undergo the examination on the same day and arrangements had been made for the examination to take place on that date, she challenged the refusal before the CJEU.

*The law* – The CJEU held that, even if it was desirable that an appointing authority informed itself in a general way of dates which might have been unsuitable for religious reasons, and sought to avoid fixing such dates for tests, neither the Staff Regulations nor the fundamental rights protected under Article 9 of the ECHR could be considered as imposing on it a duty to avoid a conflict with a religious requirement of which the authority had not been informed. If the authority had been informed of this difficulty in good time, it would have been obliged to take reasonable steps to avoid fixing for a test a date which would have made it impossible for a believer to undergo the test. Since this was not the case, the authority was in its discretion entitled to refuse to fix a different date when the other candidates had already been convoked.

## C. Wearing religious symbols at work

**CJEU, judgment of 28 November 2023, *OP v Commune d’Ans*, C 148/22, EU:C:2023:924**

*The facts* – An individual, working for a municipality primarily without being in contact with users of the public service, requested to wear a headscarf at work. The municipal board rejected that application and provisionally prohibited her from wearing, in the exercise of her professional

activity, signs revealing her religious beliefs until general rules on the wearing of such signs within the municipal administration had been adopted. The municipal board subsequently amended its terms of employment by inserting a requirement of “exclusive neutrality” in the workplace, understood as prohibiting all municipal workers from wearing any visible sign that could reveal their beliefs – religious or philosophical in particular – whether or not they were in contact with the public. In the context of proceedings brought by the worker seeking a declaration that her freedom of religion had been infringed, the Liège Labour Court referred to the CJEU preliminary questions on the interpretation of Article 2(2)(a) and (b) of the Employment Equality Directive.

*The law* – The CJEU observed that the rule at issue in the main proceedings did not establish a difference in treatment based on a criterion inextricably linked to one or more specific religions or beliefs. Therefore, it did not constitute direct discrimination.

Relying on its settled case-law (judgments of 14 March 2017, *Achbita*, and of 15 July 2021, *WABE and MH Müller Handel*, both cited below) the CJEU held that the rule could constitute a difference of treatment indirectly based on religion or belief, if it was established that the apparently neutral obligation contained therein resulted, in fact, in persons adhering to a particular religion or belief being put at a particular disadvantage.

In accordance with Article 2(2)(b)(i) of Directive 2000/78, such a difference in treatment did not, however, amount to indirect discrimination if it was (i) objectively justified by a legitimate aim and if the means of achieving that aim were (ii) appropriate and (iii) necessary.

(i) as to legitimate aim, the CJEU held that Member States had to be afforded a margin of discretion in designing the neutrality of the public service which they intended to promote in the workplace. Thus, the policy of “exclusive neutrality” could be regarded as being objectively justified by a legitimate aim, the same being true for other kinds of policies in favour of a general and undifferentiated permission for the wearing of visible signs of beliefs including in contacts with users, or a prohibition on the wearing of such signs limited to situations involving such contacts.

The Employment Equality Directive allowed Member States to take account of their own specific context, having regard to the diversity of their approaches as to the place they intended to accord, within their respective systems, to religion and philosophical beliefs in the public sector. The margin of discretion thus afforded to the Member States, in the absence of consensus at EU level, had, however, go hand in hand with supervision, by the national and EU judicature, consisting in determining whether the measures taken, depending on the case, at national, regional or local level were justified in principle and proportionate.

(ii) as to the appropriateness of the rule, the CJEU held that it was for the referring court to determine whether the municipality pursued that objective in a genuinely consistent and systematic manner with regard to all employees.

(iii) as to the necessity of the rule, the CJEU noted that the legitimate objective of ensuring, through a policy of “exclusive neutrality”, an entirely neutral administrative environment could be effectively pursued only if no visible manifestation of beliefs was allowed when employees were in contact with users of the public service or with other employees, since the wearing of any sign, even a small-sized one, undermined the ability of that measure to achieve the aim allegedly pursued and therefore called into question the consistency of that policy. Such a rule was therefore necessary.

It was still for the referring court, in the light of all the factors characteristic of the context in which that rule was adopted, to weigh up the interests at stake, taking into account, on the one hand, the right to freedom of thought, conscience and religion guaranteed by Article 10 of the Charter, the corollary of which was the prohibition of any discrimination based on religion enshrined in Article 21 thereof and, on the other hand, the principle of neutrality.

The CJEU concluded that Article 2(2)(b) of Directive 2000/78 had to be interpreted as meaning that an internal rule of a municipal authority prohibiting, in a general and indiscriminate manner, the members of that authority's staff from visibly wearing in the workplace any sign revealing, in particular, philosophical or religious beliefs could be justified by the desire of the said authority to establish, having regard to the context in which it operated, an entirely neutral administrative environment provided that that rule was appropriate, necessary and proportionate in the light of that context and taking into account the various rights and interests at stake.

**CJEU, judgment of 15 July 2021, *IX v WABE and MH Müller Handel v MJ*, C-804/18 and C-341/19, EU:C:2021:594**

*The facts* – An individual working as special needs carer in a child day care centre was suspended and subjected to warnings for refusing to remove her Islamic headscarf at work. In the context of proceedings against these warnings, the Hamburg Labour Court referred to the CJEU preliminary questions on the compatibility with EU law of the employer's internal rule prohibiting employees from wearing any visible political, philosophical or religious sign at the workplace when in contact with the children or their parents.

A second individual working as sales assistant and cashier was transferred and sent home for refusing to remove the Islamic headscarf at work. Her employer instructed her to attend her workplace without conspicuous, large-sized signs of any political, philosophical or religious beliefs. In the context of proceeding brought against this instruction, the German Federal Labour Court referred to the CJEU preliminary questions on the compatibility with EU law of the employer's internal rule prohibiting conspicuous and large-sized signs of political, philosophical or religious beliefs.

*The law* – The CJEU clarified that the ground of discrimination based on religion or belief covered both religious beliefs and philosophical or spiritual beliefs. Relying on the case law of the ECtHR, it recalled that the right to freedom of thought, conscience and religion, enshrined in Article 9 of the ECHR, represented one of the foundations of a democratic society within the meaning of the ECHR.

As regards an internal rule of a private company prohibiting the wearing of any visible sign of political, philosophical or religious beliefs in the workplace, the CJEU reiterated that such a rule did not constitute direct discrimination provided that it covered any manifestation of such beliefs without distinction and treated all workers of the company in the same way by requiring them, in a general and undifferentiated way to dress neutrally.

Since it appeared from the file before the court that the employer in the first main proceedings had also required another employee wearing a religious cross to remove that sign, it appeared prima facie that the internal rule at issue had been applied to the applicant in the first main proceedings without any difference of treatment by comparison with any other person working for that company, with the result that it could not be considered that she had suffered a difference of treatment directly based on her religious beliefs.

The CJEU further observed that, according to the findings of the referring court, the rule at issue in the first case concerned, statistically, almost exclusively female workers who wore a headscarf because of their Muslim faith. Therefore, the CJEU started from the premiss that that rule constituted a difference of treatment indirectly based on religion.

It recalled that Article 2(2)(b)(i) of the Employment Equality Directive provided that such a difference of treatment was prohibited, unless it was (i) objectively justified by a legitimate aim and the means of achieving that aim were (ii) appropriate and (iii) necessary. These concepts had to be interpreted strictly.

(i) As regards the existence of a legitimate aim, the CJEU considered that an employer's desire to display a policy of political, philosophical or religious neutrality could be regarded as legitimate. An employer's wish to project an image of neutrality towards customers related to the freedom to conduct a business recognised in Article 16 of the Charter and was, in principle, legitimate, in particular where the employer involved in its pursuit of that aim only those workers who were required to come into contact with customers.

However, the CJEU further clarified that the mere desire of an employer to pursue a policy of neutrality – while in itself a legitimate aim – was not sufficient to consider the difference in treatment as objectively justified, the employer being called to demonstrate also that the rule responded to a genuine need. In this regard, firstly account could be taken of the rights and legitimate wishes of customers, such as the parents' right to make decisions on the education and teaching of their children; secondly, particular relevance had to be attached to evidence that, in the absence of such a rule, the employer's freedom to conduct a business, recognised in Article 16 of the Charter, would be undermined in that, given the nature of its activities or the context in which they were carried out, it would have suffered adverse consequences.

(ii) As regard the appropriateness of the rule, the CJEU held that the employer's policy of neutrality had to be genuinely pursued in a consistent and systematic manner.

(iii) As to the necessity of the rule, the CJEU observed that restriction had to appear strictly necessary in view of the adverse consequences that the employer was seeking to avoid by adopting that prohibition.

By applying these principles to the second case, the CJEU observed that a rule prohibiting only conspicuous, large-sized signs of any political, philosophical or religious beliefs could be considered as pursuing a legitimate aim, namely prevention of social conflicts and the presentation of a neutral image of the employer vis-à-vis customers. However, a policy of neutrality could be effectively pursued only if no visible manifestation of political, philosophical or religious beliefs was allowed when workers were in contact with customers or with other workers, since the wearing of any sign, even a small-sized one, undermined the ability of that measure to achieve the aim allegedly pursued and therefore called into question the consistency of that policy of neutrality. On this basis, the CJEU concluded that a prohibition limited to the wearing of conspicuous, large-sized signs of political, philosophical or religious beliefs was liable to constitute direct discrimination on the grounds of religion or belief, which could not in any event be justified on the basis of Article 2(2)(b)(i) of the Employment Equality Directive.

With regard to the question, raised by both referring courts, as to whether national provisions could provide a higher level of protection for freedom of religious in the workplace, even if this resulted in a limitation of other rights, such as and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions recognised in Article 14(3) of the Charter and the freedom to conduct a business recognised in Article 16 of the Charter, the CJEU observed that the Employment Equality Directive left a margin of discretion to the Member States, taking into account the diversity of their approaches as regards the place accorded to religion and beliefs within their respective systems. It followed that the national provisions protecting freedom of thought, belief and religion could be taken into account as provisions more favourable to the protection of the principle of equal treatment, within the meaning of Article 8(1) of the directive.

**CJEU, judgment of 14 March 2017, *Achbita v G4S Secure Solutions*, C-157/15, EU:C:2017:203**

*The facts* – An individual, employed as receptionist by a private company whose internal rules prohibited to wear any visible signs of political, philosophical and religious beliefs in the workplace, was dismissed on account of her continuing insistence that she wished, as a Muslim, to wear the Islamic headscarf at work. In the context of proceedings brought against her dismissal, the Belgian Court of Cassation referred to the CJEU a preliminary question asking whether Article 2(2)(a) of the Employment Equality Directive should be interpreted as meaning that the prohibition on wearing, as a female Muslim, a headscarf at the workplace did not constitute direct discrimination where the employer's rule prohibited all employees from wearing outward signs of political, philosophical and religious beliefs at the workplace.

*The law* – By interpreting the Employment Equality Directive in the light of Article 10 of the Charter and Article 9 of the ECHR, the CJEU held that the concept of “religion” in Article 1 of that directive should be construed as covering both the *forum internum* (the fact of having a belief) and the *forum externum* (the manifestation of religious faith in public).

It further considered that the internal rule at issue in the main proceedings referred to the wearing of visible signs of political, philosophical or religious beliefs and therefore covered any manifestation of such beliefs without distinction. The rule treated all workers in the same way by requiring them, in a general and undifferentiated way, inter alia, to dress neutrally, which precluded the wearing of such signs. Therefore, it did not introduce a difference of treatment that was directly based on religion or belief, for the purposes of Article 2(2)(a) of the Employment Equality Directive.

However, the CJEU held that it was not inconceivable that the referring court could conclude that the internal rule introduced a difference of treatment that was indirectly based on religion or belief, for the purposes of Article 2(2)(b) of Directive 2000/78, if the apparently neutral obligation resulted, in fact, in persons adhering to a particular religion or belief being put at a particular disadvantage.

In this case, the referring court should have assessed whether such a difference of treatment was (i) objectively justified by a legitimate aim and if the means of achieving that aim were (ii) appropriate and (iii) necessary.

(i) Relying on the ECtHR's judgement *Eweida and Others*, cited above, the CJEU recognised that the desire to display a policy of political, philosophical or religious neutrality had to be considered legitimate.

(ii) The CJEU observed that an employer's wish to project an image of neutrality towards customers relates to the freedom to conduct a business recognised in Article 16 of the Charter and is, in principle, legitimate. However, that the fact that workers were prohibited from visibly wearing signs of political, philosophical or religious beliefs was appropriate for the purpose of ensuring that a policy of neutrality was properly applied, provided that that policy was genuinely pursued in a consistent and systematic manner. It was therefore for the referring court to ascertain whether the employer had, prior to contested dismissal, established a general and undifferentiated policy of prohibiting the visible wearing of signs of political, philosophical or religious beliefs in respect of members of its staff who came into contact with its customers.

(iii) The referring court had also to determine whether the prohibition was limited to what was strictly necessary. In particular, it should have assessed whether (a) the internal rule applied only to workers who interacted with customers and (b) it would have been possible for the employer to offer the worker a post not involving any visual contact with those customers, instead of dismissing her.

The CJEU thus distinguished between direct and indirect discrimination: a blanket neutral-dress policy applied uniformly was held not to constitute direct discrimination, but could constitute indirect discrimination if not objectively justified.

**CJEU, judgment of 14 March 2017, *Bougnaoui and ADDH v Micropole*, C-188/15, EU:C:2017:204**

*The facts* – An individual, a design engineer employed by an information technology consulting company, was dismissed because she refused to remove her Islamic headscarf when sent on assignment to customers, after that a customer expressed the wish not to have that company's services provided by an employee wearing a veil. In the context of proceedings brought against her dismissal, the French Court of Cassation referred to the CJEU a preliminary question asking whether the willingness of an employer to take account of the wishes of a customer no longer to have that employer's services provided by a worker wearing an Islamic headscarf constituted a genuine and determining occupational requirement within the meaning of Article 4(1) of the Employment Equality Directive.

*The law* – The CJEU reiterated that under Article 4(1) of the Employment Equality Directive Member States could provide that a difference of treatment based on religion or belief did not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they were carried out, such a characteristic constituted a genuine and determining occupational requirement, provided that the objective was legitimate and the requirement was proportionate. However, the willingness of an employer to take account of 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, since it was based on subjective considerations and not objectively dictated by the nature of the occupational activities concerned or of the context in which they were carried out.

**ECtHR, *Ebrahimian v. France*, no. 64846/11, ECHR 2015**

*The facts* – The applicant, recruited on a fixed-term contract as a social worker in the psychiatric department of a public hospital, was informed that her contract would not be renewed. That decision was based on her refusal to remove her veil and complaints made by a number of patients at the centre. It had been preceded by an interview during which the applicant had not been criticised for her religious affiliation but merely reminded of the rights and obligations of civil servants, namely, a prohibition on displaying one's religious affiliation. The non-renewal of the contract was based on an opinion of the *Conseil d'État* indicating that the principle of the secular nature of the State and that of the neutrality of public services applied to all public services. It observed that civil servants had to enjoy freedom of conscience but that this freedom had to be reconciled, in terms of its expression, with the principle of neutrality of the public service, which precluded the wearing of a symbol displaying one's religious affiliation. Furthermore, in the event of a breach of that obligation of neutrality, it stated that the consequences in terms of disciplinary proceedings had to be assessed on a case-by-case basis according to the particular circumstances. Appeals lodged by the applicant were dismissed.

The applicant was further enrolled by the establishment that had employed her in a competition to recruit social assistants. She did not sit the competition.

*The law* – Article 9: The non-renewal of the applicant's contract amounted to an interference with her right to manifest her religion. That interference had been prescribed by law and pursued the legitimate aim of protecting the rights and freedoms of others. The aim in the present case had been to maintain respect for all religious beliefs and spiritual orientations of the patients, who used the public service and benefited from the requirement of neutrality imposed on the applicant, by

ensuring strict equality among them. The objective had also been to ensure that users enjoyed equality of treatment without any distinction on religious grounds. Consequently, the restriction had pursued the aim of protecting the rights and freedoms of others and did not necessarily have to be motivated, further, by public-safety constraints or protection of public order.

With regard to the necessity of the measure in question, the ECtHR noted that the authorities had informed the applicant of the reasons why this principle justified special application to a social worker in a psychiatric department of a hospital. The authorities had identified problems created by her attitude within the department in question and had attempted to persuade her to refrain from displaying her religious convictions. Furthermore, the lower courts had considered that the requirement of neutrality imposed on the applicant was even stricter in that she was in contact with patients in a fragile or dependent state. It could be seen from the file that it was the requirement of protecting the rights and freedoms of others, namely, respect for everyone's freedom of religion, and not her religious convictions, that had been the basis for the decision in question. From that point of view, the neutrality of the public hospital service could be regarded as bound up with the attitude of the staff and requiring that patients were left in no doubt as to their impartiality.

In France public servants enjoyed the right to respect for their freedom of conscience which prohibited, among other things, any discrimination based on religion in access to functions or career progression. They were, however, forbidden to manifest their religious beliefs in discharging their duties. The fact that the national courts had afforded greater weight to the principle of secularism-neutrality and to the State's interest than to the applicant's interest in not having the expression of her religious beliefs curtailed did not create an issue with regard to the ECHR. This was a strict obligation which had its roots in the traditional relationship between the secular nature of the State and freedom of conscience, as stipulated in Article 1 of the Constitution. According to the French model, on which it was not the ECtHR's task to rule as such, the neutrality of the State was binding on the officials representing it. It was, however, the administrative courts' task to ensure that the authorities did not disproportionately interfere with the freedom of conscience of civil servants where State neutrality was invoked.

The applicant, for whom it was important to manifest her religion by visibly wearing a headscarf on grounds of her religious convictions, had exposed herself to the serious consequence of disciplinary proceedings. However, there was no doubt that, following the opinion of the *Conseil d'État*, she had been aware that she had to observe a neutral dress code in discharging her functions. It was owing to her refusal to comply with that obligation, and irrespective of her professional qualities, that disciplinary proceedings were instituted against her. She had then had the benefit of the safeguards relating to disciplinary proceedings and remedies before the administrative courts. Moreover, she had chosen not to sit the competition to recruit social assistants despite having been enrolled on the list of candidates that the establishment had drawn up in full knowledge of the facts. In those circumstances the national authorities had not exceeded their margin of appreciation in finding that there was no possibility of reconciling the applicant's religious convictions with the obligation to refrain from manifesting them, and in deciding to give precedence to the requirement of neutrality and impartiality of the State.

Furthermore, it could be seen from a report by the Observatory of Secularism that disputes arising from the manifestation of religious convictions of persons working within hospital services were assessed on a case-by-case basis with the competing interests being reconciled by the authorities in an effort to find friendly settlements. That willingness to reconcile competing interests was confirmed by the very low number of disputes of that kind that had been brought before the courts. Lastly, hospitals were a place where users, who despite their right to freedom to express their religious convictions, were also required to contribute to implementing the principle of secularism by refraining from any act of proselytism and complying with the organisation of the service and the requirements of health and hygiene in particular. In other words, the State regulations

concerned gave precedence to the rights of others, the equality of treatment of patients and the functioning of the service over manifestations of religious beliefs.

*Conclusion* – No violation of Article 9 of the ECHR.

**ECtHR, *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, ECHR 2013 (extracts)**

*The facts* – The first and second applicants were Christians who refused to conceal or remove their cross necklaces while working. The first applicant, a member of the check-in staff for a private airline company, was sent home without pay until such time as she chose to comply with the uniform code. The company ultimately changed its uniform policy and allowed her to wear the cross. She was not however compensated for the earnings lost during the period when she had chosen not to come to work. The second applicant, a nurse in a public hospital, was moved to a non-nursing position, which subsequently ceased to exist.

*The law* – The ECtHR considered that with regard to the first applicant a fair balance was not struck. On one side of the scales was her desire to manifest her religious belief, a fundamental right which had to weigh heavily in the balance. On the other side of the scales was the employer's wish to project a certain corporate image. While this aim was undoubtedly legitimate, the domestic courts accorded it too much weight. The first applicant's cross was discreet and could have detracted from her professional appearance, nor was there evidence that the wearing of other, previously authorised, items of religious clothing by other employees, had any negative impact on the company image. Moreover, the fact that the company was able to amend the uniform code to allow for the visible wearing of religious symbolic jewellery demonstrated that the earlier prohibition was not of crucial importance.

With regard to the second applicant, the ECtHR noted that the reason for asking her to remove the cross, namely the protection of health and safety on a hospital ward, was inherently of a greater magnitude than that which applied in respect of the first applicant. Moreover, domestic authorities had to be allowed a wide margin of appreciation in making decisions about clinical safety.

*Conclusion* – As to the first applicant, violation of Article 9 of the ECHR. Not necessary to examine separately her complaint under Article 14 taken in conjunction with Article 9 of the ECHR. As to the second applicant, no violation of Articles 9 and 14 of the ECHR.

**ECtHR, *Kurtulmuş v. Turkey* (dec.), no. 65500/01, 24 January 2006**

*The facts* – The applicant, a university associate professor who wore the Islamic headscarf when teaching, was the subject of a disciplinary investigation following an allegation that she had failed to comply with the rules on dress for public servants, and culminating in a decision that she should be deemed to have resigned.

*The law* – Article 9: in determining whether a fair balance had been struck between the fundamental right of the individual to freedom of religion and the legitimate interest of a democratic State in ensuring that its public service properly furthered the purposes enumerated in Article 9 § 2 of the ECHR, the ECtHR noted that the rules on dress applied equally to all public servants, irrespective of their functions or religious beliefs. They required their appearance to be neutral in order to preserve the principle of secularism, which was undoubtedly one of the fundamental principles of the Turkish State. The ECtHR also observed that the applicant had assumed the status of a public servant of her own free will and that she could not have been unaware of the rules requiring her not to express her religious beliefs in public in an ostentatious manner. Taking into account the margin of appreciation that States enjoyed in determining the

obligations on teachers in the State education system depending on the level of education concerned, the ECtHR found that the impugned interference was justified in principle and proportionate to the aim pursued.

*Conclusion* – Inadmissible as manifestly ill-founded.

## D. Employees' refusal to perform duties based on their religious beliefs

**ECtHR, *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, ECHR 2013 (extracts)**

*The facts* – The third applicant, a Christian believing same-sex unions to be contrary to God's will, refused to be designated as a registrar of civil partnerships. Disciplinary proceedings were brought, culminating in the loss of her job. She complained that she had suffered discrimination as a result of her Christian beliefs, in breach of Article 14 taken in conjunction with Article 9 of the ECHR.

The fourth applicant, employed by a private company with a policy of requiring employees to provide services equally to heterosexual and homosexual couples, had refused to commit himself to providing psycho-sexual counselling to same-sex couples, which resulted in disciplinary proceedings being brought against him and ultimately his dismissal.

*The law* – The ECtHR observed that the employers' actions pursued a legitimate aim, namely securing the implementation of policies of providing a service without discrimination.

As to whether the interferences were proportionate, even though the consequences for the third and fourth applicants were serious, the ECtHR observed that the employers' policies aimed to secure the rights of others which are also protected under the ECHR. It concluded that national authorities had not overstepped the wide margin of appreciation they enjoyed when striking a balance between the applicants' right to manifest their religious belief and the employers' interest in securing the rights of others.

*Conclusion* – As to the third applicant, no violation of Article 14 taken in conjunction with Article 9 of the ECHR.

As to the fourth applicant, no violation of Article 9, taken alone or in conjunction with Article 14 of the ECHR.

## E. Measures against employees based on the religious autonomy of employers

**ECtHR, *Fernández Martínez v. Spain* [GC], no. 56030/07, ECHR 2014 (extracts)**

*The facts* – The applicant, a secularised Catholic priest, applied to the Vatican for dispensation from the obligation of celibacy. He got married and had five children. From 1991 onwards he taught Catholic religion and ethics in a State secondary school, under an annual contract which was renewed by the Ministry of Education on the basis of the binding opinion of the bishop of the diocese. In 1996 the applicant took part in a gathering of the "Movement for Optional Celibacy" of priests (MOCEOP). On that occasion the participants expressed their disagreement with the Church's position on various issues such as abortion, divorce, sexuality and birth control. An Article was published in a regional newspaper, illustrated by a picture of the applicant with his family and mentioning his name, together with comments attributed to him. In 1997 the applicant was granted dispensation from celibacy. His teaching contract was not renewed, on the ground that by publicising his situation as "married priest" he had breached his duty to teach "without creating

a risk of scandal". The applicant challenged that decision in the domestic courts, but to no avail. The domestic courts took the view that, in so far as the reasoning for the non-renewal decision had been strictly religious, they had to confine themselves to verifying respect for the fundamental rights at stake. In particular, the Constitutional Court, after carefully examining the facts of the case, observed that the State's duty of neutrality prevented it from ruling on the notion of "scandal" used by the Bishop in refusing to renew the applicant's contract or on the merits of the principle of the optional celibacy of priests advocated by the applicant. However, it also examined the extent of the interference with the applicant's rights and found that it was neither disproportionate nor unconstitutional but was justified by the respect due to the lawful exercise of the Catholic Church's right to freedom of religion in its collective or community dimension, in conjunction with the right of parents to choose their children's religious education.

*The law* – Article 8: An individual's right to get married and to make that choice known to the public was protected by the Convention. Unlike the Chamber, the Grand Chamber took the view that the question in the present case was not whether the State was bound, in the context of its positive obligations under Article 8, to ensure that the applicant's right to respect for his private life prevailed over the Catholic Church's right to refuse to renew his contract. Even though it was not a public authority which had actually taken the non-renewal decision, it sufficed for such an authority to intervene at a later stage for the decision to be regarded as an act of a public authority.

The impugned interference was in accordance with the law and pursued the legitimate aim of protecting the rights and freedoms of others, namely those of the Catholic Church, and in particular its autonomy in respect of the choice of persons accredited to teach religious doctrine.

As to whether the interference was necessary in a democratic society, the ECtHR found it appropriate to take the following factors into account:

(a) The applicant's status – By signing his successive employment contracts, the applicant had knowingly and voluntarily accepted a heightened duty of loyalty towards the Catholic Church and that had limited the scope of his right to respect for his private and family life to a certain degree. Such contractual limitations were permissible under the Convention where they were freely accepted. Indeed, from the point of view of the Church's interest in upholding the coherence of its precepts, teaching Catholic religion to adolescents could be considered a crucial function requiring special allegiance. Even if the applicant's status as married priest was unclear, a duty of loyalty could still be expected of him on the basis that the Bishop had accepted him as a suitable representative to teach Catholic religion.

(b) Publicity given by the applicant to his situation as married priest – In choosing to accept a publication about his family circumstances and his association with what the Bishop considered to be a protest-oriented meeting, the applicant had severed the special bond of trust that was necessary for him to carry out his tasks. Having regard to the importance of religious education teachers for all faith groups, it was hardly surprising that this severance would entail certain consequences. The existence of a discrepancy between the ideas that had to be taught and the teacher's personal beliefs might raise an issue of credibility if the teacher actively and publicly campaigned against the ideas in question. Thus, in the present case the problem lay in the fact that the applicant could be understood to have been campaigning in favour of his way of life to bring about a change in the Church's rules, and in his open criticism of those rules.

(c) Publicity given by the applicant to his membership of MOCEOP and the remarks attributed to him – Whilst it had been generally known that the applicant was married and had five children, it was not clear to what extent his membership of an organisation with aims incompatible with official Church doctrine had also been known to the general public before the publication of the impugned article. However, the sole fact that there was no evidence to suggest that the applicant, in his class, had taught anything incompatible with the Catholic Church's doctrine did not suffice for it to be

concluded that he had fulfilled his heightened duty of loyalty. In addition, there was little doubt that the applicant, as a former priest and director of a seminary, was or must have been aware of the substance and significance of that duty. Moreover, the changes brought about by the publicity given to the applicant's membership of the MOCEOP and by the remarks appearing in the Article were all the more important as the applicant had been teaching adolescents, who were not mature enough to make a distinction between information that was part of the Church's doctrine and that which corresponded to the applicant's own personal opinion.

(d) State's responsibility as employer – The fact that the applicant had been employed and remunerated by the State was not such as to affect the extent of the duty of loyalty imposed on him vis-à-vis the Catholic Church or the measures that the latter was entitled to take if that duty were breached.

(e) Severity of the sanction – It was of particular importance that an employee dismissed by an ecclesiastical employer had limited opportunities of finding another job. This was especially true where the employer had a predominant position in a given sector of activity and enjoyed certain derogations from the ordinary law, or where the dismissed employee had specific qualifications that made it difficult, if not impossible, to find a new job elsewhere.

Moreover, as a result of his former responsibilities within the Church, the applicant had been aware of its rules and should therefore have expected that the publicity he had given to his membership of the MOCEOP would not be without consequence for his contract. In addition, in the present case, a less restrictive measure for the applicant would certainly not have had the same effectiveness in terms of preserving the credibility of the Church. It did not therefore appear that the consequences of the decision not to renew his contract had been excessive in the circumstances of the case, having regard in particular to the fact that the applicant had knowingly placed himself in a situation that was completely in opposition to the Church's precepts.

(f) Review by the domestic courts – The applicant had been able to complain about the non-renewal of his contract at various levels of jurisdiction. The domestic courts had taken into account all the relevant factors and, even though they had emphasised the applicant's right to freedom of expression, they had weighed up the interests at stake in detail and in depth, within the limits imposed on them by the necessary respect for the autonomy of the Catholic Church. The conclusions thus reached did not appear unreasonable. As to the Church's autonomy, it did not appear, in the light of the review exercised by the national courts, that it had been improperly invoked in the present case. In other words, the Bishop's decision not to propose the renewal of the applicant's contract could not be said to have contained insufficient reasoning, to have been arbitrary, or to have been taken for a purpose that was unrelated to the exercise of the Catholic Church's autonomy.

Having regard to the State's margin of appreciation in the present case, the interference with the applicant's right to respect for his private life was not disproportionate.

*Conclusion* – No violation of Article 8 of the ECHR.

#### **ECtHR, *Țîmpău v. Romania*, no. 70267/17, 5 December 2023**

*The facts* – Automatic termination of the applicant's employment, after 20 years of work as lay teacher of Orthodox religion at secondary public school, as a result of the withdrawal of endorsement by a local Archbishop, alleging unprofessional conduct and a failure to confirm that she was a true preacher of the word of God. National courts dismissed her claim, stating that she could not make her case against the Archbishop's decision before secular courts.

*The law* – The ECtHR considered that the applicant’s complaint concerning the withdrawal of the Archbishop’s endorsement and the automatic termination of her employment contract had to be assessed under Article 8 of the ECHR.

As to the legitimate aim, the ECtHR found that the interference protected the rights and freedoms of others, namely the Orthodox Church, and in particular its autonomy in choosing persons accredited to teach religious doctrine.

As to whether the interference was necessary in a democratic society, the ECtHR referred to the general principles set out in *Fernández Martínez v. Spain* [GC], cited above, and considered the following relevant factors:

(a) the status of the applicant; the ECtHR took into account the contractual duty of loyalty that the applicant knowingly and voluntarily accepted towards the Orthodox Church and the corresponding professional and disciplinary constraints, which limited the scope of her right to respect for her private life to a certain degree. It noted that, from the point of view of the Orthodox Church’s interest in upholding the coherence of its precepts, teaching religion to adolescents can be considered a crucial function requiring special allegiance and exemplary conduct.

(b) the exposure of the applicant’s situation; the ECtHR considered that the fact that no publicity was given to the conduct that was seen by the Church as being contrary to the precepts of its teachings and doctrine was not a decisive element in the assessment of the consequences of the decision to terminate the applicant’s employment;

(c) the State’s responsibility as an employer; the ECtHR observed that the applicant was employed and remunerated by the State, but this aspect was not such as to affect the extent of the duty of loyalty imposed on the applicant vis-à-vis the Orthodox Church. Her employer also considered the possibility of providing the applicant with another post within the school, making an effort to find a balance between the protection of the applicant’s private and professional life and the exercise of the Church’s autonomy;

(d) the severity of the sanction; even if the consequences for the applicant’s private life were very serious, having regard to, inter alia, the reasons of the sanction, the efforts made by the School to find her another post, the possibility open to her to seek other suitable employment in the education system, the ECtHR found that the consequences of the decision to terminate the applicant’s contract were not excessive in the circumstances of the case;

(e) and the review by the domestic courts; the ECtHR found that the domestic courts took all relevant factors into account and that they weighed up the interests at stake within the limits imposed on them by the need to respect the autonomy of the Orthodox Church.

*Conclusion* – No violation of Article 8 of the ECHR.

**CJEU, judgment of 17 April 2018, *Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV*, C-414/16, EU:C:2018:257**

*The facts* – A non-selected candidate to an offer of employment to write a report on racial discrimination on behalf of a body associated with a Protestant Church, requiring applicants to be members of that church, complained before national courts that taking of religion into account in the recruitment procedure was not compatible with the prohibition of discrimination. The German Federal Labour Court referred to the CJEU preliminary questions on the interpretation of Article 4(2) of the Employment Equality Directive.

*The law* – The ECtHR observed that the Employment Equality Directive aims, on the one hand, to protect the fundamental right of workers not to be discriminated against on grounds of their religion or belief and, on the other, by means of its Article 4(2), to take into account the right of

autonomy of churches and other public or private organisations whose ethos is based on religion or belief, as recognised by Article 17 TFEU and Article 10 of the Charter, which corresponds to Article 9 of the ECHR.

In situations where those rights may clash, a fair balance had to be ensured between them and, in the event of a dispute, it had to be possible for the balancing exercise to be the subject if need be of review by an independent authority, and ultimately by a national court. In this regard, the CJEU also stressed the need under Article 47 (right to an effective remedy) of the Charter to provide effective judicial protection of EU law rights.

It therefore found that, where a church or other organisation whose ethos is based on religion or belief asserts, in support of a rejection of an application for employment with it, that by reason of the nature of the activities concerned or the context in which the activities are to be carried out, religion constitutes a genuine, legitimate and justified occupational requirement, having regard to the ethos of the church or organisation, it had to be possible for such an assertion to be the subject, if need be, of effective judicial review by which it could be ensured that the criteria set out in Article 4(2) of that directive were satisfied in the particular case.

As regards the interpretation of the concept of “genuine, legitimate and justified occupational requirement”, the CJEU observed that the lawfulness of a difference of treatment on grounds of religion or belief depended on the objectively verifiable existence of a direct link between the occupational requirement imposed by the employer and the activity concerned. Such a link could follow either from the nature of the activity, for example where it involved taking part in the determination of the ethos of the church or organisation in question or contributing to its mission of proclamation, or else from the circumstances in which the activity was to be carried out, such as the need to ensure a credible presentation of the church or organisation to the outside world.

Furthermore, the occupational requirement had to be “genuine, legitimate and justified”, having regard to the ethos of the church or organisation. Although in principle, it was not for the national courts to rule on the ethos as such on which the purported occupational requirement was founded, they were nevertheless called on to decide on a case-by-case basis whether those three criteria were satisfied from the point of view of that ethos:

(a) as regards the “genuine” nature of the requirement, professing the religion or belief on which the ethos of the church or organisation was founded had to appear necessary because of the importance of the occupational activity in question for the manifestation of that ethos or the exercise by the church or organisation of its right of autonomy;

(b) as regards its “legitimate” nature, the requirement of professing the religion or belief on which the ethos of the church or organisation is founded had not to be used to pursue an aim that had no connection with that ethos or with the exercise by the church or organisation of its right of autonomy;

(c) as regards its “justified” nature, that term implied that the supposed risk of causing harm to its ethos or to its right of autonomy had to be probable and substantial, so that imposing such a requirement was indeed necessary.

Moreover, the CJEU found that the requirement in Article 4(2) of the Employment Equality Directive had to comply with the principle of proportionality, the latter being one of the general principles of EU law, and therefore the national courts had to ascertain whether the requirement in question was appropriate and did not go beyond what was necessary for attaining the objective pursued.

In summary, the CJEU established three principles regarding the application of Article 4(2) of the directive:

- religious organisations cannot be the sole judges of whether a religious requirement is justified and courts must be able to scrutinise that claim substantively;
- the requirement must be genuine, legitimate and justified in light of the organisation's ethos and the specific nature of the role, whereas it is not sufficient for religion to be merely convenient or preferred;
- article 17 TFEU does not shield religious employers from judicial oversight under the directive and church autonomy is not absolute.

**CJEU, judgment of 11 September 2018, *IR v JQ*, C-68/17, EU:C:2018:696**

*The facts* – A Catholic doctor, working in a managerial position in a hospital managed by a limited liability company established under German law subject to the supervision of the Archbishop of Cologne, was dismissed – for having infringed his duty of loyalty arising under his employment contract – when his employer discovered that, after his divorce from his first wife, he had married again in a civil ceremony without his first marriage having been annulled.

In the context of proceeding brought against the dismissal, the German Federal Labour Court referred to the CJEU preliminary questions on the interpretation of Article 4(2) of the Employment Equality Directive.

*The law* – The CJEU clarified at the outset that the application of Article 4(2) of the Employment Equality Directive could also be invoked by a company established under private law such as the employer in that case. Relying on the judgment of 17 April 2018, *Egenberger*, cited above, the CJEU held that where a private organisation claimed, in support of a decision to dismiss one of its employees, that the latter had failed to act in good faith and with loyalty to the ethos of that organisation, within the meaning of the second subparagraph of Article 4(2) of that directive, that decision had to be amenable to effective judicial review.

During that review, national courts hearing the action had to satisfy themselves that, bearing in mind the nature of the occupational activities concerned or the context in which they are carried out, the religion or belief was a genuine, legitimate and justified occupational requirement in the light of the ethos in question, according to the principles set out in the judgment of 17 April 2018, *Egenberger*, cited above.

While it was for the referring court to determine whether those conditions were satisfied, the CJEU observed that adherence to the notion of marriage advocated by the Catholic Church did not appear to be necessary for the promotion of the employer company's ethos due to the importance of the occupational activities carried out by the doctor, namely the provision of medical care and managerial activities in a hospital. Therefore, that did not appear to be a genuine requirement of that occupational activity. This was corroborated by the fact that similar posts were entrusted to employees who were not of the Catholic faith.

In addition, the Court observed that, in the light of the documents submitted to it, the requirement at issue did not appear to be justified.