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Divergence in fundamental labor rights case law: banning religious symbols in public employment

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ENSURING COHERENCE IN FUNDAMENTAL LABOR RIGHTS CASE LAW:

CHALLENGES AND OPPORTUNITIES

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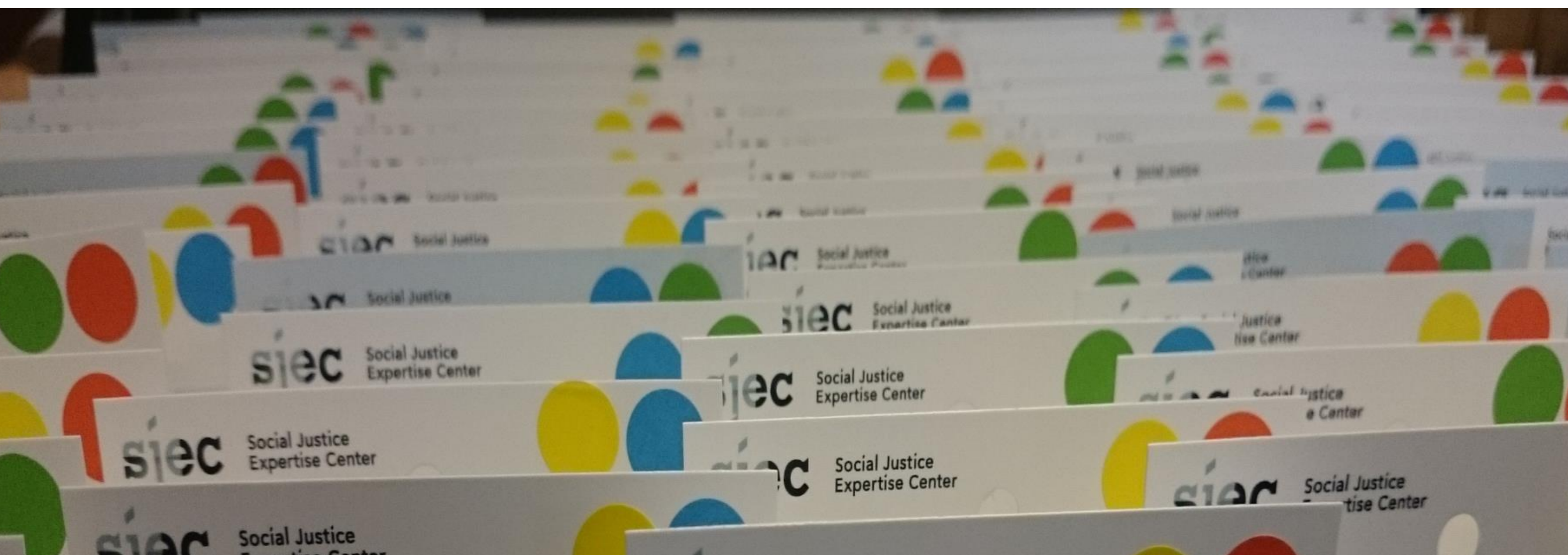

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Divergence in Fundamental Labor Rights Case Law: Banning Religious Symbols in Public Employment

Professor Titia Loenen, Professor of Human Rights and Diversity, Leiden University Law School

I. Introduction

Ensuring coherence in fundamental labor rights case law is an increasingly pressing issue. Indeed, the proliferation of judicial bodies competent to apply fundamental rights standards has turned coherence into a pressing issue in almost all areas of fundamental rights protection. In this respect, labor rights case law is no exception.

On the one hand, it seems obvious that the increasing number and variety of judicial bodies competent to adjudicate fundamental labor rights create new opportunities for enhancing the protection of those rights. At the same time, however, this development may pose threats to fundamental rights protection if it leads to widely diverging fundamental rights standard setting by different bodies.

One area where fundamental rights protection is clearly at stake concerns the fundamental rights of workers in public employment who wish to wear religious symbols such as a turban, a headscarf, or a kippa at work. The human rights protection these workers receive in European countries differs starkly.[1] In France, for instance, publicly employed personnel are not allowed to express their religion by wearing a headscarf or turban on the job, whereas in the UK this is not a problem. From the point of view of the employees concerned, this is highly problematic. In France, their freedom of religion is much more curtailed than in the UK.

So far, the fundamental rights framework of the European Convention on Human Rights (ECHR) has not created more coherence in this area. The European Court of Human Rights (ECtHR) allows the national authorities a very wide margin of appreciation in regulating manifestations of religion in the

[1] See for a comparative analysis of France, the UK, and the Netherlands, H. van Ooijen, *Religious symbols in public functions: A comparative analysis of Dutch, English and French justifications for limiting the freedom of public officials to display religious symbols* (dissertation, Leiden University, Antwerp: Intersentia, 2012).

public sphere, thus allowing the divergence in human rights protection of French and UK workers to continue.

As I submit, the Court of Justice of the EU (CJEU) could well take a different approach if it is called upon to provide a preliminary ruling on the issue, as is bound to happen at some point. In fact, several preliminary rulings regarding a ban on headscarves in employment are pending, but so far they concern private employment, not public employment.[2] Given the specific characteristics and goals of the EU legal order the balancing of interests that is ultimately at stake in cases like this could lead the CJEU to arrive at a different outcome and to require more coherence in the approaches taken by the member states in the protection of the freedom of religion of publicly employed workers. At the same time, this would then mean the CJEU is getting out of step with the ECHR fundamental rights standards as interpreted by the Strasbourg Court.

In this contribution, I explore these matters further. To start, I provide a brief overview of the diverging regulation of the wearing of religiously inspired dress in public employment in France, the UK, and Germany (section 2). I then address the way in which the ECtHR has dealt with this matter in its case law so far (section 3) and explore the question of what is to be expected of the CJEU, when it is confronted with similar cases (section 4). I round off with some concluding remarks (section 5).

II. Diverging approaches to religious dress in public employment in European countries

If you are a religious person and publicly employed and wish to express your religion by wearing a religious symbol at work, you are much better off in the UK than in France.

In France you will not be allowed to wear a headscarf, turban, or any other visible, ostentatious religious symbols because this is regarded as incompatible with the French notion of state neutrality, or *laïcité*. The state is not to express any preference for, or association, with a particular religion, belief, or conviction. It must be strictly neutral. As public functionaries represent the state when at work, they must also abide by this requirement in the way they dress or otherwise express themselves.[3]

[2] See the Belgian case *Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV* (Case C-157/15) and the one from France *Asma Bougnaoui, Association de défense des droits de l'homme (ADDH) v. Micropole Univers SA* (Case C-188/15). Just before finalizing this contribution the Opinion of Advocate General Kokott was delivered regarding the first case.

[3] For an exposition the report by the Commission that advised the French Government on the introduction of a ban on religious symbols in public education, see Commission de réflexion sur l'application du principe de laïcité dans la République, "*Rapport au président de la République et au parlement,*"

Underlying this notion of *laïcité* is the conviction that this approach is the best way to guarantee the freedom of religion or belief of all subjects of the state. Religious diversity and the expression of personal identity are important values that the state should recognize and protect, but they belong to the private sphere and not to the state sphere. In the latter, people must leave their personal religions or convictions behind so as to meet on the basis of an equal and neutral citizenship. Freedom of religion and belief is thus regarded as a precious and fundamental right, yet one that must primarily find its expression in the private sphere.

The way in which this approach to state neutrality has been elaborated is pretty far reaching. First, the prohibition to wear religious or other symbols applies to all workers who are publicly employed, regardless of whether they come face to face with the general public. So it is not just teachers at public schools or public servants who are in direct contact with the public who have to abide with the prohibition on religious symbols, but also, for example, technicians or administrative personnel who are not in such a position. Second, the regulations also cover employees of private employers if the firms concerned provide public services. This significantly increases the number of workers affected. Although the regulations have been challenged, the highest French judicial bodies have upheld them to date.[4]

UK practice regarding the wearing of religious symbols in public employment is almost the polar opposite. Religion and belief are not banned from the state sphere and its visible presence is not considered problematic. Be it civil servants or public school teachers, expressing religion or belief through a headscarf, turban, or other symbols is allowed, though more extreme forms of dress, such as a niqab or other face-covering veils, have been prohibited.[5] Even some police officers, who can be seen as representing the state par excellence, have been provided with turbans and headscarves matching their uniform. In addition, since 2011, a Sikh judge in the High Court sits with a turban.[6] This would be unthinkable in France. In the UK, the neutrality the state has to display toward its subjects is not perceived to require a uniform outward appearance, but is rather sought in the inclusion of diversity.

11 décembre 2003, http://www.ladocumentationfrancaise.fr/rapports-publics/044000099-rapport-2003-au-president-de-la-republique-et-au-parlement (accessed 27 May 2016).

[4] For a succinct overview of the legal state of affairs in this matter, see the guidelines in *Le fait religieux en entreprise*, *La Collection 'Vivre ensemble, travailler ensemble' no 2*, issued by the French confederation of trade unions CFDT, https://www.cfdt.fr/upload/docs/application/pdf/2015-12/guide_fait_religieux_en_entreprises_-_bd.pdf (accessed 27 May 2016).

[5] Such prohibition is then for different reasons, such as communication being hampered by the wearing of a face covering veil. For an overview, see Van Ooijen, *Religious symbols in public functions*, note 1.

[6] Jerome Taylor, "High Court appoints its first Sikh judge," *The Independent*, 29 July 2011, http://www.independent.co.uk/news/uk/home-news/high-court-appoints-its-first-sikh-judge-2328658.html.

Germany is somewhere in between the UK and the French approach. A good illustration of this concerns the position of public school teachers. The question whether teachers are allowed to wear a headscarf in the classroom has been a contested issue for quite some time. In 2003, in *Ludin*, the German Constitutional Court held that a ban on the wearing of a religious symbol such as a headscarf in a public school is not allowed if it does not have an adequate basis in law. This means that individual Länder, or states, are free to either ban or allow it, but they must provide for a proper legal foundation and in doing so should take into account all the relevant interests at stake, including the freedom of religion of the teacher, the neutrality of public education, and the rights of the children and of the parents.

In response to the judgment in *Ludin*, several states designed laws that prohibit the wearing of headscarves and other, especially non-Christian, religious symbols. When one of these was challenged before the Constitutional Court, the Court made clear that it will closely review any prohibitions of this sort. The ban instituted by the German state *Nordrhein-Westfalen* was held to be disproportionately limiting the freedom of religion and thus in breach of the Constitution. Although the protection of the state's duty of neutrality and of the school peace were each considered to be a legitimate aim, the regulation was based on an abstract assessment that the wearing of a headscarf endangers the state's duty of neutrality and the school peace. There was no evidence of a sufficiently specific danger to neutrality and school peace.

This overview shows how workers in Europe are faced with widely diverging limitations to the expression of their religion or belief at the public workplace, and how courts at the national level dealing with these issues have come to very different conclusions in terms of their compatibility with human rights standards. Given the framework of the European Convention on Human Rights on the one hand and of EU law on the other, case law of the ECtHR and the CJEU could be expected to bring about more coherence in this area.

III. The European Court of Human Rights and bans on religious dress

In the landmark judgment of 2005 in *Sahin v. Turkey*, the European Court of Human Rights held that Turkey was free to prohibit the wearing of headscarves and other religious symbols by students (and not just teachers) at state universities to protect the principles of, among others, state neutrality.[7] A decisive element in the judgment of the Court was its consideration that where the regulation of the relationship between state and religion is concerned, the national authorities enjoy a wide margin of

[7] ECtHR 10 November 2005, *Sahin v. Turkey* (Grand Chamber), Appl. no. 44774/98.

appreciation.[8] Similarly, in 2009 the European Court of Human Rights decided that France could exclude Sikh and Muslim pupils who refused to abide by a ban on the wearing of a turban or headscarf at a public school. Again the Court decided that measures such as those regulating religion in the public sphere fall within the state's margin of appreciation.[9]

Subsequent case law has confirmed this approach. The Grand Chamber judgment of the Court in *Lautsi v. Italy* (2011) is another landmark case.[10] In it, the Court accepted that Italy did not overstep its margin of appreciation by hanging crucifixes in public school classrooms. The message to be taken from these cases seems clear: the Court will not interfere in the issues at stake, which are politically very sensitive and have raised considerable public debate across Europe. The results of this deferential approach are also clear: under the ECHR standards as developed by the Court, the widely divergent practices between European countries described above are allowed. The national authorities are free to decide what or whom to protect and the Court sets no uniform European human rights standards in this area.

This approach has recently been confirmed in a case that specifically challenged the French ban on the wearing of religious symbols by workers in public employment, *Ebrahimian v. France*.[11] The case concerned a social worker employed in a psychiatric public hospital whose contract was not renewed because she refused to remove her headscarf at work. The Court again left a wide margin of appreciation to the national authorities and held that France's general ban on ostentatious religious symbols, such as the wearing of a headscarf, is permissible to protect the rights of others, that is the freedom of religion of the users of the public service. Importantly, and contrary to the standard of review applied by the German Constitutional Court in its 2015 judgement on the legal regulation in *Nordrhein-Westfalen*, the European Court accepted the abstract character of the French justification for the ban and did not require a more rigid and specific assessment of why the wearing of a headscarf by the social worker posed a threat to the freedom of religion of others.[12]

All in all, the case law of the ECtHR shows that, so far, the Court has not been willing to step in to provide more coherence in the approaches taken in European countries toward banning religious symbols in public employment. As a result, the Court gives its blessing in this area to widely diverging

[8] Ibid., § 109.

[9] Several rulings were handed down on the same date: ECtHR 30 June 2009; on headscarves: *Aktas v. France*, Appl.no. 43563/08; *Bayrak v. France*, appl.no. 14308/08; *Gamaleddyn v. France*, Appl.no. 18527/08; *Ghazal v. France*, Appl.no. 29134/08; on turbans: *Javir Singh v. France*, Appl.no. 25463/08; *Ranjit Singh v France*, Appl.no. 27561/08.

[10] ECtHR 3 November 2009, *Lautsi v. Italy*, appl.no. 30814/06.

[11] ECtHR 26 November 2011, *Ebrahimian v. France* (appl. No. 6446/11), available in French only.

[12] This is in fact part of the critique of the dissenting judges in the case, see ibid.

levels of fundamental rights protection for workers across Europe. Furthermore, by granting the national authorities an almost free hand, the Court also paves the way for a lowering of standards regarding the freedom of religion at the workplace in those countries where this freedom so far is less restricted than in France. Given the increasing social and political tensions related to the immigration crisis in general and the existence of hostile attitudes toward Muslims in several European countries in particular, such leveling down seems to be a serious scenario. This is highly problematic, especially for workers who regard the wearing of certain religious symbols as a fundamental aspect of their religious identity or as a prescriptive religious practice. It may seriously affect their job opportunities. Given the principled position taken by the Court regarding the wide margin of appreciation to be left to the national authorities, it is not very likely that this situation will change. This makes it all the more important to see whether the CJEU may perhaps take a different approach given the specific exigencies of the EU legal order and the specific role of EU law.

IV. The EU Court of Justice and bans on religious dress

As mentioned, preliminary questions on banning headscarves at work are pending for the CJEU. Both cases concern private employers, not public ones or private ones providing public services. Nevertheless, the Courts reasoning regarding bans in private employment may well shed light on the larger issues at stake and in any case it will only be a matter of time before public employment cases will reach the CJEU as well.

If this is to happen, a crucial question is whether the CJEU will follow a similar line as the ECtHR or not: will it be as deferential as the Strasbourg court or much stricter?[13] Stricter review need not lead

the Court to impose a strictly uniform standard on regulating religious dress at the workplace, but as the judgment of the German Constitutional Court shows, it will definitely lead to a far more critical evaluation of overly broad regulations based on abstract assessments of the dangers of the wearing of religious symbols to neutrality or other interests. A broad ban like the French one would probably not survive more rigorous scrutiny.

In this respect, the balancing test that will ultimately have to be conducted under the applicable EU equal treatment directives is quite similar to the review by the ECtHR under the ECHR. Space does not

[13] Though in a preliminary procedure the Court will formally not decide a case but leave it up to the national judge to apply the principles and criteria it has formulated, in practice the way in which the court formulates its ruling will leave either much or little discretion for application at the national level. See more extensively Christa Tobler, *Indirect Discrimination: A Case Study into the Legal Development of the Concept of Indirect Discrimination under EU Law* (Antwerpen: Intersentia 2005), 243.

allow for this point to be elaborated here, but in both instances the courts have to assess whether the ban concerned pursues a legitimate aim and whether the means chosen are proportionate.[14] Will the Luxemburg Court also accept abstract balancing as the Strasbourg Court did, or will it require a more specific (and thus more strict)—or even individualized—assessment of the threats posed by the wearing of a headscarf or other religious symbol to state neutrality or other legitimate interests that may be at stake? In addition, will in fact the CJEU include other interests in the balancing exercise than have been considered by the ECtHR?

My contention is that several reasons exist why the CJEU should follow a different line from the ECtHR and leave less discretion to the national authorities, given the specific context of EU law and the impact this may have on striking a (different) balance. At the same time, it should be acknowledged that strong reasons exist that may induce the Court to take a deferential stance.

Reasons for leaving little leeway to the member states

The main reasons for the CJEU to require a stricter review than the ECtHR applies in similar cases regarding the importance of enhancing the uniformity and efficacy of EU law, of guarding the free movement of workers, and of upholding the rather strong protection against discrimination at the workplace provided by the EU equal treatment directives so far.[15]

In regard to the first reason, the different purpose of EU law and the concomitant supervisory role of the CJEU versus the ECtHR are both clear. For the EU, ensuring the uniformity and efficacy of its law is of crucial importance for its functioning. Uniformity and efficacy may be endangered if member states are allowed to come to widely diverging results in regulating the wearing of religious symbols at the workplace when transposing the same EU directives, as is the case if we compare the outcome for the workers concerned in France and the UK. The importance attached by the CJEU to the uniformity and efficacy of EU law is illustrated by the *Melloni* case, in which the CJEU did not allow member

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[14] For a detailed comparison of the standards of review applicable to a ban on religious symbols for public officials under the ECHR and the EU equality directives see S. Speekenbrink, *European non-discrimination law: a comparison of EU law and the ECHR in the field of non-discrimination and freedom of religion in public employment with an emphasis on the Islamic headscarf issue* (dissertation Utrecht University, Antwerpen: Intersentia, 2013).

[15] See for some further exploration M.L.P. Loenen, *Mensenrechten en diversiteit in Europa: gelijke monniken, ongelijke kappen?* (Inaugural address Leiden University 2013; https://openaccess.leidenuniv.nl/bitstream/handle/1887/22183/Oratie%20Loenen.pdf), and M.L.P. Loenen and L. Vickers, "More is less? Multiple protection of human rights in Europe and the risks of erosion of human rights standards," in *Fundamental rights in the EU. A matter for two courts,* ed S. Morano-Foadi & L. Vickers (Oxford: Hart Publishing, 2015): 159-77.

states to apply a higher fundamental rights standard than provided for in the applicable EU rules, as it would be incompatible with those principles.[16]

As regards the second reason, the free movement of workers belongs to the core values and freedoms of the EU and the CJEU has a prominent role in protecting it against being undermined either directly or indirectly. It seems obvious that restrictions regarding the wearing of religious symbols in a broad range of employment affect this freedom. Many Muslims or Sikhs may be inhibited from moving from countries allowing them more freedom to express their religion such as the UK to France where they will be faced with less job opportunities. This may be exacerbated by the fact that the strict adherence to *laïcité* may also pose a serious barrier for their children to attend school, given that French law also prohibits pupils from wearing any ostentatious religious symbols at public schools. To what extent will this impact on the freedom of movement, inducing the CJEU to give France less leeway than it has had so far to severely restrict the wearing of religious symbols in public employment?

The third reason is more closely connected to the European nondiscrimination standards at stake in this case. Antidiscrimination standards have been part of EU law from the start and the grounds covered have been extended over time from discrimination on grounds of sex to other grounds.[17] As far as employment is concerned, EU law includes several directives covering discrimination on grounds of sex,[18] race or ethnic origin,[19] and sexual orientation, handicap, age, and religion or belief.[20]

As mentioned, no case law regarding discrimination on grounds of religion in employment yet exists, so it is difficult to say how strict the CJEU will review this type of discrimination. Interestingly, however, it is not inconceivable for a similar case to be presented as a claim of indirect discrimination on grounds of sex, or on grounds of race or ethnic origin. Indirect discrimination is also covered by EU law. Indirect discrimination on grounds of sex or race discrimination it is at stake when an apparently neutral provision, criterion or practice puts persons of one sex or race/ethnic origin at a particular disadvantage compared with persons of the other sex or another race/ethnic origin, unless that provision, criterion, or practice is objectively justified by a legitimate aim, and the means of achieving

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[16] CJEU 26 February 2013, *Melloni v. Ministerio Fiscal* (Case C -399/11).

[17] For an overview of EU discrimination law see Evelyn Ellis and Philippa Watson, *EU Anti-Discrimination Law*, 2nd ed. (Oxford: Oxford University Press 2012).

[18] Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L204/ 23 (Recast Directive).

[19] Directive 2000/43/EC of 29 June 2000 on the implementation of equal treatment irrespective of race or ethnic origin in employment and regarding access to and supply of goods and services, OJ L180/22 (Race Directive).

[20] Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L303/16 (Framework directive).

that aim are appropriate and necessary.[21] So the disparate impact of a ban on religious symbols on specific groups of women compared with men, or on specific ethnic groups, may trigger review under those directives.

In the case at hand, it could be argued that in France a ban on wearing religious symbols in public employment will have such a disparate impact on Muslim women because they will be more affected than Muslim men. Similarly, a case could be made that the ban has a disparate impact on specific ethnic minorities given that the groups most affected are people of North African descent. If the Court acknowledged the existence of such a disparate impact, it would have to assess whether an objective justification is indeed present. Generally speaking, the Court requires an exacting scrutiny when indirect discrimination on grounds of sex or race/ethnic origin is concerned.[22] Under such scrutiny, it is doubtful whether a broad ban on religious symbols, as applied in France, which also covers privately employed persons who render public services and persons who have no face-to-face contact with the general public.

Reasons for leaving much leeway to the member states

This said, several strong reasons may tilt the balance toward the CJEU's not imposing a more uniform standard regarding religious dress codes in public employment across the member states and leaving them much leeway.

To start, a legal argument would tie in with the obligation of the EU laid down in article 4 of the Treaty of European Union to respect the national identities of the member states as manifested, among others, in their constitutional structures.[23] There is little doubt that the very notion of *laïcité* is integral to the French national identity as manifested in its constitutional tradition. However, even if this is accepted, the concrete content and implementation of this principle is not necessarily set in stone, that is, is not subject to change.[24]

Several other reasons of a more political nature stand out. To start with, the Court may wisely want to stay away from politically highly sensitive issues. For France, its particular notion of state neutrality

[21] Article 2(1)(b) Recast directive, *supra* note 18; Article 2(2)(b) Race Directive, *supra* note 19.

[22] For an overview of the case law, see Ellis and Watson, *EU Anti-Discrimination Law*; E. Howard, *The EU Race Directive: Developing the Protection Against Racial Discrimination within the EU* (London: Routledge, 2010).

[23] Article 4(2) TEU: "The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government."

[24] In addition, according to some scholars Article 4(2) TEU is unlikely to provide an autonomous basis for a claim to respect national identity. See Nik de Boer, "Addressing rights divergences under the Charter: Melloni," *Common Market Law Review* 50 (2013): 1097.

and the concrete implementation thereof no doubt constitutes such an issue, but in other countries this topic also raises considerable—often heated—public debate. In addition, like the ECtHR, the CJEU represents a form of supranational power that has increasingly come under attack. The recent Brexit is a clear warning.[25] Such challenges to EU authority and legitimacy may induce the Court not to ruffle the feathers of some of the Member States any more than strictly necessary, especially when it concerns some powerful ones.

The opinion of Advocate General Kokott in one of the preliminary proceedings pending for the CJEU mentioned would clearly appear to support a deferential approach by the CJEU.[26] Even if it is dealing with a ban on religious symbols in private employment and not public employment, the very deferential line she advises the Court to take and the way in which she develops her arguments strongly suggests that she is in favor of giving the Member States a largely free hand. The sensitivity of the matter is explicitly referred to as a reason to do so. As she puts it,

> In a case such as this, the proportionality test is a delicate matter in the context of which the Court of Justice, following the practice of the ECtHR in relation to Article 9 ECHR and Article 14 ECHR, should grant the national authorities, in particular the national courts, a measure of discretion which they may exercise in strict accordance with EU rules. In this regard, the Luxembourg Court does not necessarily have to prescribe a solution that is uniform throughout the European Union. Rather, it would be sufficient, in my opinion, for the Court to indicate to the national court all of the material factors that it must take into account in carrying out the proportionality test but otherwise to leave to that court the actual task of striking a balance between the substantive interests involved.[27]

The CJEU should therefore provide the factors that must be taken into account when carrying out the proportionality test, but leave it to the national court to actually strike a balance between the interests involved. A uniform standard across Europe is not required.

Bearing in mind the importance attached to the uniformity and efficacy of EU law in the *Melloni* case mentioned above, it is remarkable the Advocate General does not explain any further why a need for a more uniform standard is lacking. Equally remarkable is the ease with which she discards the possibility of a ban on religious symbols coming in the purview of indirect discrimination on grounds of sex or ethnic origin. Without any further investigation she concludes that “So far as it is possible to

[25] At the time of writing, the British referendum on this topic had not been held yet.

[26] Opinion of Advocate General Kokott, 31 May 2016, *Samira Achbita en Centrum voor Gelijke Kansen en voor Racismebestrijding v. G4S Secure Solutions NV* (Case C-157/15).

[27] Ibid., § 99.

tell, a company rule such as that, at issue (...) is capable of affecting men just as much as women, and, moreover, does not appear to put employees of a particular color or ethnic background at a particular disadvantage."[28]

On the other hand, however, she gives much weight to the need for the EU to respect the national identity of the member states. She mentions France as an example of a country where secularism has constitutional status and where a respect for national identity may mean that more far reaching restrictions on the wearing of visible religious symbols would be acceptable.[29] She also mentions the freedom of employers to conduct a business in a free and open market as an important interest.[30] Surprisingly, the importance of the free movement of workers for guaranteeing an open and free market is not referred to as an interest to take into account.

To conclude, as far as Advocate General Kokott is concerned, the reasons elaborated above to support a deferential review are taken on board whereas those that would call for giving less leeway to the national court hardly received any attention to start with.

V. Concluding remarks

We will have to wait and see what line the CJEU actually takes regarding regulations that ban the wearing of religious symbols in public employment. Whatever the outcome, the issue clearly highlights the complexities and dilemmas involved with the proliferation of judicial bodies dealing with the same type of cases in different legal settings and from different perspectives. Where, ultimately, the outcome of fundamental rights cases, such as those at hand, depend on the balancing of all the interests at stake, different legal regimes and different social, economic and cultural settings may lead to different interests being identified and held in the balance, resulting in widely diverging outcomes. From the point of view of the protection of the fundamental rights of the workers involved, this is highly unsatisfactory. For those for whom religion is a core part of their identity, the question whether they are also allowed to express this identity at work is not trivial. It is difficult to explain why the freedom of workers to do so is protected so much better in one European country than in another, despite the fact that the same fundamental rights standards apply to those countries.

[28] Ibid., § 121.

[29] Ibid., § 125.

[30] Ibid., § 134.