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Combating all forms of discrimination based on religion

Report¹

Committee on Legal Affairs and Human Rights

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Summary

Although Europe has been historically shaped by monotheist religions, it is currently home to varied religious beliefs. Europe is not free from tensions between the different religious communities and it is essential to step up protection of the members of religious groups against the risk of discrimination and acts of violence. The Parliamentary Assembly has repeatedly reaffirmed the principle of separation of church and state and has firmly condemned acts of violence based on religion, in Europe and elsewhere.

The case law of the European Court of Human Rights concerning Articles 9 and 14 of the European Convention on Human Rights is well established. In particular, any restriction on the right to manifest one's religion must be "prescribed by law" and be "necessary in a democratic society". The state must remain neutral and impartial in its relations with the various religions, even if some religious communities have been given preferential treatment in view of their historical role.

There is a need to promote a culture of "living together" based on religious pluralism and on dialogue both between religions and between religions and the state. All religious communities must be granted the possibility of obtaining a legal status, and obsolete discriminatory laws and practices against them must be abolished. Hate speech and the use of violence against members of religious groups should be penalised and victims should have access to effective remedies.

1. Reference to committee: [Doc. 12257](#), Reference 3689 of 21 June 2010.



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A. Draft resolution²

1. The Parliamentary Assembly notes that Europe, which has been historically shaped by monotheist religions, has become home to varied religious beliefs, including new ones. However, members of minority religious groups are vulnerable to intolerance and discrimination.
2. The Assembly reaffirms its strong stance against the persecution of religious communities and condemns all acts of violence based on religion, in Europe and elsewhere. It invites member states to take stronger measures to combat any discrimination on grounds of religion or belief.
3. The Assembly also reiterates its support for the separation of state and church (see [Recommendation 1804 \(2007\)](#) on state, religion, secularity and human rights and [Recommendation 1396 \(1999\)](#) on religion and democracy). The autonomy of religious communities is indispensable for pluralism in a democratic society, and governments should remain neutral and impartial vis-à-vis religions and beliefs. In member states where, for historical reasons, a specific faith has a leading role, other religious groups should not be discriminated against and the same criteria for the granting of legal status, where legally required, should be applied to all religious groups.
4. The Assembly recalls the Council of Europe's *acquis* in the area of freedom of thought, conscience and religion. The European Court of Human Rights has developed a comprehensive case law on Article 9 of the European Convention on Human Rights (ETS No. 5). The right to hold or not to hold a belief and to change religion as a matter of conscience is an absolute right. The right to manifest one's religion is not unlimited, but any restrictions on it must be "prescribed by law" and "necessary in a democratic society", and must pursue a legitimate aim.
5. Consequently, the Assembly calls on Council of Europe member states to:
 - 5.1. promote a culture of "living together" based on religious pluralism, in accordance with Article 9 of the European Convention on Human Rights;
 - 5.2. remain neutral and impartial in exercising their regulatory powers and in their relations with various religions; any preferential treatment given to some religious communities in view of their historical role must strictly comply with the well-established case law of the European Court of Human Rights;
 - 5.3. grant all religious communities the possibility to obtain a legal status;
 - 5.4. abolish outdated legislation and administrative practices causing discrimination against certain religious groups;
 - 5.5. when enacting legislation and implementing appropriate policies, strive to accommodate the needs of different religions and beliefs in a pluralist society;
 - 5.6. adopt legislation to penalise hate speech and the use of violence against members of religious groups and religious leaders, in accordance with the recommendations of the European Commission against Racism and Intolerance (ECRI); such legislation should in particular make effective remedies available to victims;
 - 5.7. ensure that investigative authorities conduct effective investigations into acts of violence based on religion or belief;
 - 5.8. promote dialogue with religious leaders, including those of new religious communities, provided they support universal fundamental values of human rights, democracy and the rule of law.

2. Draft resolution adopted unanimously by the committee on 5 October 2011.

B. Draft recommendation³

1. Referring to its Resolution ... (2011) on combating all forms of discrimination based on religion, the Parliamentary Assembly recommends that the Committee of Ministers:

- 1.1. strengthen its action against discrimination based on religion or belief;
- 1.2. continue dialogue with representatives of religious, humanist and philosophical communities, in particular through the “annual exchanges on the religious dimension of intercultural dialogue”;
- 1.3. identify and disseminate examples of good practice in respect of safeguarding and/or developing religious pluralism;
- 1.4. when supervising the execution of judgments of the European Court of Human Rights concerning freedom of religion, notably those concerning registration of religious communities and acts of violence based on religion, strive to ensure their speedy execution;
- 1.5. call on those member states which have not yet done so to sign and ratify Protocol No. 12 (CETS No. 194) to the European Convention on Human Rights (ETS No. 5);
- 1.6. pursue co-operation with other international organisations, in particular the European Union, the Organization for Security and Co-operation in Europe (OSCE), and the United Nations and its Committee on the Elimination of Racial Discrimination, with a view to promoting coherent interpretations of the freedom of thought, conscience and religion and the implementation of common policies in the field of combating discrimination based on religion.

3. Draft recommendation adopted unanimously by the committee on 5 October 2011.

C. Explanatory memorandum by Mr Panțiru, rapporteur

1. Procedure to date

1. The motion for a resolution entitled “Combating all forms of discrimination and intolerance based on religion” ([Doc. 12257](#)) was referred to the Committee on Legal Affairs and Human Rights on 21 June 2010 for report. The committee appointed me as rapporteur at its meeting in Tbilisi on 16 and 17 September 2010.

2. At its meeting on 12 April 2011, the committee held a hearing with the participation of the following experts:

- Professor Peter Cumper, Senior Lecturer, Leicester University, United Kingdom;
- Professor Marie-Claire Foblets, Law Faculty, Chair of the Institute for Migration Law and Legal Anthropology, University of Leuven, Belgium;
- Professor Renata Uitz, Chair of the Comparative Constitutional Law programme, Central European University in Budapest, Hungary.

2. Purpose of this report

3. The above-mentioned motion for a resolution focuses on the recent increase in serious acts of violence committed specifically against Christian communities outside Europe (in North Korea, Egypt, Iraq, Malaysia, Nigeria, etc.). This disturbing phenomenon has already drawn critical responses from several European bodies, particularly within the European Union.⁴ The attacks against Christian communities in the Middle East in October 2010 (Baghdad) and January 2011 (Alexandria), after my appointment as rapporteur on this issue, elicited further responses from the Council of Europe, including the adoption by the Parliamentary Assembly of [Recommendation 1957 \(2011\)](#) on violence against Christians in the Middle East,⁵ condemning the attacks and stressing the need to combat all types of religious fundamentalism. On 21 January 2011, the Committee of Ministers adopted a declaration on religious freedom condemning all forms of incitement to religious hatred and violence and noting that the enjoyment of religious freedom is an essential precondition for “living together”. The Council of the European Union also commented on this subject on 21 February 2011, calling on the international community to consolidate its collective response to those who want to use religion as an instrument of division, fuelling extremism and violence.⁶ Moreover, following a motion for a resolution of March 2011, Mr Luca Volontè is currently preparing a report on “Violence against religious communities” within the Political Affairs Committee.⁷

4. Religious freedom in a multicultural context was recently the subject of a detailed report by the Committee on Culture, Science and Education on “The religious dimension of intercultural dialogue”,⁸ which strongly advocated dialogue between representatives of different religious communities. Ms Brasseur deserves praise for her dedicated work. I support her proposals and would like to stress the issue of discrimination on the basis of religion and prevention of related violence. Religion is important for many citizens. Members of religious minority groups, including immigrants or Roma, are more vulnerable than members of major religions. They are often exposed to tensions, which may give rise to intolerance and acts of discrimination. Recently, such tensions have been coupled with the effects of the economic crisis. Council of Europe member states should therefore consider measures to protect all religious communities from discrimination and violence and offer effective remedies to the victims of discrimination and aggression

5. The Council of Europe has a proven track record in the area of religious freedom.⁹ First of all, therefore, I will consider the Council of Europe’s *acquis* in this field, and in particular the concepts of religious freedom and discrimination in the European Convention on Human Rights (ETS No. 5, “the Convention”). In this

4. See, in particular, the European Parliament resolution of 21 January 2010 on attacks on Christian communities and that of 20 January 2011 on the situation of Christians in relation to freedom of religion.

5. See also [Doc. 12493](#) (rapporteur: Mr Luca Volontè, Italy, EPP/CD).

6. Conclusions of the Council of the European Union on intolerance, discrimination and violence on the basis of religion or belief, adopted at the 3069th Foreign Affairs Council meeting, on 21 February 2011 in Brussels.

7. [Doc. 12542](#), motion for a resolution.

8. [Doc. 12553](#) (rapporteur: Ms Anne Brasseur, Luxembourg, ALDE). See also [Recommendation 1962 \(2011\)](#).

9. See, in particular, [Recommendation 1831 \(2008\)](#) on European Muslim communities confronted with extremism; [Recommendation 1804 \(2007\)](#) on state, religion, secularity and human rights; and [Recommendation 1805 \(2007\)](#) on blasphemy, religious insults and hate speech against persons on grounds of their religion. See also [Resolution 1743 \(2010\)](#) and [Recommendation 1927 \(2010\)](#) on Islam, Islamism and Islamophobia in Europe.

connection, I would like to thank the Research and Library Division of the Registry of the European Court of Human Rights (“the Court”), whose report of 19 January 2011 giving an overview of the Court’s case law on freedom of religion was helpful in drafting this report. I will also look at the results of the work of other Council of Europe bodies in this field, including the Assembly itself, the European Commission for Democracy through Law (Venice Commission) and the European Commission against Racism and Intolerance (ECRI), in order to show what means are currently available to combat violence and discrimination based on religion. It would also be useful to examine how this subject is being dealt with by certain member states which are confronted with an increasing presence of new religious groups and consequently seek ways to accommodate the needs of these different groups. Therefore, I wish to express my gratitude to the experts who took part in the hearing of 12 April 2011 for the valuable information they provided on the measures aimed at combating discriminatory practices in certain member states of the Council of Europe and the challenges faced today by European societies to accommodate different religious groups.

3. International and European legal framework

6. Historically, the prohibition of discrimination on the basis of religion was the first human right to be safeguarded by an international treaty, through the treaties for the protection of national minorities established by the great congresses of the 19th century,¹⁰ in particular the Congress of Vienna in 1814-15 (agreement of 21 July 1814 joining Belgium to the Netherlands; protocol of 29 March 1815 for the protection of the Catholics of Savoy, who had been attached to the traditionally Protestant Republic of Geneva), the Conference of London in 1830 (Protocol No. 3 of 3 February 1830 concerning Greece), the Congress of Berlin of 1878 (Treaty of Berlin dealing with the situation in the Balkans) and the peace negotiations following the First World War (in particular the treaty with Poland: Treaty of Saint-Germain of 10 September 1919).

7. Freedom of thought, freedom of conscience and freedom of religion are universal human rights enshrined in several international instruments, including Article 18 of the Universal Declaration of Human Rights of 1948, Article 18 of the International Covenant on Civil and Political Rights of 1966 and the United Nations Declaration of 1981 on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief. It was also examined in several reports of the United Nations Special Rapporteur on freedom of religion or belief, and in particular her reports of 29 December 2009, 16 February 2010 and 29 July 2010.

8. In the European Union, Article 10, paragraph 1, of the Charter of Fundamental Rights of the European Union sets forth the freedom of thought, religion and conscience.¹¹ The Charter is binding on European Union institutions and on member states to the extent that they implement European Union law. The European Union has no explicit legal competence in the sphere of religion, but the management of relations with faith communities has taken on increasing importance in the European Union in recent years, mainly in the fields of citizenship and fundamental rights, non-discrimination, immigration and integration, social inclusion and education and culture.¹² Furthermore, religion constitutes one of the explicitly proscribed grounds for discrimination within the legal European framework on non-discrimination (including the Employment Equality Directive, which addresses various forms of discrimination in employment, including on the grounds of religion or belief).¹³ Currently, a project on the challenge of religious pluralism in contemporary Europe called RELIGARE¹⁴ is being conducted under the auspices of the European Commission. The project consortium comprises 13 universities and research centres from the European Union member states¹⁵ and Turkey. It carries out sociological surveys and analyses the existing legal and policy frameworks in the field of religion and secularism across the European Union and Turkey with a view to making policy recommendations.¹⁶

10. F. Edel, *The prohibition of discrimination under the European Convention on Human Rights*, Human Rights Files No. 22, Council of Europe Publishing, Strasbourg, 2010, pp. 153-54.

11. “Article 10. Freedom of thought, conscience and religion.

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. ...”.

12. For more details, see S. Carrera and J. Parkin, “The Place of Religion in European Union Law and Policy Competing Approaches and Actors inside the European Commission”, RELIGARE Working Document No. 1, September 2010, www.religareproject.eu/system/files/RELIGARE%20-%20Religion%20and%20the%20EU_Final.pdf.

13. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, *Official Journal* L 303, 2 December 2000, pp. 0016-0022.

14. Religious Diversity and Secular Models in Europe. Innovative Approaches to Law and Policy, www.religareproject.eu.

15. Some nine European Union member states are represented in the RELIGARE consortium: Belgium, Bulgaria, Denmark, France, Germany, Italy, the Netherlands, Spain and the United Kingdom.

16. The project focuses on four thematic research fields: the family, the work place, the public space and state support.

9. In the Council of Europe member states, freedom of thought, conscience and religion is protected by Article 9 of the European Convention on Human Rights and discrimination on the grounds of religion is prohibited by Article 14 of the Convention and Article 1 of its Protocol No. 12 (CETS No. 194). Over the years, the European Court of Human Rights has developed a very extensive body of case law on the first two provisions, as well as on those which are related to it directly or indirectly (see below).

4. Religious freedom and protection against discrimination based on religion in the case law of the European Court of Human Rights

4.1. The freedoms guaranteed in Article 9 of the Convention

10. Article 9 of the Convention¹⁷ is very broad in scope and applies to all personal, political, philosophical, moral and, obviously, religious beliefs. Unlike national authorities,¹⁸ the Convention's institutions do not have the authority to define "beliefs" or "religion", but the latter must be interpreted in a non-restrictive sense as including not only the "main religions" but all religious groups, including minority groups and their members. The freedom guaranteed in Article 9 of the Convention applies not only to believers, but also to atheists, agnostics, sceptics and the unconcerned. It entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion.¹⁹ Except in very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the state to determine whether religious beliefs or the means used to express such beliefs are legitimate.²⁰

11. The rights guaranteed in Article 9 have both an internal and an external aspect. First, the right of individuals to hold beliefs or not and to change their beliefs is a matter of individual conscience; it is an absolute right. An individual's deep-seated beliefs cannot in themselves prejudice public order and cannot therefore be subject to restrictions.

12. The external aspect includes freedom to manifest one's religion or belief alone or in community with others, in public or in private, in worship, teaching, practice and observance, as stipulated in paragraph 1 of Article 9. Nevertheless, under the terms of paragraph 2 of this article, the external aspect of this right may be subject to restrictions. Article 9 therefore does not protect every form of behaviour simply because it is motivated by religious (or philosophical) considerations.

13. In particular, as shown by the Court's judgment in the *Kokkinakis v. Greece* case,²¹ the right to "convince" one's neighbour to convert, although falling within the freedoms of Article 9, does not include unreasonable behaviour such as improper pressure and actual harassment; such behaviour cannot be protected by the Convention, as shown in particular by the judgment in the *Larissis and Others v. Greece* case.²²

14. Restrictions on the right to manifest one's religion or beliefs must be "prescribed by law" and be "necessary in a democratic society", namely they must meet a "pressing social need". This means that the restriction must be justified with reference to one of the forms of general interest enumerated in paragraph 2 of Article 9: public safety, the protection of public order, health or morals, or the protection of the rights and

17. "Article 9 – Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, and to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

18. *Handbook on European non-discrimination law*, European Union Agency for Fundamental Rights, European Court of Human Rights and Council of Europe, Luxembourg, 2011, p. 112.

19. See, in particular, *Kokkinakis v. Greece*, judgment of 25 May 1993, Application No. 14307/88, paragraph 31.

20. *Hasan and Chaush v. Bulgaria*, judgment of 26 October 2000 (Grand Chamber), Application No. 30985/96, paragraph 78.

21. *Op. cit.* The applicant, a Jehovah's Witness, complained of his criminal conviction for proselytism for having engaged in a discussion on religion with a neighbour, the wife of a cantor at a local Orthodox church. The Court found a violation of Article 9, holding that the conviction did not meet a pressing social need because the Greek courts had not sufficiently specified in what way the applicant had attempted to convince his neighbour by improper means.

22. Judgment of 24 February 1998, Applications Nos. 23372/94, 26377/94 and 26378/94. This case concerned the conviction of Greek air force officers belonging to the Pentecostal Church who had tried to convert young subordinates.

freedoms of others. When assessing the conformity of a national measure with Article 9, paragraph 2, of the Convention, the Court must take into account the historical context and the distinctive features of the religion in question in terms of dogma, ritual, organisation, etc.²³

15. In a democratic society in which several religions, or even several branches of the same religion, co-exist within the same population, it may be necessary to place restrictions on freedom of religion in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected. The state therefore retains certain prerogatives in this field, but it must nevertheless remain "neutral and impartial"²⁴ in exercising its regulatory power and in its relations with the various religions.²⁵ The Court has pointed out that "... where questions concerning the relationship between state and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance".²⁶

16. The Court has recently been faced with cases concerning the principle of secularism and minimisation of the potentially fragmentary effect of religion on society, particularly in cases concerning dress code. Here it has placed particular emphasis on the prevention of disorder and protection of the rights and freedoms of others.²⁷ For example, in the *Köse and Others v. Turkey* case, in which the applicants challenged a dress code prohibiting the wearing of headscarves by girls in school, the Court held that the impugned rules were not connected to issues of affiliation to a particular religion, but were rather designed to preserve neutrality and secularism in schools, which in turn would prevent disorder as well as protect the right of others to non-interference in their own religious beliefs. The application was therefore considered to be manifestly ill-founded and inadmissible.²⁸ The Court adopted a similar approach in a case relating to the dress code for teachers.²⁹

17. The rights recognised in Article 9 of the Convention are not only individual but also collective rights. As the Court has noted, "... religious communities traditionally and universally exist in the form of organised structures".³⁰ Article 9 must therefore be interpreted in the light of Article 11, which guarantees freedom of assembly and association. Seen in this perspective, the right of believers to freedom of religion, which includes the right to manifest one's religion collectively, implies that believers should enjoy freedom of association free from arbitrary state intervention. Indeed, the autonomous existence of religious communities is "indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords".³¹

18. Furthermore, according to the Court, Article 9 can hardly be conceived as being likely to diminish the role of a faith or a church with which the population of a specific country has historically and culturally been associated.³² However, the duty of neutrality requires that if a state sets up a framework for conferring legal personality on religious groups to which a specific status is linked, all religious groups which so wish must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner.³³ The Court considers that, in its relations with religions, the state must not make distinctions and any differences of treatment must be "limited in scope".³⁴

23. *Miroļubovs and Others v. Latvia*, judgment of 15 September 2009, Application No. 798/05, paragraph 81.

24. *97 Members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, judgment of 3 May 2007, Application No. 71156/01, paragraph 131.

25. See, in particular, *Metropolitan Church of Bessarabia and Others v. Moldova*, judgment of 13 December 2001, Application No. 45701/99, paragraphs 115-16.

26. *Leyla Şahin v. Turkey*, judgment of 10 November 2005 (Grand Chamber), Application No. 44774/98, paragraph 108.

27. *Handbook on European non-discrimination law*, op. cit., p. 113.

28. *Köse and Others v. Turkey*, inadmissibility decision of 24 January 2006, Application No. 26625/02.

29. *Dahlab v. Switzerland*, inadmissibility decision of 15 February 2001, Application No. 42393/98. This decision gave rise to various comments, including some which were particularly critical. See in particular: N. Chauvin, "Le port du foulard islamique par une enseignante (à propos de la décision de la Cour européenne des droits de l'homme du 15 février 2001, *Mme Dahlab c. Suisse*)", *Revue française de droit administratif*, May-June 2003, pp. 536-42; J.-F. Flauss, note concerning *Dahlab v. Switzerland*, A.J.D.A., 2001, pp. 482-84.

30. *Obst v. Germany*, judgment of 23 September 2010, Application No. 425/03, paragraph 44.

31. *Hasan and Chaush v. Bulgaria*, op. cit., paragraph 62.

32. *97 Members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, op. cit., paragraph 132.

33. *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, judgment of 31 July 2008, Application No. 40825/98, paragraph 92.

34. *Cha'are Shalom Ve Tsdek v. France*, judgment of 27 June 2000, Application No. 27417/95, paragraph 87.

4.2. The prohibition of discrimination based on religion (Article 14 of the Convention and Protocol No. 12)

19. Another question which warrants particular attention in this context is that of the application of Article 14 of the Convention in situations in which a person suffers discriminatory treatment because of his or her religion or beliefs. Article 14 provides that: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”³⁵ Furthermore, Article 1 of Protocol No. 12 to the Convention introduces a general prohibition on discrimination in the enjoyment of “any right set forth by law” (paragraph 1), which applies to all acts of public authorities (paragraph 2). Religion is mentioned there as one of the possible grounds of discrimination. Unfortunately, this protocol has so far been ratified by only 18 Council of Europe member states.

20. It follows from the scope of Article 14 of the Convention and Article 1 of Protocol No. 12 that the state may not afford different treatment to persons in substantially similar situations without any objective and reasonable justification. The state enjoys a certain margin of appreciation in assessing whether and to what extent the existing differences justify different treatment; what is important is that the inequality in treatment pursues a legitimate aim and respects the criterion of reasonable proportionality.³⁶ Furthermore, the *Thlimmenos v. Greece*³⁷ judgment shows that, in some circumstances, treating in the same manner persons whose situations are significantly different may be contrary to the principle of non-discrimination. The Court must therefore take into consideration the distinctive features of the different religions when certain differences appear to be essential to resolving the dispute brought before it.

21. The scope of the Convention in the field of discrimination based on religion is wide³⁸ and the Court has already ruled on this question in several cases, concerning for example the situation of the Catholic Church in Greece or Romania or that of the Jehovah’s Witnesses. In cases of the former type, the Court has had occasion to find discriminatory obstacles to the right of access to justice (hence discrimination contrary to Article 14 combined with Article 6).³⁹ Where the Jehovah’s Witnesses are concerned, the Court has found violations of Article 14 combined with Article 8 (right to respect for private and family life) in cases concerning the removal of children from their mother’s custody on the sole basis of her religious beliefs⁴⁰ and violations of Article 14 combined with Article 9 because of disparities in (privileged) tax treatment among religious communities.⁴¹ Article 14 is therefore to be interpreted in conjunction with different articles of the Convention, and not just Article 9 guaranteeing freedom of religion.⁴²

4.3. Existence of positive obligations

22. In general, the Convention requires states to refrain from all interference in the rights safeguarded therein (“negative obligation”). In some cases, however, it may turn out to be necessary to take action on their part; the Court’s case law has therefore developed the idea of the existence of “positive obligations” by virtue of which states are required to take certain measures to protect individuals. For a long time, the Court did not pronounce itself on whether Article 9 also places positive obligations on states. As noted by some authors, even if it did have the opportunity to do so,⁴³ it preferred to class as interference what might have been seen as a failure to act.⁴⁴ It is also true that it is not always easy to establish the existence of a positive obligation to protect the right guaranteed in Article 9.⁴⁵ The obligation to take measures depends above all on the circumstances of the case. According to the principles deriving from the Court’s case law, the positive

35. This article does not automatically confer any autonomous or substantive right: it may only be invoked in conjunction with one or more substantive guarantees established in the Convention. However, there may be a violation of this article (combined with another provision) even if the Court has found no violation of the substantive right in question.

36. *Savez crkava “Riječ života” and Others v. Croatia*, Application No. 7798/08, judgment of 9 December 2010, paragraphs 85-89.

37. Judgment of 6 April 2000 (Grand Chamber), Application No. 34369/97, paragraph 44.

38. *Handbook on European non-discrimination law*, op. cit., p. 111.

39. *Canea Catholic Church v. Greece*, judgment of 16 December 1997, Application No. 25528/94; *Sâmbata Bihor Greco-Catholic Parish v. Romania*, judgment of 12 January 2010, Application No. 48107/99.

40. *Hoffmann v. Austria*, judgment of 23 June 1993, Application No. 12875/87; *Palau-Martinez v. France*, judgment of 16 December 2003, Application No. 64927/01.

41. *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, op. cit.

42. F. Edel, op. cit., p. 155.

43. For example in the case of *Vergos v. Greece*, judgment of 24 June 2004, Application No. 65501/01, in which the national authorities were criticised for not designating an area for the construction of a prayer house.

44. See, in particular, J.-F. Akandji-Kombe, *Positive obligations under the European Convention on Human Rights*, Human Rights Handbooks, No. 7, 2006, p. 51.

obligations deriving from Article 9 imply that the national authorities must safeguard the existence of religious freedom in a spirit of pluralism and mutual tolerance, for example by acting as a “neutral mediator” in the case of an internal conflict between different factions within a religious community.⁴⁶

23. It should be pointed out that the Court referred explicitly to the theory of positive obligations in the judgment in the case of *97 Members of the Gldani Congregation of Jehovah’s Witnesses and 4 Others v. Georgia*,⁴⁷ from which it emerges that states have a positive obligation to take measures to prevent and punish discriminatory violence based on religious affiliation. The case concerned a very violent attack in October 1999 by a group of Orthodox believers (led by Vassil Mkalavishvili, known as “Father Basil”) on members of the Congregation of Jehovah’s Witnesses. The police authorities refused to intervene at the scene of the incident to protect the applicants and the children of some of them and the authorities responsible for the investigation subsequently took no action, without any reason being given. None of the assailants was arrested and most of the applicants received no reply to their complaints. The other complaints were unsuccessful despite the fact that television footage was available which could have been used to identify the perpetrators of the violence. In view of the failure of the Georgian authorities to act, the Court found a violation of Article 9 and a violation of Article 14 combined with Article 9 of the Convention. This judgment also shows that Article 14 may apply to situations concerning relations between individuals themselves. The state should therefore play its role as guarantor by ensuring that its legal system does not permit discrimination in relations between individuals and that all violations are duly and effectively sanctioned.⁴⁸ Other cases brought before the Court, although not under Article 9 (but in particular under Articles 2 and 8), and concerning attacks on Roma and, subsequently, discrimination based on ethnic origin, confirm this approach adopted by the Court.⁴⁹ Furthermore, the issue of positive obligations is not unconnected with the non-discrimination clause,⁵⁰ and this principle is indeed established in that field.⁵¹

4.4. Other issues

24. Issues of religious freedom also arise in connection with provocative remarks, which are generally protected under Article 10 of the Convention guaranteeing freedom of expression. The Court has already had occasion to criticise the conduct of individuals seeking to disparage believers’ religious feelings or incite hatred and violence on the basis of religion. In the *Otto-Preminger-Institut v. Austria* judgment,⁵² the Court accepted that respect for believers’ feelings as guaranteed in Article 9 had been violated by provocative portrayals of objects of religious veneration; such portrayals can be regarded as malicious violation of the spirit of tolerance, which must also be a feature of a democratic society.⁵³ In the *Gündüz v. Turkey (No. 2)* case,⁵⁴ concerning the sentencing of the applicant to imprisonment for incitement to crime and religious hatred through publication of his statements in the press, the Court declared the application inadmissible, arguing that the statements amounted to hate speech which glorified violence and was incompatible with the fundamental values of justice and peace set forth in the Preamble to the Convention, and that the penalty imposed by the Turkish authorities was justified as a deterrent which could be necessary to prevent public incitement to commit an offence.⁵⁵

25. Given the wide variety of cases which have been brought before the Court under Article 9 of the Convention, it would be pointless to try to give a detailed summary of them in this report. Some specific aspects of religious freedom dealt with by the Court may be mentioned as examples: compulsory military

45. J. Murdoch, *Freedom of thought, conscience and religion: a guide to the implementation of Article 9 of the European Convention on Human Rights*, Human Rights Handbooks, No. 9, Strasbourg 2007, p. 21.

46. *Supreme Holy Council of the Muslim Community v. Bulgaria*, judgment of 16 December 2004, Application No. 39023/97.

47. Op. cit., paragraphs 139-42.

48. J.-F. Akandji-Kombe, op. cit., p. 58.

49. See, in particular, *Nachova and Others v. Bulgaria*, judgment of 6 July 2005 (Grand Chamber), Applications Nos. 43577/98 and 43579/98; *Moldovan and Others v. Romania*, judgment of 12 July 2005, Applications Nos. 41138/98 and 64320/01.

50. J.-F. Akandji-Kombe, op. cit., p. 58.

51. See, in particular, the *Belgian Linguistic Case*, judgment of 23 July 1968, Applications Nos. 1474/62 and others.

52. Judgment of 20 September 1994, Application No. 13470/87, paragraphs 55-56.

53. In the case in point, the Court found that the confiscation by the Austrian courts of the film offensive to Catholics was not contrary to Article 10.

54. Decision of 13 November 2003, Application No. 59745/00.

55. But in other cases concerning sanctions against journalists who had made controversial remarks about people based on their religious affiliation, the Court criticised the state measures and found violations of Article 10 of the Convention; see, in particular, *Giniewski v. France*, judgment of 31 January 2006, Application No. 64016/00, and *Paturel v. France*, judgment of 22 December 2005, Application No. 54968/00.

service and religious beliefs, the obligation to pay “church tax”, dress codes, prisoners and religious belief, proselytism, state interference in internal conflicts between members of a religious community, the requirement for state registration, and controls on places of worship.

26. Religious beliefs may also come into conflict with other rights enshrined in the Convention, such as the right to education (Article 2 of Protocol No. 1).⁵⁶ In its recent judgment *Lautsi v. Italy*,⁵⁷ the Grand Chamber of the European Court of Human Rights overruled the previous judgment delivered by its Chamber,⁵⁸ which had found a violation of Article 2 of Protocol No. 1 in the Italian authorities’ decision to keep crucifixes in the classrooms of the state school attended by the applicant’s children. The Grand Chamber considered that the authorities had acted within the limits of the margin of appreciation left to Italy in the context of its obligation to respect, in the exercise of the functions it assumed in relation to education and teaching, the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.⁵⁹

27. Other rights which might come into conflict with religious beliefs are, in particular, the right to respect for private and family life (Article 8), for example in connection with certain medical treatment issues, and the right to a fair trial (Article 6), for example in connection with state recognition of decisions of ecclesiastical bodies. But my remit of rapporteur does not include in-depth consideration of these questions either.

4.5. Implementation of the Court’s judgments

28. Judgments of the European Court of Human Rights finding violation(s) of the Convention may sometimes lead to important changes in the legislation of the respondent state or the practice of its judicial or administrative authorities. This is so because on the basis of Article 46, states are obliged to implement final judgments of the Court, that is to say, if need be, they must take so-called “general measures” aimed at preventing similar violations in the future. Thus, for instance, following the judgments of *Metropolitan Church of Bessarabia and Others v. Moldova*⁶⁰ and *Biserica Adevarat Ortodoxa din Moldova and Others v. Moldova*,⁶¹ both concerning the refusal to register the applicant churches (violations of Article 9), Moldova adopted a new Law on Religious Denominations.⁶² Moreover, in the majority of cases, states have to ensure a wide dissemination and publication of the Court’s judgments in order to make the relevant authorities aware of the requirements stemming from the Convention and avoid further mistakes in its application.⁶³

5. The work of the Council of Europe in the field of religious freedom

5.1. The Parliamentary Assembly

29. On several occasions, the Assembly has taken a stance on issues related to religion, such as religious tolerance,⁶⁴ the relation between state and religion,⁶⁵ freedom of conscience and religion and freedom of expression.⁶⁶ It has also examined the situation of specific religious groups, such as Muslims or Jews,⁶⁷ the state of religious beliefs and legislation in specific countries, including those of central and eastern Europe⁶⁸ and the issue of religion and education.⁶⁹ Some of the main guidelines stemming from the Assembly’s documents are reflected below.

56. See for instance, *Valsamis v. Greece*, Application No. 21787/93, judgment of 18 December 1996.

57. Application No. 30814/06, judgment (Grand Chamber) of 18 March 2011.

58. Judgment of 3 November 2009.

59. See also D. McGoldrick, “Religion in the European Public Square and in the European Public Life – Crucifixes in the Classroom?”, *Human Rights Law Review*, 2011, 11 (3), pp. 451-502.

60. Judgment of 13 December 2001, Application No. 45701/99.

61. Judgment of 27 February 2007, Application No. 952/03.

62. However, the Committee of Ministers was not fully satisfied with this new law. See Resolution CM/ResDH(2010)8 adopted on 4 March 2010 by the Committee of Ministers and closing the examination of this case.

63. See, for example, *Religionsgemeinschaft der Zeugen Jehovas and Others*, op. cit., and *Verein der Freunde der Christengemeinschaft and Others*, judgment of 26 February 2009, Application No. 76581/01. Both cases are still pending before the Committee of Ministers for execution: www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_fr.asp?CaseTitleOrNumber=&StateCode=AUT&SectionCode.

64. Recommendation 1202 (1993) on religious tolerance in democratic society; Recommendation 1222 (1993) on the fight against racism, xenophobia and intolerance.

65. Recommendation 1804 (2007) on state, religion, secularity and human rights.

66. Recommendation 1805 (2007) on blasphemy, religious insults and hate speech against persons on grounds of their religion.

67. Resolution 1743 (2010) on Islam, Islamism and Islamophobia in Europe; Recommendation 1831 (2008) and Resolution 1605 (2008) and Recommendation 1831 (2008) on European Muslim communities confronted with extremism; and Resolution 898 (1988) on the situation of the Jews in the Soviet Union.

5.1.1. Condemning the use of violence based on religion

30. The Assembly has consequently condemned the use of violence purportedly motivated by religion, like for instance in its recent [Recommendation 1957 \(2011\)](#) condemning the attacks against Christians in the Middle East and stressing the need to combat all types of religious fundamentalism. In its [Recommendation 1396 \(1999\)](#) on religion and democracy, it stated that there was “a religious aspect to many of the problems contemporary society [faced], such as ... fundamentalist movements and terrorist acts, racism and xenophobia, and ethnic conflicts ...”. It has also dealt with the issue of hate speech against religious groups, in particular in its [Resolution 1510 \(2006\)](#) on freedom of expression and respect for religious beliefs and in its [Recommendation 1805 \(2007\)](#) on blasphemy, religious insults and hate speech against persons on grounds of their religion, it stressed that “any death threats and incitements to violence by religious leaders and groups issued against persons for having exercised their right to freedom of expression about religious matters” should be condemned by national governments.

5.1.2. Combating discrimination based on religion

31. In its [Recommendation 1556 \(2002\)](#) on religion and change in central and eastern Europe, the Assembly called upon governments to put special emphasis on the protection of religious minorities against discrimination and persecution by religious majorities or “other groups practising aggressive nationalism and chauvinism”. It stressed that all religious groups should have the possibility to be provided with the status of legal entities, if their activities are in conformity with human rights standards. In its recent [Recommendation 1962 \(2011\)](#), the Assembly reiterated that states have to ensure that all religious communities accepting common fundamental values enjoy appropriate legal status and that any preferential support granted to certain religions does not become disproportionate and discriminatory in practice.

5.1.3. Establishing the relationship between religion and human rights

32. A set of principles concerning relations between religion and state was established by the Assembly in its report on religion and democracy.⁷⁰ It thus follows that the state cannot allow violations of human dignity and of human rights in the name of a faith and that religious communities are obliged to observe the principles of democracy and the rule of law. Infringements of public order or the democratic rights of fellow citizens cannot be allowed to go unchecked. At the same time, society should make it as easy as possible for citizens to exercise their religion.⁷¹

33. The Assembly has stressed that religions should respect human rights as defined in the European Convention on Human Rights, and the rule of law. Freedom of religion is not unlimited and a situation in which a religion runs counter to other fundamental rights can become unacceptable; in such a situation state authorities should make use of the restrictions allowed under Article 9, paragraph 2, of the European Convention on Human Rights. The dissemination of religious principles which, when put in practice, would violate human rights, shall not be allowed and “if doubts exist in this respect, states must require religious leaders to take an unambiguous stand in favour of the precedence of human rights, as set forth in the European Convention on Human Rights, over any religious principle”. Therefore the Assembly called upon member states to “exclude from consultations any grouping that does not clearly support the Council of Europe’s fundamental values, namely human rights, democracy and the rule of law”.⁷²

34. Following the well-known Danish cartoons controversy, broadly commented throughout the world, the Assembly also affirmed that “freedom of expression as protected under Article 10 of the European Convention on Human Rights should not be further restricted to meet increasing sensitivities of certain religious groups”.⁷³

68. [Recommendation 1556 \(2002\)](#) on religion and change in central and eastern Europe; [Resolution 1278 \(2002\)](#) on Russia’s law on religion; and [Recommendation 1086 \(1988\)](#) on the situation of the church and freedom of religion in eastern Europe.

69. [Recommendation 1720 \(2005\)](#) on education and religion.

70. [Doc. 11298](#), paragraph 62.

71. *Ibid.*, paragraph 63.

72. [Recommendation 1396 \(1999\)](#), *op. cit.*

73. [Resolution 1510 \(2006\)](#), paragraph 12, and [Recommendation 1804 \(2007\)](#), paragraph 18.

5.1.4. Reaffirming the principle of separation of church and state

35. In its [Recommendation 1396 \(1999\)](#) on religion and democracy and [Recommendation 1804 \(2007\)](#) on state, religion, secularity and human rights, the Assembly reaffirmed the principle of separation of church and state as one of Europe's shared values. States are free to organise and enact legislation regarding the relationship between the state and the church in compliance with the provisions of the European Convention on Human Rights. However, the degree of severity of the control on how this separation is put into practice varies from state to state, in accordance with their different historically rooted traditions and popular attitudes.⁷⁴ The principle of separation between governance and religion seems to be well established in member states of the Council of Europe. In particular, following the above-mentioned [Recommendation 1804 \(2007\)](#), the Committee of Ministers reaffirmed its commitment to this principle, which "along with that of freedom of conscience and thought and the principle of non-discrimination, is an integral part of the concept of European secularity on which the Committee of Ministers bases its work on the religious dimension of intercultural dialogue".⁷⁵

5.1.5. Providing guidelines for legislators

36. The Assembly has stressed that national legislation should be in conformity with the European Convention on Human Rights and that restrictions on human rights must be motivated by a "pressing need" and be "proportionate to the legitimate aim pursued".⁷⁶ It has also noted that the legislation of certain Council of Europe member states, "still [contained] anachronisms dating from times when religion played a more important part in our societies"⁷⁷ and called on member states "gradually to remove from legislation, if such is the will of the people, elements likely to be perceived as discriminatory from the angle of democratic religious pluralism".⁷⁸

37. In its [Recommendation 1805 \(2007\)](#) on blasphemy, religious insults and hate speech against persons on grounds of their religion, the Assembly called on member states to review their blasphemy laws, ensuring, however, that their legislation penalises statements that call for a person or a group of persons to be subjected to hatred, discrimination or violence on grounds of their religion.

5.2. ECRI

38. Combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance from a human rights perspective is the main task of the European Commission against Racism and Intolerance (ECRI), an independent monitoring body of the Council of Europe (Article 1 of ECRI's Statute).⁷⁹ To achieve this goal, ECRI has formulated a number of general policy recommendations to member states. Recommendation No. 7, adopted on 13 December 2002, on "National legislation to combat racism and racial discrimination" is of particular importance in this context. It contains elements proposed by ECRI to be included in national legislation in order to effectively combat racism and racial discrimination, also when it is based on religious grounds,⁸⁰ and advocates the adoption of a comprehensive anti-discrimination legislation. Moreover, the issue of discrimination based on religion has been also dealt with by ECRI in its other recommendations: General policy recommendation No. 1 – Combating racism, xenophobia, anti-Semitism and intolerance;⁸¹ No. 5 – Combating intolerance and discrimination against Muslims;⁸² and No. 9 – on the fight against anti-Semitism.⁸³ The European Convention on Human Rights is the backbone and source of inspiration for all these recommendations.

74. Paragraphs 4-5 and 23.3. For a detailed description of the various models of relationship between European states and religion, see [Doc. 11298](#), report of the Committee on Culture, Science and Education (rapporteur: Mr Lluís Maria de Puig, Spain, SOC).

75. Reply from the Committee of Ministers to Recommendations 1804 and 1805 (2007), [Doc. 11717](#), paragraph 3.

76. [Recommendation 1556 \(2002\)](#), paragraph 8.i.

77. [Resolution 1804 \(2007\)](#), paragraph 15.

78. *Ibid.*, paragraph 24.2.

79. Committee of Ministers Resolution Res(2002)8 on the Statute of the European Commission against Racism and Intolerance (ECRI).

80. According to Section 18 of this recommendation, "the law should penalise the following acts when committed intentionally: a) public incitement to violence, hatred or discrimination, b) public insults and defamation or c) threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin; d) the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin; ...".

81. Adopted by ECRI on 4 October 1996, www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n1/Rec01en.pdf.

5.3. The Venice Commission

39. On several occasions, the European Commission for Democracy through Law (Venice Commission) has taken a stand on issues related to the practice of religion, such as granting legal status to religious communities (for instance, in Turkey),⁸⁴ the scope of religious freedom in the constitutional order of certain member states (Armenia,⁸⁵ Georgia or Romania)⁸⁶ or the penalisation of blasphemy.⁸⁷

40. In co-operation with the Organization for Security and Co-operation in Europe (OSCE),⁸⁸ it has also drawn up a set of “Guidelines for Legislative Reviews of Laws Affecting Religion or Belief”,⁸⁹ which, amongst others, reaffirm the principle of non-discrimination of religions. According to the Venice Commission, “legislation that acknowledges historical differences in the role that different religions have played in a particular country’s history are permissible as long as they are not used as a justification for ongoing discrimination”.⁹⁰ Moreover, any form of coercion that would impair one’s freedom of religion or belief should be prohibited.⁹¹

5.4. Various other initiatives and activities

41. Hate speech is one of the issues on which the Council of Europe institutions have worked on several occasions. With a view to avoiding the resurgence of racism, xenophobia, anti-Semitism and intolerance, on 30 April 1997, the Committee of Ministers adopted Recommendation No. R (97) 20 on hate speech. It remains fully valid today, in particular its definition of this notion.⁹²

42. On 8 April 2008, the Committee of Ministers started, on an experimental basis, “annual exchanges on the religious dimension of intercultural dialogue” with representatives of religions traditionally present in Europe and of civil society, and launched the “White Paper on Intercultural Dialogue – Living together as equals in dignity”.⁹³ The Speak Out Against Discrimination campaign, whose mandate was derived from this White Paper, is currently under way. It is aimed at the general public – in particular victims of discrimination – via a range of communication initiatives designed to raise public awareness of the fight against discrimination in Europe.⁹⁴ Besides these initiatives, a number of activities of the Steering Committee for Education (CDED) and the Steering Committee for Higher Education and Research (CDESR), concerning the development of teaching methods, take into account the notion of religious diversity and the religious heritage in Europe.⁹⁵

43. The Council of Europe Commissioner for Human Rights has consistently condemned any form of religious extremism, discrimination and intolerance, such as hate crimes, Islamophobia, anti-Semitism and other phobias directed against others.⁹⁶

82. Adopted by ECRI on 16 March 2000, www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N5/Rec5%20en21.pdf.

83. Adopted by ECRI on 25 June 2004, www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N9/Rec.09%20en.pdf.

84. “Opinion on the legal status of religious communities in Turkey and the right of the Orthodox Patriarchate of Istanbul to use the adjective ‘ecumenical’, 12-13 March 2010”, Opinion No. 535/2009, CDL-AD(2010)005, [www.venice.coe.int/docs/2008/CDL-AD\(2008\)026-e.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)026-e.pdf).

85. “Interim joint opinion on the Law on Making Amendments and Supplements to the Law on Freedom of Conscience and Religious Organizations and on the Laws on Amending the Criminal Code, the Administrative Offences Code and the Law on Charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, adopted by the Venice Commission at its 85th Plenary Session, 17-18 December 2010”, Opinion No. 603/2010, CDL-AD(2010)054.

86. “Draft opinion on the draft law regarding the religious freedom and the general regime of religions in Romania”, Opinion No. 354/2005, CDL(2005)080rev.

87. “Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred, adopted by the Venice Commission at its 76th Plenary Session, 17-18 October 2008”, Study No. 406/2006, CDL-AD(2008)026.

88. And more precisely the Panel of Experts on Religion and Belief of the Office of Democratic Institutions and Human Rights (ODIHR).

89. Adopted by the Venice Commission at its 59th Plenary Session, 18-19 June 2004, [Opinion No. 271/2004](http://www.venice.coe.int/doca/OpinionNo2712004.pdf), CDL-AD(2004)28.

90. *Ibid.*, p. 6.

91. *Ibid.*, p. 7.

92. According to the appendix to the recommendation, the term “hate speech” shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

93. www.coe.int/t/dg4/intercultural/source/white%20paper_final_revised_en.pdf.

94. www.coe.int/t/DG4/ANTI-DISCRIMINATION-CAMPAIGN/campaign/presentation_en.asp.

95. For more details, see [Doc. 11717](http://www.coe.int/t/DG4/ANTI-DISCRIMINATION-CAMPAIGN/campaign/presentation_en.asp), op. cit.

44. The very recent report of the Group of Eminent Persons of the Council of Europe on “Living together. Combining diversity and freedom in 21st-century Europe”⁹⁷ reaffirms that different religious groups, in particular Christians, Muslims and Jews, are still victims of violence and that intolerance and discrimination on religious grounds are widespread phenomena in Europe. This report calls on religious leaders to combat such conduct.⁹⁸

45. Furthermore, cultural and religious diversity of contemporary societies was the subject matter of a detailed study conducted within the Directorate General of Social Cohesion of the Council of Europe. The result of this research was a publication entitled “Institutional accommodation and the citizen: legal and political interaction in a pluralist society”.⁹⁹ This publication looks at ways of encouraging and promoting changes to institutions and individual behaviour to enable citizens to live together in societies which face – to an increasing extent – ethnic and cultural diversity. In particular, it examines, from the European and Canadian perspective, the notion of “reasonable accommodation”, which will be explained in section 6.5 of this report.

6. The fight against discrimination and violence based on religion in the Council of Europe member states: some examples of current problems and challenges

6.1. General situation

46. Although historically Europe might be characterised as a stronghold of Christianity, today’s Europe is religiously diverse. While most of the Council of Europe member states have Christian majorities, there are also some states with Muslim ones (for instance Albania, Azerbaijan, Bosnia and Herzegovina and Turkey) and an increasing number of states have a significant Muslim presence (for instance, France, Germany, Russia or the United Kingdom). Moreover, the Jewish diaspora and diverse groups representing “new religions” or sects are spread out all over Europe.

47. As Mr de Puig noted in his 2007 report,¹⁰⁰ the modern plurality of new religions in Europe is to a great extent a result of post-colonial immigration. This new presence poses problems for both governments and faith communities. States with a long tradition of secularism have difficulties in accepting the phenomenon of the rise of new religious practice as such, while many more states face a situation where there is now a plurality of religions, when, previously, the state was overtly confessional or the vast majority of citizens adhered to a single religious profession. More rigorous forms of practising Islam, such as wearing the niqab, raise particular problems. Moreover, some of the requirements stemming in particular from religion, such as dietary laws or prescribed times for prayer, might be difficult to be followed in everyday life for believers in a modern secular or multi-religious society.¹⁰¹ Subsequent conflicts might also relate to equality of the sexes and the rights of homosexuals.¹⁰²

48. As Professor Uitzemphasised at the hearing in April 2011, religious persecution remains a widespread phenomenon in contemporary societies, including member states of the Council of Europe. The problems faced by religious groups vary geographically: while “old” European democracies have difficulties handling their mostly immigrant Muslim populations, several “new” post-communist democracies remain deeply entangled in issues such as twenty-year-old church property restitution schemes and struggles over school curricula on religious education. Despite the clear standards laid down by the case law of the European Court of Human Rights, numerous member states still fail to act in an impartial manner towards religious communities and their members.

49. As Professor Foblets indicated at the hearing, the legal solutions which are currently in force in a number of multicultural states have sometimes become anachronistic, that is to say not adjusted to the new needs. New religious communities have not yet had an opportunity to take part in the democratic debate concerning the protection of religious freedom, due to a genuine lack of institutional participation in the functioning mechanisms of the state: either the approach towards them is based on an old model or the

96. “Human rights in Europe: no grounds for complacency. Viewpoints by Thomas Hammarberg, Council of Europe Commissioner for Human Rights”, Council of Europe, 2011, pp. 32-42.

97. www.coe.int/t/dc/files/source/20110511_Report_GEP_en.doc, pp. 15-19.

98. *Ibid.*, p. 44.

99. Council of Europe Publishing, Trends in Social Cohesion, No. 21, 2009. This publication was made possible also thanks to the financial and political support of the European Commission.

100. Doc. 11298, *op. cit.*, paragraph 59.

101. *Ibid.*

102. *Ibid.*, paragraph 61.

existence of such minorities is contested. So far, there has been a multitude of studies on cultural and religious diversity,¹⁰³ on the basis of which one may define three different approaches, which exclude one another. Accordingly, there might be three ways of dealing with the issue of religious diversity: 1) defining clearly the notion of a neutral state and getting rid of the remaining residues of religious privileges in the existing legislation (like in Quebec for instance);¹⁰⁴ 2) keeping the existing balance between the state and the historically rooted religions and the latter's privileges; or 3) adopting an intermediary approach, namely establishing a new sustainable balance and allowing manifest changes within the society.

6.2. Systemic discrimination of certain religious minorities in southern, central and eastern Europe

50. As Professor Uitz pointed out at the hearing, religious groups in member states of central and eastern Europe suffer from discriminatory practices, which are less known to the public than some of the incidents that have occurred in western Europe.¹⁰⁵ Muslims and Jehovah's Witnesses are confronted with governmental disapproval in Bulgaria (in the form of denials of construction permits, restrictions on proselytising in public areas and verbal intolerance in the public discourse).¹⁰⁶ Greek Catholics in Romania reportedly continue to face difficulties, despite the recent decision of the Court ruling that denial of legal personality to a Greek Catholic parish violated the right to access to justice under the Convention.¹⁰⁷ Most recently, the Hungarian Government decided to introduce a new, three-tier registration system for religious communities which – if enacted – will privilege “historic churches” after twenty years of *de jure* legal equality.

51. Some of the controversies appear to result from systemic discrimination and prove resistant to continuing disapproval: despite gaining considerable international notoriety, the ban on proselytism in the criminal code has still not been repealed by Greece and there are regular reports on its continuing enforcement against Jehovah's Witnesses.¹⁰⁸ Also, although the Greek anti-discrimination law enacted in 2005¹⁰⁹ prohibits discrimination based on religious or other beliefs, this prohibition does not extend its scope to “social protection, education and access to goods and services”. In this respect, in 2009, ECRI noted “with concern reports according to which some schoolbooks continue to contain negative references to Catholicism, Judaism and the ancient polytheistic Hellenic tradition”.

103. R. Ahdar and I. Leigh, *Religious Freedom in the Liberal State*, Oxford University Press, 2005; V. Bader, *Secularism or Democracy? Associational Governance of Religious Diversity*, Amsterdam University Press, June 2007; M. Mookherjee (ed.), *Tolerance and Recognition in an Age of Religious Pluralism*, Springer, 2009; T. Byrnes, P. J. Katzenstein (eds), *Religion in an Expanding Europe*, Cambridge University Press, 2006; E. Caparros and L. L. Christians (eds), *Religion in Comparative Law at the Dawn of the 21st Century* (15th Congress of the International Academy of Comparative Law), Brussels, Bruylant, 2002; E. B. Coleman and K. White (eds), *Negotiating the Sacred: Blasphemy and Sacrilege in a Multicultural Society*, Canberra, ANU Press, 2006; S. Ferrari, “Nationalism, Patriotism and Religious Belief in Europe”, *University of Detroit Mercy Law Review*, 2006, pp. 625-39; J. Fox, *A World Survey of Religion and the State*, Cambridge University Press, 2008; A. Lewis and R. O'Dair (eds), *Law and Religion*, Oxford University Press, 2001; J. E. Goldschmidt and M. L. P. Loenen (eds), *Religious Pluralism and Human Rights in Europe: Where to Draw the Line?*, Antwerp/Oxford, Intersentia, 2007; R. Mehdi, G. R. Woodman, E. R. Sand and H. Petersen (eds), *Religion and Law in Multicultural Societies*, Copenhagen, Djøf Publishing, 2008; P. Shah, *Legal Pluralism in Conflict: Coping with Cultural Diversity in Law*, London, Glass House, 2005; R. Torfs, “Religion, Concord and Disconcord”, *Nihon University Tokyo Comparative Law*, 2007, pp. 207-23; J.-P. Willaime, *Le retour du religieux dans la sphère publique. Vers une laïcité de reconnaissance et de dialogue*, Lyons, Olivétan (Convictions et sociétés series), 2008.

104. www.accommodements.qc.ca/.

105. Like the ban imposed on wearing the burqa in France and Belgium in 2010 or the Swiss referendum banning the building of minarets in 2009.

106. US Department of State, International Religious Freedom Report, 2010, www.state.gov/g/drl/rls/irf/2010/148922.htm.

107. **Sâmbata Bihor Greek Catholic Parish v. Romania**, judgment of 12 January 2010, Application No. 48107/99.

108. Fourth Report on Greece by the European Commission against Racism and Intolerance, 2009, paragraphs 103-04, www.coe.int/t/dghl/monitoring/ecri/country-by-country/greece/GRC-CbC-IV-2009-031-ENG.pdf. See also judgments of the European Court of Human Rights concerning impediments in practising religion (Article 9): *Manoussakis and Others v. Greece*, judgment of 26 September 1996, Application No. 18748/91, *Pentidis and Others v. Greece*, judgment of 2 June 1997 (friendly settlement), Application No. 23238/94, *Tsavachidis v. Greece*, judgment of 21 January 1999 (friendly settlement), Application No. 28802/95, and concerning, respectively, the lack of fair trial in respect of conscientious objectors to military service and their detention (articles 6.1 and 6.5) – *Georgiadis v. Greece*, judgment of 29 May 1997, Application No. 21522/93, and *Tsrilis and Kouloumas v. Greece*, judgment of 29 May 1997, Applications Nos. 19233/91 and 19234/91.

109. Law 3304/2005 on the “Implementation of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation”.

6.3. Discriminatory practices in the framework of fighting against religious extremism

52. Another problem is related to the misuse of measures aimed at combating terrorism. As Professor Uitz pointed out at the hearing, such measures have been predominantly aimed against Muslim communities, but they might also affect other religious groups. For example, in Russia, several watchdog organisations have reported that the Russian extremism law of 2002¹¹⁰ has been used regularly to prosecute Jehovah's Witnesses and the disciples of the Turkish Muslim theologian Said Nursi.¹¹¹ The alleged extent of the misuse of the law against extremism is such that the Russian watchdog organisation SOVA Centre decided to devote a separate column to it in its regular monitoring project.¹¹² This example demonstrates that the fight against terrorism in the form of anti-extremism measures targeting religious groups is likely to result in overzealous selective enforcement which furthers religious intolerance. Such measures are not neutral and impartial towards religious communities and their members, and thus they do not comply with the minimum standards established by the case law of the European Court of Human Rights.

6.4. The prohibition of discrimination vis-à-vis the freedom of religion: an example

53. As pointed out by Professor Cumper at the hearing, the situation in the United Kingdom illustrates well the challenges that Europe currently faces in eliminating unlawful discrimination generally and religious discrimination in particular.¹¹³ At first sight, the United Kingdom's record of tackling discrimination and intolerance on the grounds of religion or belief looks excellent – but on closer inspection a number of problems remain. For example, in areas of public life such as education, employment and health, many minority faith groups – especially Muslims – continue to face discrimination, while secular groups also complain that the national legislation fails to afford equal respect to their beliefs. According to a report conducted under the auspices of the United Kingdom Equality and Human Rights Commission, the number of court cases relating to religion or belief has gradually increased since December 2003, when the Employment Equality (Religion or Belief) Regulations came into force. However, it is not clear whether this trend reflects an increase of perceived discrimination or a greater awareness of legal remedies. For the moment, there is not sufficient data, spanning over time, to determine whether religious discrimination in the United Kingdom is increasing or decreasing.¹¹⁴

54. Perhaps somewhat surprisingly, given the Church of England's unique position as an Established Church, it is Christian groups that have tended to have been particularly vocal of late in complaining about threats to religious liberty in the United Kingdom. This general trend seems to be confirmed by Professor Weller's report, since "there is some emerging evidence that suggests the possibility of there being a changing pattern at least to perceptions of religious discrimination and/or readiness to pursue potential issues of such discrimination in which Christians are increasingly highlighting examples and concerns".¹¹⁵ At the April hearing, Professor Cumper pointed out two recent cases concerning apparent conflicts between the rights of Christians and those of homosexuals which illustrate this phenomenon: *Hall and Preddy v. Mr and Mrs Bull*,¹¹⁶ where the Christian owners of a hotel were ordered to pay compensation to two gay men in a civil partnership because of the hotel's policy that only married heterosexual couples could stay in a double room, and *Johns v. Derby City Council*,¹¹⁷ where the Court upheld the Council's ruling that a married Christian couple who had raised their own family and had prior foster-care experience were deemed unsuitable to be foster parents, because of their negative views on homosexuality.

55. According to Professor Cumper, cases such as these have three consequences. Firstly, they raise issues of conscience, because some conservative Christians may feel compelled to make a choice between, on one hand, remaining silent and acting against their religious conscience and, on the other hand, speaking

110. For an unofficial English translation, see http://host.uniroma3.it/progetti/cedir/cedir/Lex-doc/Ru_Ext-2002.pdf.

111. See, for example, www.forum18.org/Archive.php?article_id=1400. For the Human Rights Without Frontiers Report for 2010, see www.hrwf.net/Joom/images/forbnews/2010/russia%202010.pdf.

112. See the February 2011 update at www.rightsinrussia.info/news/press-releases/sovacentremisuseofanti-extremismlegislationinfebruary2011.

113. In the United Kingdom there are two particularly important legal sources for tackling discrimination and intolerance on the grounds of religion or belief: Article 9 of the European Convention on Human Rights, now incorporated in the Human Rights Act 1998; and the EU Employment Directive 2000/78, incorporated into British law in 2003, and today codified by the Equality Act 2010.

114. P. Weller, *Religious discrimination in Britain: a review of research evidence, 2000-10*, Equality and Human Rights Commission, Research report 73, 2011, p. 36,

www.equalityhumanrights.com/uploaded_files/research/research_report_73_religious_discrimination.pdf.

115. Ibid.

116. Case No. 9BS02095, January 2011.

117. *Johns v. Derby City Council and Equality and Human Rights Commission (intervening)* [2011] EWHC 375 (Admin).

out and challenging the law. Secondly, it is possible that there will be occasions where these cases have public service implications, in that they might conceivably deter a number of conservative Christians from working in certain areas due to fears of falling foul of equality laws. It would, for example, be regrettable if cases like *Johns v. Derby City Council* were to discourage some Christians from offering their services to fostering programmes, especially since there is currently a shortage of foster parents in the United Kingdom. Thirdly, such cases illustrate the limits of using the law as a tool for dispute resolution, on account of the risk that high profile litigation on emotive issues (for example, sexuality and faith) can exacerbate, rather than ameliorate, differences between certain religious and other communities. Therefore, determining how far laws that are designed to curb discrimination on the grounds of religion or belief should be extended to faith groups – which, themselves, feel that they are bound by their religious beliefs to differentiate (or even discriminate) between persons on the basis of their sexual orientation – will be one of the greatest challenges for Europe’s law and policy makers in the coming years.

56. Against this background, it will be particularly interesting to follow a few recent cases brought against the United Kingdom before the European Court of Human Rights, especially those concerning alleged discrimination of Christians. In the cases of *Ladele v. the United Kingdom* and *Mcfarlane v. the United Kingdom*,¹¹⁸ the applicants are Christian employees, a marriage registrar and relationship counsellor respectively, who refused to provide services to homosexuals on the basis that to do so would contravene their religious principles. The other two cases, *Eweida* and *Chaplin*,¹¹⁹ concern the right of people to openly wear crucifixes at work.¹²⁰ All these cases concern the scope of the protection afforded by articles 9 and 14 of the Convention to the manifestation of religious belief in the workplace. The Court will examine whether the United Kingdom anti-discrimination law as interpreted by domestic courts sufficiently respects religious rights and affords protection against discrimination on religion. These cases have given rise to controversy in the United Kingdom, especially after the Equality and Human Rights Commission (EHRC)¹²¹ was allowed to intervene, as an expert and an independent body, before the Court, calling for “reasonable adjustments” on the employer’s part to accommodate the religious beliefs of their staff.¹²² On 15 September 2011, the EHRC submitted its intervention to the Court, having conducted a public consultation exercise.¹²³ Concerning the first two cases, it considered that domestic courts had come to the correct conclusions. It argued, amongst others, that state services had to be provided on an impartial basis and employees could not expect their public functions to be shaped to accommodate their personal religious beliefs.¹²⁴ However, in the cases of *Eweida* and *Chaplin*, the commission stated that the courts might not have given sufficient weight to Article 9, paragraph 2, of the Convention,¹²⁵ as they did not rigorously assess the question of proportionality.¹²⁶ Hence, the United Kingdom courts failed adequately to protect individuals from religious discrimination in the workplace.¹²⁷ The Court’s future judgments in these four cases are likely to have a significant impact on the place of religion in public life in the United Kingdom.

6.5. Possible solutions to avoid discrimination based on religion in a multicultural society: example of Belgium

57. In this context, it is worth examining a study on interculturalism ordered by the Belgian Federal Government (*Assises de l’Interculturalité*), which was conducted between September 2009 and October 2010. The main outcome of the *Assises de l’Interculturalité* was a report handed over to the Belgian Government on 9 November 2010. The report was prepared by their “Pilot Committee” (Comité de pilotage), composed of 29 experts designated by the federal authorities and members of concerned cultural/religious groups.¹²⁸ The study focuses on five main issues, such as education, employment, governance, access to goods and

118. Applications Nos. 51671/10 and 36516/10, communicated on 2 May 2011.

119. *Eweida and Chaplin v. the United Kingdom*, Applications Nos. 48420/10 and 59842/10, communicated 2 May 2011.

120. “Equality watchdog drops plan to protect religious rights”, www.Telegraph.co.uk, 19 August 2011.

121. The EHRC is a statutory body established under the Equality Act 2006 and the independent advocate for equality and human rights in Britain. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights.

122. www.equalityhumanrights.com/news/2011/july/commission-proposes-reasonable-accommodation-for-religion-or-belief-is-needed/.

123. www.equalityhumanrights.com/uploaded_files/legal/consultation_response_summary.pdf.

124. Paragraph 56 of the submission:

www.equalityhumanrights.com/uploaded_files/legal/ehrc_submission_to_ecthr_sep_2011.pdf.

125. www.equalityhumanrights.com/legal-and-policy/human-rights-legal-powers/legal-intervention-on-religion-or-belief-rights/.

126. Paragraph 29 of the submission, op. cit.

127. Ibid., paragraph 30.

128. *Assises de l’Interculturalité. Rapport final*, November 2010, Editions Mardaga, Wavre.

services (housing and health care), and, lastly, cultural life, associations and the media. Its authors have formulated a number of recommendations for the Belgian authorities, concerning, amongst others, wearing of religious symbols, revising the religious holidays agenda (by introducing in particular the principle of “floating holidays”)¹²⁹ or introducing quotas for cultural minorities in the employment area.¹³⁰ The Pilot Committee also examined closely the advantages and disadvantages of the above-mentioned “reasonable accommodation”¹³¹ (*aménagement/accodement raisonnable*),¹³² applied already in Belgium to disabled persons,¹³³ and derived from the Quebec experience. This notion refers to that of “indirect discrimination”, namely to situations of discrimination which do not result directly from the legislation, but have been indirectly caused by it, due to the fact that certain categories of persons suffer more severely from the effects of the legislation than other groups. Without making a difference between those categories of persons, and depending on their situation, the law discriminates against them indirectly. Solving this problem may mean that, in certain cases, it will be necessary to adopt particular solutions (legislative or judicial), which would allow to cancel out the indirectly discriminatory effect of a norm which is applied to everyone in an equal manner. This problem arises mainly in the areas of employment, school teaching or access to goods and services (housing, health care, leisure, etc.).¹³⁴ Therefore, the Pilot Committee recommended that the Belgian authorities consider extending the application of the notion of reasonable accommodation to situations related to religious or philosophical beliefs.

58. On the basis of the recommendations contained in the above-mentioned study, at the hearing, Professor Foblets proposed three paths to explore in approaching the question of the co-existence of various religious groups: 1) to encourage the relations (and possibly their institutionalisation) between the state and new religious minorities, while respecting the principle of neutrality and respect for the minorities; insofar as possible religious groups will have their representative bodies recognised; 2) “gradually to remove from legislation, if such is the will of the people, elements likely to be discriminatory from the angle of democratic religious pluralism”, as stated in Assembly [Recommendation 1804 \(2007\)](#): this could entail, for instance, revising the religious holidays calendar; 3) to focus on the notion of personal autonomy as a starting point; then, for instance, pupils’ wearing of religious symbols could be allowed in schools from a certain age or school semester,¹³⁵ which would allow, in turn, for a balance between different freedoms.

59. However, the implementation of these principles might be very difficult in practice, not only in Belgium, but also in other countries. Most of all, it requires the state to co-operate with all religious groups, which might sometimes be difficult in practice due to the lack of organised leadership in certain religious communities; the Belgian experience shows that there has been a problem with the Muslim community, which lacks a suitable model to follow in this respect. Some countries, including Belgium itself,¹³⁶ are also very reticent about the technique of “floating holidays”, which are often perceived as affecting deep-rooted traditions within the majority population. Furthermore, the idea of fixing rules concerning religious symbols has always given rise to controversies: even the recommendations which on the basis of procedure of the *Assises de l’interculturalité* try to find a compromise on this issue are not an exception to the rule, since they have been rejected by some of the experts who took part in the preparation of this study.¹³⁷

129. In [Recommendation No. 6](#), the Pilot Committee proposed to keep the following holidays: 1 January, 1 May, 21 July, 11 November and 25 December, and to allow social partners to choose the other days off, according to their culture or religion. *Ibid.*, p. 118.

130. *Ibid.*, [Recommendation No. 4](#), p. 117.

131. *Ibid.*, [Recommendation No. 5](#), p. 118.

132. See, in particular, M. Jézéquel, *The reasonable accommodation requirement: potential and limits*, as well as P. Bosset and M.-C. Foblets, “Accommodating diversity in Quebec and Europe: different legal concepts, similar results?”, in Council of Europe, *Institutional accommodation and the citizen: legal and political interaction in a pluralist society (Trends in social cohesion No. 21)*, Council of Europe Publishing, Strasbourg, 2010, pp. 21-66.

133. In virtue of the anti-discrimination Law of 10 May 2007.

134. *Assises de l’Interculturalité. Rapport final*, November 2010, *op. cit.*, p. 65.

135. *Assises de l’Interculturalité. Rapport final*, November 2010, [Recommendation No. 1](#), *op. cit.*, p. 117.

136. See press release of 8 November 2010 at www.rtl.be/info/belgique/societe/751301/les-assises-de-l-interculturalit-recommandent-de-changer-nos-cong-s.

137. *Assises de l’Interculturalité. Rapport final*, November 2010, *op. cit.*, dissenting note by N. Charkaoui, pp. 123-24. She disagreed with [Recommendation No. 1](#), concerning wearing religious symbols by pupils, and [Recommendation No. 2](#) prohibiting public authorities agents (members of police, army or administration of justice) to wear religious symbols. While for Ms Charkaoui the prohibition of wearing the veil may not be justified because, in her opinion, the principle of religious freedom should prevail, in the opinion of other members who took part in the work of the *Assises*, on the contrary, the prohibition should be general. Some of them eventually resigned, expressing their disagreement not only on the question of veil wearing, but also on the general orientation of the *Assises*’ work. In their opinion, no concession should be made to the principle of state neutrality. However, this positioning was not able to convince other members, who found it ideological.

7. Conclusion

60. In modern and multicultural European societies, the question of the co-existence of members of different religious communities and atheists is of vital importance. Law and policy makers increasingly have to balance a myriad of Christian, secular and multi-faith values. Therefore it is worth recalling that Article 9 of the Convention is one of the foundations of a “democratic society”, guaranteeing the freedom of thought, conscience and religion.

61. However, this right does not only include absolute rights: the right to manifest one’s religion or beliefs is subject to the restrictions set forth in the Convention. Article 9, paragraph 2, of the Convention allows the member states to retain a certain margin of discretion, which has been recently recalled by the Court in the judgment delivered by its Grand Chamber in *Lautsi and Others v. Italy*,¹³⁸ concerning the presence of crucifixes in state schools in Italy and the right to education (Article 2 of Protocol No. 1 to the Convention).

62. The rights even of the “majority” religions should be safeguarded, but so too should those of minority religious communities and non-believers. The case law of the Court shows that the Convention protects all these groups and confers certain rights on them. But the scope of those rights also varies according to the circumstances, and in particular the legitimate interests of a “democratic society”, including the prevention of disorder and protection of the rights of others.

63. States are supposed to protect religious communities from violence purportedly motivated by religious affiliation or beliefs, even if that violence is perpetrated by non-state actors. It may be seen from the case law of the Court that the scope of Article 9 of the Convention remains fairly broad and covers a wide range of situations, including acts of violence and proselytism. At the European level, the development of the theory of positive obligations, including under Article 14 combined with Article 9, holds out great hope as regards the prevention of violence between members of different religious communities.

64. The controversies surrounding the judgment in the case of *Lautsi and Others v. Italy*, in which 21 states of the Council of Europe publicly opposed the Chamber’s approach and its perceived attempt at forced secularisation of schools, show that there are strong internal religious and cultural divisions within the Council of Europe.¹³⁹ Moreover, today in Europe, law and policy makers are called upon to tackle problems stemming from a new religious diversity, inherent to modern contemporary societies and numerous challenges which follow this (new) diversity. It should be recalled in this context that, according to the Preamble of the Statute of the Council of Europe (ETS No. 1), the governments of the member states reaffirmed their devotion to the “spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy”. Therefore, different solutions are being envisaged, including those based on the notion of “reasonable accommodation”. In any event, the state must remain neutral vis-à-vis this variety of religions and beliefs, including their presence or absence. Aggressive secularism, combating all forms of religious beliefs, is also a violation of the principle of religious neutrality. Member states should be mindful of the fact that the protection of freedom of religion applies to all equally, and not only to some religious communities. The requirement of neutral and impartial treatment is a minimum standard and the first step towards treatment of individuals with equal respect and dignity and an effective prevention of any form of discrimination. As the President of the Assembly, Mr Mevlüt Çavuşoğlu, stressed last August, “the best model for living together” is to bring cultures and religions together in a spirit of respect, dialogue and tolerance.¹⁴⁰

138. *Lautsi and Others v. Italy*, judgment of 18 March 2011 (Grand Chamber), Application No. 30814/06.

139. D. McGoldrick, op. cit., p. 499.

140. See his speech at the Danish Parliament Ramadan reception of 22 August 2011, http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=6873.