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*Overview of the Court's case-law on  
freedom of religion*

COUNCIL OF EUROPE



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## INTRODUCTION

1. Freedom of thought, conscience and religion is a fundamental right enshrined not only in the European Convention on Human Rights but also in many other national, international and European instruments. It is an essential right of considerable importance.

2. Article 9 of the Convention provides:

“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, 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.”

3. Article 2 of Protocol No. 1 to the Convention concerns a particular aspect of freedom of religion, namely the right of parents to ensure the education of their children in conformity with their own religious convictions:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

4. In addition to the Convention, freedom of thought, conscience and religion is an inherent part of the fundamental rights laid down by the United Nations. Accordingly, under Article 18 of the International Covenant on Civil and Political Rights, everyone has the right to freedom of thought, conscience and religion. This right includes freedom to have or to adopt a religion or belief of his or her choice, and freedom, either individually or in community with others and in public or private, to manifest his or her religion or belief in worship, observance, practice and teaching. No one can be subject to coercion which would impair his or her freedom to have or to adopt a religion or belief of his or her choice. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Further, Article 18 *in fine* specifies that the States Parties to the Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. Article 26 of the Covenant lays down a general principle of non-discrimination, which concerns religion among other things.

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5. The principle of freedom of religion also appears in a number of other instruments, including the International Convention on the Rights of the Child, which clearly enshrines the principle in Article 14. Similarly, Article 12 of the American Convention on Human Rights states that everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private. No one can be subject to restrictions that might impair their freedom to maintain or to change their religion or beliefs. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others. Lastly, Article 12 of the American Convention states that parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

6. The Charter of Fundamental Rights of the European Union also protects the freedom of thought, conscience and religion in the same terms as the Convention (Article 10 of the Charter). It also guarantees parents the right “*to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions ... in accordance with the national laws governing the exercise of such freedom and right*” (Article 14 § 3).

7. The importance of freedom of thought, conscience and religion has been stressed on several occasions by the European Court of Human Rights. Generally speaking, it is regarded as one of the foundations of democratic society. More specifically, the judges regard religious freedom as a vital element that goes to make up the identity of believers and their conception of life. The European Court of Human Rights has in fact elevated freedom of religion to the rank of a substantive right under the Convention, first indirectly and then more directly.

8. It is noteworthy that over the past ten years the number of cases examined by the Court under Article 9 has been constantly growing. This trend can largely be explained by the increasing role of religion and associated questions in the socio-political arena.

## I. SCOPE OF THE RIGHT TO FREEDOM OF RELIGION

### 1) *Scope of protection of Article 9 ratione materiae*

9. Whilst Article 9 of the Convention concerns freedom of religion in particular, the protection afforded by this provision is much broader and applies to all personal, political, philosophical, moral and, of course, religious convictions. It extends to ideas, philosophical convictions of all kinds, with the express mention of a person's religious beliefs, and their own way of apprehending their personal and social life. For example, as a philosophy, pacifism falls within the scope of application of Article 9 of the Convention, since the attitude of a pacifist can be regarded as a "belief".

10. Personal convictions are more than mere opinions. They are ideas that have attained a certain level of cogency, seriousness, cohesion and importance. It must be possible to identify the formal content of convictions.

11. The Convention institutions do not have competence to define religion, but it must be interpreted non-restrictively. Religious beliefs cannot be limited to the "main" religions. The religion in question does have to be identifiable, though an applicant's wish to describe his or her belief as a religion will be favourably regarded in the event of an unjustified interference by the State. There is hardly any case-law concerning the main religions because the tenets are known and the relations with the States are well established. However, the issue is more delicate regarding minority religions and new religious groups that are sometimes called "sects" at national level. According to the Court's current case-law, all religious groups and their members enjoy equal protection under the Convention.

12. The issue of new religious movements was brought before the Court in the case of *Fédération chrétienne des témoins de Jéhovah de France v. France* ((dec.), no. 53430/99, ECHR 2001-XI). The Court observed that the French legislation in question aimed to strengthen preventive and punitive action against sectarian movements infringing human rights and fundamental freedoms. It specified that it was not the Court's task to rule on legislation *in abstracto* and that it could not therefore express a view as to the compatibility of the provisions of the French legislation with the Convention, but gave some valuable guidance nonetheless. While noting that in so far as the impugned legislation targeted sects – a term which it did not define – it provided for their dissolution, but observed that such a measure could be ordered only by the courts and where certain conditions were satisfied, in particular where there had been final convictions of the sect concerned or of its leaders for one or more of an exhaustively listed set of offences – a situation in which the applicant association should not normally have any reason to fear finding itself. Impugning Parliament's

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motives in passing that legislation, when it was concerned to settle a burning social issue, did not amount to proof that the applicant association was likely to run any risk. Moreover, it was inconsistent for the latter to argue that it was not a movement that infringed freedoms and at the same time claim that it was, at least potentially, a victim of the application that might be made of the legislation. Accordingly, the applicant association could not claim to be a victim within the meaning of Article 34 of the Convention and its application had to be declared inadmissible in its entirety.

### 2) Right to freedom of religion as a pillar of democratic society

13. Freedom of thought, conscience and religion, enshrined in Article 9 of the Convention, is one of the foundations of a “*democratic society*” within the meaning of the Convention. In its religious dimension it is 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. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (*Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A, and *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I).

14. In a democratic society, in which several religions or branches of the same religion coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected. However, in exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial. What is at stake here is the preservation of pluralism and the proper functioning of democracy (*Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, §§ 115-16, ECHR 2001-XII).

15. In this sensitive area involving the establishment of relations between the religious communities and the State, the latter in theory enjoys a wide margin of appreciation (*Cha’are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 84, ECHR 2000-VII). In order to determine the scope of the margin of appreciation the Court must take into account what is at stake, namely the need to maintain true religious pluralism, which is inherent in the concept of a democratic society. Moreover, in exercising its supervision, the Court must consider the interference complained of on the basis of the file as a whole (*Metropolitan Church of Bessarabia and Others*, cited above, § 119).

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### 3) Internal and external aspects of freedom of religion

16. There is a twofold aspect to the freedoms guaranteed by Article 9 of the Convention: internal and external. Regarding the “*internal*” aspect, freedom is absolute: regarding deeply held ideas and convictions that are forged in a person’s individual conscience and cannot therefore in themselves prejudice public order, these cannot therefore be the subject of restrictions on the part of the State authorities. However, with regard to the “*external*” aspect the freedom in question is merely relative, which is logical in so far as – seeing that it is freedom to manifest one’s beliefs – public order may be affected or even threatened.

17. While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to “*manifest [one’s] religion*” alone and in private or in community with others, in public and within the circle of those whose faith one shares. Article 9 lists a number of forms which manifestation of one’s religion or belief may take, namely worship, teaching, practice and observance (*Metropolitan Church of Bessarabia and Others*, cited above, § 114).

18. With regard to the particular case of religion, freedom of choice is important. Article 9 of the Convention guarantees everyone the freedom to change religion, in other words to convert. However, right from the founding judgment delivered in the case of *Kokkinakis*, cited above, the Court’s case-law has recognised that religious freedom includes in principle the right to try to convince one’s neighbour. “*Convince*” does not extend to abusive behaviour such as applying unacceptable pressure, or actual harassment, which cannot attract the protection of the Convention.

19. It is noteworthy that freedom of conscience and of religion does not protect each and every act or form of behaviour motivated or inspired by a religion or a belief. In other words, Article 9 of the Convention protects a person’s private sphere of conscience but not necessarily any public conduct inspired by that conscience. Accordingly, it does not allow general laws to be broken (*Pichon and Sajous v. France* (dec.), no. 49853/99, ECHR 2001-X).

### 4) Individual and collective aspects of freedom of religion

20. Most of the rights recognised under Article 9 are individual rights that cannot be challenged. However, some of these rights may have a collective aspect. Accordingly, the Court has recognised that a Church or ecclesiastical body may, as such, exercise on behalf of its members the rights guaranteed by Article 9 of the Convention.

21. As religious communities traditionally and universally exist in the form of organised structures, Article 9 has to be interpreted in the light of Article 11 of the Convention which safeguards associative life against unjustified State interference. Seen in this perspective, the believer’s right to



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freedom of religion encompasses the expectation that the community will be allowed to function peacefully, 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 (*Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-XI; *Metropolitan Church of Bessarabia and Others*, cited above, § 118; and *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, nos. 412/03 and 35677/04, § 103, 22 January 2009).

22. In accordance with that principle of autonomy, the State is prohibited from obliging a religious community to admit new members or to exclude existing ones (*Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, § 146, 14 June 2007).

23. Similarly, Article 9 of the Convention does not guarantee any right to dissent within a religious body; in the event of a disagreement over matters of doctrine or organisation between a religious community and one of its members, the individual's freedom of religion is exercised through his freedom to leave the community (*Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others*, cited above, § 137; *Karlsson v. Sweden*, no. 12356/86, decision of the Commission of 8 September 1988, DR 57, p. 172; *Spetz and Others v. Sweden*, no. 20402/92, decision of the Commission of 12 October 1994; and *Williamson v. the United Kingdom*, no 27008/95, decision of the Commission of 17 May 1995).

24. In their activities religious communities abide by rules which are often seen by followers as being of a divine origin. Religious ceremonies have meaning and sacred value for the believers if they have been conducted by ministers empowered for that purpose in compliance with these rules. The personality of the religious ministers is undoubtedly of importance to every member of the community. Participation in the life of the community is thus a particular manifestation of one's religion, which is in itself protected by Article 9 of the Convention (*Hasan and Chaush*, cited above, *loc.cit.*, and *Perry v. Latvia*, no. 30273/03, § 55, 8 November 2007).

25. An important aspect of autonomy of religious communities manifests itself in the area of employment law. This is the freedom to choose employees according to criteria specific to the religious community in question. This freedom is not absolute, however. The Court had occasion to rule on this question in two judgments delivered on 23 September 2010. In the case of *Obst v. Germany* (no. 425/03, 23 September 2010), the applicant, who was the European director of the Public Relations Department of the Mormon Church, was dismissed without notice for adultery, which was a formal breach of one of the clauses of his employment contract. Before the Court he alleged a violation not of Article 9, but of Article 8 of the Convention, which guarantees the right to

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respect for private life. The Court held that there had been no violation of Article 8, as follows:

“40 In the present case, the Court first observes that the applicant has not complained of an action by the State but of a failure on its part to protect his private sphere against interference by his employer. In this connection, it notes at the outset that the Mormon Church, despite its status of public-law entity in German law, does not exercise public authority of any kind (see *Rommelfänger*, decision cited above, *Finska Församlingen i Stockholm and Teuvo Hautaniemi v. Sweden*, decision of the Commission of 11 April 1996, no. 24019/94; and *Predota v. Austria* (dec.), no. 28962/95, 18 January 2000).

41. The Court further observes that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition, but the applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance which has to be struck between the general interest and the individual interests; and in both contexts the State enjoys a certain margin of appreciation (see *Evans v. the United Kingdom* [GC], no. 6339/05, §§ 75-76, ECHR 2007-I, and *Rommelfänger*, cited above; see also *Fuentes Bobo v. Spain*, no. 39293/98, § 38, 29 February 2000).

42. The Court reiterates, moreover, that the margin of appreciation afforded to the State is wider where there is no consensus within the member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it. There will also usually be a wide margin if the State is required to strike a balance between competing private and public interests or different Convention rights (see *Evans*, cited above, § 77).

43. The main question which arises in the present case is thus whether the State was required, in the context of its positive obligations under Article 8, to uphold the applicant's right to respect for his private life against his dismissal by the Mormon Church. Accordingly, the Court, by examining how the German employment tribunals balanced the applicant's right with the Mormon Church's right under Articles 9 and 11, will have to ascertain whether or not a sufficient degree of protection was afforded to the applicant.

44. In this connection, the Court reiterates that religious communities traditionally and universally exist in the form of organised structures and that, where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. 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. The Court further observes that, but for 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 (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, §§ 62 and 78,

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ECHR 2000-XI). Lastly, where questions concerning the relationship between State and religions are at stake, questions on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 109, ECHR 2005-XI).

45. The Court would first note that, by putting in place both a system of employment tribunals and a constitutional court having jurisdiction to review their decisions, Germany has in theory complied with its positive obligations towards citizens in the area of employment law, an area in which disputes generally affect the rights of the persons concerned under Article 8 of the Convention. In the present case the applicant was thus able to bring his case before an employment tribunal, which had to determine whether the dismissal was lawful under ordinary domestic employment law, while having regard to ecclesiastical employment law, and to balance the competing interests of the applicant and the employing Church.

...

50. In the Court's view, the conclusions drawn by the employment tribunals to the effect that the applicant had not been bound by unacceptable obligations do not appear unreasonable. The Court considers that the applicant, having grown up within the Mormon Church, was – or ought to have been – aware when signing his employment contract, and particularly paragraph 10 (concerning adherence to “*high moral principles*”), of the importance of marital fidelity for his employer (see, *mutatis mutandis*, *Ahtinen v. Finland*, no. 48907/99, § 41, 23 September 2008) and of the incompatibility of the extra-conjugal relations that he had chosen to form with the heightened duties of loyalty that he had contracted towards the Mormon Church as European Director of the Public Relations Department.

51. The Court considers that the fact that the dismissal was based on conduct relating to the applicant's private sphere, with no media coverage or major public repercussions of that conduct, is not a decisive factor in the present case. It notes that the special nature of the occupational requirements imposed on the applicant derives from the fact that they were established by an employer whose ethos is based on religion or belief (see paragraph 27 above, Article 4 of Council Directive 2000/78/EC; see also *Lombardi Vallauri v. Italy*, no. 39128/05, § 41, 20 October 2009). In that connection it considers that the employment tribunals adequately established that the duties of loyalty imposed on the applicant were acceptable in that their aim was to maintain the credibility of the Mormon Church. It also notes that the Employment Appeal Tribunal clearly stated that its conclusions should not be understood to imply that any act of adultery constituted in itself grounds for dismissal [without notice] of a Church employee, but that it had reached that conclusion here on account of the serious breach which adultery constituted in the eyes of the Mormon Church and the important position that the applicant occupied in that Church imposing heightened duties of loyalty on him.

52. In conclusion, having regard to the margin of appreciation of the State in the present case ... and in particular the fact that the employment tribunals had to strike a balance between a number of private interests, those factors suffice for the Court to hold that in the instant case Article 8 of the Convention did not require the German State to afford the applicant enhanced protection.

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26. In the case of *Schiith v. Germany*, (no. 1620/03, ECHR 2010, a judgment delivered on the same date), the applicant, who was an organist and choirmaster at a Catholic church, was dismissed with notice, also on grounds of adultery. The Court came to a different conclusion for the following reasons:

“65. Regarding the finding of the employment tribunals that the dismissal was justified under the Basic Regulations, the Court reiterates that it is in the first place for the national courts to interpret and apply domestic law (see *Griechische Kirchengemeinde München und Bayern e.V. v. Germany* (dec.), no. 52336/99, 18 September 2007, and *Miroļubovs and Others v. Latvia*, no. 798/05, § 91, 15 September 2009). It would reiterate, however, that, whilst it is not the Court's task to substitute its own opinion for that of the domestic courts, it must nonetheless ascertain whether the effects of the domestic court's findings are compatible with the Convention (see, *mutatis mutandis*, *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 49, ECHR 2004-X; *Miroļubovs and Others*, cited above, § 91; and *Lombardi Vallauri v. Italy*, no. 39128/05, § 42, 20 October 2009).

66. As regards the application to the applicant's specific case of the criteria reiterated by the Federal Employment Tribunal, the Court cannot but note the brevity of the employment tribunals' reasoning regarding the conclusions they had drawn from the applicant's conduct (contrast *Obst*, cited above, § 49). The Employment Appeal Tribunal had confined itself to explaining that the applicant's functions as organist and choirmaster did not fall within the scope of Article 5 § 3 of the Basic Regulations, but were nonetheless so closely connected to the Catholic Church's proclamatory mission that the parish church could not continue to employ this musician without losing all credibility and that it was barely conceivable for the general public that he and the Dean could carry on performing the liturgy together.

...

69. [The Court] would note ... that the Employment Appeal Tribunal did not examine the question of the proximity between the applicant's activity and the Church's proclamatory mission, but appears to have reproduced the opinion of the employing Church on this point without further verification. As the case concerned a dismissal following a decision by the applicant concerning his private and family life, which attracts the protection of the Convention, the Court considers that a more detailed examination was required when weighing the competing rights and interests at stake (see *Obst*, cited above, §§ 48-51), particularly as in this case the applicant's individual right was weighed against a collective right. Whilst it is true that, under the Convention, an employer whose ethos is based on religion or on a philosophical belief may impose specific duties of loyalty on its employees, a decision to dismiss based on a breach of such duty cannot be subjected, on the basis of the employer's right of autonomy, only to a limited judicial scrutiny exercised by the relevant domestic employment tribunal without having regard to the nature of the post in question and without properly balancing the interests involved in accordance with the principle of proportionality.

...

75. Consequently, having regard to the particular circumstances of the case, the Court finds that the German authorities did not provide the applicant with the

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necessary protection and that there has, accordingly, been a violation of Article 8 of the Convention.”

27. More recently, in the case of *Sindicatul “Păstorul cel Bun” v. Romania* ([GC], no. 2330/09, ECHR 2013), the Grand Chamber of the Court applied the principle of autonomy of religious organisations in the context of trade-union rights. In that case the applicants, who were Orthodox priests and lay employees of the Romanian Orthodox Church, had formed a trade union whose aim was to defend the professional interests of its members. However, the respondent State authorities refused to register the trade union on the grounds that this was prohibited by the Statute of the Romanian Orthodox Church and its structural and functional autonomy. Unlike the Chamber, which had found a violation of Article 11 of the Convention (freedom of association, including trade-union freedom), the Grand Chamber reached the opposite conclusion, giving a ruling in favour of the autonomy of the religious community in question:

“139. The Court will ascertain whether, in view of their status as members of the clergy, the applicant union’s members are entitled to rely on Article 11 of the Convention and, if so, whether the refusal to register the union impaired the very essence of their freedom of association.

...

143. ... [T]he Court observes that the duties performed by the members of the trade union in question entail many of the characteristic features of an employment relationship. For example, they discharge their activities on the basis of a decision by the bishop appointing them and setting out their rights and obligations. Under the bishop’s leadership and supervision, they carry out the tasks assigned to them; besides performing liturgical rites and maintaining contact with parishioners, these include teaching and management of parish assets; members of the clergy are also responsible for the sale of liturgical items ... In addition, domestic law provides for a specific number of posts for members of the clergy and laity which are largely funded from the State and local authority budgets, the post-holders’ wages being set with reference to the salaries of Ministry of Education employees ... The Romanian Orthodox Church pays employer’s contributions on the wages paid to its clergy, and priests pay income tax, contribute to the national social-security scheme and are entitled to all the welfare benefits available to ordinary employees, such as health insurance, a pension on reaching the statutory retirement age, or unemployment insurance.

144. Admittedly, as the Government pointed out, a particular feature of the work of members of the clergy is that it also pursues a spiritual purpose and is carried out within a church enjoying a certain degree of autonomy. Accordingly, members of the clergy assume obligations of a special nature in that they are bound by a heightened duty of loyalty, itself based on a personal, and in principle irrevocable, undertaking by each clergyman. It may therefore be a delicate task to make a precise distinction between the strictly religious activities of members of the clergy and their activities of a more financial nature.

...

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148. Having regard to all the above factors, the Court considers that, notwithstanding their special circumstances, members of the clergy fulfil their mission in the context of an employment relationship falling within the scope of Article 11 of the Convention. Article 11 is therefore applicable to the facts of the case.

...

159. In the Court's opinion, it is the domestic courts' task to ensure that both freedom of association and the autonomy of religious communities can be observed within such communities in accordance with the applicable law, including the Convention. Where interferences with the right to freedom of association are concerned, it follows from Article 9 of the Convention that religious communities are entitled to their own opinion on any collective activities of their members that might undermine their autonomy and that this opinion must in principle be respected by the national authorities. However, a mere allegation by a religious community that there is an actual or potential threat to its autonomy is not sufficient to render any interference with its members' trade-union rights compatible with the requirements of Article 11 of the Convention. It must also show, in the light of the circumstances of the individual case, that the risk alleged is real and substantial and that the impugned interference with freedom of association does not go beyond what is necessary to eliminate that risk and does not serve any other purpose unrelated to the exercise of the religious community's autonomy. The national courts must ensure that these conditions are satisfied, by conducting an in-depth examination of the circumstances of the case and a thorough balancing exercise between the competing interests at stake (see, *mutatis mutandis*, *Schiith v. Germany*, no. 1620/03, § 67, ECHR 2010, and *Siebenhaar v. Germany*, no. 18136/02, § 45, 3 February 2011).

160. While the State generally enjoys a wide margin of appreciation in cases such as the present one, where a balance has to be struck between competing private interests or different Convention rights (see, *mutatis mutandis*, *Evans v. the United Kingdom* [GC], no. 6339/05, § 77, ECHR 2007-I), the outcome of the application should not, in principle, vary according to whether it was lodged with the Court under Article 11 of the Convention, by the person whose freedom of association was restricted, or under Articles 9 and 11, by the religious community claiming that its right to autonomy was infringed.

161. The central issue in the present case is the non-recognition of the applicant union. In the proceedings before the courts with jurisdiction to examine the union's application for registration, the Archdiocese, which was opposed to its recognition, maintained that the aims set out in the union's constitution were incompatible with the duties accepted by priests by virtue of their ministry and their undertaking towards the archbishop. It asserted that the emergence within the structure of the Church of a new body of this kind would seriously imperil the freedom of religious denominations to organise themselves in accordance with their own traditions, and that the establishment of the trade union would therefore be likely to undermine the Church's traditional hierarchical structure; for these reasons, it argued that it was necessary to limit the trade-union freedom claimed by the applicant union.

162. Having regard to the various arguments put forward before the domestic courts by the representatives of the Archdiocese of Craiova, the Court considers that it was reasonable for the County Court to take the view that a decision to allow the registration of the applicant union would create a real risk to the autonomy of the religious community in question.

...

173. There has therefore been no violation of Article 11 of the Convention.”

5) Relations between the State and religious communities

28. The protection of freedom of thought, conscience and religion implies corresponding neutrality on the part of the State. Respect for different convictions or beliefs is a primary obligation of the State, which must accept that individuals may freely adopt convictions, and possibly subsequently change their minds, by taking care to avoid any interference in the exercise of the right guaranteed by Article 9. The right to freedom of religion excludes any assessment by the State of the legitimacy of religious beliefs or the means of their expression.

29. The Court has held that Article 9 of the Convention 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 (*Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 132, 3 May 2007).

30. However, that does not mean that the relations between a Contracting State and religious communities lie completely outside the Court's scrutiny. In the case of *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (no. 40825/98, 31 July 2008), the Court found a violation of Article 9 of the Convention on account, among other things, of a ten-year waiting period imposed on “new” religious communities that already had legal personality before they could acquire the status of a “religious society” (*Religionsgesellschaft*) offering a number of substantive privileges, such as the right to teach religion in State schools. The Court held:

“92. ...Given the number of these privileges and their nature, ... the advantage obtained by religious societies is substantial and this special treatment undoubtedly facilitates a religious society's pursuance of its religious aims. In view of these substantive privileges accorded to religious societies, the obligation under Article 9 of the Convention incumbent on the State's authorities to remain neutral in the exercise of their powers in this domain requires therefore 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.”

31. Similarly, in the case of *Savez crkava "Riječ života" and Others v. Croatia* (no. 7798/08, 9 December 2010), the Court gave a ruling under Article 14 of the Convention and Article 1 of Protocol No. 12, prohibiting discrimination in the exercise of any right guaranteed by law. While stating that the conclusion of special agreements between the State and certain religious communities establishing a special regime in favour of the latter

## OVERVIEW OF THE COURT'S CASE-LAW ON FREEDOM OF RELIGION

communities did not in itself contravene Articles 9 and 14 of the Convention, the Court found that the refusal of the Croatian Government to conclude an agreement with the applicants – a number of protestant Christian communities in the present case –, an agreement which would allow them to perform certain religious services and obtain official State recognition of the religious weddings celebrated by their clergymen, amounted to discrimination in the exercise of their right to freedom of religion. The Court held as follows:

“85. The Court reiterates that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations. However, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see, for example, *Oršuš and Others v. Croatia* [GC], no. 15766/03, §149, ECHR 2010-...). In particular, the conclusion of agreements between the State and a particular religious community establishing a special regime in favour of the latter does not, in principle, contravene the requirements of Articles 9 and 14 of the Convention, provided that there is an objective and reasonable justification for the difference in treatment and that similar agreements may be entered into by other religious communities wishing to do so (see *Alujer Fernández and Caballero García v. Spain* (dec.), no. 53072/99, ECHR 2001-VI).

86. The Court notes that it was not disputed between the parties that the applicant churches were treated differently from those religious communities which had concluded agreements on issues of common interest with the Government of Croatia, under section 9(1) of the Religious Communities Act. The Court sees no reason to hold otherwise. Accordingly, the only question for the Court to determine is whether the difference in treatment had “*objective and reasonable justification*”, that is, whether it pursued a “*legitimate aim*” and whether there was a “*reasonable relationship of proportionality*” between the means employed and the aim sought to be realised (see, for example, *Oršuš and Others*, cited above, § 156).

...

88. The Court also found that the imposition of such criteria raised delicate questions, as the State had a duty to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom and in its relations with different religions, denominations and beliefs. Therefore, such criteria called for particular scrutiny on the part of the Court (see *Religionsgemeinschaft der Zeugen Jehovas*, cited above, § 97).

...”

32. The State must not take measures which impede the normal functioning of a religious community. Accordingly, an exorbitant tax assessment which seriously disrupts the internal organisation and functioning of the association of such a community, preventing it from carrying on its religious activity as such, amounts to an interference with the rights under Article 9 of the Convention and may constitute a violation if



the Court finds it disproportionate (*Association Les Témoins de Jéhovah v. France*, no. 8916/05, § 53, 30 June 2011).

6) *Imposition by the State of certain practices associated with religion*

33. Can a State impose certain practices associated with a religion? In the case of *Buscarini and Others* [GC], cited above, the Court examined the case of a number of members of parliament who had to swear an oath on the Bible in order to take up their duties. The Court held that there had been a violation of Article 9 because requiring them to take an oath was tantamount to obliging them to swear allegiance to a particular religion. Likewise, in accordance with the principle of free choice, a person cannot be obliged to take part against their will in the activities of a religious community when they do not belong to that community.

34. In the case of *Dimitras and Others v. Greece*, nos. 42837/06, 3237/07, 3269/07, 35793/07 and 6099/08, 3 June 2010, the Court found a violation of Article 9 of the Convention on account of the obligation imposed on the applicants, as witnesses in a number of sets of judicial proceedings, to disclose their religious convictions in order to avoid having to take an oath on the Bible.

35. The question of the imposition by the State of certain practices associated with religion – or concerning the religious beliefs of certain citizens – may also arise in schools. In the case of *Valsamis v. Greece* (18 December 1996, *Reports of Judgments and Decisions* 1996-VI), for example, the applicants – a family of Jehovah's Witnesses – complained that the third applicant, a State-school pupil, had been punished for refusing to take part in the celebration of the National Day, which commemorates the outbreak of war between Greece and Fascist Italy. The applicants, whose religious beliefs forbid any association with war commemorations, alleged a violation of Article 9 of the Convention (as regards their daughter herself) and Article 2 of Protocol No. 1 (as regards the parents). The Court held:

“22. Mr and Mrs Valsamis alleged that they were the victims of a breach of Article 2 of Protocol No. 1 ... .

...

28. ... “[T]he setting and planning of the curriculum fall in principle within the competence of the Contracting States. This mainly involves questions of expediency on which it is not for the Court to rule and whose solution may legitimately vary according to the country and the era”. Given that discretion, the Court has held that the second sentence of Article 2 of Protocol No. 1 forbids the State “to pursue an aim of indoctrination that might be regarded as not respecting parents’ religious and philosophical convictions. That is the limit that must not be exceeded” ... .

...

## OVERVIEW OF THE COURT'S CASE-LAW ON FREEDOM OF RELIGION

30. In the first place, the Court notes that Miss Valsamis was exempted from religious-education lessons and the Orthodox Mass, as had been requested by her parents. The latter also wished to have her exempted from having to parade during the national commemoration on 28 October.

31. While it is not for the Court to rule on the Greek State's decisions as regards the setting and planning of the school curriculum, it is surprised that pupils can be required on pain of suspension from school - even if only for a day - to parade outside the school precincts on a holiday.

Nevertheless, it can discern nothing, either in the purpose of the parade or in the arrangements for it, which could offend the applicants' pacifist convictions to an extent prohibited by the second sentence of Article 2 of Protocol No. 1.

Such commemorations of national events serve, in their way, both pacifist objectives and the public interest. The presence of military representatives at some of the parades which take place in Greece on the day in question does not in itself alter the nature of the parades.

Furthermore, the obligation on the pupil does not deprive her parents of their right "to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents' own religious or philosophical convictions"... .

32. It is not for the Court to rule on the expediency of other educational methods which, in the applicants' view, would be better suited to the aim of perpetuating historical memory among the younger generation. It notes, however, that the penalty of suspension, which cannot be regarded as an exclusively educational measure and may have some psychological impact on the pupil on whom it is imposed, is nevertheless of limited duration and does not require the exclusion of the pupil from the school premises ... .

33. In conclusion, there has not been a breach of Article 2 of Protocol No. 1.

...

34. Miss Valsamis relied on Article 9 of the Convention ... .

She asserted that the provision (art. 9) guaranteed her right to the negative freedom not to manifest, by gestures of support, any convictions or opinions contrary to her own. She disputed both the necessity and the proportionality of the interference, having regard to the seriousness of the penalty, which stigmatised her and marginalised her.

...

37. The Court notes at the outset that Miss Valsamis was exempted from religious education and the Orthodox Mass, as she had requested on the grounds of her own religious beliefs. It has already held, in paragraphs 31-33 above, that the obligation to take part in the school parade was not such as to offend her parents' religious convictions. The impugned measure therefore did not amount to an interference with her right to freedom of religion either ... .

38. There has consequently not been a breach of Article 9 of the Convention.”

## II. SCOPE OF PROTECTION OF FREEDOM OF RELIGION

### 1) *Interference with rights under Article 9*

36. Under Article 9 § 2 of the Convention, any interference with the exercise of the right to freedom of religion must be “*necessary in a democratic society*”. That means that it must correspond to a “*pressing social need*”; thus, the notion “*necessary*” does not have the flexibility of such expressions as “*useful*” or “*desirable*” (*Svyato-Mykhaylivska Parafiya*, cited above, § 116).

### 2) *Duty of neutrality and impartiality of the State*

37. Save for 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 (*Hasan and Chaush*, cited above, § 78; *Metropolitan Church of Bessarabia and Others*, cited above, § 117; and *Serif v. Greece*, no. 38178/97, § 52, ECHR 1999-IX).

38. State action favouring one leader of a divided religious community or undertaken with the purpose of forcing the community to come together under a single leadership against its own wishes constitutes an interference with freedom of religion. In democratic societies the State does not need to take measures to ensure that religious communities are brought under a unified leadership. Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (*Hasan and Chaush*, cited above, § 78 ; *Metropolitan Church of Bessarabia and Others*, cited above, § 117 ; and *Serif*, cited above, § 52).

39. In the case of *Miroļubovs and Others v. Latvia* (no. 798/05, 15 September 2009), the Court examined the way in which the authorities of the respondent State had resolved an internal conflict within a religious community. It stated that, when examining whether a domestic measure complied with Article 9 § 2 of the Convention, it had to have regard to the historical context and the specificities of the religion in question, whether these concerned the tenets, rituals, organisation or other aspects. Relying on *Cha'are Shalom Ve Tsedek*, cited above, it considered that this conclusion logically flowed from the general principles established in the Court's case-law under Article 9, namely, freedom to practise a religion in public or private, internal autonomy of religious communities and respect for religious pluralism. Having regard to the subsidiary mechanism of

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protection of individual rights established by the Convention, the same obligation can be imposed on national authorities where they take binding decisions in their relations with different religions. In that connection the Court also referred to its case-law developed under Article 14 of the Convention, according to which, in some circumstances, a failure to treat differently persons in relevantly different situations may amount to a violation of that provision (*Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV). In sum, the Court must not neglect the specific features of different religions where these are of particular significance in resolving the dispute brought before the Court.

### 3) Protection against gratuitous offence, incitement to violence and hatred against a religious community

40. Does Article 9 protect the right to protection of religious feelings as an aspect of religious freedom? The scope of Article 9 of the Convention is actually very broad, so that such a right does appear to be protected by that Article. Admittedly, the European Court specifies that believers must tolerate and accept the denial of their religious beliefs and even the propagation by others of doctrines hostile to their faith. However, as specified in the case of *Otto-Preminger-Institut*, 20 September 1994, Series A no. 295, the fact remains that the manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the State, notably its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 to the holders of those beliefs and doctrines. Indeed, in extreme cases the effect of particular methods of opposing or denying religious beliefs can be such as to inhibit those who hold such beliefs from exercising their freedom to hold and express them.

41. In the *Kokkinakis* judgment, cited above, the Court held, in the context of Article 9, that a State could legitimately consider it necessary to take measures aimed at repressing certain forms of conduct, including the imparting of information and ideas, judged incompatible with the respect for the freedom of thought, conscience and religion of others. In *Otto-Preminger-Institut*, cited above, the Court acknowledged that respect for the religious feelings of believers, as guaranteed by Article 9, had been infringed by provocative portrayals of objects of religious veneration; such portrayals could be regarded as a malicious violation of the spirit of tolerance, which must also be a feature of democratic society. In that judgment the Court considered that the measures complained of were based on an Article of the Austrian Penal Code which was intended to suppress behaviour directed against objects of religious veneration that was likely to cause “*justified indignation*”. Their purpose was thus to protect the right of citizens not to be insulted in their religious feelings by the public expression

## OVERVIEW OF THE COURT'S CASE-LAW ON FREEDOM OF RELIGION

of views of other persons. Accordingly, they were not disproportionate to the legitimate aim pursued, which was the protection of the rights of others.

42. In the case of *Gündüz v. Turkey*, no. 35071/97, ECHR 2003-XI, the Court held that there had been a violation of Article 10 following the conviction of the leader of a sect for inciting people to hatred and hostility on the basis of a distinction founded on religion, on account of statements made during a television programme. The Court observed first that the programme in question sought to debate the theory that the applicant's conception of Islam was incompatible with democratic values. That topic, which had been widely debated in the Turkish media, concerned a matter of general interest. Certain comments on which the conviction had been based demonstrated an intransigent attitude towards and profound dissatisfaction with contemporary institutions in Turkey. The Court considered that the mere fact of defending Sharia law, without calling for violence to establish it, could not be regarded as "*hate speech*". Having regard to the context of that case, the Court considered that the need for the restriction in issue had not been convincingly established.

43. In the case of *Gündüz v. Turkey (no. 2) (dec.)*, no. 59745/00, 13 November 2003, the Court declared inadmissible an application by the leader of an Islamic sect convicted of inciting people to religious crime and hatred through publication of his comments in the press. It considered that, having regard to the violent content and tone of the applicant's comments, they amounted to hate speech advocating violence and accordingly were incompatible with the basic values of justice and peace expressed in the Preamble to the Convention. Moreover, in the article in question the applicant had given the name of one of the persons he was alluding to. As that person was a writer enjoying a certain amount of fame, he was easily recognisable by the general public and, following publication of the article, therefore indisputably exposed to a significant risk of physical violence. Accordingly, the Court considered that the severity of the penalty imposed (four years and two months' imprisonment and a fine) was justified in so far as it was a deterrent that might turn out to be necessary in the context of preventing public incitement to commit offences.

44. In the case of *Giniewski v. France* ((dec.), no. 64016/00, 7 June 2005) the Court declared admissible an application by a journalist convicted of defaming a group of persons on grounds of their membership of a religion. The applicant had published an article in which he considered that certain doctrines of the Catholic Church had "*prepared the ground in which the idea and implementation of Auschwitz took seed*". In a judgment of 31 January 2006 the Court held that there had been a violation of Article 10.

45. In the case of *Paturel v. France* (no. 54968/00, 22 December 2005), the Court declared admissible an application concerning the conviction for defamation of the author of a book criticising action taken by an

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organisation against sects. In a judgment of December 2005 the Court held that there had been a violation of Article 10.

### 4) Religion in the workplace and reasonable accommodation

46. Lastly, the Court has had to determine the scope of the positive obligations of employers (public and private) in protecting the rights of their employees under Article 9. In other words, to what extent should the Government impose a reasonable policy to accommodate different religious beliefs, convictions and practices in the workplace. In *Eweida and Others v. the United Kingdom*, no. 48420/10, ECHR 2013, the Court had to weigh up the rights of the applicants and the legitimate interests of their employers (which corresponded to the public interest in certain cases). In that case the applicants argued that national law had failed adequately to protect their right to manifest their religion. The first two applicants complained, in particular, of restrictions placed by their employers on their wearing a cross visibly around their necks. The third and fourth applicants complained of sanctions taken against them by their employers as a result of their concerns about performing services which they considered to condone homosexual union. The third applicant relied only on Article 14 of the Convention (prohibition of discrimination), taken in conjunction with Article 9, while the three remaining applicants considered themselves to be victims of a violation both of Article 9 taken alone and read in conjunction with Article 14.

47. In its judgment the Court stated the following general principles:

“82. Even where the belief in question attains the required level of cogency and importance, it cannot be said that every act which is in some way inspired, motivated or influenced by it constitutes a “manifestation” of the belief. Thus, for example, acts or omissions which do not directly express the belief concerned or which are only remotely connected to a precept of faith fall outside the protection of Article 9 § 1 (see *Skugar and Others v. Russia* (dec.), no. 40010/04, 3 December 2009 and, for example, *Arrowsmith v. the United Kingdom*, Commission’s report of 12 October 1978, Decisions and Reports 19, p. 5; *C. v. the United Kingdom*, Commission decision of 15 December 1983, DR 37, p. 142; *Zaoui v. Switzerland* (dec.), no. 41615/98, 18 January 2001). In order to count as a “manifestation” within the meaning of Article 9, the act in question must be intimately linked to the religion or belief. An example would be an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form. However, the manifestation of religion or belief is not limited to such acts; the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question (see *Cha’are Shalom Ve Tsedek v. France* [GC], no. 27417/95, §§ 73-74, ECHR 2000-VII; *Leyla Şahin*, cited above, §§ 78 and 105; *Bayatyan*, cited above, § 111; *Skugar*, cited above; *Pichon and Sajous v. France*, decision cited above).

83. It is true, as the Government point out and as Lord Bingham observed in *R (Begum) v. Governors of Denbigh High School* case ..., there is case-law of the Court

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and Commission which indicates that, if a person is able to take steps to circumvent a limitation placed on his or her freedom to manifest religion or belief, there is no interference with the right under Article 9 § 1 and the limitation does not therefore require to be justified under Article 9 § 2. For example, in the above-cited *Cha'are Shalom Ve Tsedek* case, the Court held that “there would be interference with the freedom to manifest one’s religion only if the illegality of performing ritual slaughter made it impossible for ultra-orthodox Jews to eat meat from animals slaughtered in accordance with the religious prescriptions they considered applicable”. However, this conclusion can be explained by the Court’s finding that the religious practice and observance at issue in that case was the consumption of meat only from animals that had been ritually slaughtered and certified to comply with religious dietary laws, rather than any personal involvement in the ritual slaughter and certification process itself (see §§ 80 and 82). More relevantly, in cases involving restrictions placed by employers on an employee’s ability to observe religious practice, the Commission held in several decisions that the possibility of resigning from the job and changing employment meant that there was no interference with the employee’s religious freedom (see, for example, *Konttinen v. Finland*, Commission’s decision of 3 December 1996, Decisions and Reports 87-A, p. 68; *Stedman v. the United Kingdom*, Commission’s decision of 9 April 1997; compare *Kosteski v. “the former Yugoslav Republic of Macedonia”*, no. 55170/00, § 39, 13 April 2006). However, the Court has not applied a similar approach in respect of employment sanctions imposed on individuals as a result of the exercise by them of other rights protected by the Convention, for example the right to respect for private life under Article 8; the right to freedom of expression under Article 10; or the negative right, not to join a trade union, under Article 11 (see, for example, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 71, ECHR 1999-VI; *Vogt v. Germany*, 26 September 1995, § 44, Series A no. 323; *Young, James and Webster v. the United Kingdom*, 13 August 1981, §§ 54-55, Series A no. 44). Given the importance in a democratic society of freedom of religion, the Court considers that, where an individual complains of a restriction on freedom of religion in the workplace, rather than holding that the possibility of changing job would negate any interference with the right, the better approach would be to weigh that possibility in the overall balance when considering whether or not the restriction was proportionate.

84. According to its settled case-law, the Court leaves to the States party to the Convention a certain margin of appreciation in deciding whether and to what extent an interference is necessary. This margin of appreciation goes hand in hand with European supervision embracing both the law and the decisions applying it. The Court’s task is to determine whether the measures taken at national level were justified in principle and proportionate (see *Leyla Şahin*, cited above, § 110; *Bayatyan*, cited above, §§ 121-22; and *Manoussakis*, cited above, § 44). Where, as for the first and fourth applicants, the acts complained of were carried out by private companies and were not therefore directly attributable to the respondent State, the Court must consider the issues in terms of the positive obligation on the State authorities to secure the rights under Article 9 to those within their jurisdiction (see, *mutatis mutandis*, *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, §§ 58-61, ECHR 2011; see also *Otto-Preminger-Institut v. Austria* judgment of 20 September 1994, Series A no. 295, § 47). Whilst the boundary between the State’s positive and negative obligations under the Convention does not lend itself to precise definition, the applicable principles are, nonetheless, 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

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whole, subject in any event to the margin of appreciation enjoyed by the State (see *Palomo Sánchez and Others*, cited above, § 62).”

48. With regard to the first two applicants, the Court found that there had been an interference with their right to manifest their religion because they had not been allowed to wear a cross visibly at their workplace. Regarding the first applicant, who worked for a private employer and therefore could not attribute that interference directly to the State, the Court had to determine whether her right to freely manifest her religion was sufficiently protected by the domestic legal order. In common with a large number of Contracting States, the United Kingdom does not have legal provisions specifically regulating the wearing of religious clothing and symbols in the workplace. Nonetheless, it is clear that the legitimacy of the uniform code and the proportionality of the measures taken by the employer were examined in detail. Accordingly, the Court did not consider that the lack of specific protection under domestic law meant that the applicant's right to manifest her religion by wearing a religious symbol at work was insufficiently protected. Nonetheless, the Court reached the conclusion that a fair balance had not been struck between the first applicant's desire to manifest her religious belief and communicate that belief to others and, on the other side of the scales, the employer's wish to project a certain corporate image (regardless of the legitimacy of that objective). Furthermore, before the first applicant, other employees of the same employer had been allowed to wear religious clothing such as turbans or hijabs without any negative impact on the company's brand or image. Moreover, the fact that the company had been able to amend the uniform code to allow for the visible wearing of religious symbolic jewellery demonstrated that the earlier prohibition had not been of crucial importance. Accordingly, the domestic authorities had failed sufficiently to protect the first applicant's right to manifest her religion, in breach of Article 9.

49. However, the reason for asking the second applicant to remove her 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, hospital managers were better placed to make decisions about clinical safety than a court, particularly an international court which has heard no direct evidence. Consequently, the Court did not conclude that the obligation on the applicant to remove her cross was disproportionate. Accordingly, she had not suffered a violation of Article 9.

50. With regard to the other two applicants, the Court found that it was particularly important to take account of the fact that the principles applied by the applicants' respective employers – promotion of equal opportunities and requiring all its employees to act in a way which does not discriminate against others – pursued the legitimate aim of protecting the rights of others, particularly those of homosexual couples, which were also protected under



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the Convention. The Court has held, in particular, in previous cases that particularly weighty reasons are required to justify any difference in treatment based on sexual orientation and that the situation of homosexual couples is comparable to that of heterosexual couples regarding the need for legal recognition and protection of their relations. Accordingly, the authorities had a wide margin of appreciation regarding the balance to be struck between the employers' right to secure the rights of others and the applicants' right to manifest their religion. Considering that a fair balance had been struck, the Court held that there had been no violation of the provisions relied on by the applicants.

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