



European Network Against Racism  
Réseau européen contre le racisme  
Europäisches Netz gegen Rassismus

## Fact Sheet N°34

### Religious Discrimination and Legal Protection in the European Union

*This fact sheet aims to give an overview of the issues concerning religious discrimination in Europe, focusing in particular on the European legal framework on non-discrimination. The first part explains what religious discrimination is and outlines the existence of this phenomenon in today's Europe. This is followed by a section examining legal responses to religious discrimination in the international context and in European law, focusing on the European Union's anti-discrimination policy and on the Equality Directives of the year 2000. Some problems regarding these Directives are highlighted, explaining to what extent religious discrimination has been addressed in the legal framework and outlining issues in the transposition of these Directives into national law. Finally, the fact sheet touches on the role of civil society and NGOs in the fight against religious discrimination.*

#### **INTRODUCTION: WHAT IS RELIGIOUS DISCRIMINATION?**

Generally speaking, **discrimination** means unfair or disadvantageous treatment on the basis of a personal characteristic. **Religious discrimination** refers to a disadvantageous consideration or distinction of people on the basis of their religious affiliation, their personal belief (or non-belief), their faith-based appearance or behaviour or their assumed religious affiliation<sup>1</sup>. Unfair treatment and hostility related to personal beliefs are unfortunately quite common in Europe and they are often engendered by prejudice, especially towards religious minorities. From a legal point of view, defining the concept of religious discrimination is quite complex<sup>2</sup>.

It is also important to determine what we mean by the terms '**religion**' and '**belief**'. Generally speaking, religion is defined as "the belief in and worship of a superhuman

<sup>1</sup> These definitions of discrimination and religious discrimination are drawn from a range of references in the available literature.

<sup>2</sup> This issue will be discussed in depth below, in paragraph 3.2

controlling power, especially a personal God or gods”<sup>3</sup> or as a professed system of faith, including beliefs, observance and worship. The term ‘belief’ is also commonly used, meaning any system of philosophical beliefs or convictions that guide one’s life.

Religious discrimination is experienced through, for example, prejudice, unfair treatment, harassment or forms of violence based on a person’s religion or belief<sup>4</sup>. In today’s European society we observe hate speech and religiously aggravated crimes, attacks on places of worship and violation of places like cemeteries, as well as antisemitic incidents, acts of violence and physical attacks against religious and racial minorities<sup>5</sup>. Some minority groups are also subject to racial and religious profiling and police misconduct towards them.

People are often subject to discrimination, prejudice and violence on the basis of multiple grounds<sup>6</sup>. For example, women belonging to ethnic or religious minorities can be victims of discrimination on the basis both of their gender and their religion or race. The intersection between race and religion is particularly common in today’s Europe: on one hand because some groups are characterized both by ethnic/national origin and by religious/cultural backgrounds; on the other hand because frequently it is difficult to distinguish between racist and religious prejudice<sup>7</sup>.

Discrimination on grounds of religion or belief could also refer to differences in the treatment of a person in the enjoyment of her/his fundamental right to freedom of religion or belief.

#### **EXAMPLES OF RELIGIOUS DISCRIMINATION:**

- a)** An employer decides not to employ a job applicant because, although he has the skills required for the job, during an interview it becomes apparent that he is a Muslim. This is discrimination on grounds of religion or belief.
- b)** Students in a school are ridiculed or even physically attacked by reason of their faith. This constitutes religious harassment.
- c)** A state allows only certain religious organizations to register and to have places of worship: this could lead to discrimination in the individual right to practice a religion or belief.
- d)** An organisation that represents religious minorities organises a meeting, to which all members are invited, on a Jewish holiday. If there are Jewish participants who are prevented from coming solely by the date of the meeting, then this is a failure to accommodate their religious needs.

<sup>3</sup> Oxford English Dictionary definition of “religion”. Hepple and Choudhury, *Tackling Religious Discrimination: Practical Implications for Policy Makers and Legislators*, London 2001, p. 25, available at: <http://www.homeoffice.gov.uk/rds/pdfs/hors221.pdf>

<sup>4</sup> For a general overview on religious discrimination see: *Belief and Exclusion - Combating Religious Discrimination in Europe. A first NGO approach*, ENAR Report, 2003, available at: [http://www.enar-eu.org/en/publication/reports/religious\\_discrim\\_EN.pdf](http://www.enar-eu.org/en/publication/reports/religious_discrim_EN.pdf).

<sup>5</sup> Some data on antisemitic and islamophobic incidents is published in the EUMC Reports. It should be noted that while in some States there are official or semi-official monitoring centers and it is possible to have reliable statistics on this type of incidents, in other countries such data does not exist. See, for example: EUMC, *Antisemitism. Summary overview of the situation in the European Union 2001-2005*, 2006, and available at: [http://fra.europa.eu/fra/material/pub/AS/Antisemitism\\_Overview\\_December\\_2006\\_en.pdf](http://fra.europa.eu/fra/material/pub/AS/Antisemitism_Overview_December_2006_en.pdf).

<sup>6</sup> For more information on multiple discrimination, see ENAR’s *Factsheet Nr 33: Multiple Discrimination* (July 2007), available at: [http://www.enar-eu.org/en/factsheets/FS33\\_multiplerediscrimination\\_july2007\\_EN.pdf](http://www.enar-eu.org/en/factsheets/FS33_multiplerediscrimination_july2007_EN.pdf)

<sup>7</sup> See ENAR Policy Paper, *Fighting Religious Discrimination*, November 2005.

## RELIGIOUS DIVERSITY AND DISCRIMINATION IN EUROPE

Religious discrimination is a problem that is increasingly coming to the fore in today's European societies. With its increasing diversity, Europe is facing a more varied religious landscape than ever before. Migrants, refugees and asylum-seekers from different cultural and religious backgrounds have added to previously existing religious diversity, leading to a greater urgency to accommodate diverse religious needs, and to tackle the problem of religious discrimination at all levels of society. Essential to the picture of religious diversity in Europe are the foundation stones of the human rights to religious freedom and to freedom from discrimination on the grounds of religion or belief.

According to the *Eurobarometer Report on Discrimination*, a survey issued in January 2007, 44% of Europeans feel that discrimination on grounds of religion or belief is currently widespread in Europe and 64% perceive racial discrimination as a largely common problem<sup>8</sup>. Roma, Sinti and Travellers; third country nationals, particularly undocumented migrants and asylum seekers; the Jewish community and the Muslim community are particularly vulnerable to racial and religious discrimination<sup>9</sup>.

For these communities, religious identity is commonly perceived to be closely connected to racial and ethnic identity: it is often difficult to distinguish between discrimination on the grounds of religion and discrimination on the grounds of racial or ethnic origin. This intersection is particularly strong in the case of, for instance, the Jewish community, which experiences discrimination not only on the grounds of religion but also of ethnic, national or perceived racial characteristics.

### *Europe's Religious Population*

Few reliable statistics exist about the presence of different religious groups in Europe, largely because most European countries do not include questions on religious affiliation in their censuses. According to some recent polls<sup>10</sup>, 73% of the EU population consider themselves believers or belong to a religious denomination: among them, an estimated 66.4% identify as Roman Catholic, 21% Protestant, 6.6% Orthodox Christian, 3% belong to other Christian denominations and 3% belong to other religions (mostly Judaism, Islam and Hinduism). Almost 27% declare themselves to be atheist or agnostic. Other religious communities are also present in Europe, such as Sikhs, Buddhists and other religious groups like Baha'i, nonconformist denominations and charismatic groups. Some new movements also consider themselves as religious groups. These include forms of Scientism or New

---

<sup>8</sup> The Eurobarometer Report is available at:

[http://ec.europa.eu/employment\\_social/eyeq/uploaded\\_files/documents/Eurobarometer\\_report\\_en\\_2007.pdf](http://ec.europa.eu/employment_social/eyeq/uploaded_files/documents/Eurobarometer_report_en_2007.pdf)

<sup>9</sup> See ENAR Shadow Report 2005, p. 32, available at: [http://www.enar-eu.org/en/publication/shadow\\_reports/europe2005\\_low\\_EN.pdf](http://www.enar-eu.org/en/publication/shadow_reports/europe2005_low_EN.pdf)

<sup>10</sup> Sources: European Values Study, available at: [www.europeanvalues.nl](http://www.europeanvalues.nl); and EUMC-FRA InfoBase, available at: <http://www.fra.europa.eu/factsheets>. Both collect figures on religious affiliation country by country.

Age groups. It should be noted, however, that as we do not have reliable statistics, it is difficult to be exhaustive regarding the range of religious minorities present in the EU.

Some surveys have provided estimates of the number of people belonging to the Islamic faith<sup>11</sup>. This number has increased in many countries; even though there is a lack of data, it appears this increase is due to different factors including migration flows. In some EU Member States, such as Denmark, Italy, Germany, Bulgaria and the Netherlands, Islam is becoming the second or third largest religion in the country. It is often the main religion of some immigrant populations<sup>12</sup>.

Figures on religious observance vary considerably between the different EU countries. In Greece, Malta and Slovenia, for example, a very large majority of the population (between 95% and 98%) considers itself religious, while in Hungary, Latvia, France and the Netherlands the percentage of non-believers surpasses 40-45%. Religious affiliation also varies. In some countries (e.g. France, Austria, Italy, Spain and Portugal) the main religious community is Roman Catholic, while in Romania, Bulgaria and Greece the largest affiliation is with various Orthodox churches. Meanwhile, Germany, the United Kingdom, Denmark and Sweden are historically more Protestant countries. The presence of Islam also varies in the Member States: from a very small presence (0.05% of the total population in Portugal, and 0.1% in Poland, the Czech Republic and Hungary) to an estimated 4% in Germany, 5.7% in the Netherlands, and up to 10-11% in France and Bulgaria.

### ***Religious Discrimination in Europe***

The presence of such religious diversity in today's Europe has led to increasing contact between religious groups, which has sometimes revealed deep-seated **prejudice and stereotyping** leading to tension and even conflict. Religion is, indeed, an essential element in the identity of some of the groups that make up our societies, but it has also been associated with stereotypes or negative pre-conceptions, including the assumption of a so-called 'clash of civilizations'.

**Popular discourse and political events**, frequently reflected in the media, have negatively linked Islam and terrorism. This has influenced social attitudes and led to a resurgence of racial and religious discrimination. A recent report of the European Monitoring Center on Racism and Xenophobia (EUMC) found that Muslims are often victims of discrimination, negative stereotyping and of manifestations of prejudice and hatred. These take the form of verbal threats and physical attacks on people and property and racial profiling.

The '**war on terror**' in particular has created a new source of fear concerning minority communities, especially Muslim ones. Events since September 11, including

---

<sup>11</sup> According to 2001 statistics, published by FIERI (Forum Internazionale ed Europeo di Ricerche sull'Immigrazione) the number of Muslims in the European Union was 15 million, about 3.8% of the European population (some data is available at [www.fieri.it](http://www.fieri.it)).

<sup>12</sup> See the EUMC-FRA InfoBase. It should be noted, however, that this data is not official and there is a lack of reliable statistics on this point.

the Madrid and London bombings, have heightened these fears and have led to a greater marginalisation and discrimination and to a rise in anti-Muslim sentiment and actions. This phenomenon is commonly termed “Islamophobia”<sup>13</sup>. The evidence indicates that there is certainly some impact of the ‘war on terror’ on the rights to freedom of expression and religion<sup>14</sup>.

People belonging to religious minorities, especially migrants, also have disproportionately lower incomes and higher rates of **unemployment**. They face difficulties accessing **housing** and often live in poor neighbourhoods. They suffer from prejudice and experience exclusion or marginalization in social, political and economic activity and from unfair treatment in **public or social services**<sup>15</sup>.

There is an increase in **hate speech**. People manifest pejorative views about certain religious groups, not only in private ideas and speech, but also in public settings and sometimes in political discourse<sup>16</sup>. This represents a vilification of religious feelings and of certain groups, which as a result do not feel free to manifest and practice their religion. Hate speech can also incite acts of violence; in these cases criminal law provides for specific sanctions, but generally these can be applied only in the most extreme cases, where there is a risk of physical violence or public disorder<sup>17</sup>.

There is an increasing level of violence against religious minorities, especially **attacks on places of worship**, vandalism in cemeteries, hostility and harassment in public debates and popular discourse. There are also assaults on individuals, particularly those belonging to “visible” minorities, who are distinguished by distinctive clothing or other signs of faith and religious identity<sup>18</sup>.

---

<sup>13</sup> See, for example, the EUMC’s reports on anti-Muslim reactions within the European Union after the 9/11 attacks, available at:

[http://fra.europa.eu/fra/index.php?fuseaction=content.dsp\\_cat\\_content&catid=3fb38ad3e22bb&contentid=3fb4f8d82d72a](http://fra.europa.eu/fra/index.php?fuseaction=content.dsp_cat_content&catid=3fb38ad3e22bb&contentid=3fb4f8d82d72a)

<sup>14</sup> See, for example, EUMC, *Muslims in the European Union. Discrimination and Islamophobia*, 2006, especially pp. 8 and 60. Available at: [http://eumc.europa.eu/eumc/material/pub/muslim/Manifestations\\_EN.pdf](http://eumc.europa.eu/eumc/material/pub/muslim/Manifestations_EN.pdf)

<sup>15</sup> The EUMC has published several reports concerning migrants and ethnic or religious minorities. See *Migrants, Minorities and Employment. Exclusion, discrimination and Anti-discrimination in 15 Member States of the European Union*, EUMC, 2003, available at: <http://eumc.eu.int/eumc/material/pub/comparativestudy/CS-Employment-en.pdf>; *Migrants, minorities and housing. Exclusion, discrimination and Anti-discrimination in 15 Member States of the European Union*, available at: <http://fra.europa.eu/fra/material/pub/comparativestudy/CS-Housing-en.pdf>. See also *Combating Religious and Ethnic Discrimination in Employment*, ENAR, 2004, available at: [http://www.enar-eu.org/en/publication/reports/discrim\\_employ\\_04\\_en.pdf](http://www.enar-eu.org/en/publication/reports/discrim_employ_04_en.pdf)

<sup>16</sup> For example J.-Y. Camus, *The Use of Racist, Antisemitic and Xenophobic Arguments in Political Discourse*, ECRI: 2005, available at: [http://www.coe.int/T/E/human\\_rights/Ecri/1-ECRI/4-Relations\\_with\\_civil\\_society/1-Programme\\_of\\_action/14-Public\\_Presentation\\_Paris\\_2005/Study\\_Camus.asp](http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/4-Relations_with_civil_society/1-Programme_of_action/14-Public_Presentation_Paris_2005/Study_Camus.asp)

<sup>17</sup> The issue of hate speech is very complex. There can be a conflict of rights, i.e. between the right to freedom of expression and the right to religious freedom: it is argued that protection of religious affiliation or religious feelings should not lead to criminalisation of all forms of insults. It should be said, however, that hate speech can prepare the ground for racially and religious motivated crimes. The Parliamentary Assembly of the Council of Europe has recently (29 June 2007) adopted a recommendation on “Blasphemy, religious insults and hate speech against persons on grounds of their religion” (available at: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/EREC1805.htm>). As for the use of criminal legislation in combating racial and religious discrimination in the EU member States, see: EU Network of Independent Experts on Fundamental Rights, *Combating Racism and Xenophobia through Criminal Legislation: the situation in the EU Member States*, (Opinion n° 5-2005, November 2005), available at: <http://crldho.cpdf.ucl.ac.be/Avis%20CFR-CDF/Avis2005/CFR-CDF.Opinion5-2005.pdf>

<sup>18</sup> See for example *Annual Report 2006: Situation regarding Racism and Xenophobia in the Member States of the EU*, available at: <http://fra.europa.eu/fra/material/pub/ar06/AR06-P2-EN.pdf>, which highlights cases of

### EXAMPLE

Muslim women who wear a headscarf can be particularly vulnerable to harassment and discrimination in schools and employment. This is also an example of intersectional, or multiple, discrimination: Muslim women suffer from unfair treatment because of both their gender and their religion.

Religious freedom is universally recognised and enshrined in many legal instruments<sup>19</sup>; in practice however, there can be a disparity between the guaranteeing of this right and of its enforcement in practice, and therefore a gap remains between the legal commitments and the realities experienced by religious communities. Member States' laws, policy and practice are sometimes part of this problem, such as in the following cases:

**'Racial Profiling'** is any police or private security practice in which a person is treated as a suspect because of his or her race, ethnicity, nationality or religion. The 'war on terror' is again linked to these practices; sometimes it is argued that the aim of national security justifies them, such as when certain people, especially those coming from the Middle East, are required to pass additional security checks because of their ethnicity and religion. In these cases, the external and religious characteristics of targeted people are often blurred and indissociable. Other practices of concern include police checks of mosques and in local Muslim communities, practices which can lead to a restriction of the right to religious freedom<sup>20</sup>.

The issue of **registration** of religious communities is of particular concern, above all for the 'new religious movements' (sometimes also called 'sects')<sup>21</sup> that often have difficulties in obtaining legal status. While a number of churches and religious communities have a long-standing presence in Europe and have gained a particular status and certain privileges, many others do not receive the same treatment. This can lead to restrictions of the individual right of religious freedom. For example: if some rights (e.g. permission for building a place of worship) are guaranteed by a state only to religious communities that have been recognised, people belonging to non-registered religions can be discriminated against in the exercise of their right to practice their religion<sup>22</sup>.

---

antisemitism, racism, xenophobia and attacks on minority groups. It finds also that there is a lack of data on those crimes.

<sup>19</sup> See below, paragraph 3.

<sup>20</sup> For further information on racial and religious profiling, see: EU Network of Independent Experts on Fundamental Rights, *Ethnic Profiling*, 2006, available at: [http://ec.europa.eu/justice\\_home/cfr\\_cdf/doc/avis/2006\\_4\\_en.pdf](http://ec.europa.eu/justice_home/cfr_cdf/doc/avis/2006_4_en.pdf) and the *Comments of the European Network against Racism (ENAR) on the European Commission against Racism and Intolerance (ECRI) Working group on combating racism and racial discrimination in policing - Draft ECRI General Policy Recommendation No. 11 on combating racism and racial discrimination in policing*, available at: [http://www.enar-eu.org/en/policy/may07\\_ecri\\_policing.pdf](http://www.enar-eu.org/en/policy/may07_ecri_policing.pdf)

<sup>21</sup> In some EU countries there have been special investigative committees charged with carrying out a study into and controlling the activity of the so called 'new religious movements'.

<sup>22</sup> Recent jurisprudence of the European Court of Human Rights has addressed several cases concerning registration of religious communities. One of the latter concerns a denial of registration of the Church of Scientology by Russian Government (Jurisprudence of the ECHR is available at: <http://www.echr.coe.int/ECHR/>).

Accommodation of religious diversity and in particular **the individual's right to manifest and practice religion** is a challenge facing many in Europe today. The increasing religious diversity in Europe has amplified this problem, above all when those needs concern practices that differ from the most common European religious practices and traditions. For example, a common tradition in Europe is to have Sunday as a day of rest. As a consequence, problems arise from the desire to attend religious services at other times during the week. Other issues can come up concerning particular diets or other practices, for example wearing religious symbols or clothes, or the observance of religious holidays<sup>23</sup>.

The issue of **religious symbols**<sup>24</sup> has also been debated with respect to public schools. In some countries a ban has been imposed on “signs or clothes by which a student ostensibly manifests his or her religious beliefs”<sup>25</sup> (e.g. in France), protecting, in the view of the government, the neutrality and secular character of the public sphere.

European countries have different models of **religious education in public schools**. Some EU Member States (for instance Austria, Belgium, Germany, Italy, Spain and the UK) provide religious instruction in public schools, organised by the dominant religion in the country. In some countries there are several alternative kinds of religious education, organised by respective recognised religious communities. While religious classes are generally not mandatory, discriminatory attitudes towards minority religions in schools are still a current phenomenon<sup>26</sup>.

---

<sup>23</sup> For some examples of accommodation of religious diversity in employment, see *Religion and Belief Discrimination in Employment - the EU Law*, European Commission: January 2007, available at: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/07relbel\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/07relbel_en.pdf)

<sup>24</sup> See the report of the European Group of non-governmental experts in the field of combating discrimination on the grounds of religion or belief, *Rapport de synthèse relatif aux signes d'appartenance religieuse dans quinze pays de l'Union européenne*, 2004, available at: <http://www.migpolgroup.com/multiattachments/2890/DocumentName/relsymbol.pdf>

<sup>25</sup> This provision was introduced by the French law n. 2004-228 of 15 March 2004 on the principle of secularity in public schools (“Loi encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics”), enforced by Circulaire n. 2004-084 of 18 May 2004. This law could be interpreted as an enforcement of the principle of neutrality and equality in the schools; it is also perceived, however, as a limitation of the individual right to freedom of religion. Moreover, while the law’s terminology is neutral and though it is equally applicable to every religion, it seems that the ban of religious symbols causes more difficulties to certain beliefs for which the wearing of such symbols is customary, such as Jews and Muslims.

<sup>26</sup> See ENAR, *Belief and Exclusion*, 2003, pp. 23-24, available at: [http://www.enar.eu.org/en/publication/reports/religious\\_discrim\\_EN.pdf](http://www.enar.eu.org/en/publication/reports/religious_discrim_EN.pdf). For further information on the different legal models of religious education in European schools, see <http://www.eufres.org> and <http://www.olir.it/areetematiche/69/index.php>.

## LEGAL RESPONSES TO RELIGIOUS DISCRIMINATION

### 1) International and European human rights standards on religion

Two fundamental rights underpin the respect for religious diversity in Europe. These are the **right to religious freedom**, and the **right to freedom from religious discrimination**<sup>27</sup>. Both are enshrined in a wide variety of legally binding and political commitments which have been accepted by all EU member states.

Longstanding and widely recognised, the **right to religious freedom** is contained for instance in:

- The **Universal Declaration of Human Rights**, signed in 1948 (article 18);
- The **International Covenant on Civil and Political Rights (ICCPR)**, of 16 December 1966 (article 18);
- The **European Convention on Human Rights and Fundamental Freedoms (ECHR)**, signed in Rome in 1950 (article 9);
- The **Charter of Fundamental Rights of the European Union**, signed in 2000 but not yet included in the Treaties and therefore not yet legally binding (article 10). Its political future is currently uncertain. However, even as it stands the European Court of Justice is likely to use its provisions as an interpretation aid when applying Community Law.

The **prohibition of discrimination** on grounds of religion is provided for in a number of International and European instruments:

#### International Instruments:

- Article 2 of the **International Covenant on Civil and Political Rights (1966)** prohibits discrimination in relation to convention rights on the basis of religion<sup>28</sup>; article 26 provides that the law shall prohibit any discrimination, on grounds, among others, of religion<sup>29</sup>. Article 26 also contains the duty to guarantee effective and equal protection against discrimination, requiring the States Parties<sup>30</sup> to effectively act to realize conditions of equality;

---

<sup>27</sup> For an overview: ENAR, *Combating Religious and Ethnic Discrimination in Employment. From the EU and International Perspective*, 2004, available at [http://www.enar-eu.org/en/publication/reports/discrim\\_employ\\_04\\_en.pdf](http://www.enar-eu.org/en/publication/reports/discrim_employ_04_en.pdf)

<sup>28</sup> Article 2, par.1: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

<sup>29</sup> Article 26: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as (...) religion"

<sup>30</sup> 'States Parties' is the term used in International Human Rights Law to refer to countries that have agreed to be bound by the convention, covenant etc.

- Article 2 of the **International Covenant on Economic and Social Rights** (1966) requires States Parties to guarantee the convention rights without discrimination on grounds, among others, of religion;
- **International Labour Organization Convention Concerning Discrimination in Respect of Employment and Occupation** (n. 111, 1958), article 1(b), prohibits discrimination on the grounds of religion in the field of employment.

Moreover, the **United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief**<sup>31</sup>, provides a list of rights related to freedom of religion<sup>32</sup> and prohibits discrimination and intolerance on grounds of religious belief<sup>33</sup>. This declaration does not constitute a legally binding text, but it is the basis of a number of actions, for example the work of the UN Special Rapporteur on Freedom of Religion or Belief. The reports of the Special Rapporteur have noted numerous cases of intolerance, discrimination and violation of religious freedom in some states<sup>34</sup>.

Other United Nations conventions concerning aspects of the prohibition of religious discrimination are the **UNESCO Convention against Discrimination in Education** (1960)<sup>35</sup>; the **International Convention on the Elimination of All Forms of Racial Discrimination** (1965)<sup>36</sup>; the **Convention on the Rights of the Child** (1989), which protects children's rights regardless of race, colour, sex, language, religion, opinions, origins and other grounds<sup>37</sup>; and the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**<sup>38</sup>, adopted in 1979, which is important in cases of intersectional or multiple discrimination.

---

<sup>31</sup> General Assembly resolution n. 36/55 of 25 November 1981.

<sup>32</sup> Article 1 reads: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

2. "No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice."

3. "Freedom to manifest one's religion or belief 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."

<sup>33</sup> Full text of the declaration available at: [http://www.unhchr.ch/html/menu3/b/d\\_intole.htm](http://www.unhchr.ch/html/menu3/b/d_intole.htm)

<sup>34</sup> The last report, issued on December 2006, also includes communications sent to EU Member States in order to implement the protection of religious freedom. For example, a communication has been sent to France about the issue of governmental surveying on new religious movements; a concern was expressed with regard to Germany, where a questionnaire given to migrants could be discriminatory as asking information about religious affiliation and private life. Full report and the list of all annual reports available at:

<http://www.ohchr.org/english/issues/religion/annual.htm>

<sup>35</sup> Article 1, paragraph 1 of the Convention against Discrimination in Education is particularly important as it gives one of the first examples of a legal definition of religious discrimination in international law. It states:

"1. For the purpose of this Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular [...] (d) of inflicting on any person or group of persons conditions which are incompatible with the dignity of man." Full text of the Convention available at:

[http://www.unesco.org/education/pdf/DISCR1\\_E.pdf](http://www.unesco.org/education/pdf/DISCR1_E.pdf)

<sup>36</sup> Available at: <http://www.ohchr.org/english/law/cerd.htm>

<sup>37</sup> Full text available at: <http://www.ohchr.org/english/law/crc.htm>

<sup>38</sup> Available at: <http://www.ohchr.org/english/law/cedaw.htm>

## European Instruments:

- Article 14 of the **European Convention on Human Rights and Fundamental Freedoms** (1950) prohibits discrimination on the basis of religion in relation to matters that come within the ambit of Convention rights<sup>39</sup>. Protocol 12 to the Convention, signed in 2000, created an independent right not to be discriminated against and placed a duty on public authorities not to discriminate<sup>40</sup>. Not all EU Member States have ratified this convention, but it has been in force since 1 April 2005<sup>41</sup>;
- According to the preamble of the **European Social Charter** of 1961, States Parties are required to ensure the enjoyment of social rights without distinction on grounds of religion;
- Article 21 of the **Charter of Fundamental Rights of the European Union** contains a wide prohibition of discrimination<sup>42</sup>. In addition to this, the Charter further ensures the principle of equality before the law (article 20) and the respect for cultural, religious and linguistic diversity<sup>43</sup> throughout the EU (article 22).

The presence of such legal instruments in the international and European frameworks means that the signatories of each covenant have the duty to prohibit discrimination in their domestic legislation and to make this prohibition effective and respected by everyone in the State.

---

<sup>39</sup> Article 14 – Prohibition of discrimination: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

<sup>40</sup> Article 1 of Protocol 12 to the ECHR: “1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2. No one shall be discriminated against by any public authority on any grounds such mentioned in paragraph 1.”

The full text of the protocol is available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/177.htm>

<sup>41</sup> Of the 27 EU Member States, only the Netherlands, Luxembourg, Cyprus, Finland and Romania have ratified the Protocol at this date (July 2007).

<sup>42</sup> Article 21 - Non-discrimination: “1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”

2. “Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.”

<sup>43</sup> The EU now also has specific provisions on religious discrimination, in Directive 2000/78. See below, paragraph n. 3.2.

## **RELIGIOUS DISCRIMINATION AND THE EUROPEAN COURT OF HUMAN RIGHTS:**

When analysing the issue of religious freedom and religious discrimination in Europe, it is relevant to include the **European Court of Human Rights**. This is a Council of Europe (CoE) institution, established by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The court is charged with enforcing the Convention by ruling over complaints of human rights violations committed by States Parties that are brought to the Court either by other States Parties or by individuals. Judgements are binding for the CoE Member States that have opted to accept the Court's jurisdiction. The EU is not currently party to the ECHR. Despite that, article 6 of the Treaty on European Union makes a reference to the ECHR, stating that "the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms". Therefore the interpretation of rights given by the European Court is relevant for the protection of religious freedom and for the key concepts used in addressing religious discrimination, both in the Member States and at EU level<sup>44</sup>.

### **Concept of religion:**

The broad approach of the ECHR organs to the interpretation of article 9 "has enabled them to accept, in principle, that its protection extends to many systems of beliefs. This does not, however, mean that every individual opinion or preference constitutes a religion or belief. To come within the protection of this article the views must attain a certain level of cogency, seriousness, cohesion and importance", as stated for example in the ECHR judgement *Campbell and Cosans v UK* of 1982<sup>45</sup>.

### **Prohibition of Discrimination:**

As outlined earlier the prohibition on discrimination in article 14 of the ECHR only applies in the enjoyment of the rights and freedoms set forth in the Convention. "As a result, although article 14 ECHR may be invoked in contexts such as education and social aid, as well as in situations where the impugned difference in treatment is based on the exercise of freedom of religion<sup>46</sup>, or generally on the exercise by the individual of the freedoms protected under the Convention", it cannot be applied to contexts that fall outside the application of the Convention, such as employment and occupation generally<sup>47</sup>, which is the main area of the EU's anti-discrimination legislation. Nevertheless, case-law of the European Court under article 14 may have an impact on issues of interpretation of EU law. For example, it could be said to have encouraged the understanding of indirect discrimination, ruling that the prohibition of discrimination should include the requirement to take into account relevant differences between groups<sup>48</sup>.

---

<sup>44</sup> Moreover, it should be noted that the Charter of Fundamental Rights of the European Union in article 52.3 states that when the rights contained in the Charter correspond to rights guaranteed by the ECHR, "the meaning and scope of those rights shall be the same as those laid down by the said Convention". Although not binding, the Charter makes an explicit reference to the interpretation of the rights given by the ECHR instruments, including also the European Court of Human Rights.

<sup>45</sup> Hepple and Choudhury, *Tackling Religious Discrimination: Practical Implications for Policy Makers and Legislators*, London 2001, p. 31

<sup>46</sup> Complaints are made under both article 9 and article 14, for example in *I.D. v. Lettonie* 30 November 2006; *Leyla Sahin c. Turquie*, 10 november 2005; *Supreme Holy Council of the Muslim Community v. Bulgaria*, 16 December 2004. It should be said that in the latter, as in many other cases, alleged violations of religious freedom are analysed under article 9, looking to see if there were legitimate and proportionate reasons for differentiating on the basis of religion.

<sup>47</sup> See De Schutter O., *Prohibiting Discrimination under Human Rights Law*, European Commission: 2005, p. 5, available at: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legisl/prohib\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisl/prohib_en.pdf)

<sup>48</sup> *Ivi*, p. 16. In the case of *Thlimmenos v. Greece* (Appl. N° 34369/97), which concerns a complaint under article 9 (freedom of religion) and article 14, the Court included as a form of discrimination not only direct discrimination, but also the failure to distinguish different situations and to accommodate the specific needs of different groups of persons. ECHR judgment of 6 April 2000 available at: [http://www.olir.it/ricerca/index.php?Form\\_Document=1151](http://www.olir.it/ricerca/index.php?Form_Document=1151)

## **2) Legal responses to religious discrimination in the European Union**

The European Community has long been active in the fight against discrimination. Indeed, at the time of its creation one of its most pressing missions was to reconcile a continent divided by nationalist and ethnic conflicts. For many years, European Community law provided protection only against discrimination on the grounds of sex and nationality. Since the 1980s, the issues of racism and racial and religious discrimination have become more prominent in discussions at the European level<sup>49</sup>. As the EU was founded on the principles of liberty, democracy, the rule of law and respect for human rights and fundamental freedoms, the protection of all persons against discrimination is essential to the creation of an area of justice, freedom and security throughout the Union's Member States.

The urgency of combating racism and related intolerance calls for appropriate actions at the European level. Combating racism, xenophobia and religious discrimination can be done more effectively through co-operation between European countries, aiming in concert to eradicate these phenomena from Europe. To achieve this, a number of measures and initiatives were put into practice within the EU, especially during the 1990s. While the EU's anti-discrimination policy during these years was mainly focused on race and ethnicity, in many documents<sup>50</sup> religious discrimination is discussed and mentioned together with racial and ethnic discrimination.

All this notwithstanding, the distinction between racial and religious discrimination has been emphasised by, for instance, the exclusion of the latter from the Racial Equality Directive, as we shall see below, thus playing down the fact that the boundary between these two grounds is not easily drawn<sup>51</sup>. This may be a reflection of the fact that religious matters have generally been considered as a competency of the individual Member States, and were therefore not handled by the European

---

<sup>49</sup> See for example the Joint Declaration by the European Parliament, the Council and the Commission against Racism and Xenophobia, 11 June 1986 (OJ C 158, 25.6.1986)

<sup>50</sup> See for instance the Proposal for a Council Decision designating 1997 as European Year against Racism, COM(95) 653 final; the Resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council of 5 October 1995 on the fight against racism and xenophobia in the fields of employment and social affairs; the Resolution of the Council and the representatives of Member States' Governments meeting within the Council of 23 October 1995 on the response of educational systems to the problems of racism and xenophobia; the European Parliament resolution of 29 January 1998 on racism, xenophobia and anti-semitism and the results of the European Year against Racism. Moreover, legally binding instruments consider religion as a part of the EU's strategy to combat discrimination. Religion is mentioned together with race and ethnic origin in the Joint Action of 15 July 1996 adopted by the Council on the basis of article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia (title I, letter A) and in article 13 of the Treaty on the European Community.

<sup>51</sup> Another example of this distinction can be found in the Framework Decision on Combating Racism and Xenophobia (adopted by the Council in April 2007 but not yet in force), which, while addressing forms of racial discrimination, contains a number of opt-outs concerning religion, making religious discrimination punishable only where it is a pretext for racial hate (for a first comment, see *Framework Decision on Racism and Xenophobia - CEJI Policy Response*, available at: <http://www.ceji.org/press/2007-04-20%20CEJI%20Policy%20Response.pdf>) See also: ENAR *Combating Religious and Ethnic Discrimination in Employment*, cit., p. 8; Guild E., *The EC Directive on Race Discrimination: surprises, possibilities and limitations*, in *Industrial Law Journal*, 2000, p. 416; Bell M. and Waddington L., *More Equal than Others: Distinguishing European Union Equality Directives*, in: *Common Market Law Review*, 2001, from p. 587, p. 610

institutions<sup>52</sup>. However, the European Commission in July 2007 launched a consultation to consider a possible new initiative to prevent and combat discrimination outside employment, including on grounds of religion or belief.

Following the extension of the competencies of the EU with the adoption of the Amsterdam Treaty in 1997, the European Union today has some important legal tools in place to combat discrimination. Specifically, the Treaty gave the European Community the power to “take appropriate action to combat discrimination” on grounds, among others, of religion and belief<sup>53</sup> within its specific areas of competence.

On this basis, in the year 2000 the EU adopted two directives:

- **Directive 2000/43/EC** implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (also called the “Racial Equality Directive”);
- **Directive 2000/78/EC** establishing a general framework for equal treatment in employment and occupation (also called the “Employment Equality Directive”). This Directive protects against direct and indirect discrimination, harassment and victimisation in the workplace on grounds, among others, of religion or belief.

### ***Legal Definitions of Religious Discrimination***

European law prohibits both **direct and indirect discrimination**. According to article 2 of Directive 2000/78, direct discrimination occurs when a person is treated less favourably than others because of his religion or belief. Indirect discrimination means practices, criteria, policies or employment rules which, when equally applied to all employees, have the effect of disadvantaging people of a particular religion or belief. In contrast to direct discrimination, indirect discrimination can be justified in certain situations.

#### ***EXAMPLES***

*Direct discrimination:*

- a) An employer decides to dismiss an employee simply because he declared that he belongs to a particular religion.

---

<sup>52</sup> For more on the issue of religious matters and the competences of the European Union, see Margiotta Broglio F., *La tutela della libertà religiosa nell'Unione Europea*, in: Castro Jover A. (ed.), *Iglesias, confesiones y comunidades religiosas en la Unión Europea*, Bilbao: 1999, p. 69; Ventura M., *La laicità dell'Unione europea*, Torino: 2001, especially p. 155; Ferrari S., *Integrazione europea e prospettive di evoluzione della disciplina giuridica del fenomeno religioso*, in: Tozzi, *Integrazione europea e società multi-etnica. Nuove dimensioni della libertà religiosa*, Torino: 2000, p. 127; Christians L.-L., *Droit et religion dans le Traité d'Amsterdam: une étape décisive?*, in Lejeune Y. (ed.), *Le Traité d'Amsterdam: espoirs et déceptions*, Bruxelles: 1998, p. 195

<sup>53</sup> Treaty on the European Community, new article 13.

b) The refusal of an employer to hire or to promote someone because of her religion or belief.

*Indirect discrimination*

c) A dress code in working environments is a neutral rule—applied to everyone, without distinction—that can indirectly discriminate some religious groups. For example: the employees of a company have a dress code, i.e. to wear a particular cap with the colour of the company. This could disadvantage Sikh employees who wear turbans for religious reasons, or Muslim women who wear a headscarf.

Indirect discrimination will not be unlawful if it can be justified. To justify it, an employer must show that there is a legitimate aim and that the practice is proportionate to that aim. In the former example, it may not be unlawful to require that employees wear a helmet for safety in the workplace, but it may be disproportionate to require an employee to wear a cap, rather than, for example, a turban or headscarf in the colours of the company.

Both Directives 2000/43 and 2000/78 further prohibit instruction to discriminate, victimisation and harassment:

**Instruction to discriminate** is prohibited by article 2.4 of Directive 2000/78. It occurs, for example, if an employer instructs an employee to do something which would amount to religious discrimination.

**Victimisation** (article 11 of Directive 2000/78) takes place when a person is treated less favourably for having made a complaint about religious discrimination, or having supported another person in their complaint procedure.

**Harassment** means conduct or actions “with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment” (article 2.3 of Directive 2000/78). It occurs, for example, when a worker, especially if he or she holds a supervisory function, intimidates a colleague, or humiliates an employee in front of other colleagues.

Another important provision in the directives deals with **positive action**. According to article 7 of Directive 2000/78, these are “specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in article 1”. For example, ethnic or religious minorities may need special training to have equal opportunities to be recruited or promoted at work. According to EU law, therefore, these actions do not constitute discrimination, but rather serve to redress past discriminatory practices or remedy current inequality.

***What does ‘religion’ mean?***

As we saw, there is no clear definition of ‘religion’. This is equally true from the legal perspective: there is no generally accepted legal definition of ‘religion’, neither in international instruments nor in European Union documents. Moreover, the EU Member States use different approaches to address the problem of defining religion for legal purposes. This is mostly the case because such a definition could appear as

discriminating in and of itself. This is a crucial problem for legislation prohibiting religious discrimination. This is one of the reasons why most international covenants, when addressing religious freedom and religious discrimination, use the expression 'religion or belief', without providing a definition of religion, in order to encompass a wide variety of systems of beliefs, including also non-beliefs.

Drawing a boundary between the concepts of *race/ethnicity* and *religion/belief* is difficult due to the arguable instability of these categories and due to the overlap between them. "Ethnicity is sometimes defined to include religious identity; religious groups may be predominantly from one particular racial group; and some religions may encompass cultural practices or rituals, that might otherwise be understood as linked to ethnic identity"<sup>54</sup>.

### ***The Scope of the Equality Directives***

Religion is included as grounds for discrimination only in the Employment Equality Directive and was excluded from the Racial Equality Directive. This separation between racial and religious discrimination has been strongly criticized<sup>55</sup>. It is argued that this separation entails a limitation in the protection against religious discrimination, which is thus prohibited by European Community law only in the field of employment.

However, the distinction is not clear and complexities can arise in cases which present aspects of both racial and religious discrimination, or in cases where the dividing line between race and religion is not clear.

Thus, religious groups defined as racial or ethnic groups can enjoy the broader protection established in the Racial Equality Directive (2000/43), but not all religious groups are considered to have ethnic characteristics. Directive 2000/43 may also be able to be used in cases when religion is a part of a more general discriminatory treatment based on racial grounds. Finally, a case can be addressed through Directive 2000/43 when religious discrimination amounts to indirect discrimination against a racial group.

#### ***Example***

Refusal of time off work for religious holidays to Muslim or Hindu employees may be discriminatory on the grounds of religion.

---

<sup>54</sup> Vickers, *Religion and Belief Discrimination in Employment. The EU Law*, Report for the European Commission, January 2007, Part .V, available at:

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/07relbel\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/07relbel_en.pdf)

<sup>55</sup> See for instance European Parliament resolution of 29 January 1998 on racism, xenophobia and anti-semitism and the results of the European Year against Racism, point 5; Chopin I. and Niessen J. (eds.), *The Starting Line and the incorporation of the Racial Equality Directive into the national laws of the EU Member States and accession States*, Brussels-London: 2001, p. 25, available at: <http://www.cre.gov.uk/downloads/mpg.pdf>

Moreover this can also be considered as discriminatory against national or ethnic groups, such as Pakistanis, Bangladeshis or Indians, who are predominantly Muslim or Hindu. In other words, this might also be considered a case of indirect racial discrimination<sup>56</sup>.

Given these complexities, it could be argued that religious discrimination would be better addressed if considered together with racial discrimination, through the same legal instruments. Moreover, as the European Parliament noted, all forms of discrimination should be addressed and dealt with equally, as differing legislative treatments for certain types of discrimination can have the effect of creating a kind of ‘hierarchy of suffering’<sup>57</sup>.

Nevertheless, based on the Employment Equality Directive, EU Member States are now under the obligation to comply with anti-discrimination provisions and to provide appropriate measures and effective remedies against religious discrimination in employment settings. For some Member States that previously had no specific provisions about religious discrimination in place, this is particularly interesting, as they are tackling religious discrimination for the first time through their implementation of this directive<sup>58</sup>.

The Employment Equality Directive (2000/78/CE) prohibits religious discrimination only in the fields of **employment and training**. This represents a limitation because religious discrimination occurs in many fields of daily life, for example in schools or public places. It should be said that some EU Member States<sup>59</sup> have extended the prohibition of religious discrimination beyond the area of employment, for example to the areas of housing, schools and education and access to social services.

According to Directive 2000/78, some exceptions to the application of the prohibition of discrimination can be established by Member States in certain circumstances. A first type of exemption is permitted when there is a need for the employer to hire workers belonging to a particular religion or belief, in order to do the job in a particular manner (article 4.1). These so-called ‘**genuine occupational requirements**’ concern situations where being of a specific religion or belief is necessary to carry out the duties of a job. It may, for example, be required to be a Muslim in order to work in a halal butchery.

Furthermore, article 4.2 of the Directive<sup>60</sup> allows Member States to maintain exceptions to the principle of equal treatment in cases of occupational activities of churches or organisations which have an ethos based on a particular religion or belief (such as faith-based schools or charitable organisations). These organisations are

---

<sup>56</sup> Hepple and Choudhury, *Tackling Religious Discrimination: Practical Implications for Policy Makers and Legislators*, London: 2001, p. 4 and *passim*

<sup>57</sup> European Parliament resolution on non-discrimination and equal opportunities for all - a framework strategy (2005/2191(INI)), adopted 14 June 2006 (EP doc. A6-0189/2006)

<sup>58</sup> It should be noted that the United Kingdom, for example, first adopted specific provisions on religious discrimination only during the transposition of Directive 2000/78. Other Member States (e.g. Germany), while having a general clause in their constitution prohibiting discrimination on grounds of religion, introduced more specific anti-discrimination legislation, only recently largely deriving these from EC law.

<sup>59</sup> See below, section 4

<sup>60</sup> Article 4.2 of Directive 2000/78

permitted to carry out differences in treatment based on religion or belief, in order to act in conformity with their principles and values. For example a Catholic school may be allowed to refuse to hire a non-Catholic religious education teacher, in order to guarantee teaching that is compatible with the principles of this religion. However, the same school is probably not permitted to require the same of someone who applies for work as a cleaner in the school: this treatment could be regarded as discriminatory because the nature or the context of this activity is not relevant for the protection of the ethos of a Catholic organisation.

With regard to the latter type of exceptions, The Employment Equality Directive aims to balance different principles, namely the preservation of national peculiarities in the legislation on churches and religion, the protection of churches' rights and autonomy, and the prohibition of discrimination. Problems can arise because of conflicts between these rights. For instance, if a religious group is intolerant against homosexuality, a requirement to be loyal to the religious principles of the organisation can be indirectly discriminatory against homosexual employees. However, the exemptions based on article 4.2 are permitted only if the requirements are proportionate to the religious aims of the organisation and if there is no discrimination based on other grounds.

## DIFFERENCES AND COMMONALITIES IN THE NATIONAL APPLICATION OF THE PROHIBITION OF RELIGIOUS DISCRIMINATION

Since the adoption of the Equality Directives many states have adopted more visible and specific anti-discrimination legislation. Analysing the different national provisions against religious discrimination and the ways in which the Directives – including the exceptions mentioned above– have been transposed into national law, we find some commonalities and differences among the Member States<sup>61</sup>.

### *Key concepts in national legislation against discrimination*

Most Member States have introduced the same **definitions of discrimination** into national legislation as were used in the Equality Directives, and some have even literally reproduced the text of the Directives in this regard. This is important, as it creates a unified concept of discrimination throughout the EU, thus guaranteeing similar protections for victims regardless of the Member State in which they reside. However, it should be noted that this has only come about due to the fact that some Member States previously had little national anti-discrimination legislation in place, showing a lack of consciousness about the key concepts to be developed. They were, in a way, forced to adhere to the European guidelines they received<sup>62</sup>.

With regard to a **definition of religion or belief**, Member States generally have not provided a definition of religion within their anti-discrimination laws<sup>63</sup>. While European Community law has separate and autonomous provisions on racial and religious discrimination, some Member States have established a connection between the two. In Italy, for example, the decree that transposes Directive 2000/43 prohibiting racial discrimination refers to “forms of racism with a cultural or religious character”<sup>64</sup>.

### *Prohibiting religious discrimination outside the area of employment*

The majority of EU Member States have an equality clause in their constitutions, which applies generally, or entails a general prohibition of discrimination.

---

<sup>61</sup> References can be found in the following publications: *Equality and non-discrimination - Annual report*, European Commission: 2006, available at: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/pubst/poldoc/annualrep06\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/poldoc/annualrep06_en.pdf); *Developing Anti-discrimination Law in Europe. An updated comparative analysis of 25 EU Member States*, European Commission: 2006, available at: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/06compan\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/06compan_en.pdf); *Religion and Belief Discrimination in Employment - the EU Law*, European Commission: 2007, available at: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/07relbel\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/07relbel_en.pdf); European Commission Country reports on the implementation of anti-discrimination legislation, available at: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/pubst\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm)

<sup>62</sup> Idem

<sup>63</sup> *Religion and Belief Discrimination in Employment - the EU Law*, European Commission: 2007, pp. 25-30, available at: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/07relbel\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/07relbel_en.pdf)

<sup>64</sup> Article 1 of Legislative Decree n. 215/2003 of 9 July 2003 (*Gazzetta Ufficiale della Repubblica Italiana*, n. 186, 12 August 2003)

More specific anti-discrimination legislation was adopted in the Member States with the transposition of the Equality Directives. Some states have also passed legislation prohibiting religious discrimination beyond the scope of the Employment Equality Directive. For example, the United Kingdom has recently adopted a new bill (“Equality Act 2006”), which includes religious discrimination in a number of fields, including housing, access to services, school and education; in Belgium a federal law prohibits discrimination on all grounds not only in employment but also in access to and participation in public and social activities; and the Finnish Non-Discrimination Act contains a ban on discrimination in education based on a variety of grounds, including religion or belief.

Some Member States’ legislation, however, is more restrictive. For example Malta, Estonia and Hungary have not fully implemented the prohibition of discrimination in the private sector, meaning that only employees in the public sector enjoy full protection in cases of discriminatory treatment<sup>65</sup>.

### ***Organisations with an ethos based on religion or belief***

Not all Member States have chosen to introduce exemptions based on article 4.2 of the Employment Equality Directive in their domestic legislation. France, Estonia and Sweden, for instance, do not grant any exemptions for religious organisations. In some other countries, such as Belgium and Portugal, similar exemptions are not expressly prescribed, but it is common legal practice to recognize the right of churches to autonomy and internal organization, including when this implies a deviation from common anti-discrimination rules.

Other states, like Austria, Italy, Greece, the United Kingdom, Denmark and Germany, expressly provide exceptions in favour of churches and religious organisations. In some cases, exceptions are particularly wide, creating a broad area where the prohibition of discrimination is not applied. Controversies have arisen about the extent of these exceptions: while on the one hand they could be said to breach the principle of equality, on the other they aim to protect other fundamental rights, i.e. religious freedom and the freedom of churches to organise themselves and to act consistently with their faith and principles.

---

<sup>65</sup> Bell M., Chopin I., Palmer F., *Developing Anti-Discrimination Law in Europe. Comparative Analysis*, European Commission: February 2007, p. 5, available at: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/06compan\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/06compan_en.pdf)

## IMPLEMENTING THE PROHIBITION OF DISCRIMINATION THROUGH INITIATIVES AT EU LEVEL: NON-LEGAL MEASURES.

Legal tools are the cornerstones of the fight against discrimination, but they are not the only instruments for achieving this goal. In order to combat discrimination effectively within society, legislation needs to be supported by concrete actions to bridge the gap between the legal text and the reality facing religious groups and individuals.

The EU has implemented a variety of programmes and activities to execute its anti-discrimination policy and to promote equal opportunities. Examples of these are the European Employment Strategy –an overall framework for economic and employment policies– and the programmes administered by the European Social Fund, as well as some specific initiatives such as the Action Programme to Combat Discrimination. Also notable are the European Years, including the 1998 European Year Against Racism, the 2007 European Year of Equal Opportunities for All<sup>66</sup>, and the upcoming 2008 European Year on Intercultural Dialogue, which will focus also on interreligious dialogue.

The Community Action Programme to Combat Discrimination<sup>67</sup> has supported anti-discrimination activities worth almost EUR 100 million during the years 2001-2006. Activities supported by the programme have included studies, co-operation initiatives between NGOs and social partners at the European and national levels, as well as campaigns and the dissemination of information.

The EU has named the year 2007 the “European Year of Equal Opportunities for All”. The 2007 European Year aims to make every European aware of his or her right to equal treatment, to disseminate information about anti-discrimination policies and legislation, and to highlight the benefits of a diverse European society. One of the main principles of the 2007 European Year of Equal Opportunities for All is the involvement of civil society and of key stakeholders. ENAR is one of the organisations involved in the activities of this year<sup>68</sup>.

---

<sup>66</sup> The European Year against Racism was established by Resolution of the Council and the representatives of the governments of the Member States, meeting within the Council of 23 July 1996 (*Official Journal*, C 237, 23 July 1996); further information available at:

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/arcreyar\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/public/arcreyar_en.htm). The European Year of Equal Opportunities for All was established by “Decision of 16<sup>th</sup> may 2006 on the European Year of Equal Opportunities for All (2007) - Towards a Just Society” (*Official Journal*, L 146, 31 May 2006, p. 1); the website of the European Year is: <http://equality2007.europa.eu/>

<sup>67</sup> See Council Decision of 27 November 2000, n. 2000/750/EC establishing a Community action programme to combat discrimination (2001 to 2006), (*Official Journal* L 303, 2 December 2000, p. 23)

<sup>68</sup> ENAR’s comments on the proposal for a decision on the 2007 European Year of Equal Opportunities for All (August 2005) available at: [http://www.enar-eu.org/en/policy/AUG05\\_ENAR\\_2007\\_Year.pdf](http://www.enar-eu.org/en/policy/AUG05_ENAR_2007_Year.pdf)

## THE ROLE OF CIVIL SOCIETY

These European Union initiatives highlight the importance of involving both civil society and the social partners. The social partners can play an important role in **raising awareness** among the population about the need to combat discriminatory attitudes and acts of discrimination based on ethnic origin, race or religion. Some NGOs and networks promote an active involvement of religious communities, developing more sustained intercultural and interreligious dialogue between different groups. Considering the changing religious landscape of Europe as described in the introduction<sup>69</sup>, this is particularly important: religious diversity and multiculturalism are often perceived to be sources of conflict, and there are misunderstandings, prejudice and ignorance towards and about minority groups. It is, then, important to involve religious communities, as well as all other groups in society, in developing an open dialogue<sup>70</sup>. Education can play a particularly important role here.

NGOs and social partners also play a vital part, not only by providing information and raising awareness about anti-discrimination policies, but also in **supporting victims of discrimination**. Both Equality Directives include a series of mechanisms to ensure effective remedies in the event of discrimination. They stipulate, for example, that Member States shall improve the legal protection of victims of discrimination by ensuring access to justice or to conciliation procedures<sup>71</sup>. In cases of discrimination, an individual can also appeal to certain civil society bodies or governmental entities that are empowered to support victims of discrimination. According to the Equality Directives, as well as many national anti-discrimination laws, these organisations are entitled to give support to individual victims or to individuals forming part of a collective complaint, for example by providing appropriate information to the victims or proposing possibilities for informal resolutions (they could, for instance, mediate between the person who discriminates and the victim)<sup>72</sup>. Associations, organisations or other legal entities, in accordance with national law, can also represent victims of discrimination in judicial proceedings, acting on behalf of the complainant<sup>73</sup>.

---

<sup>69</sup> See above, paragraph 2

<sup>70</sup> The importance of dialogue is underlined by a new initiative of the European Commission, the 2008 European Year of Intercultural Dialogue. See ENAR Fact Sheet n. 31, *The 2008 European Year of Intercultural Dialogue* (March 2007), available at: <http://www.enar-eu.org/en/factsheets/FS31%20-%202008%20year%20-%20march%202007.pdf>

<sup>71</sup> Article 7 of Directive 2000/43 and article 9 of Directive 2000/78

<sup>72</sup> Activity of support of NGOs is described by the Training manual *Combating Discrimination*, published by the European Commission (2005), available at:

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/civil/train\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/civil/train_en.pdf)

<sup>73</sup> Article 7 of Directive 2000/43 and article 9 of Directive 2000/78

## CONCLUSION

The increasing visibility of religious diversity in Europe has been accompanied by a rise in discrimination and prejudice against ethnic and religious minorities. While a great deal of progress has been made, discrimination on grounds of racial or ethnic origin and religion is still a problem for many people in our societies, although this is difficult to measure accurately due to a lack of data on the religious composition of the population of the EU, particularly as regards minority religions. The European Union has created a framework of legal instruments, policies and initiatives for combating religious and racial discrimination and for promoting equality. Nevertheless, it could be argued that the principles of equality and non-discrimination and the respect for the right to freedom of thought, conscience and religion have not been fully implemented in all Member States.

The paper outlines the complexity of the current legal protection and the remaining gaps in anti-discrimination legislation, highlighting the fact that, as many have argued, the European Union should adopt more comprehensive and more extensive legislation on religious discrimination. It is also recognised that legal instruments alone are not sufficient to grant a broad implementation of the principle of equality or to ensure that commitment to this principle is shared by all people in our society. The role that NGOs and associations can play cannot be overstated, both in terms of support for victims of discrimination and in combating prejudice within EU society.

## **Resources and websites**

### **References:**

- Bell M., Chopin I. and Palmer F., *Developing Anti-Discrimination Law in Europe. Comparative Analysis*, European Commission, February 2007, available at: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/06compan\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/06compan_en.pdf)
- Chopin I. and Niessen J. (eds.), *The Starting Line and the incorporation of the Racial Equality Directives into the national laws of the EU Member States and accession States*, Brussels-London 2001, available at: <http://www.cre.gov.uk/downloads/mpg.pdf>
- De Schutter O., *Prohibiting Discrimination under Human Rights Law*, European Commission publication, 2005, available at: [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legisl/prohib\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisl/prohib_en.pdf)
- ENAR, *Comments on the European Commission against Racism and Intolerance (ECRI) Working group on combating racism and racial discrimination in policing - Draft ECRI General Policy Recommendation No. 11 on combating racism and racial discrimination in policing*, available at: [http://www.enar-eu.org/en/policy/may07\\_ecri\\_policing.pdf](http://www.enar-eu.org/en/policy/may07_ecri_policing.pdf)
- ENAR, *Racism in Europe. ENAR Shadow Report 2005*, available at: [http://www.enar-eu.org/en/publication/shadow\\_reports/europe2005\\_low\\_EN.pdf](http://www.enar-eu.org/en/publication/shadow_reports/europe2005_low_EN.pdf)
- ENAR, *Islamophobia in Europe. ENAR Shadow Report 2005*, available at: [http://www.enar-eu.org/en/national/eu/Islamophobia\\_in\\_Europe\\_2005.pdf](http://www.enar-eu.org/en/national/eu/Islamophobia_in_Europe_2005.pdf)
- ENAR, *Combating Religious and Ethnic Discrimination in Employment*, 2004, available at: [http://www.enar-eu.org/en/publication/reports/discrim\\_employ\\_04\\_en.pdf](http://www.enar-eu.org/en/publication/reports/discrim_employ_04_en.pdf)
- ENAR, *Belief and Exclusion - Combating Religious Discrimination in Europe. A first NGO approach*, 2003, available at: [http://www.enar-eu.org/en/publication/reports/religious\\_discrim\\_EN.pdf](http://www.enar-eu.org/en/publication/reports/religious_discrim_EN.pdf)
- EUMC, *Annual Report 2006: Situation regarding Racism and Xenophobia in the Member States of the EU*, 2006, available at: <http://fra.europa.eu/fra/material/pub/ar06/AR06-P2-EN.pdf>
- EUMC, *Antisemitism. Summary overview of the situation in the European Union 2001-2005*, 2006, available at: [http://fra.europa.eu/fra/material/pub/AS/Antisemitism\\_Overview\\_December\\_2006\\_en.pdf](http://fra.europa.eu/fra/material/pub/AS/Antisemitism_Overview_December_2006_en.pdf)
- EUMC, *Muslims in the European Union. Discrimination and Islamophobia*, 2006, available at: [http://eumc.europa.eu/eumc/material/pub/muslim/Manifestations\\_EN.pdf](http://eumc.europa.eu/eumc/material/pub/muslim/Manifestations_EN.pdf)
- EUMC, *Migrants, minorities and employment. Exclusion, discrimination and Anti-discrimination in 15 Member States of the European Union*, 2003, available at: <http://eumc.eu.int/eumc/material/pub/comparativestudy/CS-Employment-en.pdf>
- EUMC, *Migrants, minorities and housing. Exclusion, discrimination and Anti-discrimination in 15 Member States of the European Union*, 2003, available at: <http://fra.europa.eu/fra/material/pub/comparativestudy/CS-Housing-en.pdf>

- EUMC, *Summary Report on Islamophobia in the EU after 11 September 2001*, 2002, available at: [http://fra.europa.eu/fra/material/pub/anti-islam/Synthesis-report\\_en.pdf](http://fra.europa.eu/fra/material/pub/anti-islam/Synthesis-report_en.pdf)  
Country Reports are available at:  
[http://fra.europa.eu/fra/index.php?fuseaction=content.dsp\\_cat\\_content&catid=3fb38ad3e22bb&contentid=3fb4f8d82d72a](http://fra.europa.eu/fra/index.php?fuseaction=content.dsp_cat_content&catid=3fb38ad3e22bb&contentid=3fb4f8d82d72a)
- EU Network of Independent Experts on Fundamental Rights, *Combating Racism and Xenophobia through Criminal Legislation: The situation in the EU Member States*, (Opinion n° 5-2005), November 2005, available at:  
<http://cridho.cpr.ucl.ac.be/Avis%20CFR-CDF/Avis2005/CFR-CDF.Opinion5-2005.pdf>
- EU Network of Independent Experts on Fundamental Rights, *Ethnic Profiling*, 2006, available at:  
[http://ec.europa.eu/justice\\_home/cfr\\_cdf/doc/avis/2006\\_4\\_en.pdf](http://ec.europa.eu/justice_home/cfr_cdf/doc/avis/2006_4_en.pdf)
- European Commission, *Eurobarometer Survey on Discrimination and Inequality in Europe*, January 2007
- European Commission, *Equality and Non-Discrimination - Annual Report*, November 2006
- European Commission, *Training manual - Combating Discrimination*, 2005, available at:  
[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/civil/train\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/civil/train_en.pdf)
- European Commission and Migration Policy Group, *Discrimination on the Grounds of Religion and Belief, Country Reports from Independent Legal Experts on the Implementation of Anti-Discrimination Laws*, 2004
- European Values Study, available at: [www.europeanvalues.nl](http://www.europeanvalues.nl)
- Hepple B., Choudhury T., *Tackling Religious Discrimination: Practical Implications for Policy Makers and Legislators*, London: 2001, available at:  
<http://www.homeoffice.gov.uk/rds/pdfs/hors221.pdf>
- Migration Policy Group, *Rapport de synthèse relatif aux signes d'appartenance religieuse dans quinze pays de l'Union européenne*, 2004, available at:  
<http://www.migpolgroup.com/multiattachments/2890/DocumentName/relsymb.pdf>
- Vickers L., *Religion and Belief Discrimination in Employment*, European Commission, Human European Consultancy and Migration Policy Group: February 2007, available at:  
[http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/legnet/07relbel\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/07relbel_en.pdf)

## Websites:

### European Commission:

- DG Employment, Social Affairs and Equal Opportunities – Homepage  
[http://ec.europa.eu/employment\\_social/fundamental\\_rights/index\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/index_en.htm)
- DG Employment, Social Affairs and Equal Opportunities – List of publications  
[http://ec.europa.eu/employment\\_social/fundamental\\_rights/public/pubst\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm)
- European Year of Equal Opportunities for All (2007)

<http://equality2007.europa.eu/>

- European Union Agency for Fundamental Rights (FRA) – formerly the European Union Monitoring Centre on Racism and Xenophobia (EUMC) – Homepage  
<http://www.eumc.europa.eu>
- European Union Agency for Fundamental Rights (FRA) – Publications  
[http://eumc.europa.eu/eumc/index.php?fuseaction=content.dsp\\_cat\\_content&catid=1](http://eumc.europa.eu/eumc/index.php?fuseaction=content.dsp_cat_content&catid=1)
- European Union Agency for Fundamental Rights (FRA) – InfoBase  
<http://www.fra.europa.eu/factsheets/>

#### **Council of Europe:**

- Council of Europe – Homepage  
<http://www.coe.int/DefaultEN.asp>
- European Court of Human Rights – Jurisprudence  
<http://www.echr.coe.int/ECHR>
- European Commission against Racism and Intolerance (ECRI)  
[http://www.coe.int/t/E/human\\_rights/ecri](http://www.coe.int/t/E/human_rights/ecri)

#### **Organization for Security and Co-operation in Europe (OSCE):**

- Tolerance and Non-Discrimination Information System (TANDIS)  
<http://tandis.odhr.pl/>

#### **United Nations High Commissioner for Human Rights:**

- Subject: Religious Intolerance  
<http://www.unhchr.ch/html/menu2/i2othrel.htm>

#### **NGOs and networks:**

- CEJI  
<http://www.ceji.org>
- ENAR:  
<http://www.enar-eu.org>
- Migration Policy Group:  
<http://www.migpolgroup.com>
- Forum18  
<http://www.forum18.org>
- Religion and Law International Document Database  
[www.religlaw.org](http://www.religlaw.org)

- “For Diversity. Against Discrimination.” Document Library  
[http://www.stop-discrimination.info/index.php?id=sdoc\\_en](http://www.stop-discrimination.info/index.php?id=sdoc_en)
- Database on Anti-Discrimination and Equality Law (DADEL)  
[http://www.pili.org/dadel/Main\\_Page](http://www.pili.org/dadel/Main_Page)
- Strategies On Litigation tackling Discrimination in EU countries (SOLID)  
<http://www.solid-eu.org>
- ERA Academy of European Law – “The Fight against Discrimination in the EU” pages  
[http://www.era.int/web/en/html/nodes\\_main/4\\_1649\\_490/4\\_1087\\_539/5\\_1070\\_66.htm](http://www.era.int/web/en/html/nodes_main/4_1649_490/4_1087_539/5_1070_66.htm)
- Osservatorio delle Libertà e Istituzioni Religiose (OLIR) (mainly in Italian)  
<http://www.olir.it>
- Forum Internazionale ed Europeo di Ricerche sull’Immigrazione (FIERI)  
<http://www.fieri.it>

**For further information contact:**

ENAR, European Network against Racism  
Rue de la Charité 43, 1210 Brussels - Belgium  
Website: <http://www.enar-eu.org>  
E-mail: [info@enar-eu.org](mailto:info@enar-eu.org)

CEJI – A Jewish Contribution to an Inclusive Europe  
Avenue Brugmann 319, 1180 Brussels – Belgium  
Website: <http://www.ceji.org>  
E-mail: [ceji@ceji.org](mailto:ceji@ceji.org)

This fact sheet was written by Stella Cogliervina and edited by Tansy Hutchinson and Guidon Van Emden.



*ENAR is a network of some 600 European NGOs working to combat racism in all EU Member States. Its establishment was a major outcome of the 1997 European Year against Racism. ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives.*



*ENAR is funded by the European Commission, DG Employment, Social Affairs and Equal Opportunities, Anti-Discrimination Unit.*