enorb

European Network on Religion & Belief

FAIR TREATMENT FOR ALL

IMPROVING IMPLEMENTATION OF THE EU EQUALITIES DIRECTIVES IN THE FIELD OF RELIGION AND BELIEF

Brussels, 19-20 March, 2013
European Parliament and Centre 'ESPACES'

SEMINAR THREE
DRAFT REPORT

ENORB
A: **332 Rue Engeland, 1180, Brussels, Belgium.**
P: **+322 374 7733**
E: **enorb@enorb.eu**

Supported by

OPEN SOCIETY FOUNDATIONS

TABLE OF CONTENTS

1. INTRODUCTION

The seminar, *Fair Treatment for All: Improving Implementation of the EU Equalities Directives*, was held on March 19-20 2013 at the European Parliament (Session 1) and at the Centre Espaces (Sessions 2-4). The European Parliament session was held at the invitation of the Vice-President with responsibility for matters of religion and belief, Dr Laszlo Surjan. Nearly a hundred people registered for the seminar, from 16 member-states.

The aims of the seminar were:

- To examine evidence on the implementation of the Equalities Directives Religion and Belief in member-states, and explore difficulties and complexities.
- To identify key factors which influence member-states' implementation of the directives, such as: judicial and politico-legal traditions (eg laicité).
- To note and suggest possible actions on areas of conflict between the Religion and Belief strand and other strands of Fundamental Rights.
- To respond to the DG Justice Review of Implementation of the Directives, with a view to improving effectiveness and consistency on the Religion and Belief strand.

This report collects the main speeches, papers and contributions to discussion from participants. The initial paper is the formal Response to the DG Justice Consultation on Implementation of the Employment and Equalities Directives (2000/43 and 2000/78), which is based on consultation with member and partner organisations at the seminar bringing together approximately 100 participants from 16 EU-Member-States. The seminar sought to bring together legal/academic specialists with representatives of grassroots religion and belief organisations to explore both the implementation of EU Directive and the fundamental right of freedom of religion and belief'.

The summary below does not seek to summarise the findings from the extensive research undertaken by Religare, Equinet, ENAR and other studies reported to the seminar. These speeches and papers are collection in Section 2 of this report. Instead it focuses on the key messages emerging from the discussions with grassroots religion and belief organisations.

2. PREAMBLE

The Conference was preceded with a startling illustration of the importance of discrimination on grounds of religion or belief, as an issue for the EU when one of the workshop leaders: Harjinder Singh, a Sikh, was refused entry to the European Parliament building because he was wearing a *Kirpan,* the small ornamented dagger worn by all male Sikhs as one of the five key religious insignia of the Sikh religion.

This incident occurred despite a decision reached in the European Parliament in 2012, and a celebratory reception of the European Parliament for over 300 Sikhs from all over Europe in January 2013.

3. WELCOME

The Vice-President of the European Parliament, Dr Laszlo Surjan, who had invited the conference to hold its first session in the Parliament Building began by apologising to the participants, especially the members of the Sikh community, for the administrative error which had led to the exclusion of Harjinder Singh from proceedings. He emphasised that it provided an excellent example of why the work of ENORB as a European Network on Religion and Belief in bringing together members of religious and non-religious organisations is so important. The Directives on Employment and Equalities were an essential part of the struggle for freedom of religion and belief, and he welcomed the initiative of holding a seminar on the implementation process in member-states.

He also pointed to the launch of the new European Parliamentary Group on Freedom of Religion and Belief as a group with similar aims to ENORB to encourage discussion of these issues between the full diversity of European beliefs. The most important learning experience from his own period as vice-president in charge of religion and belief issues, was that it was possible for atheists and religious leaders to have such discussions without the debate becoming angry or conflictual. He urged members of all religious groups to be committed to fully open and free discussion of all difficult issues, especially Muslim groups, where some seemed unwilling to allow such liberty at all times, and he wished the conference well in all its deliberations. Dr Surjan then answered questions, responding in particular to an intervention from Bashy Quraishi, of ENAR, on the traditional diversity and liberty of thought in Islam, on the current engagement of Muslim scholars with the current European philosophical context.

4. SESSION 1 – RELIGION AND BELIEF, EU LAW AND EQUALITIES

Keynote Speech 1: New Legal Developments: Lucy Vickers
(NOT ATTACHED)

Keynote Speech 2 - New Challenges, New Paradigms: Marco Ventura

EU law on religions is based on two pillars. The first pillar is constituted by fundamental rights, including equality. The second pillar comprises, on the one hand, the balance between national priorities and the EU initiative and on the other, the rights of churches, religious associations or communities, philosophical and non-confessional organizations to entertain a dialogue with the Union (based on Article 17 TFEU).

This structure reflects the gradual European construction of a free circulation-based single market combined with an area of justifiable fundamental rights and equality. In the Cold War setting European integration served the advancement of religion and mobilised religion as a powerful resource against the communist world. The promise of the free world to religious actors that faced persecution beyond the Berlin wall superseded three patterns of opposition and competition that featured prominently in the picture, but remained somehow invisible: (i) between religion and secular consumerism; (ii) between religious majorities and minorities; (iii) between national and European interests, over control of the religious domain.

After the collapse of communism, the Darby (1990), the Kokkinakis (1993) and the Preminger (1994) decisions delivered by the European Court of Human Rights announced a new challenge, which has emerged in the following two decades. In the new challenge, the three patterns of opposition (between the religious and the secular; between religious majorities and minorities; and between the national and the European) are paramount. Experts have simplified and codified these three patterns as the illustration of their clear vision and efficient knowledge. Actors have adopted them as formidable tools to protect and advance their respective agendas.

Responding to the challenge, the erection and consolidation of the two EU pillars has resulted in two simultaneous and contradictory outcomes. On the one hand, the EU law and policies on religion acknowledge and celebrate the three patterns of conflict. On the other, the rich and vibrant interaction of law, politics and religion in the European space exposes everyday that the three patterns are far from portraying let alone governing an unruly reality. The gap between the dominant narrative (and action) based on the three patterns of opposition, and the real dynamism of European societies beyond the boundaries between the religious and the secular, majorities and minorities, and the national and the European, has a paralyzing effect: rhetoric can prevail over actual issues, illusions on projects. Legal and political tools are powerful in theory but weak in practice. The struggle over equality and non-discrimination illustrates how an older paradigm can end up hijacking vital principles. Equality is not valued and enhanced for its contribution to the project of an open European space of freedom and justice, but is exploited for the sake of particular strategies and agenda.

This paper suggests that a new paradigm is needed. It advocates the de-mystification of the three patterns of opposition and suggests that a fresh look is possible, based on three assumptions:

i) while many actors or groups of actors aim at appropriating "the religious" or "the secular" in order to stand as the self-appointed exclusive representative of one or the other, as a matter of fact in a plural Europe, neither the 'religious' nor the 'secular' are monolithic. Nor can either be clearly identified as squarely opposed to each other. Religious interests and strategies, theologies and politics are not univocal. They are often divided and in opposition, even within the same faith and the same denomination;

ii) while the interests and fears of religious majorities are the key element in the opposition to the counter-majoritarian role of courts and to the advocacy of minority rights, the distinction between majorities and minorities is increasingly devoid of sense on the European scene. Minorities can be majorities in certain geographical areas or social spaces. Majorities are often reduced to a big social minority, or are themselves made up of internally conflicting, dissident minorities;

iii) the opposition between the 'national' and the 'European' is no less artificial and distant from the social practices and the political dynamism of Europe. Governmental activism in upholding specific denominational interests cannot be confused with the 'national' per se. For, however `influential, the construction of national identities as a given represents a very partial interpretation of the interaction between local communities, nations and states in Europe. The 'European' sphere is also an extremely diverse and evolving universe, which cannot be seized through a rigid and formalistic approach to either the European courts, the Council of Europe or indeed the EU itself. Contrary to the dominant narrative that states have defended themselves against omnivorous European bureaucrats and judges, the opposite has often been true: that national and religious actors used Europe to advance their agenda.

Based on a more accurate and de-mystified recognition of the reality of the European context for religion and belief, it is possible to use the new intellectual paradigm described above as a more sensible basis for operating legal tools and policies applying to:

i) interaction between local actors, member states, and European institutions in the field of religion, as compared with the action of non-governmental and global actors;

ii) the legislative process as it impacts directly or indirectly on religion and belief, which would demand a fresh approach to the myth of the so-called lack of competence of the EU in the field of religion and belief;

iii) the shaping of public policies impacting on religion and belief, as interplaying with the outcomes of private litigation and the unintended effects of the legal construction of Europe;

iv) the dialogue with religious and non-religious actors as well as interfaith and ecumenical dialogue, which demands a fresh approach to marginal and minority groups (eg Scientology or dissident groups within the mainstream and new European religious traditions);

v) the elaboration of a European external religious policy driven by support to persecuted religious and non-religious minorities on the global scale, based on the advocacy of the fundamental right of freedom of religion and belief as a means towards the building of peaceful international relations in a global world.

This paper is based on my previous works in the field. See in particular: *Law and Religion Issues in Strasbourg and Luxembourg: the Virtues of European Courts*. Conference Paper for the Research Project Religio West, European University Institute (November 2011, available at the website of ReligioWest).

5. SESSION 2 – IMPROVING IMPLEMENTATION: PERSPECTIVES FROM ACADEMIC AND ACTIVIST PROJECTS

5.1 Religare Project. Employment Law and Religion and Belief: Lessons from a 10-nation project: Katayofv Alidadi

The growing religious diversity in European societies poses important policy challenges in various domains of social life. The new religious landscape means that European states not only have to cope with inhabitants with varying commitments to Christianity as well as with humanists, agnostics, atheists, and Jewish and/or Muslim minority populations, but in many instances also with a 'super-diverse' range of other religious cultures and traditions which have entered Europe by way of immigration and conversion. Challenges with the position of Islam have been most visible, prompting a number of states to adopt restrictive measures on religious dress, family life and places of worship.

Issues related to religion and belief have become increasingly topical in Europe's **workplaces**, illustrating that the idea that religion or belief should remain confined to the private lives of individuals is untenable in present day Europe. This paper addresses the particular role of reasonable accommodations for religious beliefs and practices in this regard. Considering the often problematic socio-economic status of ethno-religious communities (e.g. low participation rates, high unemployment, occupational segregation) it is justified to consider law and policy practices and instruments that work towards a more substantive notion of equality.

At a time when economic growth is of the utmost importance in the EU, policy tools that work towards creating an inclusive labour market, and which fully take advantage of the skills and talents of its (ethno-religiously) diverse population, should be adopted. In doing so, these **policies must look beyond formal equal treatment and work towards creating a more substantive equality.** While under *formal* equality, the focus is on identical or similar treatment *irrespective* of particular personal characteristics including religion, under *substantive* equality context-relevant religious or belief-based identities, beliefs and practices of employees *are* sometimes to be taken into account.

Religion or belief: an important *issue* in the European workplace

The large majority of workplace tensions or conflicts do not escalate into legal conflicts, but rather are dealt with at the local company level, whether or not they are satisfactorily addressed for all parties. Still, public debates on the presence of religious and cultural symbols at work, including as displayed by teachers in public schools, have taken place in Belgium, Denmark, Germany, France, the Netherlands and the UK and have already resulted in a number of judicial cases involving the role of religious beliefs, practices and observances in a variety of workplaces (private, public, faith-based organisations,..). In Bulgaria and Italy, such cases have not yet reached the courts while in Turkey and Spain cases remain rare. Judicial cases have predominantly involved employees of minority religions such as Muslims and Sikhs, but there are also cases involving Seventh-day Adventists and devout Christian employees. The following provides some illustrative cases:

a. Religious symbols and dress/grooming:

- A female Muslim receptionist was dismissed for seeking to wear a headscarf during work hours (Belgium: Antwerp Labour Court of Appeal, 23 December 2011);

- A female Muslim doctoral researcher's financial stipend was retracted because she – as a civil servant- wore a headscarf when conducting research at the University (France: Administrative Court of Toulouse, 17 April 2009);
- A Christian airline check-in assistant was dismissed after she sought to wear a necklace with a large crucifix at work (the UK: *Eweida v. British Airways* [2010] EWCA Civ 80);
- A Sikh hotel employee was dismissed for wearing a turban and growing a beard (the Netherlands: Kantonrechter Amsterdam 24 January 1986);
- A female Muslim nurse was fired by a hospital because she sought to cover her elbows (and particular hygiene standards justified a sleeveless uniform) (the Netherlands: Civil Court 's-Hertogenbosch 13 July 2009);
- Female Muslim teachers have been dismissed for wearing a headscarf in the classroom (ECtHR: *Dahlab v. Switzerland*; Belgium, France, Germany)
- Female Muslim store clerks have been denied jobs or dismissed by grocery stores because of their headscarves (Denmark, Belgium, France).

b. Requests for time off to observe religious duties or holy days:

- A Seventh-day Adventist employee was dismissed for absenting himself on the Saturday Sabbath (EComHR 3 December 1996, *Konttinen v. Finland*);
- A Muslim public teacher was denied a limited amount of time off to be able to participate in collective Friday prayers (EComHR 12 March 1981, *X. v. United Kingdom*).

c. Exemptions of certain job duties that contradict religious or philosophical beliefs:

- A Muslim (higher education) teacher refused to shake hands with female students/colleagues (the Netherlands: District Court of Rotterdam, 6 August 2008);
- A Muslim grocery store clerk asked not to have to handle or be in touch with alcohol (Germany: Federal Labour Court, 24 February 2011);
- A Christian marriage registrar asked not to have to officiate over same sex partnerships as this ran counter to her religious beliefs (The UK: *Ladele v London Borough of Islington* [2009] EWCA Civ 1357).

Indirect Discrimination

The Employment Equality Directive defines indirect discrimination as "**an apparently neutral provision, criterion or practice** [which] would put persons having a particular religion or belief (…) at a **particular disadvantage** compared with other persons." Such provision, criterion or practice can be justified if there is a legitimate aim and the means of achieving that aim are appropriate and necessary.

Many member states have adopted this definition, sometimes word for word. Cases involving indirect discrimination often reveal **structural or implicit barriers** which previously went unnoticed and unchallenged, thus making the concept an important tool in addressing structural inequalities and barriers to participation.

Reasonable Accommodation

The Employment Equality Directive does **not explicitly** include a right for employees to request reasonable accommodations from their employers or labour unions on the basis of religion or belief in the workplace. The concept was introduced in the Directive but was limited to the ground of disability. Only a limited number of member states have included

(some) rights to reasonable accommodations for religious beliefs or practices or similar measures:

- Art. 13 (2) of the 2004 Bulgarian Protection Against Discrimination Act provides that employers have a duty to ensure working conditions **in terms of working hours and days of rest** in accordance with an employee's faith as long as this "would not result in excessive difficulty for the organisation and implementation of the production process, and where there are possible ways to compensate for any potential unfavourable consequences of this on the overall production outcome."
- in Spain, the Cooperation Agreements between the state and the Evangelical, Jewish and Islamic communities recognise the rights of employees adhering to these religions to celebrate their religious holidays but require that an agreement is reached with the employer.

With respect to the European setting, we need to look at how the prohibition of (in)direct discrimination is interpreted and applied in religious discrimination cases. In the Netherlands and Germany, something closely akin to a duty of reasonable accommodation arguably already exists under the current legal framework:

- Several Dutch employment cases consider and evaluate the efforts of employers to look for alternative solutions to keep the employee on the job.
- A German Federal Labour Court decision held that the dismissal of a Muslim employee from a supermarket because of his refusal to work with alcoholic drinks would be invalid if there was other employment available for the employee (e.g. a transfer to the fresh food department). But this is not necessarily the case in Belgium, where courts have explicitly stated that it would be pointless to look into whether the parties considered a possible transfer of the employee to another position since "there exists no duty of reasonable accommodation." The same can be said with regard to Denmark, France and Turkey. It is clear that these contrasting approaches affect the availability of adequate employment opportunities for religious minorities across member states. An individual's religious beliefs or practices such as dress can (sometimes starkly) reduce the range of employment opportunities they are able to accept in certain countries but not in others. The adoption of an explicit duty would thus have significance.

NB. Some legal experts argue that if interpreted 'dynamically' the prohibition of indirect discrimination already includes a right to reasonable accommodation of deeply-held beliefs and religious practices. The freedom of religion can also require positive steps to realise the effective exercise of the fundamental right.

Is there an 'added value' for employers and employees to adopting an explicit duty of reasonable accommodation for religion or belief?

The concepts of indirect discrimination and reasonable accommodations are interrelated, but there are some important differences.

Although a successful claim of indirect discrimination does not require an *actual c*omparator (a hypothetical comparator is accepted), a *group* disadvantage is required. Also, the open justification system under EU law allows for (widely) divergent decisions/outcomes in very similar cases, within the same legal system but particularly

across different member states with divergent Church-Religion arrangements and histories. These are two differences with the reasonable accommodations framework, which concentrates on the **situation of the individual employee** requesting an accommodation and **shifts the burden** of demonstrating the required hardship in offering such accommodation to the employer.

A more subtle yet important **difference between discrimination and accommodation** lies in the more intuitive nature of accommodation versus the more complex legal concept of indirect discrimination. Also, a discrimination allegation could have a more disparaging effect on the employment relations as it carries an undeniably pejorative implication. Accepting the idea of reasonable accommodations, however, entails a mentality switch with regard to the role of religion in the workplace and in the lives of employees. *School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970. Consequently, the meaning of 'undue hardship' -determining whether or not an accommodation is reasonable- is not self-evident but rather to be determined in the relevant jurisdiction.

I. For EU policy makers

- Amend the Employment Equality Directive to add a right for public and private employees to request reasonable accommodations on the basis of religious beliefs, practices and observances, unless this results in a demonstrated disproportionate burden or cost on employers.
- Track the legislative and judicial implementation of the Employment Equality Directive, in particular available national case-law applying the prohibition of discrimination on the basis of religion or belief. Develop a coherent and clear policy in addressing national decisions or developments that defeat the purpose of anti-discrimination norms.
- Include the aspect of *religious and philosophical* diversity more clearly in the EU's discourse on the value of diversity.
- Adopt explicit strategies accommodating EU employees from diverse religious backgrounds, promoting such strategies in other public and private workplaces through example.
- Create or encourage platforms for exchange of good business practices accommodating request for religious accommodations and promote these national or cross-national practices across EU member states.

II. For national governments

- Adopt national legislation giving employees a legal right to request reasonable accommodations for religious beliefs, practices and observances in public and private workplaces, unless such would impose a demonstrated disproportionate burden or cost on employers.
- Establish an advisory service ('helpline') for employers and other decision-makers with questions about religious accommodations in various work settings, possibly operated by an equality body.
- Encourage the inclusion of workers from diverse religious backgrounds in the workplace through a variety of policy-tools: e.g. encourage and incentivise company diversity plans which also touch on *religious* diversity, address legitimacy of company 'neutrality policies'.

III. For local governments, trade unions, equality bodies, NGO's

- Demystify the concept of indirect discrimination using information campaigns and informational resources directed at employers and employees. Voluntary accommodations that help employees reconcile professional and religious duties and do not cause any organisational hardships should be offered as good examples.
- Educate labour market stakeholders and the general public on common religious practices and observances of religious minorities in the country.
- Emphasise the unacceptability of disadvantaging, negative treatment or discrimination of employees on the basis of their religion or belief as well as their religious or philosophical practices and observances.

2. Combating Discrimination: Experience from ENAR/EMISCO: Bashy Quraishi

Today, according to Euro-barometer, there are nearly 30 million people with non-European roots living in Europe. Their socio-economic conditions are below average. Although these ethnic and religious minorities in Europe come from all over the world, and have diverse social standing, cultures and religions, when Europeans talk about failed integration, they are directly and indirectly referring to people with Muslim background as well as Africans. To this, we can add 8 million Roma who are actually European with Indian roots.

Whichever way one looks at the present European continent, one can hear, see and read a very frightening trend emerging in political, social, legal and public fields. To top it all, media is playing a special role, not only to spread prejudices but also fan the flames of racism by its irresponsible coverage by focusing on group ethnicity, cultures, religions and traditions of minorities. Every individual of non-European background is considered as a representative of its group.

Looking at discrimination and racism in a wider historical context in Europe, we can see that from the 1957 Rome Treaty, until the signing of Amsterdam Treaty of 1997, there was not a single word in any agreement, treaty or directive concerning racial discrimination or any legal protection in labour market, in social and health services, in housing, in education or violence against immigrants and refugees.

Combating of discrimination became only possible with the signing of Amsterdam Treaty, which included a NGO-proposed anti-discrimination clause Article 13 and later the 2 Equality Directives of 2000 as well as setting up of ENAR with the help of EU Commission in 1999. Since then, EU Commission and to a lesser extent, EU Parliament has been very active in promoting equality, non-discrimination, human rights, freedom of movement for non-EU citizens in Schengen area and advocating diversity and inclusion in EU. Unfortunately, these praise worthy steps have been almost nullified by the unwillingness of member states, who are not very keen to protect non-European minorities. They drag their feet for years in the process of including anti-discrimination directives in their laws and even then implement the directives at the minimum level.

The events of 11thSept 2001 actually reinforced the anti-minorities and anti-Muslim mindset among the politicians who successfully linked terrorism and security to the failed multi-culturalism and lack of integration. This way of reasoning helped to scare people,

and justify even more restrictive visa policies, asylum laws and laws against family reunion, against civil liberties and human rights of ethnic and religious minorities. So we are back to square one, with one marked difference. Discrimination and racism has now moved from ethnicity and race to culture and religion. It is now; US versus Them, West against Islam, democracy against Islamism and terrorism contra security.

ENAR has been trying to mobilise anti-discrimination activists, co-ordinate NGOs and appeal to progressive forces in EU as well as lobby the Commission and Parliament to be more vigilant against the rise of fascism, ultra nationalist movements and guard against extremism of all types. There are signs that EU institutions are also worried about the rise of anti-Semitism and Islamophobic trends, which are usually disguised behind the notion of free speech and preservation of western values. NGOs are also battling to remind the authorities that anti-discrimination should not be put on hold to please the voters. Europe cannot afford to turn its back on the notion of a true inter-cultural and inter-faith continent because that would go against humanity and democracy.

Working Together across the Divides: Education: Richy Thompson, British Humanist Association

We in the British Humanist Association very much welcome this Conference's agenda. I've been asked to talk about education, and unsurprisingly I'm going to primarily talk from the BHA's UK perspective but will also compare and contrast the situation here to how it is elsewhere. The specific areas of the BHA's education work that I am going to focus on are faith schools, Religious Education and Collective Worship, all within the state school system.

We work together across the divides with many religious groups on education, such as the Religious Education Council for England and Wales, the further education group All Faiths and None, and the Accord Coalition, which campaigns for inclusive education. I'll come back to these groups as I go.

As some background, the UK passed its Equality Act in April 2010. This implements the European Employment Directive and also precludes direct and indirect discrimination, harassment and victimisation across nine different equality strands and in a wide range of different contexts. However, there are many exemptions and this is particularly true when it comes to faith schools. In the UK, one third of state schools are faith schools, and these are very almost 100% state funded.

For admissions, an exemption means that if they have more applicants than places, they can choose pupils on the basis of faith, considering parental attendance at Church, and whether the children have been christened or baptised. Schools cannot select on the basis of race or income, but there is strong evidence that faith school admissions inadvertently contribute to segregation in both of these areas as well. Religious selection by state schools is also possible in Ireland and the Netherlands, and in many other member-states.

Whether such arrangements are compatible with the European Convention on Human Rights is debatable. A report published last September by the UK's Equality and Human

Rights Commission[1] said that 'One concern identified in this research relates to the necessity and proportionality of faith-based admissions policies', going on to state that whether such arrangements are compatible with article 2 of protocol 1 (right to education) and article 14 (prohibition of discrimination) is an 'unresolved issue'. In 2010, the UK Parliament's Joint Committee on Human Rights concluded that the 'the exemption permitting faith schools to discriminate in their admissions on grounds of religion or belief may be overdrawn'.

Turning to employment, the European Employment Directive obviously limits religious selection of staff to where there is a genuine occupational requirement. However, in the UK faith schools have an exemption from this limitation, and are usually able to religiously select all of their staff. In April 2010, we complained about this to the European Commission, and our complaint was joined by some from the National Secular Society in May the following year. Last summer, the Commission decided to start a formal investigation on the matter, and we hope that this will limit things.

The Commission recently told us that there have been no other complaints about breaches of the Directive on religion or belief, but we know such issues are widespread. For example, just considering education, in Malta you cannot be a primary school teacher without the approval of the local parish priest. I believe Slovakia has a similar situation. Perhaps the following example is not a breach, but in many countries it is the Church that employs the priests who teach RE, which is confessional. This is true in Spain, and we saw in a case last year[2] that the Catholic Church's freedom of religion trumps such priests' right to be able to marry under article 8 (right to a private life).

Speaking generally, there is obviously a conflict between wanting to provide a diversity of types of religious school, and ensuring any one school is inclusive. We want to move from the former to the latter. And we work across the religious divide to achieve this aim: one organisation we are members of is the Accord Coalition, a broad coalition of organisations and individuals founded in 2008 that includes Christian, Muslim and Hindu groups, alongside teachers unions and human rights groups, and is chaired by one of the UK's most prominent Rabbis. Accord also works on the curriculum issues I'll now turn to.

England and Wales is unique in requiring all state schools to have a daily act of Collective Worship. In schools that are not faith schools, this must be mainly or wholly Christian. Parents can opt pupils out of such worship up to the age of 16, at which point the rights transfer to the child. But opt outs are plainly inadequate, with children often being discriminated against by their peers, or missing out on school notices. Schools do not have to provide an alternative activity for pupils and so often children are forced to sit outside the hall in the corridor. This seems to me to raise issues with article 2 of protocol 1.

So far we have considered examples of where we see there as being continuing sources of division which we are struggling to alleviate, and where implementation of the Convention and Employment Directive needs to be improved. But let's finally turn to where we've had

[1] *Religion or belief, equality and human rights in England and Wales*, Alice Donald, with the assistance of Karen Bennett and Philip Leach:
http://www.londonmet.ac.uk/fms/MRSite/Research/HRSJ/Publications%20&%20reports/EHRC%20Religion%20%20Report%20300812.pdf

[2] Fernandez-Martínez c. Espagne, http://www.zenit.org/en/articles/significant-victory-for-freedom-at-european-rights-court

more success in 'working together across the divides' towards inclusivity, namely in Religious Education.

Faith schools usually can teach RE in line with the tenets of their faith, but some faith schools and all other schools teach about different religions from a comparative perspective – and, increasingly, about non-religious beliefs as well. The uninclusive subject name is statutory and so, unfortunately, the name is unlikely to expand to cover belief any time soon, but nonetheless such teaching is now more common than not, with national guidance recommending the inclusion of the teaching of Humanism. The BHA, for its part, has also been a member of the subject body, the Religious Education Council, since it was founded in 1973, and our Chief Executive is currently a Director of the Council. We have also been involved, in other initiatives such as All Faiths and None at the further education level, and it is notable that the recently retired Archbishop of Canterbury, Rowan Williams, is supportive of the teaching of Humanism in schools.

This is in stark contrast to the approach taken elsewhere. Most countries do not teach about non-religious beliefs, but others which do so have instead opted to provide different options for different students, with an ethics class for the non-religious. To give some examples, this approach is employed in Belgium, the Netherlands, Norway, parts of Germany, and, from last year, in Malta.

So there are a diversity of issues and approaches and I have only been able to touch on some of them in the limited time I have available, but I hope this gives you a flavour of where the potential issues are and what different approaches can be taken on inclusivity and diversity.

Grassroots Action: Tinci Singh

Secularism and its effect on religious minorities

What is the main core of secularism and in what ways does it, and should it, structure public life? There were diverse opinions on these questions that illustrated the ongoing international and national debate on this issue. Where some put emphasis on secularism giving freedom to all religions to exercise their belief in the public sphere, others believed that, in order to uphold the neutrality of a state, secularism can legitimately justify restrictions on the exercise of religions in the public life.

In recent years the supporters of the last group seem to be in a majority. For members of the Sikh community this development has been followed with great concern. Even though in the UK Sikhs are able to practice their religion publicly without serious problems, there have been a few alarming developments. To give an example, in 2010 the European Commission adopted a regulation in which the walk-through metal detection and the hand search have become the primary methods of screening passengers in airports. In practice this means that if the walk-through metal detector bleeps, Sikhs travelling from EU member states airports will be subjected to a hand search of their turban. For Sikhs, the turban is their pride and is carried as a mandatory part of their religion; therefore, hand search of a turban is perceived by Sikhs as very humiliating.

Fortunately, the British government has understood the sentiments of Sikhs and reverted back to scanning methods, as they took place before the Regulation entered into force. However, in other European airports Sikhs are still subjected to this humiliating treatment.

In Poland, for instance, several Sikhs have complained about the discriminatory treatment they received during the security screening at the airports. For instance, one Sikh man in Poland was told to remove his turban in public while he was intimidated by four gun-holding security officials and called a terrorist.

Sikhs outside of the UK are also facing other difficulties when it comes to the exercise of their religion in the public sphere. In France, for instance, a ban on all religious symbols in schools has made it impossible for Sikh children to exercise this aspect of their religion. Since the turban is a mandatory part of the Sikh religion, children going to French schools are deprived of their identity as a Sikh. At a very young age they are forced to choose between their education and their religion. Many of these children decide to cut their hair or keep their unshorn hair uncovered, which is also contrary to the Sikh belief.

France, as a secular state, is motivated in this ban by the desire to keep religion strictly separated from their state and by the principle of *laicite*. However, it is questionable why a state that has been secular from its inception suddenly 'wakes up' and decides to institute such a ban. Most probably, 9/11 and the fear for Islamic extremism have inspired the French government to take such a decision. Sadly, this development is also taking place outside of France. In 2010 a Flemish (Belgian) school group has instituted a similar ban on religious symbols in their schools. The legality of this ban has been questioned by *UNITED SIKHS* and is presently being examined by the Belgian Council of State.

These developments illustrate that some current interpretations of secularism are threatening Sikhs in their exercise of their religion in the public space. My observation on secularism has been very well described in the words of Baroness Warsi who stated: "My fear today is that a militant secularisation is taking hold of our societies... At its core and in its instincts it is deeply intolerant." I share her concern and fear that, if this trend continues, the identity of religious minorities, such as the Sikhs, will fade away...

6. SESSION 3 – RELIGION AND BELIEF PRIORITIES IN EUROPEAN REGIONS

Eastern Europe: Renata Uitz

Lessons on Access to Legal Entity Status for Religious Communities for Europe: Hungary's New Religion Law Faces Repeated Challenges

I. Introduction

In Hungary, the legal regulation of the collective aspect of freedom of religion, especially access to legal entity status for religious communities, underwent major transformation in recent years. The constitutional reform of 2011 resulting in a new Fundamental Law for Hungary was used as a foundation for further legislative changes to take effect in 2012. These new legal rules completely redefine relations between the state and those churches the state prefers to cooperate with. This profound transformation of the constitutional and legal framework was made possible by a conservative-Christian majority led by the FIDESZ party which won a two-thirds (constitution-making) majority in Parliament in the 2010 elections. The new rules apply to all religious communities which had been registered as churches under the previous law of 1990. As the new legal rules affect previously acquired rights of religious communities to legal entity status, the impact of the new regulation would be difficult to underestimate, so the opposition to the new law on churches is not a major surprise.

Shortly after the new Fundamental Law was adopted in 2011, to entrench its provisions Parliament enacted the first cardinal law on churches in the summer of 2011. After challenges from the Constitutional Court by February 2012 32 churches had been recognised by Parliament with an amendment to the new church law, while on the same day Parliament refused to recognise 66 previously registered churches without offering any reason for its decision. In March 2012 the Venice Commission raised concerns about the new Hungarian law on churches. Around the same time, Commissioner Vivienne Reding responded to a question of MEPs in the European Parliament promising to look into whether the provisions of the new Hungarian church law are in line with EU anti-discrimination rules.

In late December 2012 the Hungarian Constitutional Court rendered two important decisions which undoubtedly affect the constitutionality of the 2011 law on churches under the new Fundamental Law. Firstly, the Constitutional Court found the substantive articles of the Transitional Provisions of the Fundamental Law—among them the rules on churches and church-state relations—unconstitutional. This decision therefore removes the basis which was enacted by Parliament in late December 2011 as a foundation for the much contested procedure of church recognition established by the new law on churches. Secondly, in a decision where the Constitutional Court found the law on the protection of families unconstitutional, the Court emphasized that the level of protection which was afforded to fundamental rights under the previous Constitution cannot be diminished by statutes enacted under the new Fundamental Law. While the later decision does not affect the validity of the new cardinal law on churches directly, it points into the direction of

potential relief from the Constitutional Court for those religious communities which lost their previously obtained church status under the new law.

Offering further insight on the above developments, this article will summarise the most important features of the new Hungarian church recognition regime, its constitutional basis and legislative history, and the challenges mounted against it. While the fate of the new Hungarian law is far from resolved, the developments of 2012 alone warrant a closer look at the Hungarian case: these developments paint a picture about whether the emerging European minimum standard on an important collective aspect of religious liberty (i.e. access to legal entity status for religious communities) has sufficiently solidified to keeping
national political actors at bay.

II. What Did the 2011 Law on Churches Change Exactly? 14 + 18 Lucky Winners, and at Least 66 Unfortunate Losers

Shortly after the new Fundamental Law was signed into law, the first cardinal law was enacted to entrench its provisions on freedom of religion and state-church relations. This cardinal law—among many other new statutes adopted on key issues during 2011—was meant to enter into force on 31 January 2012 together with the new Fundamental Law, as if to mark the entry of a new era. This first law on churches, however, was withdrawn by Parliament before it entered into force, and was replaced by an essentially identical law on churches later in 2011. In cold numbers, by February 2012, the Hungarian Parliament recognized 32 churches in two rounds, and clearly refused to recognize the church status of another 66 previously properly registered churches.

A. The Making of the First Law on Freedom of Religion and Churches in 2011

As already mentioned, the new law on freedom of religion and churches was meant to replace the first post-communist law on churches, adopted in 1990. Under the 1990 law 100 persons could request the registration of a church from a court of law, showing a charter of operations with a self-governing organisational structure, and a declaration that the founders intended to pursue a religious activity. During the two decades when the 1990 law had been in force over 300 religious communities were registered as churches in Hungary.

The cardinal law on the freedom of religion and churches was among the very first ones adopted under the new Fundamental Law. The reason for the rush is not entirely easy to trace, as the 1990 law on churches has not been a subject of major public concern in the recent past. Nonetheless, by the autumn of 2010—around the same time that the making of the new constitution was starting to catch up—the fight against 'business sects' became a prominent topic in the Hungarian media. In early 2011—i.e. before the new Fundamental Law was passed and ratified—the Secretary of State in the Ministry of Public Administration and Justice, Laszlo Szaszfalvi promised a new church law, indicating that the optimal threshold for registration would be at 10.000 founding members. The concept of the new law arrived in the spring of 2011. According to Secretary Szaszfalvi the aim of the new law was "to reinforce communities which engage in credible church and religious activities, and to remove from the scope of the law those organizations which were formed expressly for business purposes." In a refined version of the concept, Secretary Szaszfalvi announced in early April 2011 that under the new law the Catholic, the Reformed, the Lutheran and the Evangelical churches, as well as the Unitarian and the Orthodox communities would be recognized as historic churches. In addition, he clarified

that "[h]istoric churches will be expected to have a nation-wide institutional network of public service, for which they will continue to receive public funding." After amendments churches which have operated in Hungary for at least 20 years and have at least 1.000 founding members would be registered not by a court of law, but by a qualified majority vote of Parliament upon the initiative of the responsible minister. The appendix to the law in its final form listed 14 churches recognized *ex lege*, while the others—among them Christians, Buddhists and Muslims—were required to seek re-registration with a qualified majority of Parliament upon the entry force of the law in January 2012. Formerly registered churches which did not receive re-registration were meant to continue as associations.

In the summer of 2011 the churches and religious minorities which were not recognised took various steps. Some, like the Hungarian Evangelical Brotherhood, petitioned both Parliament and the Minister of Justice, urging the amendment of the new law. Many others petitioned Parliament for their recognition before the entry into force of the new law.

Church status *may* be granted by Parliament to an association upon the request of 1.000 applicants and after 20 years of presence in Hungary or 100 years of operations internationally. All previously registered churches are transformed into so-called religious associations and have to seek recognition under the new law if they intend to preserve their church status.

In February 2012, after the rejection of the initial law by the Constitutional Court and many months of legal and parliamentary conflict Parliament adopted an amendment to the cardinal law on churches, adding another 18 names to the list of 14 "acknowledged churches". On the same day in a resolution Parliament refused to recognise the church status of some 66 previously registered churches without providing any reasons for the refusal. Some of the 18 newly recognised churches clearly did not meet the statutory criteria for church status, as they undisputedly did not appear to have 1.000 believers in Hungary.

When recognizing the Anglican Church, the chairman of the human rights committee of Parliament openly admitted that the motivation for the decision was that four ambassadors belong to the church. When recognizing the Coptic Church, the same chairman reasoned that in order to prevent the persecution of Christians in the world, it was important to recognise the oldest Christian churches and also the churches of world religions, in the hope of reciprocity in international relations. Still, the Taoist and the Hindu *Vaishnava* community did not receive recognition, although their inclusion would follow from this logic.
At the same time, some churches which were turned down do satisfy statutory conditions. The Hungarian Evangelical Brotherhood, although it undisputedly met the statutory conditions, was turned down at this time, with the committee finding that they can apply next time—in the round when Parliament is not taking discretionary decisions—and follow the recognition procedure (complete with popular initiative) as prescribed by the new law.

In short, the experience of this first round of recognition decisions makes it clear that the decision of Parliament to grant or to refuse recognition is not only discretionary, but is also essentially the outcome of a purely political bargaining process. It is not an exaggeration to say that the procedure as envisioned and as applied makes the religious communities'

access to legal entity status entirely dependent on the whims of the political majority of the day.

B. From a Rights-based Approach to a Discretionary One: The Return of the Sovereign

In the round of amendments in February 2012 it was argued in Parliament that when amending the cardinal law to the effect of recognizing further churches Parliament took discretionary decisions based on political considerations, and it purposefully did not follow the process for church recognition in the new cardinal law. Furthermore, it was confirmed in the Parliamentary debate that the conditions for church recognition as prescribed in the new cardinal law do not grant church status to religious communities as a matter of fundamental rights; instead, Parliament retains its discretion in granting church status even if an applicant clearly meets the statutory criteria.

The view according to which Parliament essentially takes discretionary decisions on church status had been an underlying theme throughout the entire legislative process of 2011. When introducing the last minute amendments of the first bill in the summer of 2011 to make the registration of churches the task of a qualified majority in Parliament, the faction leader of the governing party, Janos Lazar (FIDESZ/Alliance of Young Democrats) justified this solution—which was ultimately adopted—by submitting that similarly to the recognition of national minorities, the recognition of churches was an act of sovereignty. Faction leader Lazar continued by saying:

You should not delude yourselves by trying to transfer the responsibility for the decision to judges, because you are the ones who make the law on the basis of which the judges will decide who is a church and who is not. In 1990 the law on the basis of which it was determined who is a church and who is not [sic] was also made by deputies in Parliament. This time we will make this law, and the responsibility is on us, whether we are ready to name in concrete terms who do we find as worthy and befitting for church status in 2011, or whether we are not . . .

Why could we not offer to churches, depending on whether the government concludes an agreement with them or not, to decide whether they want to maintain their church status, or not, as this will not prevent them from exercising their freedom of religion. This law opens the way for them to exercise their religious freedom. This much you have to admit. I believe that it is much more transparent, more open; and—starting from the responsibility we have towards national minorities—I believe that following from their oath all members of Parliament are willing to undertake the responsibility for churches, to take decisions in the case of people who wish to exercise their religious freedom.

Although in the Parliamentary debate the recognition of churches was likened to the recognition of national minorities, the recognition of national minorities does affect the exercise of state sovereignty to the extent that under the new Fundamental Law national minorities ("*a velunk elő nemzetisegek*") qualify as constitutive parts of the state and the political representation of national minorities has remained a component of Hungarian representative democracy under the new constitution. In contrast, churches have never been envisioned as constitutive parts of the state under any modern Hungarian constitution.

More generally, in this logic freedom of religion is granted to communities of believers on the basis of their commendable qualities and contributions, depending on the government's assessment. The basis of this exercise is detached from freedom of religion as an individual right, and depends on the decision of the government to conclude a concordat, and ultimately, on the decision of Parliament to grant or deny church status. In this logic, therefore, it is the government or Parliament (thus, ultimately, of the sovereign) that distributes a privilege to practice freedom of religion, pending further qualifications.

III. The Constitutional Framework: On the Old Wine and the New Cask

Although the provisions of the new Fundamental Law on freedom of religion and state-church relations do not differ that much from those of the previous, 1989 Constitution, as an afterthought the new constitution was supplemented by some last minute Transitional Provisions which clearly create a legal basis for distinguishing between privileged churches and other religious communities. References to the historical traditions of the nation and social support for certain religions became the new criteria for regulating state-church relations in the Transitional Provisions. Not surprisingly, in the Parliamentary debates on the second and final law (on the point that in regulating state-church relations Parliament is taking a discretionary sovereign decision), such terminology was on churches' insistence quickly supplemented by references to conform to the social role of certain churches.

A. The new Fundamental Law and its Transitional Provisions: What Is New since the 1989 Constitution?

The Fundamental Law of Hungary in its chapter entitled "Freedom and responsibility" guarantees the right to freedom of thought, conscience and religion as an individual right prohibits discrimination on the basis of religion, and also provides for the continued separation of church and state. In addition, the new Fundamental Law makes the regulation of state-church relations subject to a statute passed with a qualified majority (a so-called 'cardinal law').

There are two significant differences in comparison to the previous, 1989 Constitution, which signal a fundamental shift. The new provision on separation of church and state proclaims that the "state shall cooperate with the churches for community goals." As the cooperation requirement was absent from the 1989 Constitution, the new provision suggests a shorter distance than envisioned in the early days of transition to democracy. It remains to be seen, however, if the Constitutional Court will find this difference to be more than a question of drafting style. In its decisions under the new Fundamental Law the Constitutional Court decided to reaffirm its previous jurisprudence as long as it found a material similarity between the provisions of the 1989 Constitution and the new Fundamental Law, and did not require a complete match between the wordings of the relevant provisions. As far as the cooperation requirement is concerned, in its jurisprudence under the 1989 Constitution the Constitutional Court clearly did not require complete separation between the state and the churches. Indeed, the Court was known to sanction a cooperationist regime in which the state had closer ties with the so-called historical churches. Another notable distinction between the old and the new constitutions is that while the 1989 Constitution required freedom of religion to be regulated by a qualified majority the new constitution requires qualified majority (i.e. cardinal law) for the regulation of church-state relations, but not of individual religious liberty. Thus, from these two subtle departures from the previous constitutional framework one may sense that the new Hungarian Fundamental Law intended to readjust church-state relations on a new footing.

When adopting the law on churches for the second time, the Hungarian Parliament added Transitional Provisions to the articles of the new Fundamental Law on 30 December 2011. A dedicated provision makes it the task of Parliament to recognize 'acknowledged churches' and to determine the conditions for church status, dependent on the length of church operations, membership, historical traditions and social support. This rule is clearly not transitional in nature: instead of assisting in the entry into force of the new constitutional provisions on freedom of religion and church state relations, it clearly empowers Parliament to recognize certain churches one by one, a power which was not mentioned in Article VII of the new Fundamental Law. Furthermore, the rule in the Transitional Provisions states some of the conditions (to be specified further by a cardinal law) on church recognition, such as the reference to historical traditions and social support.

As the relevant provision of the Fundamental Law on freedom of religion and churches does not contain similar substantive criteria concerning church recognition, the Transitional Provisions undoubtedly go beyond the scope of the original constitutional provision. Furthermore, to the extent the rules in the Transitional Provisions permit Parliament to distinguish between religious communities, among them previously recognized churches, Article 21(1) of the Transitional Provisions appears to be in clear collision with the requirement of equal protection enshrined in Article XV of the Fundamental Law.

In the logic of the Transitional Provisions the era of formal legal equality of recognized churches appears to be over. The new cardinal law's authorization for different treatment of select churches on the basis of their actual social role furthers inequality between previously registered churches in a political climate where time and again new religious movements and minority faiths came under suspicion and political attacks.

In addition to a heavy emphasis on the discretion of the sovereign in matters of state-church relations, the Parliamentary debates were underscored by the need to tailor church registration in a manner which reflects Hungarian identity, understood as a means of responding to 'real social needs'. In this spirit, the Secretary of State justified the latest bill on churches with a new argument, by pointing out that the list of 14 recognized churches indeed corresponds to the religious affiliations of 99 per cent of the population as represented for the 2001 census, adding that in 2010, 91 per cent of the 1 per cent tax donations to churches went to those 14 churches which were placed on the list of recognized churches.

Not surprisingly, once the Parliamentary debate became infused with references to the religious make-up of society, it became completely irrelevant that access to legal entity status was an aspect of religious liberty and therefore as an exercise of a human right it could not depend on statistical data or popularity.

IV. Reactions to the New Hungarian Law on Churches

A. The Constitutional Framework of State-Church Relations Redefined

In late December 2012, a year after their adoption, the Constitutional Court found that the substantive rules contained in the Transitional Provisions of the Fundamental Law were

indeed unconstitutional. Among these substantive rules the Constitutional Court invalidated Article 21(1) regulating the conditions of church recognition by Parliament.

Furthermore, the Constitutional Court noted that Transitional Provisions amounted to a limitation on the constitutionally established jurisdiction of the Constitutional Court itself, and were not acceptable as such. The Court emphasized that under the new Fundamental Law it was the constitutional responsibility of the Court to protect the unity of the constitution, and to ensure that the text of the constitution can be clearly identified. The justices added that an amendment of the constitution cannot create an irresolvable inconsistency in the text of the constitution.

While the Constitutional Court did not enter into a detailed discussion of the fate of Article 21(1) of the Transitional Provisions on the powers of Parliament to recognize churches, with the authorizing gesture missing, it remains to be seen whether the Constitutional Court will find constitutional the new law on churches under the remaining provision of the Fundamental Law. As mentioned earlier,— unlike the Transitional Provisions—the new Fundamental Law contains no particulars on which religious community merits recognition by the state. Therefore, without specific rules to this effect a statute which clearly favours certain religious communities over others in the manner of divesting the latter of their previously awarded legal entity status is problematic.

In this respect, it is important to be mindful of the decision of the Constitutional Court on the unconstitutionality of the law on the protection of families. The law introduced a definition of family based on heterosexual marriage, thus leaving unmarried life partners and same-sex registered partners outside the scope of family protection. In another article, the law—in direct contravention with the Civil Code and the law on registered partnership—excluded life partners and registered partners from the line of succession. In the case the Constitutional Court reinforced its earlier jurisprudence developed under the 1989 Constitution concerning both the constitutional protection of marriage and also of other family forms not based on marriage. In doing so the justices emphasized that the language of the relevant provisions in the new Fundamental Law do not differ substantially from the provisions of the 1989 Constitution. Confirming its earlier jurisprudence the Constitutional Court said that positive obligations stemming from the protection of family and the protection of the right to private and family life give rise to a constitutional obligation: when the legislator defines the rights and duties of families, it cannot remove or diminish the existing level of protection applicable to those lasting forms of cohabitation which precede or are alternative to marriage. Although this finding does not apply to the new law on churches directly, to the extent access to church status as defined under the 1990 law on churches can be regarded as an entrenchment of the collective or organisational aspect of freedom of religion, the recent decision on family protection is worthy of attention as it suggests that due to the similarity of the provisions of the 1989 Constitution and the new Fundamental Law the Constitutional Court may be expected to return to its previous jurisprudence on the subject—at least to mark its starting point.

In 1993 the Constitutional Court was already requested to assess the constitutionality of the 1990 law's requirement of 100 founders for a church. Petitioners in the case found the threshold too high. The Constitutional Court then reviewed the requirement in the context of the collective (organisational) aspect of freedom of religion and also from the perspective of the constitutional requirement of the separation of church and state. It was in this case where the Constitutional Court argued that the point of opening up a special

legal entity status for religious communities (in the form of church status under the 1990) was meant to give effect to separation of church and state in the sense of distancing "historical" churches from the state, and creating an opportunity for smaller religious communities to seek recognition

B. Doubts about the New Procedure of Church Recognition

The recognition procedure envisioned in the 2011 law on churches authorizes Parliament to take a discretionary decision on church status alongside some statutory criteria of eligibility. The decision of Parliament is not subject to ordinary judicial review. It remains to be seen whether the Constitutional Court will find a way to assert jurisdiction to review the decisions on the refusal of recognition which were issued in a Parliamentary resolution in February 2012.

Both the Hungarian Constitutional Court, and the Venice expressed deep concerns about the lack of "procedural guarantees for a neutral and impartial application of the provisions pertaining to the recognition of churches, how and on which materials the Parliamentary Committee and Members of Parliament were able to discuss this list of 32 churches, to settle the delicate questions involved in the definition of religious activities and churches supplied in the Act, within a few days, without falling under the influence of popular prejudice". Similarly to the Constitutional Court, the Venice Commission found the lack of judicial remedy against the decision of Parliament problematic and expressed serious concerns about the process and consequences of de-registration of previously registered churches. In particular, they registered doubts that "depriving churches of the legal status thy enjoyed sometimes already for many years can be seen as 'pressing social need' and 'proportionate to the objective pursued' in the sense of international standards, without providing reasons that can justify this deprivation".

Furthermore, in closing its observations, the Venice Commission addressed a set of non-discrimination concerns which were not tackled by the Hungarian Constitutional Court. The Venice Commission had serious concerns about the unequal treatment of recognized churches on the one hand and other religious communities on the other, worrying that un-recognized religious communities may end up in a legal status which renders "their enjoyment of the right to freedom of religion illusory and theoretical, rather than practical and effective". In line with standards developed in the non-discrimination jurisprudence of the ECtHR the Venice Commission reminded the Hungarian government that the difference in treatment needs to underlined by objective and reasonable justifications.

Although the Venice Commission applied international and European human rights standards, relying heavily on the jurisprudence of the ECtHR and the OSCE/ODHIR—Venice Commission Guidelines for review of legislation pertaining to religion or belief, and the Hungarian Constitutional Court applied primarily the 1989 Constitution, their opinions of the new church recognition regime appear to converge. This correspondence is partly due to the fact that when applying the Hungarian Constitution, the Constitutional Court informed itself of the relevant jurisprudence of the ECtHR on religious communities' access to legal entity status. It is apparent from the jurisprudence of the Constitutional Court that it remains mindful of European human rights standards and the importance of comparative analysis in its more recent jurisprudence, when it applies the new Fundamental Law. Among many other questions, it remains to be seen whether the anti-discrimination challenge as identified by the Venice Commission is separate from or rather

ancillary to the claims of acquired rights which de-registered churches may also be expected to make under the new Fundamental Law before the Constitutional Court.

C. Open Questions

Despite some promising developments, so far very little was said about a core issue in the new Hungarian law, i.e. whether requiring 1.000 applicants for recognition was acceptable. Interestingly, this is a matter on which the ECtHR has not ruled explicitly yet, although the OSCE/ODHIR Guidelines recommend that member states abandon high minimum membership requirements. Currently only Slovakia requires more founding members for a registered church with its infamous 20.000 threshold. After the Hungarian law, the second
highest requirement is in Croatia (500), followed by the Czech (300) and Austrian (300 at entry level). Therefore, despite the optimism in the Parliamentary debate, the new Hungarian requirement became the second highest in Europe. On this high Hungarian threshold the Venice Commission said that also the Commission has repeatedly warned against high membership requirements, the Hungarian rule is not really a membership requirement. Instead, it was read by the Commission as a requirement of showing support from 1.000 souls in a population of 10 million for the recognition of a particular church by Parliament. Although the Venice Commission clearly believes that these signatures may come from 1.000 random supporters, in practice religious communities tend to collect these signatures from within their adult membership. Apart from doubts about making the exercise of a fundamental right dependent on such a popularity contest.

The Russian requirement of 50.000 founding members for party registration is considerably higher than any other rule in Europe. It is apparent that this requirement places smaller, non-mainstream religious communities at a disadvantage when it comes to acquiring legal entity status.

V. Conclusion

The saga of the new Hungarian church recognition regime is certainly not over, at least for the petitions which are still pending before various courts. The new Hungarian regulation raises a number of key questions on the protection of rights of religious communities in Europe. Apart from the gradual process of emerging European standards, wherein the ECHR, Venice Commission and the OSCE/ODHIR framework may mutually reinforce each other, the Hungarian case will be of lasting interest as it also tells a story about the discretion national governments may or do have to define domestic state-church relations through constitutional rules and statutory solutions.

South Eastern Europe: Peter Petkoff

[INSERT]

South West Europe: Eugenia Relano

Equalities and Non-Discrimination on grounds of Religion and Belief in Spain
Eugenia Relano Pastor

1. Introduction: Religious diversity

Spain has been transformed from an emigration country to an immigration country. By the arrival of immigrants, with their different religions, languages, and cultures. The question of how to manage the conditions of diversity, particularly, religious diversity is one of the

most important debates. By December 2011, the number of foreigners with legal residence in Spain was 5,251,094, which represents 11,4% of the population. No official government census based upon religion has ever been conducted in Spain, as the Spanish Constitution states that no individual has to answer questions regarding religion or religious belief. The Center for Sociological Investigation, an independent government agency, periodically collects data on religious trends. In April 2010 one of its surveys reported that 73.2 percent of respondents considered themselves Catholic, though 31.1 percent of these almost never attend Mass. All other Christian groups, constituting less than 10 percent of the Spanish population, include: Protestant and evangelical denominations; Christian Scientists; Jehovah's Witnesses; Seventh-day Adventists; Eastern Orthodox; and Mormons. According to the Islamic Commission of Spain and Ministry of Justice reports in 2009 there were approximately 1.4 million Muslims in Spain. The number of immigrants from predominantly Muslim countries is about 800,000. Most of them come from Morocco (almost 700,000), followed by Algerians (46,000), Senegal (31,000) and Pakistan (36,000). Moroccans have increased five times in the last ten years. Bangladeshis and Pakistanis for fifteen and sixteen respectively. An additional portion of Spanish society, again less than 10 percent, are followers of Judaism, Buddhism, Hinduism, and Baha'ism.

Muslims: Muslims are a very heterogeneous community: Immigrants and converts; those who identify themselves as Muslims but with little practice of their religion and those who guide their lives accordingly to Islam. It is also important to emphasis the reciprocal perception of how citizens perceive the Muslims presence in Spain and how Muslims perceive the strength of their Islamic identity. A survey of Spanish attitudes showed that 67 per cent say that Muslims want to remain distinct from the larger society. Instead when one asks Muslims themselves, only 27 per cent say they want to be different from society as a whole.

2. General legal framework for religious freedom

The Constitution of 1978 protects the exercise of freedom of religion and conscience by every individual and group and guarantees the individual and collective right to "freedom of ideology, religion, and worship," with the manifestation of such freedoms subject to those restrictions necessary to "maintain public order as protected by law". Section 2 protects individual freedom of expression by recognizing that no one can be forced to declare his or her religious beliefs, while Section 3 prohibits the establishment of a state religion and requires the State to "maintain appropriate cooperation with the Catholic Church and the other (religious denominations)". The Spanish Constitution establishes a framework for religious pluralism and tolerance, based on important principles to be taken into consideration for effective protection of any human rights, particularly religious freedom:

- Respect and protection of fundamental rights inherent in human dignity. Religious groups, such as churches or religious communities, are also rights holders.
- The value of pluralism. Because there can be no liberty without freedom of choice, each individual must be able to choose among a variety of beliefs and philosophical or religious worldviews.
- The constitutional principle of participation in political, economic, cultural and social life includes taking part in decision-making processes not only by individuals but also by religious and philosophical groups in any issue that may directly.

There are four guiding principles cited in the Spanish Constitution which inspire Church and State relations:

- The first principle is religious freedom. As a guiding principle governing public authorities.
- The second principle is equality with respect to religion/s, both "in the law" (preventing laws from creating unequal or discriminatory situations among citizens) as well as "of the law" (legal consequences resulting from laws must also be equal).
- The third principle is state neutrality.
- The principle of cooperation with religious groups: State cooperation with churches, to ensure that citizens obtain the full enjoyment and exercise of the right of freedom of conscience.

3. Specific legal framework about equality and non-discrimination

Equality is one of the *highest values* of the legal system established by the Spanish Constitution of 1978, together with liberty, justice and political pluralism. The Constitution proclaims the general principle of equality and non-discrimination in its Article 14. Art. 9 provides the positive obligation for the public authorities to promote equality, Art. 10 recognises fundamental rights and freedoms recognised by the Constitution shall be interpreted pursuant to the Universal Declaration on Human Rights and the international instruments combating discrimination.

The transposition of **European anti-discrimination Directives** (2000/43, 2000/78, 2002/73 and 2004/113) to Spanish legislation has been done in an incomplete, sparse and, in some aspects, inappropriate manner. Directives 2000/43 and 2000/78 were jointly transposed, with no debate in society and no political or parliamentary debate, in a law known as a Ley de acompañamiento (Accompanying Law), in which over 50 existing laws were amended. This use of accompanying laws to amend many other laws has been repeatedly criticised as not easily accessible to or comprehensible by the citizens.

There are important points where national law is in breach of the Directives, including aspects of direct and indirect discrimination. In addition sanctions have only been established in the field of labour and legal entities and associations may engage "on behalf" of the complainant, but only in the field of employment and not "or in support" of complainants.

Because of the current legislation has proved so far inadequate and inefficient, the Spanish Socialist Party called for the adoption of a **Comprehensive Equality Law** in the 2008 electoral programme. The Equality Bill was approved by the Council of Ministers in May 2011 and it should have been discussed and adopted definitively as Law in the Parliament before the end of 2011. The Bill showed three important features: it provided guarantees for individuals and mechanisms to ensure the exercise of rights were introduced. More specifically, it enumerated the grounds covered by European Directives (gender, race or ethnic origin, age, disability, religion or belief and sexual orientation) and included definitions of *multiple discrimination and discrimination by mistake.* Also measures relating to judicial protection and administrative action against discrimination and a national Equality Body. But the early dissolution of Parliament for the general election of 20 November 2011 caused the bill to decay. The new government formed in December 2011 will not present this bill again.

The Workers' Statute expressly mentions discrimination, including religion or beliefs. Article 314 punishes offences against workers' rights, referring to "those responsible for serious discrimination in a public or private workplace against any person by reason of his ideology, religion or beliefs, ethnic group, race, etc.

The Criminal Code (Organic Law 10/1995), in its section on offences in relation to the exercise of fundamental rights and civil liberties guaranteed by the Constitution, punishes "those who incite discrimination..." and those who disseminate defamatory information against groups on racist, anti-Semitic or other grounds relating to ideology, religion, beliefs, family background, belonging to a race or ethnic group, national origin, gender, sexual orientation, illness, or disability.

The Organic Law 7/1980 on Religious Freedom (Article 1.2) proclaims the principle of non-discrimination, providing that "religious beliefs shall not constitute a basis for inequality or discrimination before the law.

4. Spanish Ombudsman: Equal Treatment Unit

The Ombudsman is the National structure to promote equality and combat discrimination. It is independent and the level of compliance with its recommendations is high.

Main tasks: Carrying out investigations of citizens' complaints on Immigration and Equal Treatment Issues; resolving complaints filed by Spanish citizens and foreigners relating to violations to their fundamental rights and brought against public authorities; recommending appropriate procedures and redress measures; carrying out pertinent actions, meaningful contact with authorities, monitoring, supervision and follow-up. Once an investigation is concluded: to formulate and provide public authorities and civil servants with a broad range of measures, including:

- Reminders of the obligation to fulfil their legal duties.
- Warnings that a de facto situation exists which requires improvement.
- Recommendations regarding the revocation, revision, or adoption of administrative procedures, or guidelines and/or instructions.

4.1 Hate crimes and discrimination in internet: There are a high number of neo-Nazi movements, the largest in Europe according to the ECRI, in Spain. Racism on the Internet is increasing. We monitor this situation closely and initiate criminal proceedings where necessary (NB according to a Constitutional Court decision: Holocaust denial is no longer a criminal offence).

The wearing of the hijab prohibited in schools. There have been many complaints under judicial jurisdiction, in courts, so the Ombudsman have had to suspend any intervention, but have started several investigations regarding the wearing of hijab in schools. (eg in one case, girls were transferred to another school where they could wear the veil.)

Hijab in ID cards, also in driving licenses. A successful recommendation was made permitting this.

5. Equality bodies

ECRI urged the Spanish authorities to establish an independent body. The Council for the Promotion of Equal Treatment of All Persons… provides assistance to victims through a network of office throughout Spain, provides information about lodging a complaint of

discrimination on grounds of racial or ethnic origin, however the Council does not have powers to investigate or to participate in court proceedings. It has carried out some awareness raising campaign on racial discrimination, has tried to involved civil society partners but it has been not very successful. There is also an Observatory for Racism and Xenophobia which promotes studies, research, data compilation and analysis.

The multi-tier system of Spanish Church-State relations: Institutional discrimination

State relations with the Catholic Church were set up by Agreements negotiated in 1979 (covering economic, religious, educational, military and judicial matters). The LOLR can be considered a crucial step in the advancement of religious pluralism within Spain, as it was the first time that a broad spectrum of individual and group religious rights were officially recognized, with limits prescribed similar to those established by international human rights law. But what is a religious purpose? Article 3.2 of LOLR outlines those activities, purposes and entities which are not deemed religious, that is those related to psychic or para-psychic phenomena, or those which spread "humanist or spiritual" values. The question is how state law distinguishes religious values from spiritual values therefore one could be legally protected by the religious freedom guarantees and the other could remain out of scope of the law.

If entities or denominations have religious purposes LOLR provides them the possibility of special protection by granting them legal recognition, requiring that inscription in the Register of Religious Entities. Once registered, the denomination enjoys autonomy and freedom of internal organization, is able to create associations for achieving its ends, and gains special protection of its beliefs and rites.

In order to access to the Religious Entities Registry, a religious group must prove that it is a religious organization according to Catholic paradigm:

- belief in the existence of a higher being, transcendent or otherwise, with whom communication is possible;
- belief in a body of doctrine (dogma) and rules of behaviour (moral rules), somehow derived from this higher being;

ritual practice, whether individual or collective (worship)

As a multi-tier system of church-state relations is based upon the recognition of diverse legal status - social roots, member size and tradition within the country - a situation wherein principles of equality and neutrality can be undermined often results.

"**Well-known rooted**" religions: the General Authority for Religious Affairs decided that Protestantism, Judaism, and Islam were historically rooted in Spain without looking at any data regarding the number of members. But the Catholic Church´s ecclesiastical jurisdiction on the nullity or dissolution of **marriages** are given civil effects, the marital decisions of Jewish and Islamic religious courts are not granted any civil effect. The Ministry of Justice's Advisory Commission on Religious Freedom recognized the "well-known roots" of the Church of Jesus Christ of Latter-day Saints on April 23, 2003, Jehovah's Witnesses in 2006; Federation of Buddhist Communities.

The first main organization representing various Muslim associations was the Spanish Federation of Islamic Religious Entities (FEERI). Some members of this organization who were primarily converts to Islam left and established the Union of Islamic Communities of

Spain (UCIE). These two composed one entity that negotiates with the Government: the Islamic Commission of Spain (CIE).

The Court annulled the General Authority for Religious Affairs' denial of inscription for the Church of Unification. This ruling stated that inscription could be denied only when a religious group's activities could endanger individual rights and freedoms. The Court found the right to inscription part of the constitutional right of religious freedom as it facilitated the collective exercise of this right. In 2007 a Spanish Court ruled that Ministry of Justice's decision not to allow the Church of Scientology to be registered was wrong and that group should be recognized as a religious organization.

Education - The Catholic Church in 1979 preserved the state's obligation to provide religious instruction in all primary and secondary schools "under the same conditions as for other basic disciplines", the 1992 Agreements only provide access to school grounds for religious minorities and the availability of classrooms for religious instruction (dependent upon on the number of students). Catholic Chaplaincies offering religious assistance are paid for with state funds, religious minorities with Agreements only enjoy a system of "free access and free exit".

Economic cooperation between the State and religious denominations, the only beneficiary of direct economic aid from the State is the Catholic Church. Therefore tax assignment remains an exclusive privilege of the Catholic Church. Minorities with agreements have only the deductibility of donations and tax exemptions The law provides taxpayers the option of allocating a percentage of their income tax to the Catholic Church. This financing is also available for nongovernmental organizations (NGOs) but not to other religious entities (In 2009 taxpayers contributed approximately to Catholic Church 252 millions of euros)

7. Cases on religious discrimination

Over the years, other issues related to the accommodation of religious minorities have developed. For example, in 1985 a Seventh Day Adventist Church member was dismissed from her job when she refused to continue working on Saturdays. The Constitutional Court ruled in favor of the employer (19/1985, 13 February), stating Sundays are the standard day of rest in secular Western society. (NB If the case of the Seventh Day Adventist employee described above were to be reviewed now, the employer's refusal to accommodate an employee´s religious beliefs might well be considered a violation of religious freedom (so long as the employer had not provided a reasonable justification for his decision).

Special diets: This possibility is provided only for Muslims interned in public centres or establishments (prisons and other centers) and on military premises, as well as in public and subsidised private schools, where requested, and not as an obligation.

Religious symbols: educational institutions:

Headscarves: Each school has the authority to decide whether or not to allow the wearing of headscarves, with some schools banning their students to wear the veil. When female students have dropped out of school for this reason, the central government or regional authorities have demanded her readmission because the constitutional right to education must prevail over the internal rules of the school. The right to wear a headscarf has not yet become an important legal issue in Spain.

Crosses: Most schools do not have religious symbols in classrooms, though some classrooms may have a crucifix on the wall. In 2002, parents of Muslim students in Barcelona requested that schools authorities remove crosses from classrooms. The Secretary of Education of the Catalonian government instead ordered that the students be transferred to a public school where no religious symbols existed in the classrooms. In December 2009, the Superior Court of Castilla y León ruled that the crucifix should be removed from a particular school only in classrooms where parents have requested the removal of religious symbols, arguing that while the cross is a Christian symbol belonging to the Spanish majority's religion, it may also have cultural and historical meaning linked to the identity of the country and, hence, could be accepted as a cultural symbol and not as a religious one.

Full veil: New ordinances banned wearing the burqa and niqab in public buildings in several cities and prescribed fines of up to 600 euros. At least 11 cities, mostly in Catalonia, have banned in municipal buildings the burqa, niqab. A Muslim organisation in Lleida, filed a suit with the Superior Court of Justice of Catalonia contesting the burqa ban as a breach of fundamental rights and based on religious discrimination.

Catalonia's regional parliament, however, struck down an initiative that would have banned the burqa in all public spaces throughout the autonomous region. Recently, on February 28 2013, the Supreme Court (Tribunal Supremo) said the Catalan city of Lérida exceeded its authority when, in December 2010, it imposed a burqa ban, as it "constitutes a limitation to the fundamental right to the exercise of the freedom of religion, which is guaranteed by the Spanish Constitution." The court said that the limitation of a fundamental right can only be achieved through laws at the national level, not through local ordinances.

The judges also rejected the argument that the municipal ordinance is a threat to public order necessary to protect the equality of women. On the contrary, the court said, a burqa ban could produce the "perverse effect of preventing the integration of Muslim women in public spaces" because it could result in the "confinement of Muslim women in their homes." The judges said the burqa ban cannot be justified on the mere supposition that "women wearing the burqa in our public spaces do so against their own will, due to an external compulsion that runs counter to the equality of women."

Workplace: Religious attire and dismissal

Workplace: Religious attire and dismissal on religious grounds
Religious attire: The most well-known case of the accommodation of religious symbols in the workplace was taken by the Superior Court of Justice of Baleares. A driver of the Municipal Company of Public Transportation of Palma de Mallorca wore a *kippa*. The Court ruled that although the employer held the right to determine the work uniform of employees, any such decision should be respectful of an employee's fundamental rights.

Dismissal on religious grounds:
As a result of the 1999 Agreement the bishop of each diocese decides on the hiring, activities and dismissal of teachers of religion and the State pays their wages and compensates them in the event of dismissal, if appropriate. This situation has given rise to

many conflicts in recent years and various court rulings have been given against dismissals of religious education teachers.

On 15 February 2007 the Constitutional Court adopted a judgment on the constitutionality of the agreement between Spain and the Vatican regarding teachers of religion. A teacher of religion in the Canary Islands was notified that she would not be given a new contract because she was carrying on a romantic relationship with a man other than her spouse, from whom she had separated. Similar judgement on a divorced teacher was reached in 2011.

The Constitutional Court's decision on these cases rejected such dismissals on the grounds that such decisions infringed their fundamental rights and were discriminatory. The Court also argued that such decisions were unrelated with the educational activity of the applicants.

Reasonable accommodation

Places of worship:
It is estimated that in Spain there may be approximately 400 prayer centres in addition to thirteen major Islamic centres. At least 55 Spanish cities have witnessed conflicts over the construction of places of worship since 1998, particularly, in Catalonia, where there have been many demonstrations against the mosques. Islamic federations report that obtaining a building permit for new mosque construction could be difficult and lengthy, especially in central urban locations. The Islamic Commission reported that sometimes new mosque construction was forced into less visible suburban areas, due to resistance from neighbourhood groups. The lack of a formal mosque remained a significant issue in Catalonia because it has the highest concentration of Muslims, and none of the approximately 200 prayer centres in the region are actual mosques. Leaders of the Jewish community also complained about difficulties in securing permits and approvals to construct new places of worship.

Islam education
Islam education in public schools is taught by teachers proposed by the Islamic Commission and accepted by education authorities when there are more than ten students. In 2009 UCIDE estimated that there were 166,192 Muslim students applied for the teaching of Islam as a religion and only a 10 per cent received.

For this reason, many Muslim parents prefer to seek for a religious education for their children outside school hours, either in mosques or at local Islamic cultural Centers. This means that the religious characteristics of the Muslim population are not present in schools, thus denying the existing religious diversity in society. It is very difficult to educate about cultural and religious diversity if the school system obstructs the teaching of religions other than Catholicism, the religion of the majority.

Conclusions
Ongoing controversies related to the wearing of a headscarf or burka, the building of mosques or the demand for Muslim religious education have uncovered two main streams in Spanish society intent upon curtailing religious and equality freedom in Spain. At one end of the spectrum are the secularists, standing for the removal of any religious values from the public sphere, ignoring religious dimensions meaningful to some parts of society.

At the other end is mainstream Catholicism, relying on the historical and collective legitimacy of Catholicism to protect the status quo of the Spanish Catholic Church.

Three factors work against the full implementation of the Equality Directives and EU Equality principles in practice in Spain: (i) There is a profusion of different measures which prevent the citizens from knowing their rights. (ii) There is general lack of awareness of legislation, (iii) Few discrimination cases are brought to court. To achieve full implementation, there is a need for clear guidance from the EU on reasonable accommodation and also a real need for a Comprehensive Equal Treatment and Non-discrimination Law for Spain.

North East Europe: Anu Laas

Religion and Belief Priorities in North-Eastern Europe

Anu Laas, (Estonia)

Estonian, Finnish, Latvian, Norwegian and Swedish societies are predominantly protestant, with strong secular traditions. In these countries religiosity plays a limited role compared to the European average. Lithuania is a Catholic majority country.

Education about all major world religions is compulsory in public schools in many countries. In some Member States there is an exemption in the equality legislation that allows schools based on a particular religion to refuse students/pupils that are not a member of that religion or that do not follow the school's religious rules. Many private schools are based on a certain religion or belief or on a particular educational method. In some countries also state support is provided. In Estonia there is one Catholic School on Tartu, held in public-private partnership

Case law

There have been few cases in the Baltic states based on discrimination on grounds of religion. It might be connected with dominating secular and Christian population with a small number of other religious communities. It might also be due to a lack of attention paid by employers and national equality bodies in initiating legal procedures in court. In the same time, the Equinet report states that national equality bodies, even if they do not have a specific human rights mandate, face more and more cases that require them to assess both religious discrimination issues and the limits of freedom of religion.

Here are some examples of discrimination cases from Northern Europe. In Finland there have been court cases in connection with acceptance and sexual orientation of female priests. The Finnish cases demonstrate that where women are permitted to become priests or hold similar religious positions, it is direct sex discrimination where male priests refuse to work with female priests on purported grounds of religious convictions.

In Norway the Norwegian Gender Equality Ombudsman found that an employer's refusal to permit wearing a hijab by a Muslim female employee was both religious discrimination and gender discrimination. But in a similar case in Denmark the plaintiff claimed to have been subjected to indirect religious discrimination when she was dismissed from her job in a supermarket where she served customers. The plaintiff also claimed that a prohibition against headdress was a violation of Article 9 of the European Convention on Human

Rights. In a Supreme Court judgment, the court accepted that a company's wishing to be politically and religiously neutral was a legitimate aim and that a clothing requirement as a mean to achieve that aim was proportionate and necessary.

A case in Sweden, demonstrated that employers and institutions providing vocational training should carefully consider whether requirements that Muslim women or men shake hands with persons of the opposite sex are for a legitimate aim and proportionate. If they are not they are likely to amount to either direct or indirect religious discrimination.

Tackling intolerance

As court cases and claims demonstrate, the most difficult issue is the extent to which students and employees are permitted to manifest their religion within the school or work environment. But it seems that more serious issue is an intolerance and xenophobia. Opinion surveys and political debate manifest rising xenophobia. These trends are linked to concerns about the integration of migrants, the economic crisis and fears around terrorism and loss of cultural identity. The tragic attacks in Norway highlight growing intolerance against Muslims, Roma and migrants in Europe. Combating religious intolerance and discrimination requires an interdisciplinary and long-term approach including cooperation and networking, legislative measures, legal measures, but especially measures such as education and dialogue.

Equality Bodies in Baltic countries

There are a few reports of societal abuse or discrimination based on religious affiliation, belief, or practice. One complaint was sent to the Finnish Chancellor of Justice in 2008, where non-religious vegetarian's rights were opposed to respect of religious person's eating habits in prison settings. Chancellor of Justice did not find contradictions in law.

In Lithuania since 2005, there is the right to file complaints to the Equal Opportunities Ombudsman in cases of discrimination on grounds of age, sexual orientation, disability, race and ethnic origin, religion or beliefs. In 2012, the majority of the complaints received by the Lithuanian Office of the Ombudsman for Equal Opportunities were in connection to gender discrimination (189 out of 203). Only 6 related to religion or belief. In Latvia, 6% of complaints relate to religion or belief.

Religious freedom in Estonia

According to Eurobarometer (2012), 14% of Estonian people think that discrimination ofngrounds of religion and belief is widespread. Surveys have demonstrated low support to egalitarian values and tolerance in Estonia. There could be several explanations. Estonia experienced the Soviet regime with high human losses and forced secularisation process, where freedom of thought or religion might lead to prison or psychiatry clinic. A former closed society experienced huge transformation processes and free movement of people has created new situation and migration flows. There is near one hundred of asylum seekers in Estonia.

Approximately 14% of the population is Evangelical Lutheran, and approximately 15% of the population belongs to one of the two Orthodox Churches in the country: the Estonian Orthodox Church, subordinate to the Moscow Patriarchate, and the Estonian Apostolic Orthodox Church. Among other Christian groups (1.4% of the population) include Methodists, Seventh-day Adventists, Roman Catholics, and Pentecostals. There are also small communities of Russian Old Believers, Jews and Muslims. 32% of the population is

unspecified or other, approximately 34% is unaffiliated, and 6% does not identify with a religion.

The constitution and other laws and policies protect religious freedom. The Churches and Congregations Act and the Non-Profit Associations and Unions Act regulate the activities of religious associations and their registration. A congregation must have at least 12 adult members. Public schools offer at the primary or secondary level offer basics of religious studies upon the request (at least 15 students). Comparative religious studies are available in public and private schools on an elective basis. Services at public events and holidays are held by Lutheran and Orthodox Churches.

7. WORKSHOPS

7.1 Workshop 1.

How can consistent implementation of the R&B strand of the directive be achieved, in the light of current challenges in your region?
Chair: Prof Paul Weller, Rapporteur: Anu Laas

Challenges in Northern Europe are connected with knowledge, practice and action

KNOWLEDGE

- More information/research about equality legislation and non-discrimination
- R&B and other discrimination grounds
- Deeper analysis about relevance of directives, especially R&B strands
- Providing a context and exploring broader aspects in reports relevant to the EC
- More studies on minority groups in broader context, using an Interdisciplinary approach

PRACTICE

- Countries differ by implementation of equality directives
- Low reporting about R&B discrimination in the Baltic countries
- Active/passive equality bodies could create distorted picture about the region
- National states act and report on the basis of minimum required standards
- There is inadequate case-law on R&B and employment, education, housing, social protection
- Conflict between equalities, disparities between countries
- Politicising R&B issues is a problem: the Media contribute to rhetoric about "threat to community

ACTION NEEDED

- Awareness raising by Equalities Bodies and ngo's in Baltic States
- Practical guidelines on reasonable accommodation, how to bring a case and starting legal procedures
- Reframing issues (on behaviour, not on religion)
- Increasing tolerance to responsible expressions of R&B
- A public debate on the transposition of the directives' requirements into national legislation

Proposals

More information should be gathered and analysis done about relevance and applicability of equality directives. It is important to study to what extent equality directives are relevant and why it is so.

More information should be gathered about national s (legislation, equality bodies across Europe), which would allow organisations like ENORB, Equinet etc to sensitise different member-states on appropriate issues.

Awareness raising and public debate is needed about equality directives, law amendments and implementation, especially in connection with R&B. Grassroots organisations are needed in all member-states to contribute on local, national, regional and EU-level.

Improvement of EU communication is needed: legal literacy is needed, rephrasing and translating legalistic language into easier-to-read texts for the wider public, specifically in the field of R&B.

More information and analysis about law implementation, especially on R&B cases eg in Baltic States, to take historical and current context into account. Current reports do not provide contextual analysis if different national and ethnic contexts. This work could be carried out by inter-convictional teams and network members, and coordination is needed, eg by ENORB.

Current knowledge allows arguing, that reframing could be done on behaviour, not on religious affiliation.

2. How can European Institutions help to reframe the debate on religion and belief - away from diversity as a challenge, towards lack of inclusivity as a challenge?

The power and rhetoric of European Institutions, the Council of Europe etc, with a view to finding ways reframing debates away from the rhetoric of blaming the religious or non-religious, on the basis of their affiliation, and towards examining their behaviour, especially the way specific activities interact with local cultural norms and national laws.

Conflict between equalities and disparities between countries should be explored (competing and interrelated equality strands) – looking for agreement on basic values.

DG Justice should encourage national equality bodies to deal with discrimination cases more effectively and be provided with adequate staff and funding to study discrimination on grounds of R&B and reasons for under-reporting.

DG Justice should introduce more effective monitoring of implementation in member-states; today too much freedom is given to national level and some states barely fulfil minimum requirements. There are few studies on minority groups and daily practices. Low knowledge provides a basis for hate, misunderstanding, and intolerance.

Systematic and ongoing research and analysis in the field of R&B should be carried out and disseminated. Permanent network on R&B is needed

Workshop 2 Report - How can European Institutions help to reframe the debate on religion and belief - away from diversity as a challenge, towards lack of inclusivity as a challenge?

Chair: Lucy Vickers, Rapporteur - Julie Pascoet

Several recommendations came out from the debate:

1. DG Justice could encourage more public employers in Europe to value diversity by requiring an "equality duty" in the public sector (similar to the situation in the UK

and a few member-states). This is a positive action measure and it would help to remove discrimination and promote inclusion.

2. Develop a "Kitemark" (quality certification) to encourage private employers to reflect religious and ethnic diversity in their workforce. It would be given according a company's excellence in promoting religious and ethnic diversity. e.g. Diversity Charters platform launched by the European Commission. It would be useful to do a mapping of initiatives already existing in this area, for example:
   - ENAR's recommendations from the report "Reasonable accommodation of cultural diversity in the workplace".[3]
   - Adopt proactive techniques of protection, advancement and mainstreaming of cultural and religious equality, including positive action measures and positive duties to promote equality with incentives.
   - Include duty of reasonable accommodation of religious diversity in diversity charters and labels.
3. Re-phrase diversity issues by valuing diversity and recognizing diversity as a positive contribution to society. We need a change in the narrative when we talk about diversity. We also have to acknowledge that discriminatory barriers exist and prevent people from really contributing to European society and the European economy. See ENAR's progressive narrative on equality and diversity[4] and ENAR's latest publication: "Hidden Talents, Wasted Talents? The real cost of neglecting the positive contribution of migrants and ethnic minorities".[5] Define European citizenship? Are we allowed as a European to have multiple identities? This fact should be better acknowledged in discourses.

   Do we really need to have a precise definition of European citizenship? Won't there be a risk that such a definition might be used to exclude people? A need to better define concepts of religion, belief, etc. was also mentioned, and explore the links between ethnicity and religion.

Workshop 3 Report – How can Grassroots Organisations help to move public awareness of Religion and Belief away from Confrontation and towards reasonable accommodation? Chair, Peter Petkoff, Rapporteur Win Roberts

The **background** to this discussion was felt to be

- This is a time when spirituality was once again taking its place in the public sphere, after a time when it had been either pushed back behind the doors of private life or been subsumed into discourse on human rights and anti-discrimination. It has been unfashionable to mention religion and belief for what they are. Now they are engaging with human rights strands and the political sphere but need to learn to use the instruments available
- Faith leaders were in evidence – in photo-call "dialogue" with the EU institutions but were not always felt by those embracing this new context of spirituality to be representative of them
- At the same time, there were visible dangerous trends – on the far right, in the media (the two sometimes converging) with a generally negative attitude to any form of religious manifestation or presence in the public sphere. There was also a

[3] http://cms.horus.be/files/99935/MediaArchive/publications/3rd%20Adhoc_report_FINAL.pdf
[4] http://www.enar-eu.org/Page_Generale.asp?DocID=29577&la=1&langue=EN
[5] http://cms.horus.be/files/99935/MediaArchive/publications/20068_Publication_HiddenTalents_web.pdf

shift in the definitions used, in extremist rhetoric – from negative attitudes on grounds of race/ethnicity to grounds of religion or belief.

More specifically

- The "dialogue" the Commission was hitherto promoting (under the terms of Article 17 of the Lisbon Treaty) was felt to be inadequate: the Commission was corralling it by setting the topics, and delivering more than it was listening: what was needed rather was inter-convictional co-operation between EU institutions and the communities of faith and conviction.
- It was important to forge alliances across religion/belief barriers at the grass-roots: this would strengthen our voices (and the chances of getting funding), and gather groups sharing a degree of commonality amongst groups which shared spiritual values and ethical principles (not necessarily the same as institutionalised religions or secular organisations). These grassroots organisations also needed however to learn how to use human rights and legal tools at international level to underpin and progress their work.
- It was vital to clarify terminology and definitions by all available means, especially using the media: for too long "dangerous Islam" has been confused in people's minds (including in the press and the EU institutions) with Islam as a whole and the whole Islamic community, and this non-representative minority has to be shown up, isolated and prohibited. Discussion with all sectors of the general public has to be face-to-face – talking to and not about each other, and going beyond aspects of clothing and food to the real problems of experience at work, in school, socio-economic status etc
- The existing legislation combating anti-Semitism and homophobia should be widened to include Islamophobia – even though fears were voiced as to how this could affect freedom of expression, and whether, if the press were "threatened" in this way, it could result in adverse or unwelcomed minimal coverage and thus a counterproductive outcome. It was reiterated that media coverage was a major problem.

8. FORMAL RESPONSE TO DG JUSTICE CONSULTATION ON IMPLEMENTATION OF THE DIRECTIVES ON EQUALITY AND EMPLOYMENT

ALAN Murray
President, ENORB

1. BACKGROUND

ENORB is a new European Anti-Discrimination Network covering the Religion and Belief (R&B) strand of EU Fundamental Rights and Equalities policies, registered as an ASBL in May 2012 after 2 years preparatory work. Formed in response to the increase in discrimination and hate crimes on religion/belief grounds in Europe, ENORB is inter-convictional, representing the full diversity of religions, non-religious and humanist/atheist groups with a huge body of experience in this field. ENORB's core mission is to combat discrimination and promote mutual understanding among R&B groups across Europe, focusing on minorities subject to exclusion. ENORB has been set up by a group of religion and belief associations on a voluntary basis: having no current access to European funding funding, it has no paid staff, but several energetic voluntary officers drawn from its executive committee.

2. INTRODUCTION

ENORB's response is based on consultation with member and partner organisations a Europe-wide seminar on the implementation of the Directives on March 19-20 2013 bringing together nearly 100 participants from 16 EU-Member-States. The seminar had the specific purpose of 'bringing together legal/academic specialists with representatives of grassroots religion and belief organisations to explore both the implementation of EU Directive and the fundamental right of freedom of religion and belief'. The report does not seek to summarise the findings from the extensive research work which underpins, for example the reports from Religare, Equinet, ENAR which were reported to the seminar. Instead it focuses on the key messages emerging from the discussions with grassroots religion and belief organisations. As such, this is a limited basis for a response to this consultation, but an appropriate one at this stage of ENORB's development.

3. KEY RECOMMENDATIONS

The context for implementation in the field of religion and belief is significantly different from the other equalities strands, especially because of the diversity, complexity and divisions in this strand (see Section 4). The recommendations below reflect these differences (see also Section 5):

7. **Improved Data Collection** is a priority: both population data on religion and belief affiliation, and data from the employment sector.
8. **EU Policies and Strategies** in this field are very important for the future of a strong and stable Europe: they deserve greater publicity, in what is seen as unfamiliar territory in many equalities contexts.

9. **Greater Public Awareness** of the directives in this field is a shared responsibility between EU institutions, Government Equality Bodies and religion and belief networks. An effective European Network with links to networks in all member states should be built up.
10. **Guidance** is a felt strongly-felt need across Europe: on basic issues of terminology and on specific controversial issues, to distil the implications of case law and good practice.
11. **Variation** in interpretation and application in member states is considerable. Guidance and greater communication and cooperation between specialists, equalities bodies and religion and belief organisations is needed at local and European levels to address this.
12. **Access to Justice,** difficult in many local contexts because of lack of expertise and civil society organisations in this field, could be improved by more proactive dissemination.
13. **Multiple Discrimination and Conflicts over Rights** affecting very vulnerable groups could be addressed through proactive work at community level.
14. **Equal Treatment.** Approval of the full directive would greatly assist work in the religion and belief field.

4. THE RELIGION AND BELIEF CONTEXT FOR IMPLEMENTATION OF THE DIRECTIVES

The seminar was seen as timely, as religion and belief are increasingly present in the public sphere, rather than simply as a private concern. A strong commitment to European values and human rights was shared across the religious and non-religious organisations present, and the vast majority of their members. But the seminar also revealed the extraordinary diversity of religion and belief contexts across Europe, the complexity of the issues around equality and freedom of religion and belief, and their importance for Europe's future of the development of strong, stable and secure plural societies across the EU. A speaker pointed out that the complexity and difficulty can lead to two common reactions on the part of government and secular institutions. Fear – of the tensions and emotions generated by controversial topics, can lead to strategies of avoidance and inaction. Symbolic actions – such as inter-faith summits – can produce important statements, which may have may little impact on the realities of discrimination or lack of freedom on the ground. ENORB's hope is that a combination of EUand member state level action supported by a network of very diverse organisations can tackle controversial issues directly. Cooperative work by networks and organisations at European level, and support for practical local inter-convictional actions at member state level to combat discrimination and promote mutual understanding, can lead to real progress in this field.

Religion and Belief in Contemporary Europe

Many speakers referred to, and described the extraordinary diversity of religion and belief contexts in modern Europe. This diversity is of three kinds:

- Diversity of historical contexts – for both religious and non-religious belief – including: countries with continuous traditions of close relations between Church and State; countries which have broken the connection with the state church to introduce a strong version of secularism or laicité; countries which experienced persecution of religion under community/atheist regimes in the twentieth century;

countries which have strong historic minority populations; countries which have religiously plural populations as a result of migration.

- Diversity of contemporary religion and belief contexts – from highly diverse in North and West Europe to countries still characterised by a mono-religious (Christian) tradition in East and South Europe though with considerable variation between the balance between Catholic, Orthodox and Protestant churches.
- Diversity of intra-convictional contexts – both religious (eg the wide spectrum of liberal to conservative positions and increasing diversity of belief within Christianity and Islam) and non-religious (eg the major differences between different social meanings ascribed to secularity).

One speaker at the seminar characterised contemporary Europe as being simultaneously Christian, Secular and Religiously Pluralist. Keynote speakers also identified the importance of the new context for religion and belief in Europe after the Lisbon treaty, as described in section 4.2.

The EU Treaties and Religion and Belief.

A new European context for Religion and Belief with potentially immense significance is set out in the Treaty of Lisbon, specifically Articles 13 and 17. Article 13 both incorporates the Charter of Fundamental Rights – including the right to Freedom of Religion, which both prohibits any form of discrimination on grounds of Religion and Belief, (including the right to practice, manifest and change religion or belief) - and promotes the equality of treatment of all – whatever their religious affiliation or non-religious belief. Article 17 focuses on the EU's respect for the status of religions and philosophical (ie non-religious) and commits the EU to open, transparent and regular dialogue with these churches and organisations.

These Articles effectively create, for the European Union, a Free European Area for Religion and Belief, in which diversity and dialogue are seen fundamental to European society and civilisation. In the late 20th Century, religion and belief was to a large extent excluded from public discourse anti-discrimination, equalities and fundamental rights during the years when the equalities strands on gender, race, disability, age and later on sexual orientation held centre stage in debates and actions. However, just as in the 21st Century European society religion and belief have again become key issues, so they have assumed a much greater importance in the legal and anti-discrimination context.

A Free European Area for religion and belief offers a comparable opportunity to the free economic area (or Single Market) for the growth and development of Europe as a stable and peaceful community - in the field not of material, but of moral and spiritual development. Both need to be underpinned by European values of solidarity, as well as equality and freedom, and also need to respect, through the principle of subsidiarity, the rights of communities with different traditions.

The Directives.

There were no arguments from the seminar for changes to the texts of the directives, though there was strong support for a quick resolution of the blockage on introduction of the new Equal Treatment Directive. There were also several arguments for a greater focus on reasonable accommodation rather than recourse to the courts, especially in the employment context. In a European context of huge diversity in both historical and contemporary contexts for religion and belief, dialogue should be the starting point, not

law. What is needed was a much greater public awareness of the new European Framework for Religion and Belief, and its basis in the foundational EU values of freedom, equality and solidarity. Better public awareness of the impact of the directives, and in particular, better understanding of the concept of indirect discrimination would be of great benefit.

Implications for Implementation

The context of diversity and complexity means that the Religion and Belief strand of Equalities requires a significantly different approach to those which have been adopted for the implementation of the other Equalities Directives, such as race, gender or disability. Firstly, discrimination may take a great variety of forms, even in the employment context. Key issues raised during preparation and the seminar included the following:

- Employment – discriminatory hiring practices, harassment, dress, holidays, festivals etc
- Religiously sensitive topics which affect some employment sectors, eg education, health (eg beginning and end of life, circumcision and other procedures, LGBT rights/homophobia)
- Religious observance - religious symbols, dress, insignia, worship, buildings
- Religion and Belief in the public space – issues relating to free speech, blasphemy and hate speech
- Interaction with other fundamental rights (eg Gender, LGBT rights)
- Exceptions relating to employment eg in faith schools

Secondly, religious and belief organisations have a long tradition of opposition and conflict on many issues, some of which are fundamental to their existence (eg religious and atheist organisations views on God), some of which cause great division *within* organisations. Even in the contemporary context the reaction of some religious and non-religious organisations to the setting up of ENORB as a European Network on Religion *and* Belief has been negative, on the basis that it would be impossible to include traditions with such fundamentally opposed views in the same network. However the experience of the past three years developing and getting ENORB off the ground have demonstrated not only its possibility but the great value of collaborative work.

The approach which emerged from the seminar can be summarised as recognising and exploring the complexity both at European and member state levels – working against religion/belief discrimination cannot be such a clear and direct task as working against racial or gender discrimination.

Initial exploratory work is needed on key issues such as those listed above to identify appropriate strategies relating *both* to the complexity of the issues (eg EU-level seminars), and key priorities at national levels (eg action on specific areas of discrimination), *and* to those topics which provoke division (eg joint ENORB/ILGA seminar on LGBT equality issues), national collaborative work on faith schools.

Ongoing development work is required in all EU member-states to bring together organisations and groups which have not usually been willing to work collaboratively to meet together and in with others from different European contexts, to identify: their common ground, in terms of shared European values; common interests, in working together against discrimination and for mutual understanding; as well as national priorities for action to assist implementation of the directives in the field of religion and belief.

5. IMPROVING IMPLEMENTATION ACROSS EUROPE IN THE FIELD OF RELIGION AND BELIEF

The diversity and complexity of the Religion and Belief context set out above gave rise to a number of key issues raised and discussed at the seminar, as well as over the past year of ENORB's work. This report attempts to distil conclusions and recommendations for action at European, Member-State Governmental levels as well as at NGO/grassroots levels.

5.1 European Level – General Messages

EU Policy and Strategy. The point was made by several speakers, from UK to Spain and Eastern Europe, that the inclusion of religion and belief in the Employment Equality Directive had been in most member-states the initial stimulus to starting work on this strand of equalities, unlike the other strands, where there was an already established ngo culture supporting equalities and anti-discrimination work prior to the directives, as well as legislation in some countries, especially on gender and race. Engagement with religion and belief issues by official equalities bodies and human rights ngos has been variable across Europe and the lack of specific religion and belief networks at national and European levels has also left gaps in policy advice, advocacy and data collection. There were calls for clearer statements on the aims of EU policies on religion and belief, on the implications of the directives in the field of religion and belief, at European Union level and for guidance on strategies for implementation to assist member-states in implementation.

Guidance. A strong message from representatives from all parts of Europe, especially those working at government level, was that the Religion and Belief strand of Equalities was unfamiliar (as well as complex) territory for many working in the equalities field. The European Commission could address the complexity by developing guidance on implementation of the directives in this field. Even terminology was unclear: none of the member-states have included a definition of religion and belief in their legislation.

Other key issues where guidance would be especially useful included: religious symbols, insignia and dress at work: considerable case-law has been built up on this issue and , so that guidance could be issued to enable most cases to be resolved on the basis of reasonable accommodation and proportionality of response. Religious Observance and non-religious rights in relation to festivals, holidays and practices (eg prayer): guidance could be made available on the basis of the experience in several member-states. Guidance on religiously sensitive issues such as contraception, abortion, circumcision, assisted dying etc as they affect some employment sectors (notably health)- on the basis of reasonableness and proportionality, could assist the work of the equalities/human rights and religion and belief organisations in health and related sectors. ENORB seminars, like the Good Practice Exchange seminar organised in Brussels in October 2012, can draw general conclusions, but what is needed is guidance on the full range of sensitive issues, based on examples of case-law and good practice from various member-states.

Making clear the inclusiveness which underpins Articles 13 and 17 – both for religious and for non-religious belief systems – would also have an impact, especially in Hungary and other countries where a restrictive policy on registration of religious organisations is

severely limiting freedom of religion and belief. Other terms which could benefit from definition are the general terms developed both in legal/academic and religion and belief organisations such as: reasonable accommodation, proportionality, inclusive even-handedness, substantive equality**.**

Public Awareness. In the field of religion and belief, the agenda for public awareness on religion and belief is often set by the media, with a focus on conflict and division, often allied with pressure groups which are less interested in freedom for *all* currents of religion and belief than in imposing the agenda of their own religious/non-religious groups.

Public awareness campaigns are needed, both at European and national levels, which emphasise the positive framework for equalities and freedom in the area of religion and belief created by the policies set out in the European treaties, which are still little known and little understood. The role of a European Network on Religion and Belief issues, to complement the work already done over the last ten years by the European Networks on the other five strands of Equalities and Anti-Discrimination work is clearly crucial to raising public awareness in positive rather than negative ways.

Networking, Sharing Expertise and Building Capacity. A European network with the central resources to support the work of implementing the directives in the field of religion and belief in member states was , perhaps predictably, a recurring theme in the seminar. This would have benefits both for Equalities bodies, which in many member states did not have access to specialist networks working in the field of religion and belief or even in inter-faith relations. Support being given by Human Rights organisations was reported in several member states, but these often had other priorities and were under-resourced. They needed the support of specialist networks, and for these to be effective, funding would be needed to develop capacity, to build relationships between religious and non-religious groups, and to share information and expertise both within and between member-states.

5.2 Practical Steps at Member-State level

Information and Data Collection.
A general problem identified in many member states was the lack of data - both of quantitative data on religion and belief in general, and qualitative information on implementation of the directives in this field, and in nearly all member-states. Basic data, on religion and belief, even in the field of employment, was not collected by public or private sector bodies/employers – in contrast with other key strands of equalities, and there was a similar even more general statistical data (eg from Campuses) in most member-states.

Information on the religion and belief context of member-states was also not easily available. Many participants in the seminar had little or no knowledge of this context, even in other member-states, even close neighbours. The major sources of information – such as the Country Reports the EU Network of Legal Experts in the Non-Discrimination field and the recent Equinet Report (Dec 2011): Equality Laws in Practice – Religion and Belief in Europe do cover all member-states, but focus on case-law on religious discrimination and on specific areas of discrimination (eg employment, education etc). Reports which provided information on the national context for freedom of religion and belief in each member-state (the ENAR Shadow Reports were cited) would be useful for

both equalities bodies and NGOs in this field. The contributions to the seminar from various national perspectives eg Spain, Bulgaria, Hungary, Romania made it clear that academic research is available for some countries on certain aspects. ENORB could play in important part in making such information more widely available.

A third type of lack of knowledge was identified by some participants from government departments of equality bodies in member-states: their lack of experience and training \for religion and belief equalities work in comparison with other strands. Some officials in governments with strong secular traditions of separation between religion/belief and the state in particular said that they had very little knowledge of religion/belief There was a call for seminars of this kind to be held in member-states to combat this lack of basic knowledge, as well as the lack of data and contextual information.

Application in Member States
The seminar demonstrated that application of the Religion and Belief aspect of the Equalities directives is extremely varied. Many seminar contributions made clear the radically different approaches taken in different member-states, as for example on:

Registration. It was reported that some member-states have created an extremely difficult registration process which can effectively exclude some religions or beliefs from being able to operate effectively, or from benefiting equally from state benefits, tax exemption, education facilities, building licences etc). Others at the opposite end of the spectrum allow all religious organisations or groups to operate freely provided that they do not break the law in any other way. Others have a strict secularist or laicité policy which had led to the proscribing of certain religious organisations designated as 'cults' or 'sects'. The lack of guidance on definition was identified as a problem for consistency of application.

Equal Treatment. There were many references to the lack of progress on the adoption of the directive on equal treatment which would include religion and belief, and the consequent differences between member states on issues not directly concerned with employment. There were examples means some important fields for ENORB members – such as education (there was lively debate in the seminar on faith schools, and also on inter-convictional education), health (see 4.2) and goods and services - are not covered except in the countries which have introduced their own equal treatment legislation. In addition, the examples given in the Equinet report based on evidence from these countries illustrate the important issues raised in these fields. ENORB strongly supports the adoption of this directive.

Access to Justice and Legal Aid
The situation varied greatly between member-states. Although the general view which emerged from the seminar was that legal action is a blunt instrument to be a last resort rather than an initial step, a number of cases were highlighted in which legitimate grievances could not be pursued because of the lack of specialist grassroots or civil society advisory groups in the field of religion and belief. The activities of human rights groups, especially in Eastern Europe, is to some extent filling this gap. But among the mainstream religious and some atheist/humanist groups the main effort is inevitably given to promoting their own activities rather than to broader issues of freedom and non-discrimination on grounds of religion and belief. As a result, legal actions have often been

supported by funds and legal expertise from special interest rather than mainstream groups.

Participants referred to a lack of clarity and public awareness as to which body to approach in order to make a complaint or bring a case in many member-states : the seminar heard of difficulties specifically on religion and belief cases, because of lack of awareness in minority groups that discrimination on grounds of religion/belief was included inequalities legislation. Even in countries with strong equalities traditions, and experienced governmental and non-governmental anti-discrimination organisations, there was a lack of awareness of this strand of equalities. Specific dissemination measures, such as local seminars

6. OTHER AREAS OF CONCERN

Multiple and Intersectional Discrimination

Multiple discrimination especially in relation to women, where discrimination may take place on more than one ground, was raised as an issue in those countries where restrictions on religious dress, notably the hijab, have been introduced (an example was given of discrimination on grounds of religion, gender and race). The report on Multiple Discrimination by the European Network of Legal Experts identifies difficulties in applying the concept in member-states, and the report's recommendations for clarification and improvement would make an important contribution to reducing discrimination against women on grounds of religion and belief.

Positive Action

The provision for positive action in the directive has been little used in the field of religion and Belief, even though minorities in some member-states are among those most subject to social exclusion and discrimination in employment. Lack of data means that this situation remains invisible in many member-states. In addition to improved data collection, and robust positive action policies backed public awareness campaigns by religion/belief organisations, could make a significant impact in several member-states. Guidance from European level would help to kick-start this process.

The UK examples of the 'equality duty' and a 'kitemark' for employers was cited as examples of effective positive action measures which had not provoked adverse reactions.

Conflicting Rights in the field of Religion and Belief

Examples were raised during the seminar of conflicting rights in the field of equality based on the rights of lesbian, gay, bisexual and transsexual (LGBT) people, and in the field of gender.

- LGBT rights: cases have been arisen concerning the right to manifest religion in employment where conflict with LGBT rights have arisen.
- Gender: cases have arisen where manifesting a religion or belief may have an adverse impact on the rights of another person, eg in cases relating to the wearing of headscarves at work by female employees, or to physical contact between men and women in the workplace.

Again, the provision of guidance on the basis of case law and good practice would assist member-states, both the courts and organisations which are concerned with religion and belief and/or human rights, in resolving such conflicts.

7. APPENDIX - SPEAKER PROFILES

Laszlo Surjan is Vice-President of the European Parliament with special responsibility for issues of Religion and Belief matters across Europe, and chairs the EP Dialogue Process under Article 17 of the Treaty of Lisbon.

Lucy Vickers is Professor of Law at Oxford Brookes University. Her main research area is the protection of human rights within the workplace, with a focus on freedom of speech and religion on which she has written a report of the EU.

Katayoun Alidada is a researcher at the University of Leuven in the Faculty of Law, specialising in European Anti-Discrimination legislation as it applies to Religion and Belief. She is also a member of the EU RELIGARE research team on Religious Diversity and Secular Europe.

Marco Ventura is a Professor at the University of Siena, and at the Faculty of Canon Law at Leuven. He has many special interests including Church and State research, and the impact of EU treaties on religion and belief.

Richy Thompson is Campaigns Officer for the British Humanist Association, and was formerly President of Oxford Atheists. He has a special interest in schools and education.

Tricia Singh is a legal specialist with a special interest in the legal aspects of being a committed Sikh in secular contexts. She advises the United Sikhs organisation on legal matters.

Karim Chemlal is Secretary of the Federation of Islamic Organisations in Europe, which represents a large number of Muslim organisations across Europe, and a member of the Executive of ENORB.

Bashy Quraishy is Chair of the Advisory Board of ENAR, and General Secretary of EMISCO, the European Muslim Initiative for Social Cohesion. He has a long track record as an export and active worker for human rights and against discrimination and islamophobia. He is a regular broadcaster and also Chair of Midia-Watch, a magazine on media and minorities.

Dennis De Jong is a Member of the European Parliament from the Netherlands. He is chair and co-founder of the European Parliament's Working Group on Freedom of Religion and Belief and has a special interest in the religion and belief issues associated with the European Union's role in international affairs.

Catriona Robertson is Convenor of the London Boroughs' Faiths Network, and has been a tireless worker for inter-faith dialogue in Britain and Europe for many years. She was a founder member of the group which set up ENORB in 2010-11.

Peter Petkoff lectures on Law and Religion at the universities of Brunel and Oxford and is editor of the Oxford Journal of Law and Religion.

Ann Laas is a researcher at the University of Tartu, Estonia. She specialises in European Human Rights issues, relating especially to gender, social inclusion and employment.

Robin Sclafani is Director of CEJI (A Jewish Contribution to an Inclusive Europe) which manages the Belieforama programme. She is also a founder-member of ENORB's Exploratory Group.

Paul Weller is Professor of Inter-Religious Relations at the University of Derby, and co-manages the AHRC/ESRC research programme Religion and Belief: Discrimination and Equality in England and Wales.

Julie Pascoet is Policy Officer at the European Network Against Racism (ENAR), and has worked in human rights advocacy and for the Assembly of European Regions.