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FREEDOM OF RELIGION IN THE WORKPLACE: THE CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

Abstract of Doctoral Thesis

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I. Subject and research objective of the thesis

Freedom of religion is one of the oldest and most pre-eminent of the internationally recognized human rights, which played a fundamental role in creating the modern international order.[1] The role of religion in societies and the relationship between Churches and States has changed significantly, but it is indisputable that religion got inextricably linked to history and the legal development, especially in Europe.[2] The concept of religious freedom has also changed, and its original meaning which basically covered freedom to choose a denomination has expanded considerably.

One of the core values of the European Union is pluralism, within which religious pluralism is becoming increasingly important as an essential element of democratic societies.[3] In the Member States of the European Union, two parallel phenomena may be observed. On the one hand (especially in Western-Europe) there is a decades-long wave of secularization or rather *'churchlessness'*[4] which results in a declining number of followers of traditional religions, and religion tends to be *'exiled'* from public life and certain areas of private spheres. Nevertheless, churches, religious organizations and church-affiliated employers are amongst the most important players in the labour market, operating schools, hospitals and other facilities consistent with their mission, determining specific occupational requirements unique to their ethos. At the same time, national labour laws are pervaded by the historical past, and as a common theme, most work schedules are fundamentally aligned with Christian holidays, a religion not shared by a growing part of the workforce.[5]

On the other hand, as a result of the demographic transformations caused by the surge in immigration since the second half of the 20th century, the number of followers of Islam is dynamically increasing, as is their proportion within the population. This community is characterized by clearly expressing their religious beliefs through their clothing amongst other things. This level of religious commitment tends to evoke awareness or confused gazes at best, stereotypes and hostile behavior at worse from the society. In order to integrate these

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[1] KONDOROSI Ferenc: Vallásszabadság kultúrák keresztútján. *Jura,* 2011/1. p. 68–70.
[2] Javier MARTINEZ-TORRÓN – William Cole DURHAM, Jr.: *Religion and the Secular State: National Reports*. The International Center for Law and Religion Studies, Provo, 2010. p. 1–2.
[3] DIRECTORATE - GENERAL FOR INTERNAL POLICIES*: Religious practice and observance in the EU Member States.* 2013. p. 7. http://www.europarl.europa.eu/studies
[4] Secularism had two major waves. The first one was induced by the Age of Enlightenment in the spirit of modernity, removing the Church from center of social life. The second wave was the result of a "subjective shift" after World War II, leading to a decline in the role of Christianity and a reinterpretation and redesign of personal identity. See: Russel SANDBERG: *The sociological dimension of law and religion.* In: Rex AHDAR (ed.): *Research Handbook on Law and Religion*. Edward Elgar Publishing, Cheltenham, 2018. p. 24.
[5] David W. MILLER – Timothy EWEST: A new framework for analyzing organizational workplace religion and spirituality. *Journal of Management, Spirituality and Religion,* Vol. 12, No. 4, 2015. p. 2.

communities and observe constitutional and historical traditions, many national legislations set certain standards (restrictions on the wearing of religious clothing in educational institutions, in the public sector etc.) which tend to have a counterproductive effect, contrary to their purpose.

In the 1990s, religious freedom still played the role of a somewhat 'neglected grandparent' among human rights, but this has changed radically since the 2010s, partly due to global migration.[6] Mainstream views, which predicted the complete retreat of religion from public life in a modern, technologically developed environment proved to be inaccurate,[7] as religion has returned to the everyday reality of public discourse.[8] Its relevance is clearly demonstrated by the questions referred to the Court of Justice of the European Union (hereinafter referred as: CJEU) for preliminary rulings on certain aspects of religious freedom at work.[9]

After the adoption of the Employment Framework Directive[10] the CJEU did not focus on issues related to religious freedom at work until 2017, but in the light of social and employment changes, it became essential to set a direction that the EU Member States can follow.[11] Until the completion of the dissertation, the CJEU has issued five major decisions on certain issues related to religious freedom at work. Two of these cases focused on the external expression of religious beliefs in the private sphere through clothing and the possible restriction of this expression in the light of the economic interests of a private enterprise as an

[6] BALOGH Lídia: „Vallási pereskedés." Panelbeszélgetés Christopher McCruddennel emberi jogokról, bíróságokról és hitbéli meggyőződésekről. *JTI Blog,* 2019. 12. 05. https://jog.tk.hu/blog/2019/12/vallasi-pereskedes-christopher-mccrudden

[7] NEMZETKÖZI TEOLÓGIAI BIZOTTSÁG: *A mindenki javát szolgáló vallásszabadság – Korunk kihívásainak teológiai megközelítése*. http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_20190426_liberta-religiosa_hu.html

[8] Andrea PIN – John WITTE, Jr.: Meet the New Boss of Religious Freedom: The New Cases of the Court of Justice of the European Union. *Texas International Law Review*, Vol. 55, 2019. p. 224–226.

[9] A sign of contemporary relevance of religious freedom, is that apart from workplace related questions, the CJEU has made numerous observations on other aspects of this fundamental human right as well. These include the question of religious slaughter (*C-336/19. Centraal Israëlitisch Consistorie van België and Others, 2020. 12. 17. [ECLI:EU:C:2020:1031]*), the consistency of records relating to the conversion activities of Jehovah's Witnesses with EU law (*C-25/17. Tietosuojavaltuutettu v. Jehovan todistajat – uskonnollinen yhdyskunta*, *2018. 07. 10. [ECLI:EU:C:2018:551*), tax exemption for church-run schools (*74/16. Congregación de Escuelas Pías Provincia Betania v. Ayuntamiento de Getafe 2017. 06. 27. [ECLI:EU:C:2017:496]*), or marriages annulled by a religious court *(C-372/16. Soha Sahyouni v. Raja Mamisch, 2017. 12. 20. [ECLI:EU:C:2017:988]).*

[10] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

[11] János CZIGLE: *Freedom of Religion at the Workplace. Background to the Ruling of the Court of Justice of the European Union in the Achbita and Bougnaoui Cases.* In: Marcel SZABÓ – Petra Lea LÁNCOS – Réka VARGA (eds.): *Hungarian Yearbook of International Law and European Law*. Vol. 5, Eleven International Publishing, Hague, 2018. p. 311.

employer.[12] Two further cases concerned the justification of occupational requirements imposed by churches, religious organizations and church-affiliated employers and the possible judicial review of these requirements by objective courts, as well as the scope of the personal life-related aspects of certain requirements and, indirectly, they also centered around the limitations on the autonomy of churches.[13] The last case analyzed the framework and justification for more favorable treatment under national law for members of minority religions with respect to church holidays.[14] Three more cases are currently pending, related to the first topic, i.e. the wearing of headscarves at work.[15] The aim of the dissertation is to present and analyze the decisions made by the CJEU in the field of religious freedom at work, to highlight the consistent elements of the case law, covering the ongoing cases and interpreting the issue of religious freedom in the light of greater socio-economic contexts.

[12] C-157/15. Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV, 2017. 03. 14. [ECLI:EU:C:2017:203] and
C-188/15. Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v. Micropole SA, 2017. 03. 14. [EU:C:2017:204].

[13] C-414/16. Vera Egenberger v. Evangelisches Werk für Diakonie und Entwicklunge.V., 2018. 04. 17. [ECLI:EU:C:2018:257] and
C-68/17. IR v. JQ, 2018. 09. 11. [ECLI:EU:C:2018:696].

[14] C-193/17.Cresco Investigation GmbH v. Markus Achatzi, 2019. 01. 22. [ECLI:EU:C:2019:43].

[15] C-804/18. IX v WABE e. V., Arbeitsgericht Hamburg, request for preliminary ruling: 2018. 12. 20.
C-341/19. MH Müller Handels GmbH. v. MJ, Bundesarbeitsgericht, request for preliminary ruling: 2019. 04. 30.
C-344/20. L.F. v. S.C.R.L:, Tribunal du travail francophone de Bruxelles, request for preliminary ruling: 2020. 07. 27.

II. Research structure and methodology, the use of sources

In terms of the structure of the dissertation, in addition to the introduction, it can be divided into six major chapters, which, after defining the theoretical, conceptual and legal framework, focus on the presentation of individual legal cases, analysis of decisions and the drawing of conclusions.

The second chapter of the dissertation includes the general theoretical, historical and conceptual framework of religious freedom. Within this framework, the role of religious freedom in the development of human rights and the development of the modern international order, starting from antiquity, through the Middle Ages and reaching the modern age to our present days, the common development and duality of religion and law are all presented. The chapter also focuses on the concept of religious freedom, describing what principles characterize it and how this fundamental right can be examined. Sub-concepts related to religious freedom, such as religion, religious belief or belief, are also touched upon. In defining the concept of religious freedom, I present the standards generally accepted in international law, the internal and external, positive and negative, individual and community aspects of religious freedom, and certain rights of parents. In this context, the chapter will also introduce the meaning attributed to this human right by the European Court of Human Rights (hereinafter referred as: ECtHR) via its relevant case law. The second chapter further introduces the place of religious freedom in the international legal order, describes the provisions of general, defining international legal documents such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

When establishing the theoretical framework created by the second chapter, I relied on the findings of classical and contemporary, international and Hungarian experts, defining books, online and offline analyses which appeared in prestigious and well-recognized journals, official Council of Europe publications on religious freedom as well as the authoritative cases from the past. In addition, I visited web and blog pages containing analyzes and descriptions, displaying professional legal publications, to map out perhaps lesser-known areas such as the phenomenon of so-called “joke churches”.

The third chapter of the dissertation narrows the focus to Europe and the European Union, presenting the cornerstones of a common European identity and how the situation of religious freedom has changed in European countries, what parallel social and demographic changes can be observed. One of these characteristics is a political reflection of certain

preconceptions about the Muslims, as the fastest growing religious community in the EU, which is coupled by legal changes that often resembles the concept of Islamophobia, at the same time questioning both the possibility of integrating these communities and the foundations of multiculturalism.

Although European identity is based on common foundations, the relationship of states to churches and religions is very diverse, and the "religious map" determined by historical and cultural traditions could not be more different.[16] One example of this complexity is that even within countries there are significant differences in the assessment of the social relevance of religion, as pointed out by the ECtHR. As state-church relations play a key role in public employment (and to some extent indirectly in private employment), the types of these relationships and their characteristics are briefly described. The principle of state neutrality may seem like an extremely divisive and often misunderstood concept with problematic definitions, but we can see that some private employers made an attempt at transposing it into their internal regulations and endowing it with specific meaning, so it is worth touching upon this phenomenon briefly.

In presenting the social and demographic situation, I relied on research, surveys and statistics produced by research centers and the European Union, as well as volumes summarizing and analyzing their results, and articles published in legal and sociological journals. For introducing the situation of religious minorities, in addition to the mainstream, Western authors, I also highlighted the opinions of authors belonging to these communities, an approach I consistently tried to follow in the entire dissertation. In the typology of state-church relations, I mostly relied on the leading authors of the Hungarian and the international literature. In connection with the issue of state neutrality, I have analyzed the case law of the ECtHR, the interpretations and analyses of these decisions, while building on my previous research in this topic.

The second part of the chapter focuses on the constantly evolving role of religious freedom in EU law, describing the provisions on religious freedom in key sources such as the European Convention on Human Rights (hereinafter referred as: ECHR), the Charter of Fundamental Rights of the European Union (hereinafter referred as: Charter) and the

[16] We get a similarly diverse picture in a global perspective. The most common state religion in the world is Islam, as it has such status in 27 countries (including most of the states of the Middle East and Northeast Africa). In contrast, in 13 countries of the world, a form of Christianity is the state religion (9 of which are European countries). Another 40 countries prefer some form of religion, but of these, Christianity is already the most common (28). See: PEW RESEARCH CENTER: *Many Countries Favor Specific Religions, Officially or Unofficially- Islam is the most common state religion, but many governments give privileges to Christianity.* 2017. 10. 03. https://www.pewforum.org/2017/10/03/many-countries-favor-specific-religions-officially-or-unofficially/

Employment Framework Directive, which are also the starting point for the analysis of cases that form the core of the dissertation. The case law of the ECtHR has an indisputable impact on the CJEU and *vice versa*, therefore, the relationship and influence of these courts are also addressed within the chapter. The third chapter, as a point of reference also introduces the principle of reasonable accommodation for religion, a phenomenon of American-Canadian origin, which in some cases and to certain degree can also be observed in some EU Member states. The decisive sources for this part of the chapter are mostly the articles related to religious freedom of the Charter and the ECHR, the cases interpreting them, which I present using international law journals, articles and publications of experts. In addition to European authors and related ECtHR cases, I also used the work of overseas experts on the principle of reasonable accommodation.

The fourth chapter examines the first two decisions of the CJEU separately and together. Before describing and analyzing the headscarf cases themselves, in order to establish an appropriate societal and legal framework, religious attires, especially Muslim women's attire are analyzed with regards to their specific religious requirements. In addition, views and perceptions centering around these symbols by its critics and wearers are also introduced, which affect the social debates. All of these observations are essential for creating a proper evaluation methodology of the decisions issued by the CJEU. Feminist views either supporting or rejecting religious clothing of Muslim women are also presented.

With the introduction of relevant case law, the chapter describes how and through what aspects the issue of restrictions on expressing religious beliefs arose and how the wearing of religious attire and symbols was restricted and banned first in public educational institutions, then in public spaces and public institutions, in public sector employment, gradually 'spilling over' to the private sector, which process has been accompanied by a strong political narrative to this day. Due to its importance, the case law of the ECtHR on religious beliefs is presented, with a separate chapter focusing on the case *Eweida and Others v. The United Kingdom*[17], where the ECtHR established an approach to private employment relationships, which clearly influences CJEU decisions to this day.

International and Hungarian literature focus extensively on the wearing and restriction of religious clothing, providing researchers with myriads of books, articles, analyses and other publications. However, it is a common phenomenon that the voice and opinions of those who

[17] Eweida and Others v. The United Kingdom, 2013. 01. 15. (Application numbers: 48420/10, 59842/10, 51671/10 and 36516/10).

wear these clothes are ignored, In order to avoid this, I also present surveys conducted by and publications and perspectives of Muslim experts.

The core of the fourth chapter is the presentation and analysis of decisions related to the dismissal of Muslim workers Achbita and Bougnaoui, who wore a headscarf at their workplace. Achbita was fired for insisting on wearing a headscarf while working, which the employer considered to be incompatible with the company's internal rules promoting a neutral image. Bougnaoui, on the other hand, was fired because a client requested her to work without a headscarf in the future, and in line with this, her employer (a private enterprise, which did not have a general internal rule on neutrality) raised the same request that she refused.

In case of Achbita, it was found that a general rule which bans the expression of religious, philosophical or political views via clothing or other symbols at the workplace, in case of workers coming into contact with customers, thereby seeking to protect a company's neutral image in line with its economic interests, does not constitute direct discrimination. At the same time, indirect discrimination can be justified as long as the internal rules pursue a legitimate aim (the neutral image is one such objective, which the CJEU also emphasized by referring to the *Eweida* case*)* in accordance with the article of the Charter declaring the freedom to conduct business.[18] A further condition for justification is that the measure is applied and pursued in a consistent and systematic manner, thus also meeting the criteria of necessity and proportionality. A necessary element of the latter is that the restriction must only apply to employees who come into contact with the employer's clients, in other words, who represent the company to the outside world in the course of their work.

In the *Bougnaoui* case, the legitimate aim of protecting a private employer's neutral image was further reaffirmed, but the CJEU also emphasized that, the purpose of meeting the specific requests of a customer does not constitute a genuine and determining employment requirement capable of justifying direct discrimination.

The analysis outlines national contexts, followed by a comparison of these decisions, and the critical commentaries on the CJEU rulings, while also mentioning the different approaches of Advocates Generals Sharpston and Kokott to this case. The chapter also covers other "headscarf cases" currently pending with a preliminary ruling and attempts to determine the logic and approach that the CJEU will follow, based on the *Achbita* and *Bougnaoui* cases.

[18] Article 16:
'The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.'

In addition, certain notable cases are also presented from the relevant case law of some Member States of the Union, some of which already show the impact of the findings in the *Achbita* and *Bougnaoui* cases.

During the analysis of these cases, in addition to the decisions of the CJEU and the Opinions of the Advocates Generals, I presented my own findings but also the relied on a very extensive international literature (publications in journals, books on the situation of religious freedom) and on other platforms with highly divided and critical legal opinion focusing on religious freedom (legal analysis sites, EU law and religious freedom specific forums). In order to present the aftermath of the cases before the national courts, I relied on the decisions of these courts, also including the legal and layman opinions concerning the final outcome.

With regard to the pending cases, I analyzed the questions submitted and the working documents in order to outline the possible decisions of the CJEU in light of the guidelines given in the *Achbita* and *Bougnaoui* cases, while also reflecting on criticisms regarding the previous cases.[19] The concluding part of this chapter is a brief description of some legal cases related to the wearing of religious clothing which are (at least for now) not within the CJEU's field of vision.

The fifth chapter, like the fourth, also focuses on two cases, *Egenberger v. Diakonie* and *IR v. JQ*, examining the occupational requirements of employers with a religious ethos and the possible justification for said specific requirements. In the framework of this investigation, the chapter also covers the unique characteristics of religious organizations, the respect for their national status granted by EU law, as well as previous cases of decisive

[19] C-804/18. IX v WABE e. V., Arbeitsgericht Hamburg, request for preliminary ruling: 2018. 12. 20.
In this case, a Muslim educator returning from maternity leave was asked by his employer, who runs a number of private nurseries, to refrain from wearing a headscarf at work in the future, in accordance with the rules of neutrality born in his absence. This rule prohibits the wearing or other expression of any political, religious or ideological symbol in the workplace for employees who come into contact with parents, children and other third parties.
C-341/19. MH Müller Handels GmbH. v. MJ, Bundesarbeitsgericht, request for preliminary ruling: 2019. 04. 30.
A Muslim woman returning from maternity leave and employed as a drugstore cashier was asked not to wear a headscarf at work that she had not worn before the leave. Following the instruction, the company amended its internal regulations, which originally prohibited the wearing of headgear, in a way that extended the wearing of large-scale religious, political and worldview symbols and clothing.
C-344/20. L.F. v. S.C.R.L, Tribunal du travail francophone de Bruxelles, request for preliminary ruling: 2020. 07. 27.
In this case, a Muslim lady wearing a headscarf applied for an internship at a housing company. This company informed her that wearing a headscarf was not permitted by the workplace regulations, as it required religious, worldview and political neutrality. This condition is not new, the company also had two employees who took off their headscarves when they entered the office. The trainee position would have included regular receptions of designers, consultancy firms, contractors and couriers, thus asking her to adapt to the common rules, which she rejected. In her subsequent re-application, she indicated that she would be willing to wear a different type of headgear, but the company confirmed that no headgear could be worn in the office, not just a headscarf worn for religious motives.

importance. Similarly to the methodology of the fourth chapter, the circumstances of the cases and the decisions of the CJEU are described in detail here. In the *Egenberger* case, a condition for filling the position advertised by the potential employer was to belong to one of the Christian religions, specified by the employer, which criterion the applicant did not meet, as a result, she did not got the job. In the *IR v. JQ* case, a doctor was fired from a Catholic church-affiliated hospital, because according to the employer he violated the employer's religious beliefs and ethos (and with this at the same time certain conditions of his employment contact) with his behavior in his private life by remarrying.

In the *Egenberger* case, the CJEU emphasized, that while religious employers may indeed impose specific occupational requirements, those requirements must be objectively justified by the characteristics of the work, which must be materially examined by an external, independent judicial body in accordance with the principle of effective judicial review. In addition, it was once again declared that national legislation that is contrary to EU law (even if EU law is interpreted by them) should be disregarded if the latter cannot be interpreted in accordance with EU law. Furthermore, the CJEU emphasized, that EU citizens can invoke EU fundamental rights in their legal disputes with each other. As there was no objectively justifiable link between the nature of the work and belonging to a particular religious community, the discrimination could not be justified.

In the *IR v JQ* case*,* referring to its findings in the *Egenberger* case, the CJEU highlighted the importance of the principle of effective judicial review, and it found, that dismissal was based on the doctor's religion (which was the same as his employer's), resulting in more stringent private life-related loyalty expectations, a requirement which other employers of different religion did not need to meet. The objective link between the nature of the work and the requirement could not be assumed here either, the discrimination hence once again was not justified.

As in the *Achbita* and *Bougnaoui* cases, the CJEU guidance resulted in a long-awaited resolution which will serve as a reference for similar issues in the future. In contrast to headscarf cases, these decisions resulted in less division and dispute between legal experts, they were also not accompanied by so much media and public attention, and criticism was rare and more restrained. This can also be attributed to the fact that traditional churches have been present in the collective consciousness of the countries of the continent for hundreds (sometimes thousands) of years and their peculiarities regarding their ethos and mission are also known, which obviously has an effect on occupational requirements. In contrast, women wearing headscarves and veils are often viewed with aversion, some seeking their full

assimilation to avoid the emergence of ‘shadow societies’, but often this is just how they create or exacerbate said phenomenon. The primary sources of the dissertation's research in this chapter are CJEU decisions. In addition to international and Hungarian literature, I also relied on my previous research and publications, as well as analyses published in prestigious electronic and offline journals concerning the CJEU’s guidance.

The last case of the CJEU that the dissertation analyzed is the *Achatzi* case, which is linked to the discriminatory nature of national regulations on religious holidays, covered in chapter six. In line with the logic of the previous structural units, the chapter also includes a theoretical approach to the topic, an emphasis on the role of the national context, and a presentation of earlier case law. This is followed by a description of the circumstances of the case and a detailed analysis of the CJEU's decision, during which the research focuses on the role and impact of the previously analyzed cases. In the mostly Roman Catholic Austria, Good Friday was a paid holiday only for members of some particular religious denominations determined by law. If they did work that day, they could claim a wage supplement, as opposed to those who belonged to other religions, or did not belong to a religion at all. For them, it was a working day without the possibility of a wage supplement, as was the case with Mr. Achatzi, who claimed religious discrimination due to this rule. In its analysis, the CJEU pointed out that national legislation was indeed discriminatory, and there was no justification for the different treatment of workers in comparable situation. This decision was generally welcomed by the legal profession, praising the logic of the CJEU and the correctness of its finding. For this chapter, I used similar sources i.e. international and Hungarian experts analysis, my observations and previous researches.

The final chapter of the dissertation summarizes the main findings reflecting on the social and legal framework of religious freedom and as a conclusion, seeks to draw the consequences of decisions, highlight their social implications and interpretations, and to develop a conceptual framework for the CJEU's analysis on religious freedom in the workplace. The main part of the dissertation is followed by the bibliography and the list of cited legal cases.

III. Summary of the scientific results

The CJEU has made radical changes to its previous reluctance around workplace religious freedom in the recent years. In doing so, the CJEU began to consistently follow some *leitmotifs*. One of them is to apply the interpretation set out in the *Achbita* case to the concept of religion, (religion is not defined in the Employment Framework Directive) which includes its internal and external aspects, i.e. the *forum internum* and the *forum externum*, building on the theoretical framework of the ECHR and the Charter, emphasizing that while the former enjoys absolute protection, the latter enjoys only relative protection.

In the headscarf cases, the importance of the economic interests of private companies has been emphasized, which may legitimately justify the restriction on the expression of employee' religious beliefs in the workplace. One applicable method for this, is to create internal rules on neutrality as the "latest trend", this way banning employers who come into contact with clients from wearing all religious, political, ideological symbols and clothing at work in line with the said internal rule's purpose, i. e. to project a fully neutral corporate image. This is to serve the economic interests of the employer. Following in the footsteps of the ECtHR, the CJEU accepted corporate interest and neutrality as a legitimate aim which may justify discrimination. The financial interests and profit-orientation of employers must be taken into account, but these and a potential financial loss does not automatically override any other fundamental right, nor can the expression of religious belief be suppressed indefinitely at the workplace. In the *Achbita* case, business interest orientation is more pronounced, in the *Bougnaoui* case the CJEU takes a somewhat more restrained position, as it points out, that not all consumer preferences and satisfaction of requests are legitimate aims and grounds for restricting religious beliefs.

The CJEU's headscarf decisions have been rather divisive, resulting in much criticism from legal professionals and the general public. It was a regrettable, that the CJEU did not refer to the existence of stereotypes and prejudices surrounding and clearly present in the cases and that direct discrimination was not identified in any of the cases. A general rule may prohibit all clothing and symbols expressing religious, political, worldview beliefs, but this does not result in equal effort for all employees. The CJEU did not differentiate between religions and their specific requirements, though it is well known, that for some religions the external element, i.e. the manifestation beliefs via clothing and symbols is inseparable from the internal beliefs, being equally important, and restrictions may cause serious concerns for

followers. Religion cannot be left 'at the doorstep' of the workplaces,[20] it would be a misinterpretation of the essence of religion, but the CJEU seems to interpret religion as a chosen (and changeable) element of identity, resulting in a lower level of protection within the anti-discrimination framework.[21] For some, neutral attire does not require any extra effort, as their religious views, or lack thereof, are easily reconciled with the rule, since neutral clothing is also Western casual wear in the general and conventional sense.[22]

The CJEU has defined precisely the framework within which an indirectly discriminatory restriction can be justified, thereby (unintentionally) creating a "handbook" providing a direction that employers can follow in the future to justify restrictions on the employees' religious freedom. The test of necessity and proportionality cannot be considered rigorous enough, as in order to justify neutrality it only needs to prove, that an internal rule is applied systematically and consistently to all employees who come into contact with customers.[23]

The issue of religious freedom is often entwined with other fundamental rights, and in light of the framework established by the CJEU in the *Achbita* and *Bougnaoui* cases, it would seem as if there was a hierarchical link between these rights. According to the current EU guidelines, higher-level and thus more protected fundamental rights include innate qualities such as gender, ethnic origin, or possible disabilities,[24] although religion may play a much more decisive role in a person's self-image and identity.[25]

In the case of private employment, the reference to corporate neutrality seems to be the latest trump card by which employers may seek to justify restrictions on workplace expression of religious (and worldview, political) beliefs.[26] This trump card was provided to

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[20] Joseph WEILER: 'Je Suis Achbita'. *European Journal of International Law*, Vol. 28, No. 4, 2017. p. 989.
[21] Stéphanie HENNETTE-VAUCHEZ: Equality and the Market: the unhappy fate of religious discrimination in Europe ECJ 14 March 2017, Case C-188/15, Asma Bougnaoui & ADDH v Micropole SA; ECJ 14 March 2017, Case C-157/15, Samira Achbita & Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV. *European Constitutional Law Review*, Vol. 13, No. 4, 2017. p. 754-755.
[22] Nuna ZEKIC: An Open and Diverse European Union? *Tilburg Law Review,* Vol. 22, No. 1, 2017. p. 260–261.
[23] Erica HOWARD: Headscarves return to the CJEU: unfinished business. *Maastricht Journal of European and Comparative Law*, Vol. 27, No. 1, 2020. p. 5.
[24] Costanza NARDOCCI: Equality & non-discrimination between the European Court of Justice and the European Court of Human Rights. Challenges and perspectives in the religious discourse. University *of Milan-Bicocca School of Law Research Paper Series*, No. 18-12. 2018. 12. 14. p. 2–4. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3301171
[25] The issue of gender-based discrimination is also usually voiced in connection with religious attire worn by Muslim women', as they are ones primarily affected by a general ban at work. Similarly, cases of ethnic and religious discrimination often overlap. It is not easy to create a legal regulatory environment that addresses the issue of religion, culture and the position of women in society with a steadily growing Muslim population. See: LÁNCOS Petra Lea: A hidzsáb az Európai Bíróság előtt. Ars Boni 2016. 10. 15. http://arsboni.hu/a-hidzsab-az-europai-birosag-elott/
[26] Lucy VICKERS: *Law, religion and the workplace.* In: Silvio FERRARI (ed.): *Routledge handbook of law and religion*. Routledge, Abingdon, 2015. p. 272.

them by the CJEU itself when it stated in the *Achbita* case that a general provision of an internal rule prohibiting the wearing of all religious, worldview and political, philosophical symbols at the workplace did not constitute direct discrimination. As it was expected, and as evidenced by the new "headscarf cases" that are currently being referred for a preliminary ruling, employers have begun to introduce rules similar to those described in the *Achbita* case and made them part of company internal policies to achieve the external corporate neutrality. This principle that "if everyone is discriminated against, then no one is" essentially constitutes a hostile attitude towards religions in pursuit of an image of neutrality.[27] If the CJEU intends to follow the case law it started with the *Achbita* case, it will be forced to declare that such provisions may serve a legitimate aim. As a result national courts may consistently take a restrictive approach to the expression of religious beliefs in the workplace.

Churches and religious organizations from a certain point of view may be perceived as an antithesis of the private, profit oriented and neutral employers involved in the headscarf cases analyzed. Here, the opposite of complete neutrality is the expectation, i.e. behavior and commitment in the workplace in accordance with the religious ethos of the organization, which, due to the specific nature of the employment, can also have potentially private-life related aspects. In other words, this spirituality, or ethos, can impose criteria related to both the *forum internum* and the *forum externum* of employees. Although the circumstances of the *Egenberger-, IR v. JQ* and *Achatz*i cases differ significantly, they should be interpreted in a common framework of analysis, as they played a decisive role in shaping the Union's position on national churches. The "myth of the inviolability" of church employers seems to be fading. Respect for the national status of the churches must not result in the principles and values of the Union being undermined, consequently, this respect must have a narrower meaning. As demonstrated by the cases analyzed, churches and religious organizations still enjoy their unique status, internal autonomy and the right to set special occupational requirements. At the same time, every Member State must ensure, that an objective, independent court can also analyze and review said occupational requirements with respect to its every aspect.[28]

The CJEU has also provided guidance on the precise meaning of the occupational requirements imposed by employers of religious affiliation, according to which there must be an objective link between the nature of the work to be performed and the framework for its

[27] Eva BREMS: *Belgium: Discrimination against Muslims in Belgium*. In: Melek SARAL – Şerif Onur BAHÇECIK (eds.): *State, religion and muslims: between discrimination and protection at the legislative, executive and judicial levels*. Brill Publishing, Leiden, 2020. p. 88.
[28] Ronan MCCREA: "You're all individuals!" The CJEU rules on special status for minority religious groups. *EU Law Analysis*, 2019. 01. 29. http://eulawanalysis.blogspot.com/search?q=achatzi

implementation, as well as the requirements imposed. The ethos and mission of religious organizations and churches would be discredited by an employee who violates the principles and values of said employer. As such it is understandable that these employers emphasize the importance of the principle of employee loyalty. However, this does not always justify discrimination in cases where increased loyalty is only imposed on people of certain religions, although their situation is comparable to that of colleagues of other religions or those not following any religion, as emphasized by the CJEU in *IR v. JQ*.

Another major aspect of the CJEU's analysis on religious employers was the declaration of the horizontal effect of the EU fundamental rights in matters related to fundamental human rights (such as freedom of religion), emphasizing the importance of the non-discrimination article of the Charter and reaffirming that national rules that are contrary to, or incompatible with EU law should be disregarded, even if they are intended to implement EU law, where appropriate.

As emphasized in the *Achatzi* case*,* in matters relating to freedom of religion at work, it is essential whether certain workers are in a comparable situation. Recognition of church holidays as public holidays is common in most EU Member States, having deep historical and cultural traditions rooted in the Christian past. It is questionable how EU Member States will be able to meet the requests and needs of an increasing number of religious minorities for observing their own religious holidays and clothing. Equal treatment and equal rights in the *Achatzi* case were not achieved by withdrawing the privileges for members of the privileged denominations, but by extending their privileges to every employee in general until the legal environment changed. This is exact opposite approach taken by the CJEU in the *Achbita and Bougnaoui* cases, where the CJEU aimed at creating equal treatment by justifying a general restriction to religious freedom.[29]

[29] In other words, here the CJEU opted for the "if we give everyone the right that we give to the few then we create an equal situation" mentality, as opposed to the "if we take the right away from everyone, we create an equal situation" seen in the headscarf cases.

IV. Further research options

The topic of religious freedom in the workplace is a never-ending resource for researchers, as we can discover more and more difficulties, unexpected aspects and problems in this area. One sign of its utmost relevance are the ongoing preliminary rulings, and we can also conduct research into the specific effect of CJEU decisions on national case law. We can already see some of the impacts of these decisions, for example in an increasing number of internal rules created by some private employers with specific reference to the findings of the CJEU in the *Achbita* case, or in national court decisions that also refer to this decision. Another interesting aspect of research could be focusing on exploring the possibility of extending the principle of reasonable accommodation within EU law, which in its current form only covers workplace accommodation for people with disabilities. The dissertation analyzed and interpreted the decisions made so far within a unified framework, highlighting the common points and considerations, but a more robust case law will only be established in the future.

It is not possible to interpret the decisions of the CJEU without presenting the relevant case law of the ECtHR, as the Court of Justice of the European Union itself refers to the latter's decisions several times and the two forums have a clear effect on each other. The 'advantage' of the ECtHR over the CJEU is that, while the European Union was created essentially for economic reasons,[30] thus certain human rights such as religious freedom in the workplace were not in the primary focus for a rather long time, the Council of Europe was established specifically for the protection of human rights. As a result, the ECtHR has provided guidance in a number of workplace religious freedom matters for example the opposition to certain workplace requirements on religious or conscientious grounds, which can also serve as guidance for the CJEU, that has so far remained silent in this area. As a result, it is worth examining pending cases before the ECtHR and exploring its case law in more depth.

[30] SZABÓ Marcel – LÁNCOS Petra Lea – GYENEY Laura (eds.): Az Európai Unió jogi fundamentumai. Szent István Társulat az Apostoli Szentszék Könyvkiadója, Budapest, 2014. p. 315.

V. List of publications related to the area of research

CZIGLE János Tamás: *Freedom of Religion at the Workplace. Background to the Ruling of the Court of Justice of the European Union in the Achbita and Bougnaoui Cases*. In: Marcel SZABÓ – Petra Lea LÁNCOS – Réka VARGA (eds.): *Hungarian Yearbook of International Law and European Law*. Vol. 5, Eleven International Publishing, Hague, 2017.

CZIGLE János Tamás*: Religious Garment as Public Security Risk in the European Union - Afraid of Clothes?* In: Marcel SZABÓ – Petra Lea LÁNCOS – Réka VARGA (eds.): *Hungarian Yearbook of International Law and European Law*. Vol. 6, Eleven International Publishing, Hague, 2018.

CZIGLE János Tamás: Vallási eredetű öltözet Európában: Tilalmak, korlátázások és indoklásuk. *Külgazdaság,* Vol. 63, 2019/1-2, 2019.

CZIGLE János Tamás: A vallási eredetű ruházat bírósági tárgyalások során történő viseletének tilalma az Emberi Jogok Európai Bírósága joggyakorlatában. *Iustum Aequum Salutare*, Vol. 16, No. 4, 2020.

CZIGLE János Tamás: „Keresztkérdés"– Az egyházi munkáltatók által támasztott foglalkoztatási követelmények igazolhatósága az EuB joggyakorlatában. *Magyar Jog,* Vol. 67, No. 7-8., 2020.

CZIGLE János Tamás: „Akié a munkahely, azé a vallás"- Újabb fejkendőügyek az EuB előtt. *Pázmány Law Working Papers.* Nr. 2021/04. 2021.http://plwp.eu/images/2021/PLWP_2021-04_Czigle.pdf

CZIGLE János Tamás: Korábban ismeretlen vizeken – A munkahelyi vallásszabadság kérdései az EuB előtt. *publication in progress*

VI. Other Publications

CZIGLE János Tamás: *Az Európai Unióból sohasem less szuperállam?* In: POGÁCSÁS Anett-SZILÁGYI Pál–LÁNCOS Petra Lea – ÁDÁNY Tamás Vince (eds.): *„Értékek mentén rendet tartani", válogatott tanulmányok joghallgatók tollából*, Pázmány Press, 2015.

CZIGLE János Tamás: *Review: András Jóri– Andrea Klára Soós: Data Protection- The Hungarian and European Regulations.* In: Marcel SZABÓ – Petra Lea LÁNCOS – Réka VARGA (eds.):*Hungarian Yearbook of International and European Law*, Eleven International Publishing, Hague, 2017.