Stato, Chiese e pluralismo confessionale

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Equality & Non-discrimination between the European Court of Justice and the European Court of Human Rights. Challenges and Perspectives in the Religious Discourse

ABSTRACT: Whereas gender, race and ethnicity have been placed at the very center of the rediscovery of European anti-discrimination law in the last decades, religion seems to stand in the backyard of European Agenda. Despite the increasing relevance of religion in the societal and public debate, Europe seems to barely consider religion in legislation and jurisprudence. No surprise therefore if the European Court of Justice delivered no case before 2017 and only two cases in 2017, the European Court of Human Rights rarely found violations of Article 9 ECHR compared to other conventional rights violations and both Courts have scarcely devoted the deserved attention to the discriminatory implications of the scrutinized cases. Moving ahead and beyond the legal background and given the cross-borders resonance of issues pertaining to human rights, the paper discusses and compares the European Union Court of Justice and the European Court of Human Rights approaches towards discrimination claims on religious ground, by highlighting weaknesses and challenges faced by the principle of equality and non-discrimination on account of religious belief at the European level. The parallel and combined investigation will thus offer an insight into the unsolved questions behind the understanding and the legal awareness towards religious discrimination.

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1 - Preliminary Remarks

Whereas gender, race and ethnicity have been placed at the very center of the rediscovery of European anti-discrimination law in the last decades, religion seems to stand in the backyard of European Agenda.

Despite the increasing relevance of religion in the societal and public debate, Europe seems to barely consider religion in legislation and jurisprudence.

No surprise therefore if the European Court of Justice delivered no case before 2017 and only two cases in 2017, the European Court of Human Rights rarely found violations of Article 9 ECHR compared to other conventional rights violations and both Courts have scarcely devoted the deserved attention to the discriminatory implications of the scrutinized cases.

Be it for its contentious linkage with the concepts of "choice and immutability"[541], efforts to tackle discriminations on religious belief have not yet invested all areas of EU anti-discrimination law, whose preference has been progressively devoted to other factors, even by leaving religion aside from the material scope of the *Race Directive* 43/2000/CE. The *Employment Equality Directive*, in fact, only prohibits discriminations on religious grounds in the fields of employment and occupation, vocational training, membership of employer and employee organizations, though refraining from following the *Race Directive* approach as to the width of protection.

Freedom of religion within the EU is then enshrined under Article 10, *Freedom of thought, conscience and religion*, of the EU Charter of Fundamental Rights together with the general guarantee of non-discrimination (Article 21) and that of cultural religious and linguistic diversity (Article 22).

On the Council of Europe side, the European Convention - through Article 9, 14 and, to some extent, 1, Protocol no. 12 - and the European Court of Human Rights (ECtHR) have instead played a prominent role in addressing issues pertaining to freedom of religion, though generally disregarding the discriminatory implications of the scrutinized cases and giving precedence to the safeguard of States' demand of neutrality in the public sphere[542].

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[541] On this, arguably, ECJ, *Achbita v. G4S Secure Solutions NV*, AG KOKOTT, § 45 and § 116.

[542] On this, see **J. RINGELHEIM**, *Rights, Religion and the Public Sphere: the European Court of Human Rights in Search of a Theory?*, in C. Ungureanu, L. Zucca (editors), *Law, State and Religion in the New Europe. Debates and Dilemma*, Cambridge University Press, 2012, p. 283

Moving ahead and beyond the legal background and given the cross-borders resonance of issues pertaining to human rights, the paper intends to discuss and compare the European Union Court of Justice (ECJ) and the European Court of Human Rights (ECtHR) approaches towards discrimination claims on religious ground, by highlighting weaknesses and challenges faced by the principle of equality and non-discrimination on account of religious belief at the European level.

The parallel and combined investigation will thus offer an insight into the unsolved questions behind the understanding and the legal awareness towards religious discrimination.

In following this path, a specific focus will be devoted to the adequacy of approaching anti-discrimination claims by interlacing religion and ethnicity, as to avoid an unequal or "levelling down" treatment among grounds of discrimination, as well as to the challenges surrounding supranational Courts' dependence on the comparator methodology.

As to its structure, part one presents a theoretical analysis of the existing safeguards towards discrimination on religious ground whereas part two investigates the ECtHR's and the ECJ's approaches in examining religious claims by focusing on the comparable and diverse system and mechanisms of anti-discrimination protection.

Ultimately, the paper will pave the way to the ECtHR and ECJ responses to the unavoidable question of "how much difference and diversity an open and pluralistic European society must tolerate within its borders and, conversely, [of] how much assimilation it is permitted to require from certain minorities"[543] through the lens of the principle of equality and non-discrimination.

Part One
Setting the Stage: Theory and *Rationale*

2 - The Notion of Religion: Where to Situate Manifestations of Religious Beliefs

Reluctance from defining religion continues to play a role in the case-law of the ECtHR and the ECJ.

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[543] *Achbita v. G4S Secure Solutions NV*, **AG KOKOTT**, § 3.

Not only do Courts refrain from clarifying the notion of religion, but, even before its increasing impact in shaping societies and individuals' ways of life, the consistent case-law is likely to choose not to interfere with States' preferences as to the relationship between religious faith and national order.

Since EU law reflects the ECtHR's developments in the interpretation of the guarantees set forth under Article 9 of the ECHR[544], it is worth framing the analysis within the fences of the Conventional system.

Even in the absence of a stark definition and partly because of that, the ECtHR embraces a broad definition of religious belief.

The ECtHR has in fact progressively recognized an open-ended list of religious beliefs and convictions protected under Article 9[545], following the "loose and ill-defined"[546] criteria suggested in *Campbell and Cosans v. United Kingdom*, where it spoke of "views that attain a certain level of cogency, seriousness, cohesion and importance"[547].

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[544] See ECJ, *Asma Bougnaoui, Association de défense des droits de l'homme (ADDH) v. Micropole SA*, "[i]n accordance with that provision, that right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. As is apparent from the explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), the right guaranteed in Article 10(1) of the Charter corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. In so far as the ECHR and, subsequently, the Charter use the term 'religion' in a broad sense, in that they include in it the freedom of persons to manifest their religion, the EU legislature must be considered to have intended to take the same approach when adopting Directive 2000/78, and therefore the concept of 'religion' in Article 1 of that directive should be interpreted as covering both the forum internum, that is the fact of having a belief, and the forum externum, that is the manifestation of religious faith in public", §§ 29, 30.

[545] See, § 36. On this, see **F.J. JACOBS, R. WHITE, C. OVEY**, *The European Convention on Human Rights*, Oxford University Press, 2012. Among others, see ECtHR, *Jakobsky v. Poland* (Buddhism); *Genov v. Bulgaria* (Hinduism); *W. v. United Kingdom* (veganism); *Jehovah's Witnesses of Moscow and Others v. Russia* (The Jehovah's Witnesses); *Izzetin Dogan v. Turkey* (Alevism); *Francesco Sessa v. Italy* (Judaism); *Leyla Sahin v. Turkey* (Islam);

[546] **F.J. JACOBS, R. WHITE, C. OVEY**, *The European Convention on Human Rights*, cit., p. 403.

[547] A more elaborated reflection of what constitutes a religious belief can be found in *Eweida and Others v. UK*, where the ECtHR argued that "[e]ven 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[…]. 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", § 82. By

Since the *Kokkinakis v. Greece* case and in the light of § 2, the ECtHR has also expanded Article 9's protection to the so-called *forum externun* admitting that, alongside "matter[s] of individual conscience"[548] dealing with the *forum internun* aspect, religious freedom "implies […] freedom to 'manifest [one's] religion", meaning "freedom to hold or not to hold religious beliefs and to practice or not to practice a religion"[549] in fields such as employment or education.

The dual dimension of the protection - in terms of its private and public aspect together with its individual and collective resonance[550] - echoes the prominent place of Article 9 within the Convention system as it represents, as the Court suggested, "one of the most vital elements that go to make up the identity of believers and their conception of life […], a precious asset for atheists, agnostics, sceptics and the unconcerned"[551] as well as one of the foundations of a democratic society due to its linkage with pluralism, tolerance and broadmindedness[552].

Whereas freedom of religion (*forum internum*) is an absolute right with no restrictions, freedom to manifest religious beliefs clearly illustrates the challenges faced by multiethnic and multi-religious societies in accommodating religious diversity within national borders or, conversely, in preserving a policy of State neutrality.

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contrast, a detailed indication of cases where the ECtHR refused to apply Article 9, § 1, can be found in *Guide on Article 9 of the European Convention on Human Rights*, 2018, p. 13 ss.

[548] ECtHR, *Kokkinakis v. Greece*, § 31.

[549] ECtHR, *Leyla Sahin v. Turkey*, § 104.

[550] In Article 9's perspective, the community element "goes beyond the mere coming together of individuals in the collective enjoyment of their individual freedom and extends to the recognition of an associative life which is to be protected as a necessary expression of that freedom. Within that religious associative life, individuals will be bound by its rules and the primary protection for their right to freedom of thought, conscience and religion lies in their being able to leave and disassociate themselves from the community. The state is to avoid entering into religious or doctrinal questions within that associative life, other than to test them for compatibility with the foundational convention values of democratic governance, pluralism and tolerance. It is not for the Court to comment on the practices of the religious community, although they may of course be limited in accordance with Article 9(2)", **M.D. EVANS**, *Manual on the Wearing of Religious Symbols in Public Areas*, Council of Europe Publishing, 2009, p. 34. In the case-law, see ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, § 118; *Izzetin Dogan and others v. Turkey*; *Moscow Branch of the Salvation Army v. Russia*.

[551] ECtHR, *Kokkinakis v. Greece*, § 31.

[552] For an in-depth investigation, see **J. RINGELHEIM**, *Diversité culturelle et droits de l'homme. La protection des minorités par la Convention européenne des droits de l'homme*, Bruylant, Bruxelles, 2006.

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It is therefore subjected to the limitations set forth under Article 9, § 2, keeping in mind the principles outlined in the ECtHR's case law: the preservation of a sentiment of "mutual tolerance between opposing groups"[553]; the safeguard of pluralism[554]; the necessity to strike a balance among opposite interests acknowledging the individual and collective dimension of the claims in a non-majoritarian perspective.

Irrespectively on the model of society adopted by the Contracting States, the ECtHR has thus provided some, although poor, guidance to the question of what constitutes manifestation of religion or belief.

Moving beyond the adamant dichotomy between conducts that are "motivated or influenced by a religion or belief"[555] and the relevant conduct required by Article 9 § 1 as being a manifestation of the belief in "practice"[556], in *Jakòbski v. Poland* the Court began to suggest a softer approach qualifying, in that case, as a religious practice a meat-free dietary request. Without so much delving into its qualification as an act motivated by religion or as a pure manifestation of religion, the Court simply argued that

> "without deciding whether such decisions are taken in every case to fulfil(sic) a religious duty […] the Court considers that the applicant's decision to adhere to a vegetarian diet can be regarded as motivated or inspired by a religion and was not unreasonable"[557].

Similarly, overturning *Dahlab v. Switzerland* where it was described as a "powerful external symbol" not protected under Article 9, the consistent ECtHR's case-law now plainly qualifies the Islamic headscarf as a religious protected under Article 9 of the European Convention[558].

Notwithstanding the wider approach reached by the more recent case-law as to enlargement of the notion of religious manifestations, the ECtHR has though not yet provided sufficient guidance as to the definition of religion within the meaning of Article 9 and, mostly, with respect to the admitted restrictions, especially when minorities are concerned.

Despite lack of clarity in defining grounds of discrimination recurs in almost any branch of anti-discrimination law, the presumed non inherent nature of religion, as a chosen rather than intrinsic human trait such as

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553 *Inter alia*, ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldovia*, § 123.

554 ECtHR, *Serif v. Greece*, § 53.

555 ECtHR, *Pretty v. United Kingdom*, § 123.

556 See on this the strict approach endorsed by the Commission in *Arrowsmith v. United Kingdom*.

557 ECtHR, *Jakòbski v. Poland*, § 45.

558 The reference here is specifically to *S.a.s. v. France*.

gender, sex or race - so greatly emphasized in the AG opinions in *Achbita* and *Bouagnoui* as it will be further discussed -, seems to trigger the risk of hierarchical approaches to religion-based discrimination claims[559].

As to the *status* of religion confronted with other grounds of discrimination, at least in one case the ECtHR has pooled religion with ethnicity.

From this angle, a point worth mentioning revolves around the relationship between religion and ethnicity due to the relationship entertained by the latter with the notion of race.

Do ethnicity and religion complement each other or do they always consist in two separate grounds of discrimination, entailing separate reviews?

Neither the Strasbourg Court or EU law offer responses, but a suggestion in the direction of a joint consideration of ethnicity and religion was prompted by the ECtHR in *Timishev v. Russia*.

In the attempt to make a distinction between race and ethnicity, the Court held that

> "[e]thnicity and race are related and overlapping concepts. Whereas the notion of race is rooted in the idea of biological classification of human beings into subspecies according to morphological features such as skin color or facial characteristics, *ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds*".

However, the established connection between religion and ethnicity, as intertwined factors[560], leaves the door open to the treatment reserved to the latter in the ECtHR case-law.

Whilst discriminations based on ethnicity require very weighty or compelling reasons to be justified under the Convention[561], in that echoing the safeguard afforded to race, even after *Vojnity v. Hungary*[562] in which for

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[559] The topic will be further discussed under Part Two.

[560] See, ECtHR, *Milanovic v. Serbia* (no. 7) § 97.

[561] For an analysis of the ECtHR's case-law on racial and ethnic discrimination, see **C. NARDOCCI**, *Razza e etnia. La discriminazione tra individuo e gruppo nella dimensione costituzionale e sovranazionale*, Editoriale Scientifica, Napoli, 2016.

[562] ECtHR, *Vojnity v. Hungary*, where the Court argued, for the very first time, that "in the light of the importance of the rights enshrined in Article 9 of the Convention in guaranteeing the individual's self-fulfilment, such a treatment will only be compatible with the Convention if very weighty reasons exist", § 36. For a more detailed analysis of the *rationale* upheld in the case, see **J. GERARDS**, *The Margin of Appreciation Doctrine, the Very Weighty Reasons Test and Grounds of Discrimination*, in M. Balboni (ed), *The principle of*

the very first time the ECtHR spoke of religion as a suspected ground, scrutiny on religion-based discriminations continues to rest on the wide margin of appreciation afforded to the Contracting States and on a slightly lenient review[563].

3 - Direct & Indirect Discrimination under the EU and the ECHR system

Another facet warrant a preliminary reflection deals with the direct and indirect forms of discrimination from their theorization to their concrete application.

The European Convention and EU law recognize the multidimensional nature of discrimination, sanctioning conducts that imply differences in treatment based on suspected grounds and practices that, although coached in neutral terms, cause disadvantages on a group.

How these notions of discrimination have been interpreted and applied in the case-law on religious freedom will be further analyzed.

The purpose here is to briefly highlight the ongoing challenges encountered by Courts in verifying the recurrence of either a direct or indirect forms of discrimination in order to better investigate the case-law analysis proposed in Part Two.

To begin with, the first one concerns the identification of the *tertium comparationis*, be it the individual or the group, and its nature, be it concrete or hypothetical.

In the former, dependent on the individual or group based approach is the interpretation of the act at issue as direct or indirect discrimination, which might be contested over trials due to the absolute prohibition of direct discriminations versus the possible reasonable and objective justification underneath a disparate impact or a particular disadvantage suffered by the group.

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discrimination and the European Convention of Human Rights, Editoriale Scientifica, Napoli; **L. PERONI**, *"Very Weighty Reasons" for Religion: Vojnity v. Hungary*, in *StrasbourgObserver.com*; **K. HENRARD**, *Duties of Reasonable Accommodation. In Relation to Religion and The European Court of Human Rights: a Closer Look At The Prohibition of Discrimination, the Freedom of Religion and Related Duties of State Neutrality*, in *Erasmus Law Review*, 2012, p. 59.

[563] On this, see **S. FREDMAN**, *Emerging from the Shadows: Substantive Equality and Article 14 of the European Convention on Human Rights*, in *Human Rights Law Review*, in *Human Rights Law Review*, 2016, p. 273 ss.; **O. ARNARDOTTIR**, *Vulnerability under Article 14 of the European Convention on Human Rights Innovation or Business as Usual?*, in *Oslo Law Review*, p. 150 ss. In the ECtHR case-law, see *Lautsi and Others v. Italy*, and *S.A.S. v. France*.

In the latter, the path from the traditional antidiscrimination model centered on a merely comparative approach to the so-called substantive rights model, endorsed by EU law, has brought about an extension of the antidiscrimination principle in terms of its capability to intercept discriminatory behaviors even when a concrete comparator is lacking.

This is especially true for EU law and for the suggested definition of direct and indirect discrimination that came with the Race Directive 2000/43 and the Framework Directive 2000/78.

As to indirect discrimination, EU law does not require anymore the proof of a disparate impact supported by a comparative analysis, but merely the hypothetical feasibility of a particular disadvantage that might occur on a disadvantaged social group[564].

With respect to direct discrimination, following the *Feryn* case[565], on the interpretation of certain provisions of the Race Directive, the ECJ has paved the way to a new approach to direct discrimination, unleashing the causal link between the conduct and the quest for a concrete detrimental effect: in other words "the comparator need not 'exist'; establishment of the probability of 'his' or 'her' better treatment will be enough"[566].

Before the ECtHR however contours appear blurred.

Article 14's weakness has largely impacted on the scarce implementation of antidiscrimination cases together with the habit of the ECtHR to neglect investigation over alleged violations of Article 14. This results in few violations of Article 14 and in a less detailed theoretical approach as to the distinction between direct and indirect discrimination - the former is never explicitly mentioned in the case-law as such - and to the role of the comparator methodology.

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[564] On this, EU law shows to follow the ECJ's approach explained in the *O'Flyn* case where the ECJ stated that: "unless objectively justified and proportionate to its aim, a provision of national law must be regarded as indirectly discriminatory if it is intrinsically able to affect migrant workers more than national workers and if there is a consequent risk that it will place the former at a particular disadvantage. It is not necessary in this respect to find that the provision in question does in practice affect a substantially higher proportion of migrant workers. It is sufficient that it is liable to have such an effect. Further, the reasons why a migrant worker chooses to make use of his freedom of movement within the Community are not to be taken into account in assessing whether a national provision is discriminatory. The possibility of exercising so fundamental a freedom as the freedom of movement of persons cannot be limited by such considerations, which are purely subjective", § 20.

[565] ECJ, *Centrum voor gelijkheid van kansen en voor racismebestrijding contro Firma Feryn NV*.

[566] **E. HOLZLEITHNER**, *Mainstreaming Equality: Dis/Entangling Grounds of Discrimination*, in *Transnat'l L. & Contemp. Probs.*, 2005, p. 934.

Whereas the consistent interpretation of Article 14 has been developed since the well-known *Belgian Linguistic* case on the criteria revealing discrimination on suspected grounds, the very first case the ECtHR found the recurrence of an indirect discrimination is fairly recent and dates back in 2007 with the *D.H. & Others* case, where the Strasbourg Court held that "a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group"[567].

Secondly, another difficulty might arise in the identification of the "correct" or "true" comparator. As it will be further discussed, a wrongful comparison might be sometimes used by Courts in the attempt to dismiss cases or merely to deny the recurrence of a directly discriminatory behavior[568].

A third argument that can possibly affect the choice of the comparator regards the establishment of the individual's membership or affiliation to the targeted group.

To this regard, both systems openly recognize the possibility to sanction discriminatory conducts even without a deep rooted investigation on the victim's affiliation and merely looking at his or hers presumed or perceived characteristics (the so-called discrimination by association). This is of crucial importance for a claim to be successful in cases covering inherent individual traits such as gender, race, ethnicity and religion as well[569], where the lack of definitions and of universally accepted criteria establishing membership may impede Courts' finding of alleged violations.

Beyond the implications surrounding the identification of the *tertium comparationis*, stands the role of Courts in rooting out discriminatory conducts. The extent to which Courts afford discretion in ascertaining who is the comparator - the individual or the group - and from which perspective - the concrete or the hypothetical one - may in fact very much affect the qualification of a behavior as directly or indirectly discriminatory, the subsequent severity of the scrutiny and eventually the outcome of the case.

Moving on from this line of reasoning, the group concept featuring indirect discriminations impacts on a fourth challenge that involves procedural issues in anti-discrimination law and, more specifically, the gathering evidence process.

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567 See, also, ECtHR, *Biao v. Denmark*, § 107.

568 See, **S. HAVERKORT**, p. 208, and Part Two.

569 See, ECJ, *S. Coleman v. Attridge Law and Steve Law*; ECtHR, *Škorjanec v. Croatia.*

As to the evidence, since *D.H. and Others v. Czech Republic*, the ECtHR has firmly established statistics as admitted evidence of indirect discrimination and same is for the ECJ.

Difficulties for both forms of discrimination might though remain in cases of conducts lacking data or whose not reliance on a normative legal basis makes it complex to verify their concrete, and likely discriminatory, realization.

Alongside statistics, another challenge has to do with the rules on the burden of proof that might be sometimes shared between the complainant and the respondent, meaning shifted from the former to the latter, as it has been admittedly held by the ECtHR in hate-crime cases[570].

To sum up, the unbinding interlace between substantial and procedural aspects encompasses both systems of anti-discrimination strategy. What may make the difference is the supranational Courts' tendency to avoid or, conversely, tackle discriminatory behaviors as the jurisprudence on religious discrimination will reveal.

4 - Balancing Freedom of Religion: the Proportionality Test in the Light of States' Margin of Appreciation

How Courts verify the recurrence of a violation of the principle of equality and non-discrimination and the weight attached to the so-called proportionality test also warrants reflection.

Both the ECJ and the ECtHR require that a fair balance among competing interests, that of the individual and that of the community, needs to be struck in order to reject a presumption of discrimination.

A three step analysis where appropriateness, necessity and the so-called "proportionality *strictu sensu*" - in that it has to be established a proportionality between "the aim(s) of the measure and the interest(s) harmed" - or, in the case of the ECtHR, a more loose and sometimes lenient scrutiny of reasonableness, need to be judicially ascertained.

It is beyond the scope of this paper to fully examine the ways in which the ECJ and the ECtHR undertake this test[571]. These mechanisms nevertheless call into question Courts' assessment of proportionality, meaning the intensity of the review and the elements that come into play.

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[570] See ECtHR, *Nachova and Others v. Bulgaria.*

[571] *Inter alia*, **S. VAN DROOGHENBROECK**, *La proportionnalité dans le droit de la Convention européenne des Droits de l'Homme. Prendre l'idée simple au sérieux*, Bruylant, Bruxelles, 2001.

Firstly, the intensity of the proportionality test varies and performs differently on account of the wide or *viceversa* narrow margin of appreciation afforded to national States[572]. This means that the strictness of the review largely depends on the width of control Courts accept to exercise towards national States.

As it will be outlined below, in religion-based discriminatory claims, the ECJ's and the ECtHR's stance appears that of softening the proportionality test by giving precedence to States' margin of discretion, therefore avoiding a thoroughly investigation on the invoked violation of the non-discrimination principle. Be it for the assumed better placed position enjoyed by national States, where ethics and moral have a say, or for the lacking political representation affecting both Courts, when religious discrimination enters the scene hardly Courts end up with the finding of violations.

Secondly, though there is no explicit hierarchy among factors of discrimination[573], the case-law on religion-based discrimination claims reveals, in the writer's perspective, a marked tendency in making use of the margin of appreciation doctrine in cases involving religious freedom through references to the lacking consensus among the member States.

Thirdly, the increasing "popularity" of secularism in deciding claims - especially when conceived as implying the neutrality of public spaces - has greatly affected the reasoning underling the proportionality test[574]. The Strasbourg Court, in particular, has shown a preference to surrender proportionality to secularism by interpreting it as an objective justification of interferences with religious manifestations.

All these three aspects will be jointly considered in the light of the selected case-law in Part two of the paper.

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[572] See, for an insight into the implication surrounding the margin of appreciation doctrine, **G. LETSAS**, *A theory of interpretation of the European Convention of Human rights*, Oxford University Press, 2007; **E. BENVENISTI**, *Margin of Appreciation, Consensus, and Universal Standards*, in *International Law and Politics*, p. 843 ss.; **E. BREMS**, *The Margin of Appreciation Doctrine in the Case-Law of the European Court of Human Rights*, in *Journal of international law*, 1996, p. 240 ss.

[573] For the European Union, see EU Commission, Communication, *Non-Discrimination and Equal Opportunities: A Renewed Commitment*, 2008, 420 final, p. 4.

[574] An example of this might be that of ECtHR's *Ebrahimian v. France* with a specific reference to the partially concurring opinion of Judge **O'LEARY** and to the dissenting opinion of Judge **DE GAETANO**. See, likewise, ECtHR*S.a.s. v. France*.