

Declassified*
AS/Jur (2019) 43 Appendix
22 November 2019
ajdoc43 2019

Committee on Legal Affairs and Human Rights

The protection of freedom of religion or belief in the workplace

Appendix to the information note

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1. In order to collect additional information on the legislation concerning measures aimed at ensuring that the freedom of religion or belief is observed at the workplace, I have sent a questionnaire to national parliaments delegations through the European Centre for Parliamentary Research and Documentation (ECPRD). I have received replies from twenty-seven member States of the Council of Europe: Albania, Belgium, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Montenegro, Norway, Poland, Portugal, Romania, Serbia, the Slovak Republic, Spain, Sweden, Switzerland, Turkey and the United Kingdom. Two observer States (to the Assembly) - Canada and Israel - have also replied to my questionnaire. For various reasons, Slovenia has decided not to do so. Here is a summary of the replies to the below questions:

i. What measures (legislative, administrative or others) have been taken by your authorities to protect freedom of religion or belief at work? Are there currently any parliamentary or governmental proposals to strengthen respect for freedom of religion or belief in the workplace?

2. Concerning the **first question**, the majority of Council of Europe member States have recalled that the freedom of religion or belief is enshrined in their Constitutions (Albania, Croatia, France, Georgia, Germany, Greece, Hungary, Latvia, Lithuania, Montenegro, Norway, Poland, Portugal, Romania, Serbia, Spain, Sweden, Switzerland and Turkey); some of these States (Albania, France, Georgia, Germany, Greece, Montenegro and Turkey) have also indicated that the prohibition of discrimination based on religion is clearly stipulated at the constitutional level. Therefore, these provisions also apply to the freedom of religion or belief at work. Other applicable provisions are included in human rights acts (Norway and the United Kingdom) and/or specific laws governing freedom of religion or belief and the legal status religious communities (Croatia, Hungary, Latvia, Poland, Portugal, Romania, Serbia and Spain). Greece has also indicated that the provisions of the 1923 Treaty of Lausanne regulated the status of the Muslims of Thrace, including their right to freely wear Islamic clothing.

3. Moreover, some countries referred to criminal law provisions concerning sanctions for violating freedom of religion or belief in general (Croatia, Hungary, Spain and Switzerland), discrimination (Spain and Turkey) or violating workers' rights (Turkey). For example, according to Article 314 of the Spanish Criminal Code, "those that produce serious discrimination in public or private employment against a person on the grounds of (...) religion or belief (...) and do not re-establish the situation of equality before the law after an administrative injunction or sanction, repairing the economic damage that has arisen, shall be punished with imprisonment of six months to two years or a fine of 12 to 24 months".¹

* Document declassified by the Committee on 15 November 2019.

¹ See Spanish Criminal Code (*Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*).

4. As regards prohibition of discrimination on grounds of religion or belief in the workplace, many States have indicated that their labour laws contain special provisions designed to protect employees against such discrimination (Albania, the Czech Republic, France, Georgia, Germany, Greece, Hungary, Italy, Latvia, Montenegro, Portugal, the Slovak Republic, Spain and Turkey). Some States mentioned specific equality and/or anti-discrimination legislation (Albania, the Czech Republic, Estonia, Finland, Georgia, Germany, Hungary, Lithuania, Montenegro, Norway and the Slovak Republic). Several member States of the European Union have also referred to the implementation of the Employment Equality Directive 2000/78² (which lays down a general framework for combating discrimination on the grounds of religion or belief), either by adopting special anti-discrimination or equality laws (Cyprus, Greece, Italy, Poland, Sweden or the United Kingdom) and/or amending their Labour Codes (Poland).

5. Concerning observer states, in **Canada**, freedom of religion or belief is protected at the federal, regional and territorial levels. This freedom is enshrined in the 1960 [Canadian Bill of Rights](#) and the 1982 [Canadian Charter of Rights and Freedoms](#), which is a part of the Constitution Act and applies only to federal, regional and territorial authorities but not to private parties. On a federal level, the [Canadian Human Rights Act](#) prohibits discrimination based on religion in the workplace and applies to situations in which the federal government is the employer. In October 2017, the National Assembly of **Québec** adopted the [Act to Foster Adherence to State Religious Neutrality and, in particular, to Provide a Framework for Requests for Accommodations on Religious Grounds in Certain Bodies](#) (*La Loi favorisant le respect de la neutralité religieuse de l'État et visant notamment à encadrer les demandes d'accommodements pour un motif religieux dans certains organismes*), which explicitly addresses the concept of reasonable accommodation of religion in the workplace, having been previously developed in courts' case law. Moreover, in the province of **Ontario** the [Human Rights Code](#) prohibits discrimination in employment on the basis of "creed".

6. In **Israel**, the 1988 Equal Employment Opportunity Law prohibits discrimination in employment on the grounds of religion or belief and specific laws regulate the accommodation of religion in the workplace, especially as regards times for prayer and holidays. The 1959 Civil Service Law obliges ministries and other authorities to ensure adequate representation of various population groups, including religious ones.

7. As regards the **second question**, according to all replies, there are currently **no parliamentary or governmental proposals under discussion** on strengthening respect for freedom of religion or belief in the workplace in any of the member States.

ii. Is there a formal mechanism for the reasonable accommodation of religion or belief in the workplace (whether it refers to employment or service provision)? If so, what is the test/threshold for the reasonable accommodation of religion or belief in the workplace?

8. Most member Council of Europe member States have replied negatively to this question or have not provide any specific answer to it (Albania, Belgium, Cyprus, Czech Republic, Estonia, Finland, Georgia, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Montenegro, Norway, Poland, Portugal, Romania, Serbia, Slovak Republic, Spain, Sweden, Turkey and the United Kingdom). In the **United Kingdom**, the *Equality and Human Rights Commission* (EHRC) published a report³ stating that a duty of reasonable accommodation would not lead to substantial additional protection and the existing law enabled employers to make an accommodation and address employee's request sufficiently.

9. Many States have indicated that 'accommodation' is ensured in practice, although this term is not explicitly mentioned in the law. That is, in particular, due to the fact that a refusal to accommodate may lead to discrimination in some cases (according to the replies from Norway, the Slovak Republic and Switzerland). In **Switzerland**, the obligation to ensure 'reasonable accommodation' could be interpreted from the courts' case-law; however, no criteria have been established, except for that of 'proportionality', which is measured in relation to the disadvantage for the employer caused by the accommodation and the consequences for the employee in case of a refusal to accommodate.

10. In **Italy**, some collective agreements contain provisions aimed at promoting 'adaptable forms of work organisation which take into account (...) religious differences', e.g. in modifying the organisation of canteens or guaranteeing the right to pray. **Hungary** stressed that the issue of accommodating employees' needs related to their religion or belief could be resolved bilaterally between the employer and the employee. **Serbia** has indicated that "the situation varies depending on a number of factors" and concerns a "secular domain".

² Council [Directive 2000/78/EC](#) of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Official Journal L 303, 02 December 2000, pages 0016 – 0022.

³ [Equality and Human Rights Commission Report](#), December 2016.

In **Sweden**, employers have to take 'active measures' to prevent discrimination on all grounds covered by the Discrimination Act, applying a four-step approach (investigate, analyse, take measures and monitor/evaluate).

11. Many countries referred to special regulations addressing different **religious holidays** (Albania, Croatia, France, Italy, Norway, Poland and Switzerland). In **Albania**, "persons who celebrate religious holidays have the right to have the day off". In **Croatia**, the *Holidays, Memorial Days and Non-Working Days Act* stipulates that citizens who do not celebrate during the public holidays but "who celebrate Christmas on January 7th, Islamic denominations in the days of Ramadan-Bayram and Kurban Bayrami, and Jewish denominations in the days of Rosh Hashanah and Yom Kippur" have the right not to work on those days and are entitled to compensation. Employees who celebrate on days not prescribed by this law may submit to their employer a request for exercising the "right of absenteeism and compensation for working hours on working days, Sundays or holidays without the right to special remuneration"⁴. In **France**, an employee can request leave for a religious holiday which is not officially recognised, but the employer is allowed to refuse it (in the case of the public administration, on the basis of "the need of the service"). The **Italian** legal system regulates religious festivities and their recognition as holidays with implied contractual provisions for all employees, irrespective their religion. According to the **Norwegian Act relating to Denominations**, all employees may "take two days off per year related to religious holidays" (Article 27a). In **Poland**, employees belonging to religious communities whose holidays are not public holidays may request days off from work at least seven days in advance; such a request may be accepted on the proviso that the employee would compensate his/her absence by working on public holidays or in overtime hours⁵. In **Switzerland**, an employee (in the private sector) can interrupt his/her work due to religious holidays other those officially recognised by the cantons; he/she shall inform the employer at least three days before and might be asked by the employer to compensate otherwise the lost working time.⁶

12. In **Turkey**, following legal changes in recent years, employees are allowed to attend the "Friday prayer" even if it coincides with working hours. Moreover, public officials who have exhausted their annual or casual leave may obtain a 20-day unpaid leave for a pilgrimage. **Croatia, Italy and Norway** stated that employers are encouraged to take specific religious requirements into account when providing employees with food. **Norway and Turkey** indicated that there was no legal obligation for employers to provide for places of worship. In **France**, the employer may prohibit praying in the office if it disturbs the work of other employees.

13. As regards the wearing of religious clothing and/or symbols, some countries make a distinction between employment in public institutions and employment in the private sector (Belgium, France and Switzerland). In **Belgium**, while private companies are free to accept or ban religious symbols or clothing, the employer's freedom in this respect may be subject to some restrictions in the public sector (especially in the military forces and police for security reasons). In **France**, a civil servant (*fonctionnaire*) is bound by the obligation of neutrality and shall carry out his/her duties in accordance with the principle of secularism. He/she therefore "shall refrain from expressing his/her religious opinions in the performance of his/her duties."⁷ This obligation is binding on around 5 million *fonctionnaires* across the country. Internal civil service regulations may prohibit the wearing of religious symbols or clothing under stricter conditions than in the private sector, where employers may prohibit certain clothing or accessories for reasons of safety, health or sanitary hygiene. Moreover, it is forbidden to wear 'in the public space' clothing aimed at hiding one's face.⁸ In **Switzerland**, although the Federal Law regulating the status of civil servants (*Loi sur le personnel de la Confédération*)⁹ may oblige employees to wear specific work clothes, it has never been applied to ban the wearing of religious symbols. As regards the private sector, the employer can restrict one's freedom of religion only for the "good execution of the employment contract" (including reasons of security or hygiene) and should treat employee of various religious communities in a neutral and equal manner.

14. In contrast, **Turkey** has recently lifted the ban on wearing religious clothing by public officials in the workplace. The freedom to wear headscarves was re-introduced for civil servants in 2013. It was subsequently extended to judges and prosecutors in 2015, police officers in 2016 and military officers in 2017 (by administrative decisions and regulations).

⁴ See Article 3 and Article 5 of the Holidays, Memorial Days and Non-Working Days Act.

⁵ Article 42 of the Act on the Guarantees of Freedom of Conscience and Religion.

⁶ Articles 20a and 11 of the Federal Law on the Work for the Industry, Craft and Trade (*Loi fédérale sur le travail dans l'industrie, l'artisanat et le commerce*).

⁷ See Article 25 of the General Status of the Public Service (*loi n° 83-634 du 13 juillet 1983 "portant droits et obligations des fonctionnaires"*).

⁸ Act n° 2010-1192 of 11 October 2010 "prohibiting hiding one's face in the public space" (*loi "interdisant la dissimulation du visage dans l'espace public"*).

⁹ Article 21.1 c).

15. Some countries also referred to the concept of a “**conscience clause**” for physicians (the Czech Republic) or **conscientious objection** of persons obliged to perform military service (Portugal).

16. **Estonia, Italy and Poland** indicated that within churches, religious associations and other organisations whose ethos is based on belief or religion, different treatment of an employee because of occupational requirements based on his or her belief or religion is not considered as discrimination.

17. As regards observer States, in **Canada**, under *the Canadian Human Rights Act, the Canadian Charter of Rights and Freedoms* (see above) and under special provincial and territorial human rights legislation – all employers have a duty to ensure reasonable accommodation. The employer’s duty to accommodate exists with respect to any ground of discrimination (e.g. religion, sex or disability) and has its limits where accommodation is not possible because it would cause “undue hardship” (Fr. *contrainte excessive*) to the employer. In **Québec**, following the adoption of the above-mentioned *Act to Foster Adherence to State Religious Neutrality*, public bodies have to follow special ‘Guidelines for Processing Requests for Accommodation for Religious Reasons’ (*Lignes directrices portant sur le traitement d’une demande d’accomodement pour un motif religieux*). If an employee feels that his or her employer has treated him or her in a discriminatory manner, he/she may file a complaint with the appropriate body competent for the protection of human rights. If admissible, such a complaint is followed by a mediation process and, if it has not been possible to reach an agreement between the parties, it is referred to a court.

18. In **Israel**, although there is no compulsory provision on accommodation, various legal provisions allow adjustments for religion or belief. The 1951 *Work and Rest Law* provides for various possibilities to take time off from work for religious reasons. Employees may pray during the day of work in accordance with their religious requirements, are entitled to a weekly rest period depending on their religious affiliation (Friday, Saturday or Sunday) and to a maximum of seven days of paid absence due to religious or customary mourning in the case of the death of a family member. Furthermore, the *Civil Service Regulations* also include various rules for civil servants aimed at ensuring freedom of religion or belief at work (e.g. religious holidays or fast days).

iii. If there is no formal mechanism for the reasonable accommodation of religion or belief in the workplace, how are requests from employees to have their beliefs accommodated addressed?

19. The answers to this question were quite varied, addressing different complaint mechanisms. Many States stated that it was primarily up to each employer to decide how requests for accommodation should be addressed (Belgium, Finland, Greece, Hungary, Lithuania and United Kingdom). Some States also stressed that the employer had to implement the relevant provisions of the legislation on non-discrimination and/or equal treatment (Finland, Greece, Poland and the United Kingdom). For example, in the **United Kingdom**, requests for religious accommodation in the workplace are normally made in an informal manner and should be handled by employers as a matter of good practice. If such a request has been dismissed, an employee may bring a claim for indirect discrimination. He/she then needs to show that a practice puts those sharing a protected characteristic at a disadvantage (i.e. a group disadvantage).

20. In their replies, countries referred to the available judicial (Georgia, Hungary, Italy, Serbia, Switzerland and Turkey) or non-judicial (Albania, Georgia, Italy and Slovak Republic) remedies against discrimination.¹⁰ **Cyprus** has indicated that job seekers can complain to the Department of Labour.

21. In **Estonia**, ‘work guidelines on equal opportunities in the workplace’ have been recently issued in order to help employers to manage religious diversity in the workplace. They include a checklist to help employers verify whether they have taken the right measures to promote religious diversity.

22. In **Germany**, according to the Federal Anti-Discrimination Agency, it is easier to accommodate religious diversity in large companies. Due to their size, such companies can easily accept special holiday wishes, introduce flexitime regulations and set up prayer rooms. Small and medium-sized enterprises have fewer financial resources to do so. According to the General Act on Equal Treatment¹¹, the employer is obliged to set up a complaints’ office to which all employees can turn when they feel discriminated against in connection with their employment. In the event of a violation of the prohibition of discrimination, the employer shall be under the obligation to compensate the damage arising therefrom.

¹⁰ In in Albania – the Office of the Commissioner for Protection from Discrimination, in Georgia - the Ombudsman (Public Defender), in Italy - the National Office Against Racial Discrimination (UNAR) and in the Slovak Republic - the National Centre for Human Rights.

¹¹ [General Act on Equal Treatment](#) of 14 August 2006 (Federal Law Gazette I p. 1897), as last amended by Article 8 of the SEPA Accompanying Act of 3 April 2013 (Federal Law Gazette I p. 610).

iv. *Have there been any court cases where the question of reasonable accommodation has been considered? If so, what was the conclusion of such case(-s)?*

23. Only thirteen Council of Europe member States have indicated that there have been cases where questions of reasonable accommodation have been raised before courts (Belgium, Croatia, France, Germany, Hungary, Latvia, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United Kingdom).

24. As regards the wearing of religious symbols or clothing, in **France**, the "Baby Loup crèche" case has proved controversial. A private nursery school had fired one of its employees because she had worn the veil. The management had considered this religious clothing as contrary to the internal regulations, which required employees to respect the principle of secularism. The French Cassation Court (*Cour de cassation*) eventually held that the decision was legal¹², but the United Nations Human Rights Committee later criticised it as being in violation of Articles 18 (right to freedom of religion) and 26 of the [International Covenant on Civil and Political Rights](#) (prohibition of discrimination)¹³. Similarly, **Switzerland** referred to the case *Dahlab v. Switzerland*¹⁴, which was considered inadmissible by the European Court of Human Rights (ECtHR). The case concerned a teacher who had worn the Islamic headscarf in class before eventually being forbidden to do so by the Swiss authorities. Moreover, in a recent judgment, the Federal Tribunal (*Tribunal fédéral*) confirmed the legality of the Basel city canton's ban on court staff wearing religious symbols.¹⁵ **Belgium** referred to the 2013 so-called "Hema case", in which the Tongeren civil court had held that the dismissal of an employee for wearing a veil at a shop counter constituted discrimination on the grounds of religion. In a similar case of 2002, the **German** Federal Labour Court came to the same conclusion¹⁶. **Spain**¹⁷ and **Turkey**¹⁸ mentioned cases concerning conflicts between employee's rights to manifest their religion and employer's corporate image. According to a general doctrine established by the **Spanish** courts, employees can manifest their religion or belief so long as their conduct does not damage the image of the company or produce any harm to it. In a judgment of 2018, the **Turkish Constitutional Court** found that the dismissal of a civil servant of the Ministry of Finance for having worn the headscarf in the workplace had not met a 'compulsory social need' and violated her freedom of religion.¹⁹ The **United Kingdom** recalled the *Eweida and Others v. the United Kingdom*²⁰ case.

25. **Norway** referred to a case concerning the dismissal of a physician from her job as a regular general practitioner in a municipality because she refused, for reasons of conscience, to insert IUDs (inter-uterine devices). The Supreme Court found that a binding oral agreement had been entered into by the complainant and the municipality under which her right of reservation for reasons of conscience had been recognised. As the state of the law regarding such reservations was unclear when the oral agreement was made, the grounds for dismissal were found unreasonable and the termination of the working contract was declared unlawful.²¹ However, in a similar case, in **Sweden**, Jönköping County declined to employ a midwife after she stated that assisting in abortion conflicted with her religious views. The Swedish Labour Market Court found that her right to freedom of religion had not been violated.²² In its view, the employer's requirement to assist abortion was neutral, appropriate and necessary to achieve the objective of providing adequate health care.

26. **Latvia** reported on a case in which a detainee had complained about the prison authorities' refusal to provide him with a rug for praying and appropriate food. **Norway** mentioned a case concerning cancellation of a job interview due to the fact that the complainant had not wished to shake hands with a person of the opposite sex because of his religious beliefs; the Equality and Anti-Discrimination Tribunal found that the differential

¹² Plenary Chamber, Decision No. 612 of June 25, 2014.

¹³ UN Human Rights Committee, decision of 10 August 2018, CCPR/C/123/D/2662/2015.

¹⁴ ECtHR, application No. 42393/98, decision of 15 February 2001.

¹⁵ Judgment of the Federal Tribunal of 11 March 2011, case 2C 546/2018.

¹⁶ Judgment of 10 October 2002, 2 AZR 472/01. Recently, a similar issue has been referred to the Court of Justice of the European Union by the Federal Labour Court, which requested a preliminary ruling (of 30 January 2019, 10 AZR 299/18(A)), referring inter alia to Directive 2000/78. This was decided following an appeal lodged against a judgment of the Labour Court in Nuremberg of 27 March 2018. The latter had concluded that the employer's prohibition of wearing a headscarf by a sales consultant and cashier in the workplace constituted indirect discrimination.

¹⁷ See the judgment of the Balearic Islands Supreme Court of Justice (TSJ) of 9 September 2000 (no. 457/2002) and the judgment of the Juzgado de lo Social nº1 de Palma de Mallorca of 6 February 2017 (no. 31/2017).

¹⁸ Turkish Ninth Law Office of the High Court, Applications No. 2016/32606, 2016/5475 and 2014/664.

¹⁹ Judgment of 18 July 2018, application No. 2015/8491, Official Gazette no. 30497 of 2 August 2018.

²⁰ ECtHR, applications Nos. 48420/10, 59842/10, 51671/10 and 36516/10, judgment of 15 January 2013.

²¹ Case No. HR-2018_1958-A.

²² Judgment n° AD 23/17, case n° B 10/16.

treatment, i.e. the cancellation of the interview, was lawful.²³ **Portugal** referred to a case concerning a magistrate's shift work.²⁴

27. As regards observer States, in **Canada**, for the last thirty years, courts and human rights bodies have examined numerous cases concerning discrimination on grounds of religion and requests for reasonable accommodation in the workplace. The case of *Ontario Human Rights Commission v. Simpsons-Sears*²⁵ (concerning the weekly days off for a Jewish employee) is worth noting, as the Supreme Court's decision has introduced for the first time the duty of reasonable accommodation on religious grounds. Other important cases concerned the accommodation of Jewish holidays and Muslim prayers, Catholics' work on Sundays and the wearing of religious symbols and/or clothing at work.

vi. Given the similarities among several mechanisms of reasonable accommodation, could you provide us with the information on your country's mechanisms for the reasonable accommodation of disability or any other protected characteristics? If so, what is the test/threshold?

28. The majority of States have replied that their legislation provides for measures to accommodate disabled persons in the workplace. Most of them are **member States of the European Union**, which are bound, on the basis of Article 5 of Directive 2000/78, to provide for such an accommodation (Belgium, Croatia, Cyprus, Estonia, Finland, France, Germany, Hungary, Italy, Lithuania, Montenegro, Norway, Poland, Romania, the Slovak Republic and the United Kingdom). However, some member States of the European Union (the Czech Republic, Greece, Latvia, Portugal and Spain) have not provided information in this respect. **Sweden** has indicated that there is no formal mechanism for the reasonable accommodation of disability but has also stressed that, on the basis of the Discrimination Act, employers must take 'active measures' to prevent discrimination.

29. **Other Council of Europe member States** – Albania, Montenegro, Norway, Serbia, Switzerland and Turkey - have replied positively to this question. Georgia has not given any answer.

30. The accommodation measures are often applied on a case-by-case basis, depending on the employee's needs and the work carried out. They may consist of concrete adaptations of working hours, the purchase of equipment, tools or assistive technologies and the adjustment of the physical environment (for example, in **Finland, Romania and Switzerland**). The right to reasonable accommodation for disabled persons should not imply "disproportionate" or "unreasonable" burden for the employer (**Cyprus, Norway and Poland**). Some countries have also indicated that their legislations provide for mandatory employment quotas for people with disabilities; whether this be in the public or the private sector (for example, **Albania, Belgium or Serbia**). This obligation is sometimes linked with the obligation to provide compensation payments in the event of non-compliance (for example, in **Croatia, France and Montenegro**).

31. As regards 'other protected characteristics', only **Norway** has indicated that its Equality and Anti-Discrimination Act provides for special "lawful differential treatment on the basis of pregnancy, childbirth or breastfeeding and leave in connection with childbirth or adoption", where this does not have a disproportionate negative impact on the employee in question.

32. Concerning observer States, in **Canada**, the same rules that apply to reasonable accommodation on grounds of religion are also valid for disabled persons and the key criterion is again that of 'undue hardship'. The term 'disability' has been very broadly defined by the courts to include the subjective perception of disability, whether physical, mental or psychological²⁶. Moreover, the Canadian Human Rights Commissions have developed tools for a better understanding of discrimination based on disability and the duty to accommodate persons with disabilities. In **Israel**, the 1988 *Equal Rights for Persons with Disabilities Act* requires adjustment measures because of the special needs of a person with a disability.

²³ Case DIN-2018-325.

²⁴ Supreme Administrative Court, judgment of 15 October 2014, no. 058/12.

²⁵ 1985, 2 S.C.R. 536.

²⁶ See Supreme Court's decisions of *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)* and *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*.