

# Tying the Knot: A Holistic Approach to the Enhancement of Religious Minority Rights and Freedom of Religion

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## Introduction

The debate on religious minority rights has long been stranded in the shallows of a sterile juxtaposition between the politics of sameness and the politics of difference. On the one hand, there are the supporters of a strategy aimed at ensuring freedom of religion or belief for all on the same footing (Binderup 2007); on the other hand, there are advocates of special legal measures intended to protect the identity of and guarantee non-discrimination against minority religions (Van der Ven 2008). The former believe that general rules aimed at ensuring individual and collective religious freedom, once they are correctly implemented, are sufficient to protect minorities from discrimination and enable them to maintain and develop their religious identity. The latter are convinced that these objectives are unattainable without specific measures to remedy the situations of inferiority and vulnerability in which minorities are almost always placed. In their view, it is more a matter of the structural deficiency of a system, based on the principle of “the same freedom of religion or belief for all” than of the correct implementation of its rules.

These two legal strategies are based on different philosophical and political premises. The guarantee of individual autonomy is the former’s fundamental principle. The protection of individual freedom may also imply a collective dimension, i.e., the freedom of individuals to associate, in order to attain the purposes they wish to pursue. However, the core of this first line of thought is the (religious) freedom of the individual. This is the universal value that should be protected and promoted in every part of the world, through the development of a normative framework within which individuals can freely make choices related to religion or conscience. The second strategy takes as its starting point a different vision of the individual: in this strategy, the individual is not an isolated subject but a member of a community with its own history, culture, language, religion and so on.<sup>1</sup> The universal value to be protected is the existence of this plurality of communities in the first place, those that, being minorities, are at risk of assimilation or extinction. In this context, the concrete exercise of individual religious freedom cannot be dissociated from a regulatory framework in which different measures can be legitimately taken to guarantee and promote the religious identity of minority groups.

Another dichotomy emerges when the issue is addressed from the point of view of equality. Two conceptions of equality confront each other in this field. Freedom of religion or belief for all goes hand in hand with the idea that the same rule should apply to all individuals and groups, regardless of whether they profess and practice a majority or minority religion or belief. Religious minority rights imply that equality can include a certain degree of difference. The former approach supports the elimination of any distinction grounded on religion or belief, while the latter accepts that some differences are upheld, provided that they are voluntarily accepted by the members of the religious or belief community. In the one scenario, the accent is placed on the politics of sameness, and in the other, on the politics of difference. This discrepancy does not mean that convergence is impossible on a practical level. Many legal systems, without questioning the principle



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of equal treatment, accept a certain degree of accommodation to answer the challenge posed by deeply ingrained differences and to defuse potential conflicts (Ferri, forthcoming; Alidadi 2017).

The distance between the politics of sameness and the politics of difference can also be seen in the juxtaposition of systems grounded in legal uniformity or legal pluralism. Religious minority rights are likely to cause problems in a legal order founded on the principle of a uniform law that applies to all citizens; a system based on legal pluralism may accept more easily the different rights and obligations for members of majority or minority religious groups (Modood and Sealey, forthcoming). Again, thinking that uniformity and plurality cannot be pragmatically combined would be a mistake. There are many examples of states that adopt uniform or dissimilar rules, depending on the legal field they intend to regulate.

Finally, the preference for one or the other legal strategy—the same rights for all, versus special rights for minorities—may also be connected with scholars' different academic disciplines. In the field of study regarding law and religion, the management of religious diversity rather than the protection of religious minorities is the guiding principle. In this context, ensuring the same rights and freedoms for all religious groups is a goal that, in the opinion of most scholars of law and religion, can be attained without making use of special rights for religious minorities. As a consequence, many law and religion scholars would agree that “une situation minoritaire sociale comme telle n'évoque pas des traitements juridiques différents” (Wieshaider 2018) so that “special provisions safeguarding the rights and legal status of religious minorities are not necessary” (Pulte 2018). Few minority rights scholars would accept these conclusions, and this disagreement is a symptom of a significant difference between them and the law and religion scholars. The former focus on vulnerable groups and are primarily interested in finding legal strategies and tools that can minimize their disadvantages. They see the links between different minorities and include the religious ones in a family of groups that face similar problems because of their minority status.<sup>2</sup> The latter place religious minorities within another family comprising different religious groups (including both majorities and minorities). They focus on the regulation of religious diversity and are primarily interested in developing a system in which the relationship between the state and religions is fair to both majorities and minorities. The interest in religious minorities is the link between the two groups of scholars, but each of them looks at the issue from a different point of view.

This Special Issue of “Religions” brings together contributions from both traditions of study and aims to represent the point of convergence of the reflections developed in these two areas of legal research. For this reason, the first question to be answered is the following: through a dialog between scholars of law and religion and scholars of minority rights, can we overcome the dichotomy between the politics of the same rights for all and the politics of special rights for minorities?

### Minority Rights and Human Rights

To break the deadlock described in the previous pages, it has been argued that “minority rights are an integral part of human rights”; minority rights serve to bring “all members of society to at least a minimum level of equality in the exercise and enjoyment of human rights and fundamental freedoms” (Van der Stoel 2000). This approach grasps the core of the problem, which is to place minority rights fully within the human rights horizon, but presents the limit of conceiving minority rights as a level of protection that precedes the full enjoyment of human rights (Henrard 2021). In this perspective, minority rights become useless once they have guaranteed the minimum level of equality that is necessary to enjoy human rights. They represent the gateway to the full enjoyment of human rights for individuals and groups that are in a minority position but are of no real value for individuals and groups that are part of the majority. This line of thinking does not fully capture the contribution that minority rights can make to a more comprehensive understanding of human rights and, in particular, freedom of religion. By emphasizing the

importance of participation in decision-making processes and the promotion of collective identities, on the one hand, and affirmative state action on the other, minority rights studies and research help overcome a negative conception of religious freedom centered on removing restrictions on individual choices concerning religion or belief. Similarly, studies and research on the right to freedom of religion, which are characterized by a strong focus on respect for individual rights, help prevent the dangers inherent in overemphasizing the rights of minority groups.<sup>3</sup> The scarcity of points of contact between minority rights scholars, on the one hand, and law and religion scholars on the other, has not helped to grasp or develop the full potential of closer cooperation (Ghanea 2012). As will be seen in the next section of this paper, a collaboration between these two groups of scholars would allow for the development of useful synergies to ensure the better protection of both religious freedom and minority rights.

A step forward has recently been made by some human rights scholars, who propose overcoming this limitation through a “holistic conceptualization” of the right to religious freedom. They support:

“... an interpretation of freedom of religion or belief and minority rights as mutually reinforcing norms. Neither of the two norms can replace the other. While protective and promotional measures on behalf of religious minorities always presuppose respect for freedom of religion or belief of all their members, minority rights have an added value beyond merely reinforcing everyone’s right to freedom of religion or belief.” (Bielefeldt et al. 2016, p. 451)<sup>4</sup>

This added value consists in the notion of protection and promotion of the religious identity of minorities.

“What distinguishes minority rights from other human rights is their emphasis on the long-term development prospects of communities and their identities, always depending on the wishes of the respective groups and their individual members. Whereas freedom of religion or belief just presupposes the existence of religious communities within which individuals can practise their faith, minority rights turn this very existence of communities into an explicit goal of protective and promotional State activities.” (Bielefeldt et al. 2016, p. 452)

Looking at the issue from this point of view, the protection and promotion of religious identity, which are at the heart of religious minority rights, become equally central to a correct conceptualization of the right to freedom of religion or belief. Conversely, the issue of the individual’s right to choose, change or abandon a religion, which is at the heart of the right to freedom of religion or belief, becomes equally central to a correct conceptualization of religious minority rights. If religious minority rights and the right to freedom of religion or belief are truly integrated within a single system of human rights, the interpretation of the former cannot be separated from that of the latter, and vice versa. The link that makes hybridization between these rights possible is their collective and institutional dimension. Freedom of religion or belief includes the right to profess and practice a religion or a belief “in community with others”, and to establish institutions with religious, charitable and educative goals. This collective and institutional dimension is also at the core of religious minority rights.

A similar argument can be made with regard to the principle of participation, which is another pillar on which the system of protection of minority rights is based.<sup>5</sup> The right of members of a religious minority to participate in decision-making processes affecting them is clearly upheld in UN documents.<sup>6</sup> This right cannot be directly derived from the right to freedom of religion or belief, and constitutes an added value that enriches the legal regulation of the latter. It is a good example of how “the effective implementation of one category of rights can contribute to the effective implementation of other categories of rights and vice versa” (Tomaselli and Xanthaki, forthcoming). However, leaving aside the principle of participation, which would require a much more in-depth analysis, the hybridization process that has now been mentioned raises a number of questions that

require careful consideration. What is the legal meaning of “religious identity”? How do we reconcile the principle that freedom of religion or belief primarily protects the right to choose, abandon and change one’s religion and the idea that religion is an essential component of a minority group identity and, as such, is worthy of specific protection? What makes a religious minority different from an ethnic, linguistic or national one? Is there a relationship between the protection of religious minority rights and legal pluralism?

Before addressing some of these questions, a methodological remark is required. The relationship between minority rights and the right to freedom of religion or belief cannot be discussed without contextualizing both its components. Although there is a shared core, these rights can acquire a profoundly different meaning and content depending on the history and cultural background of a particular country or region of the world. The right to religious freedom is neither understood nor regulated in the same way in India and France, in Europe and Africa, and the same remark applies to religious minority rights. There are countries where the emphasis is on ensuring freedom of religion or belief for all and others where the protection of religious groups takes precedence. The need to contextualize the analysis, and avoid stereotypes that do not correspond to reality, was taken into account when designing this Special Issue of “Religions”. Its focus is on Europe, but the experiences of other geographical and cultural areas are not ignored. This choice is supported by the conviction that the countries and peoples of the Old Continent present an affinity based on a shared history, political culture and legal traditions that, although with many different specifications, make it possible to allow someone to speak of Europe as a sufficiently homogeneous field of investigation, capable of providing the researcher with comparable elements of analysis. At the same time, this specificity of Europe lives in dialog and comparison with other histories, cultures and traditions. Although this dialog has been distorted and made difficult by the colonial experience and is its continuing legacy,<sup>7</sup> it is far from being useless. For this reason, a large part of this Special Issue of “Religions” is dedicated to the examination of the legal discipline of religious minorities in non-European contexts.

### **Synergies**

To understand how feasible and helpful it may be, the integration of input from studies on minority rights and from studies on freedom of religion or belief must be tested in relation to certain unresolved problems affecting both the former and the latter. They will be briefly set out and discussed in this section.

#### *(a) Definition*

Despite lengthy and lively discussions, the legal definition of “religious minority” remains an unresolved problem. There is no consensus on the meaning, content or scope of either of the two words that comprise the term: “minority” and “religion”.

Beginning with “minority”, more than twenty years ago, a document published by the UN Office of the High Commissioner for Human Rights stated the following: “No definite answer has been found and no satisfactory universal definition of the term ‘minority’ has proved acceptable.” After more than twenty years, not many steps forward have been taken, and the lack of consensus on the definition of “minority” is an element of the weakness of the whole system of the protection of minority rights. To guarantee the homogeneous and consistent implementation of legally binding instruments on minority rights, it is acknowledged that states should clarify the intended beneficiaries. A pragmatic approach that leaves the question of definition open to the state’s margin of appreciation is indeed not fully satisfactory because it can lead to inconsistent implementation, in breach of the principle of non-discrimination.<sup>8</sup> Notwithstanding the risk of legal vagueness, it is indeed not impossible to formulate a binding definition, but it certainly requires both social and political sensitivity.<sup>9</sup>

Besides, any reliance on an international instrument regarding the notion of “minorities”, as, for instance, in Article 2 TEU, or of “national minority”, as in Article 21 of the EU Charter of Fundamental Rights, should be based on a common legally binding definition

of minorities and should not be subject to diverse interpretations in the different Member States. Finally, insofar as the notion of the rights of minorities is relied upon in the future EU accession process with respect, for instance, to Turkey—as it should be, according to the 1993 Copenhagen criteria—the understanding of the concept of “minority” should also be clarified.<sup>10</sup>

However, as mentioned, in international law there is no generally recognized, legally binding definition of the term “minority” as set out in the Grundnorm of minority protection, i.e., Article 27 ICCPR, not to mention ethnic, religious or linguistic minorities, despite several attempts in past decades to elaborate such concepts.<sup>11</sup>

The most quoted, although not binding, definition of “minorities” is the descriptive 1979 Capotorti definition: “A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language” (Capotorti 1979, para. 568).

Among the most difficult aspects involved in providing a definition of “minority”, some are particularly problematic and deserve more detailed reflection.

Firstly, in determining the existence of a minority group, language and religion have been without a doubt the most objective among the factors that have always been taken into account. In contrast, the element of ethnicity, which is often linked to specific religious aspects, such as traditional practices, confessions and new sects, is much more awkward to handle. As Joseph Marko puts it, “Ethnicity is not an inherent, natural trait of people(s) or territories, but a social construction of reality with the political function of exclusion or inclusions” (Marko 2019, p. 141).

Secondly, the numerical element of a minority is generally acknowledged. However, this aspect can potentially exclude groups that may constitute a minority in numerical terms within a province of a state, but that constitute a majority in the state as a whole. State versus sub-state levels, or so-called minority-in-minority situations, and the consequent possibility of whether or not one can rely on minority protection, is another difficult issue involved in defining “minorities”.<sup>12</sup>

Thirdly, the non-dominant position of a minority is another controversial issue: are only the marginalization of, and discrimination against, a group by the majority population and public authorities the preconditions for protecting a group under international law? Should groups that find themselves, *de jure* or *de facto*, in a dominant or co-dominant position then be excluded from protection?<sup>13</sup>

Finally, the widely shared interpretation of international law is inclined to follow the so-called self-identification principle, namely the principle whereby the will of the person concerned is decisive for his or her identification with a given minority and, thus, for the existence of the minority itself (UN Commission on Human Rights 2004). In this respect, the situation of individuals of mixed identities and their affiliation with a given group is particularly complex,<sup>14</sup> and so is the possibility to opt out of the group without fearing that the state will continue to label them as members thereof.<sup>15</sup>

If we now turn to the definition of “religion”, the picture becomes even more complex.<sup>16</sup> In the United States, it has been debated for a long time whether yoga is a religion (and therefore should be regulated as such) (Moriarty et al. 2013), and in Europe, it has been discussed for just as long whether Pastafarians are members of a religious community or a group of jokers.<sup>17</sup> A secular state must refrain from any theological discussion, and therefore faces trouble when deciding whether a doctrine or practice can be defined as “religious”. Some scholars have tried to offer an objective definition of “religion” and have immediately come up against the problem of identifying the elements that should characterize the definition. Does a religion, in order to be recognized as such, presuppose the existence of a god, of certain divinities or supernatural entities? Does it require practices such as prayer, meditation, or worship? The variety of doctrines and practices that are commonly held to be religious has quickly shown how impervious this path is. Others

have renounced any claim to objectivity and have proposed a subjective definition of religion, placing the attitude of the faithful at the center of the investigation. They concluded that “religion” is what constitutes the ultimate meaning of a person’s life, but failed to respond to the objection that, when adopting a subjective point of view, the meaning of “religion” becomes so broad that it no longer has any definitional value. The problem is further complicated by the fact that, in most international law instruments, belief is equated with religion. For these reasons, some scholars gave up any attempt to define what religion is. The central argument of Winnifred Sullivan’s book, *The Impossibility of Religious Freedom*, is that it is useless to look for a sound legal notion of freedom of religion because it presupposes a concept—religion—that we are not in a position to define (Sullivan 2005).

Legislation and case law confirm this situation of uncertainty. The European Court of Human Rights stated, “It is clearly not the Court’s task to decide in abstracto whether or not a body of beliefs and related practices may be considered a ‘religion’ within the meaning of Article 9 of the Convention.” The Court concluded that “it must rely on the position of the domestic authorities in the matter and determine the applicability of Article 9 of the Convention accordingly” (ECtHR 2009, *Kimlya and Others v. Russia*, para. 79). However, the constitutions of the European countries do not provide any definition of “religion”, and their laws contain at most an indication of what is not a religion.<sup>18</sup> It is therefore not surprising that the case law of the national courts does not allow a uniform line to be identified at the European level, as indicated by the conflicting decisions concerning Scientology, which is considered a religion in some countries but not in others.

What can we learn from this short review of the problems connected with the definition of minorities, religious minorities and religion? That developing general legally binding definitions is an extremely difficult task, because any definition requires a degree of precision that is hardly attainable, especially in fields that are very sensitive for cultural, social, economic or political reasons. Nevertheless, the courts have been able to deal with practical issues involving the identification of a legal concept of religion, as well as minorities and religious minorities, with a sufficient degree of accuracy. How has this happened? For instance, as regards the concept of religion, this has been done through the identification of some formal parameters that define the fields of religions and beliefs entitled to be protected by the right to freedom of religion or belief. These parameters are as follows: a religion or belief must represent “one of the fundamental elements” of the “conception of life” of a person<sup>19</sup> and must attain a certain level of cogency, seriousness, cohesion and importance (ECtHR 2013, *Eweida and Others v. The United Kingdom*, para. 81). We are far from a definition, and these parameters leave ample leeway to the courts to decide controversial and borderline issues.<sup>20</sup> However, these parameters are enough to provide guidance to the courts and administrative bodies that must pragmatically answer the question about the religious nature of individual and collective claims.

#### (b) Recognition

An additional weakness of minority protection, and an unsettled issue at both the national and international level, is the problem of the non-recognition of a minority. The recognition of a minority, and the accompanying legal capacities of governmental institutions and authorities, is intimately linked to the right to existence, which is among the basic claims of minorities (Packer 1996, pp. 150–53).

International law holds that the existence of communities is a question of fact, not a question of law. Article 27 ICCPR clearly guarantees certain rights “in those States in which . . . minorities exist”. Accordingly, the question of whether a state does or does not “recognize” minorities in its domestic law cannot be decisive for international law.

While the existence of minorities may be a question of fact,<sup>21</sup> there is, however, nothing to prevent a state from requiring registration, and, in this regard, states enjoy a rather broad margin of appreciation on the “form” of recognition of a minority group. In addition, if an independent state does not accept the existence of a minority group, there is no ad hoc machinery—apart from indirect recourse to international provisions, such as freedom of assembly and association or freedom of religion—for settling the dispute

at the international level, even though sectors of the international community, the press and the general public recognize that the group in question should enjoy explicit and legal recognition. The question of non-recognition of a minority group is thus a subject on which there are no national or international instruments, nor is there any satisfactory case law. In some cases, the de facto existence of a minority is admitted, but that admission does not imply de jure recognition. The lack of an international mechanism that can reverse a state's refusal to recognize the existence of a minority group has in fact been identified as one major lacuna in both the international law of minority protection and conflict-resolution mechanisms (Bengoa 2000, p. 22; Eide 2003, para. 43).<sup>22</sup>

Do state laws and court decisions related to religious organizations provide any useful insights into these issues? The question of the recognition of religious organizations is one of the most prominent topics of the regulation of relations between states and religions and has attracted the attention of both scholars and international organizations (Friedner 2007; OSCE-ODIHR 2014). They agree that the protection that international law grants religious organizations does not depend on whether they have been recognized by the state and enjoy legal personality. According to international and human rights law (UN Human Rights Committee 1993), unrecognized and unregistered religious organizations are entitled to the same rights of liberty, autonomy and self-administration that are enjoyed by recognized/registered religious groups. Moreover, freedom of religion and association includes the right of every religious organization to obtain legal personality, and states should ensure that access to legal personality should not be more difficult for religious or belief organizations than for other categories of groups or communities (OSCE-ODIHR 2014, p. 19). Domestic legislation does not always respect, and sometimes openly contradicts, these standards, and recently, the gap between international and national laws has tended to widen.

Above this basic level of guarantees, international law leaves states free to establish their own systems of recognition or registration of religious organizations. The variety of national situations is very large. In some countries, the recognition (or registration) of religious communities is entrusted to the courts, and in others, to administrative bodies. Some countries have adopted a multilevel system, with different forms of recognition or registration, and different rights attached to each of them. Religious organizations have access to each of them depending on how many members they have, how long they have had a presence in the country and other requirements. Other countries have just one type of registered or recognized religious organization, and all of them enjoy the same rights and must respect the same conditions for recognition/registration.<sup>23</sup> As can be understood from these remarks, each state enjoys a wide margin of discretion in defining the system of recognition or registration that best suits its traditions and needs. However, there are certain limits that must always be respected. Firstly, states should ensure that access to legal personality for religious or belief organizations is "quick, transparent, fair, inclusive and non-discriminatory", and does not entail burdensome requirements (OSCE-ODIHR 2014, p. 26). Secondly, if states grant certain privileges to some religious or belief organizations (for example, providing financial subsidies, access to public mass media, etc.), those privileges should be granted and implemented in a non-discriminatory manner that implies that the privileged treatment has an objective and reasonable justification (OSCE-ODIHR 2014, p. 38).

### *(c) Individual versus Collective Rights*

Minority rights have traditionally been admitted in contemporary standards of human rights as the rights of individuals rather than collective or group rights. Some states' refusal to accept any suggestion that some minority rights may be collective rights is due to the "securitization" of ethnic relations that has been the main short-term concern behind most international treaties and declarations on the protection of minorities (Carlá 2019). As a result, in the process of codifying general human rights after the Second World War, the emphasis shifted from group protection to the protection of individual rights and freedoms. The non-discrimination principle was applied accordingly, which meant that whenever

a person's rights were violated because of a group characteristic—be it race, religion, or nationality, to name a few—the matter was to be resolved by protecting the rights of the individual on a purely individual basis.

Thus, while most recent international documents concerning minorities acknowledge that the promotion and protection of the rights of minorities contribute to the stability of states, they also point out that minority rights cannot serve as a basis for claims of secession or dismemberment of the state, and they make special mention of the principle of sovereignty and territorial integrity. Thornberry clarifies the reasons for this restrictive approach toward minority rights by noting that states fear that “reifying the group will contribute to the intensification of its potential for separatism” (Thornberry 2001, p. 70).

Between the two polarized options—the individual dimension versus the group dimension—a third position employs the formula of individual rights that are “collectively exercised” and represents a *via media* between the rights of individuals and full collective rights. In this regard, however, the Explanatory Report that accompanies the FCNM—the major European-based legal instrument for the protection of minorities—clarifies that the “joint exercise” of rights and freedoms is distinct from the notion of collective rights (Council of Europe 1995, para. 37).<sup>24</sup>

The debate around the individual/group rights dimension is clearly not just a theoretical one; it has practical consequences: in case of a controversy between a group and its individual members, is the individual rights dimension to be given priority over the group's interests, or is it the other way around? Upon whom are the rights bestowed? Are the individual members of the group the beneficiaries, or is it the collective itself?<sup>25</sup>

These issues have been discussed in depth, in relation to the right to freedom of religion or belief. The ECtHR's case law provides us with many examples. First of all, the ECtHR has considered the question of the subject upon whom the right to freedom of religion is bestowed. As already mentioned, in addition to an individual and collective dimension, this right also has an institutional dimension. In view of the latter, the ECtHR has established that a religious organization can exercise the right to freedom of religion granted by Article 9 ECHR on behalf of its adherents, and can consequently lodge a complaint alleging a violation of the collective dimension of its members' freedom of religion.<sup>26</sup> Secondly, the ECtHR has often been called upon to decide disputes in which the freedom of a religious institution collides with that of one or more of its members. The ECtHR has established that religious organizations have the right to freely determine their doctrine and organization, and respect for their autonomy prevents the state from deciding disputes between a religious organization and its members that concern the institution's doctrinal principles and organizational structure. On the basis of this principle, the ECtHR rejected the request of a priest of the Church of England who contested the decision of the Church Synod to ordain women to the priesthood, as well as the request of a priest of the Lutheran Church of Sweden who had been rejected for a vicar's post because of his opposition to the ordination of women.<sup>27</sup>

The further away from this area where the doctrine and organization of a religious institution are at stake, the more the individual rights of its members regain strength. Two cases concerning the dismissal of Church employees who had extramarital relationships provide a good example. In the first case, the ECtHR ruled against the German tribunals' decisions that had upheld the right of a religious organization to dismiss the organist of a parish. According to the ECtHR, the worker's right to respect for his private and family life and the limited harm his conduct had done to the Church had not been adequately taken into consideration by the German courts.<sup>28</sup> In the second case, the ECtHR upheld the Church of Jesus Christ of Latter-Day Saints' decision to dismiss its director of public relations, taking into consideration the important public position he held, and the damage his behavior had done to the credibility of the Church in view of the seriousness of adultery in its teachings.<sup>29</sup> These two decisions show that the Court is inclined to favor the rights of the institution over those of individuals when the organizational autonomy and the doctrinal independence of the religious organization are at stake. The further one moves



away from this area, the more the Court adopts a pragmatic orientation and takes into consideration the particularities of the concrete case it has to decide.

The three issues discussed in this section—definition, registration/recognition, individual and collective rights—are at the center of the reflections of both minority rights scholars and law and religion scholars. The subject matter of their investigations is the same, but the angle from which they approach these issues is slightly different. As written at the beginning of this introduction, minority rights scholars focus on religious minorities; law and religion scholars focus on religious organizations. If properly capitalized upon, these slightly different perspectives can prove to be an asset because they highlight two facets of the same problem: the specific needs of religious minorities and the more general requirements of religious groups, minority and majority alike. Starting from this more inclusive point of view, it is possible to address more complex problems, such as those that will be highlighted in the next section.

### **Regulating Religious Diversity: What Still Remains to Be Addressed**

The essays included in this Special Issue of “Religions” also pose a number of questions concerning the very conceptualization of the notion of religious minority. This section of the introduction will consider two of them. These are complex questions that cannot be fully answered in these pages; they are intended to draw attention to the need to address them in order to develop an effective system of protection and promotion of the rights of religious minorities.

The most radical question has been framed in the following way: should we “abandon the notion of religious minorities”, which has become “a straitjacket that is tightened to societies with high socio-religious differentiation, internal to both the historical dominant religions, and to the new religious presences” (Pace, forthcoming)? This question leads us right to the heart of the problem, which is not the relationship between religious majorities and minorities, but the regulation of religious diversity. The dialectic between the members of different religions is a constant in human history; it crosses all continents and all historical periods but takes on different forms, depending on the frame of reference within which it is placed. In modern times and in Europe, this has been constituted by the nation-state, which has provided the cultural, political and legal background necessary to build the category of “minority” and apply it to people and groups who, for ethnic, linguistic or religious reasons, are not fully included in the horizon defined by the triad of one people—one nation—one state. Within this horizon, the discourse on religious minorities and their rights could develop. However, prior to the formation of nation-states, the frame of reference was provided by political (Holy Roman Empire), religious (Christianity or Islam), or other types of structures that, due to their internally fragmented and plural structures, were poorly suited to identifying the problem of religious diversity in terms of relations between majorities and minorities. As John Tolan has pointed out, in the medieval Canon, Jewish and Islamic law did not know “the categories of ‘minority’ and ‘majority’”. Any attempt to demarcate ‘minorities’ as a field of study in pre-modern history hence must be wary of anachronism” (Berend et al. 2017, p. 21). This means that the question of religious minorities and their rights must be historically and politically contextualized: it cannot be understood outside the framework provided by the nation-state. From this, it follows that the answer to the question mentioned at the beginning of this section also depends on the vitality of this form of political organization: if the growing nationalistic impulses in Europe prevail, the need for a strong legal system for the protection of minority rights is likely to grow at the same rate; if, on the other hand, these impulses are absorbed within the process of European unification (which, by its nature, can only be supranational), then other hypotheses for regulating religious diversity could become plausible. One of them has been formulated by certain political scientists, according to whom the time has come to abandon “the protection of religious minorities as the normative framework for inclusive and peaceful societies” and to develop “new forms of inclusive citizenship”, overcoming the “numerical approach of majorities and minorities” (Mediterranean Dialogues 2020).

But what does “inclusive citizenship” mean? A first indication is provided in one of the chapters of this Special Issue: “Rather than expunging group identities from citizenship, citizenship accommodates those identities, treating them as if they belong to that citizenship and makes their bearers feel a sense of belonging to that citizenship and through that citizenship” (Modood and Sealey, forthcoming).<sup>30</sup> This observation provides us with a direction in which to proceed, but leaves some questions open: what are the essential conditions to attain this goal? Is not abandoning the solid ground of “minority rights” and venturing on the road to “inclusive citizenship” a leap in the dark? Finally, are inclusive citizenship and minority rights mutually exclusive?

The second question concerns the specific characteristics of the notion of religious minority. It is not only a matter of the complex problems underlined in many contributions to this Special Issue that have hindered the elaboration of a suitable definition of religious minority: defining a linguistic minority is equally difficult (Ruiz Vieyetez, forthcoming). It is rather a matter of identifying the needs that are typical of and specific to religious minorities, and asking whether they are adequately addressed in the post-WWII system of protection of minority rights. It is easy to observe that some instruments of protection, such as forms of “territorial self-government”, are more effective in safeguarding the rights of linguistic minorities than those of religious minorities, and that the latter require other strategies and instruments of protection.

It is true that, while “freedom of religion is a universally recognized human right”, there is no “comparable right to a language, beyond the rights of linguistic minorities . . . . There is no freedom of language as such (a ‘right to a language’) in the same way as there is freedom of religion.” (Ruiz Vieyetez, forthcoming). It could be added that there is not even a “right to freedom of ethnicity”, in the sense that there is no freedom to choose or change one’s ethnicity (although this issue is beginning to be discussed<sup>31</sup>); the right to change one’s nationality is also subject to many more limitations than the right to change one’s religion. International law recognizes more easily the right to choose and change one’s religion than the right to choose and change one’s ethnicity, race or nationality.

What significance and weight should be given to this difference? The current system of minority protection has been shaped with ethnic, racial and national minorities in mind much more than religious minorities, and the element that distinguishes the latter—the power of each individual to choose and change his or her religion—has not received as much attention as it needed. Does this fact help to explain why, “though religious minorities have been one of the three most explicitly recognized categories of minorities in the minority rights regime, they have largely been excluded from consideration under the umbrella of minority rights” (Ghanea 2012, p. 60)? Is this lack of consideration of religious minorities within the minority rights system a symptom that the protection tools are not effectively addressing the needs of religious minorities? Is this the reason why, “when religious minorities face discrimination and persecution as a group, then, their case is addressed under the ‘freedom of religion or belief’ umbrella in international human rights and not under minority rights” (Ghanea 2012, p. 61)? Finally, what correctives need to be introduced into the minority rights system to allow for more effective protection of religious minorities?

### Structure of the Special Issue

The contributions that follow explore the relationship between the politics of sameness and the politics of difference, or in other words, the politics of the same rights, including freedom of religion and belief, for all and the politics of special rights for religious minorities, from the perspective of scholars of law and religion and scholars of minority rights. Through the dialog between scholars of law and religion and scholars of minority rights, the contributions to the Special Issue uncover the strengths and weaknesses of policies aimed, on the one hand, at ensuring freedom of religion or belief for all on the same footing, and, on the other, at guaranteeing special legal measures intended to protect the identity of religious minorities and ensure their participation in decision-making processes.

Using this holistic approach, this Special Issue complements recent publications, which focus primarily on one of the two aspects, depending on the traditions of study, whether freedom of religion/belief studies or minority rights, and offers a reflection on how to overcome the alleged dichotomy between the politics of the same rights, including freedom of religion and belief, for all and the politics of special rights for religious minorities.

The Special Issue is divided into two parts. The first part provides an analytical framework to elucidate the nexus between the politics of sameness and the politics of difference, with a focus on the European context. By analyzing the alleged dichotomy between the two perspectives, the first part of the Special Issue seeks to determine how, as far as Europe is concerned, both approaches can be combined to foster the protection of religious communities and their members and, ultimately, strengthen social cohesion.

At the outset of the first part of the Special Issue, **Angeletti** explores the intersectionality of individual and group identities (e.g., culture, ethnic origin, gender, language), and the synergies among legal sources protecting individual freedom of conscience and religion as well as religious minorities. Angeletti argues that these concepts—intersectionality and synergies—that characterize the current debate in international law are crucial to combining the politics of the same rights for all and the politics of special rights for minorities. Intersectionality is also relevant in **Ferrari's** analysis of the legal definition of religious minorities in international law and the distinction between religious, ethnic and linguistic minorities. Ferrari distinguishes three major phases in this debate, from the traditional definition to “enlargement” and “inclusion”, leading to the most recent concept of “intersection”. An analysis of the synergies among legal instruments on religion and language diversity is also the focus of **Ruiz's** inquiry. Ruiz observes that, although the management of linguistic diversity has been generally more influenced by policies and measures developed for the management of religious diversity, a number of techniques that have so far been applied for the protection of linguistic diversity have the potential to be applied for the protection of religious-based diversity, opening the door to further synergies among legal instruments that are crucial to responding to the dilemma between ensuring religious freedom for all and guaranteeing special measures for religious minorities.

With a focus on the European legal order, a set of contributions analyses the most relevant legal instruments, as well as the decisions and opinions of their monitoring bodies, emerging from the European Union and the Council of Europe. **Henrard's** contribution examines, from the perspective of the EU legal order, the relationship between religious minorities and fundamental rights, in particular the prohibition of discrimination, as rights for all human beings irrespective of particular identity features. Henrard investigates EU legislation and case law on minority rights, and the extent to which the EU's engagement has been attentive to religious themes. **Foblets** also discusses the relationship between human rights and minority rights from the perspective of EU law and the case law of the European Court of Justice, with a focus on Muslims in Europe. The challenge in finding a fair balance between the claims of the majority and those of minority groups is the main focus of Foblets's reflection. **Topidi** analyses the most specific legal instrument on minority rights—the CoE Framework Convention on National Minorities—with a focus on the cultural and diversity management dimensions of the exercise of religious rights on the part of minorities. By taking this perspective, Topidi's investigation sheds light on an important, though often neglected, aspect discussed in the Special Issue, namely, the current implications of religious identity for minority–majority relations. To discuss the nexus between freedom of religion and minority protection to foster the protection of religious communities, **Fokas's** point of departure is to look at when provisions for religious minority protection lead to endangering rather than defending minority rights. Along the lines of the case law of the European Court of Human Rights, Fokas reminds us that it does not always work to one's advantage to be treated by the law as a minority, and that one should have the right to choose whether or not to enjoy minority safeguards. **Ferri's** contribution also investigates the case law of the ECtHR on religion-related issues, but she complements it with a comparative analysis of the opinions of the UN Human

Rights Committee and the EU legal system. Ferri underlines the relevance of the principle of non-discrimination and, in particular, intersectional discrimination, as well as the duty of reasonable accommodation in achieving effective minority protection.

In their final contribution to the first part of the Special Issue, **Modood and Sealey** also discuss accommodative approaches to religious diversity, which they term “moderate secularism”, as emerging in Western Europe and conclude that, to be effective, these approaches should also be “multiculturalized”: a respectful and inclusive egalitarian governance of religious diversity cannot be achieved by individualist understandings of religion and freedom, by the idea of state neutrality, or by radically secular understandings of citizenship and equality.

The second part of the Special Issue extends the geographical scope of analysis beyond the European context, and focuses on how freedom of religion and the concept of—and the promotion and protection of—rights for religious minorities have been framed and applied in the management and accommodation of religious diversity in national contexts as diverse as Latin America, South Africa, India and Asia. What unites the contributions in this part is the impact of colonialization, imperialism and geopolitics on state formation, on “constitution-drafting” processes, and on the recognition and accommodation of the rights and claims of religious minorities. States were, and up to the present day still are, reluctant when framing the rights of minority groups, fearing the loss of their territorial integrity and societal cohesion. Consequently, the definition, meaning and understanding of concepts such as “minorities” or “religion”, or even “human rights”, depends on the respective national, geographical and socio-historical context.

**Tomaselli and Xanthaki** emphasize in their contribution that the meaning of indigenous beliefs and spiritualities cannot simply be limited to the (Western) understanding of religion only. Constitutional and international guarantees for Indigenous rights fail to adequately protect Indigenous communities and their spirituality. Therefore, Tomaselli and Xanthaki argue for a combined approach that safeguards the right to freedom of and from religion, ensures the effective implementation of legal obligations, and provides for incorporation of the different concepts and understandings of Indigenous peoples relating to their beliefs and spiritualities.

Indeed, to be able to participate in public affairs and in the political, economic, social and cultural life of one’s country of residence is central for minority groups in order to preserve their identity and prevent social exclusion. States might find it easier to tolerate individual guarantees of freedom of religion than to grant collective rights to religious minorities. **Fessha and Dessalegen** address this issue in their reflection on the protection of religious minorities in postcolonial South Africa. Through an analysis of constitutional guarantees of freedom of religion and of constitutional courts’ case law on the claims of religious minorities, the authors point to the rather weak protection of the collective rights of minorities. **Choudhary** addresses the conflict between community and individual rights in his reflection on the idea of religious minorities in India as well. India’s struggle for independence, and the related constitution-making process, is the point of departure for Choudhary’s account of how and why the Indian model of secularism and minority rights provides for a cultural autonomy of communities and legal pluralism to manage religious diversity in a secular democracy.

In the final contribution of this section, **Neo** tries to bridge the gap between individual guarantees of freedom of religion and the rights of minorities as a collective in the wider Asian context. Neo argues that a focus on minorities that supplements the protection of religious freedom has the potential to take into account intersections between culture, language and religion, addresses intrareligious diversity and the minorities within majorities, encourages states to foster minority protection and even provides for a right to political participation for religious minorities. However, Neo points out the limitations of a minority protection regime in terms of the reification of societal differences potentially leading to permanent marginalization, and eventually to the forced assimilation of religious minorities as well.

The final part of the Special Issue provides some concluding remarks and ideas for an enhanced realization of religious diversity through a combination of the protection of freedom of religion and the protection of the rights of religious minorities in Europe and beyond. **Pace** discusses the new religious landscape in Europe as characterized by two elements: the growing differentiation in believing and practicing within religions that have been traditionally and historically present in Europe, and the high diversity of religions that, only recently, have become more prominent in Europe. In his conclusions, Pace underlines three major points: the relevance of history to grasping new phenomena such as Islamophobia and its similarities to the old, well-known phenomenon of Judeophobia; the importance of distinguishing and keeping separate sociocultural and linguistic differences from those connected with religious communities' freedom of religion and worship; and finally, the relevance of focusing on freedoms and rights attached to citizens, including the right to freely exercise their religious faith in compliance with the general rules that are in force in a state. **Castellino and Thomas** remind us in their contribution of the necessity for multireligious Europe to acknowledge the impact of its colonial endeavors on ideas, legal systems, state formation processes and international relations within and beyond the continent. To address today's challenges, resulting from the impact of climate change and population movements on societal cohesion and the rights of religious minorities in Europe, the authors identify five key areas to address. These include (1) the need for a reframing of historical accounts towards community-oriented and intersectional narratives, (2) a re-articulation of European values, (3) a strong legal protection mechanism against stigmatization and hate speech, coupled with the need to dismantle the church–state relationship to provide for the neutrality of public space, (4) the need to build on resources within minority communities, and finally, (5) the need not only to ensure greater religious freedom but also to enable the equal participation of religious minorities in all areas of life.

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## Notes

- <sup>1</sup> “The significant shift encapsulated in the minority protection regime is the conceptualization of the individual as embedded within a community” (Neo, Jaclyn. *Religious Minorities in Asia: Between the Scylla of Minority Protection and Charybdis of Religious Freedom Rights*, in this Special Issue).
- <sup>2</sup> See Medda-Windischer, Roberta, and Kerstin Wonisch. 2018. Old and New Minorities in the Middle East: Squaring the Circle through Common Solutions. In *Maghreb-Machrek* 236, pp. 73–90, p. 216: minority rights scholars are convinced that minority groups “have some basic common claims [ . . . ] that they can be subsumed under a common definition and that the rationale for protecting them is fundamentally the same”.
- <sup>3</sup> The risk “to reify differences with the rest of society, and entrench the group as a minority” is underlined by Jaclyn Neo, *Religious Minorities in Asia*, as well as in the contribution by Effi Fokas, *On Aims, Means, and Unintended Consequences: The Case of Molla Sali*, in this Special Issue.
- <sup>4</sup> On this point, see also Alexandra Tomaselli and Alexandra Xanthaki, *The Struggle of Indigenous Peoples to Maintain their Spirituality in Latin America: Freedom of and from Religion(s), and Other Threats*, in this Special Issue.
- <sup>5</sup> On the relevance of participation for religious minorities, see Marie-Claire Foblets, *Islam Under the Rule of Law in Europe: How Consistent is the Human Rights Test?*, in this Special Issue.
- <sup>6</sup> See OHCHR. 2014. The inclusion of religious minorities in consultative and decision-making bodies. Available online: [https://www.ohchr.org/Documents/Issues/Minorities/Religious\\_minorities.pdf](https://www.ohchr.org/Documents/Issues/Minorities/Religious_minorities.pdf) (accessed on 2 March 2021). (“Minority rights extend the protection of religious minorities and complement instruments concerned with freedom of religion or belief including as regards the effective participation of minorities in decisions affecting them”).

- 7 On this point, see the concluding chapter written by Joshua Castellino and Claire Thomas, *Modeling Equality in the Midst of Religious Diversity: Lessons from Beyond Europe?*, in this Special Issue.
- 8 See, ECtHR, *Thlimmenos v. Greece*, Appl. No. 34369/97, judgment of 6 April 2000. In this case, the European Court of Human Rights held that the principle of non-discrimination is violated not only when states treat differently those persons in analogous situations but also when states without an objective and reasonable justification fail to treat differently those persons whose situations are significantly different. The principle of equality thus requires that equal situations are treated equally, and unequal situations differently. Failure to do so would amount to discrimination unless an objective and reasonable justification existed. See also PCIJ, *Minority Schools in Albania*, Advisory Opinion, 6 April 1935, XXXIV Session, Series A–B, No.64.
- 9 On this point, the Advisory Committee on the Framework Convention noted that the possibility for certain groups that constitute a numerical minority to enjoy the protection provided by the Framework Convention does not imply “a weakening of their status as constituent peoples as provided for by the Constitution, but merely [aims] at offering an additional tool to respond to a specific need for protection”. See ACFC, Opinion on BiH, adopted on 27 May 2004, ACFC/INF/OP/I(2005)003, para. 28; ACFC, Opinion on Cyprus, 6 April 2001, ACFC/INF/OP/I(2002)004, para.17.
- 10 Although neither Belgium nor France, nor Greece, nor Luxemburg, nor Latvia—at least at the time the latter acceded to the European Union on 1 May 2004—has ratified the Framework Convention for the Protection of National Minorities, this convention is based on the Copenhagen Document adopted on 29 June 1990 in the framework of the Conference on Security and Co-operation in Europe, which lists the rights of the members of national minorities and has been agreed by all the Member States (Preamble to the FCNM). Moreover, all EU Member States are bound by the European Convention on Human Rights, which already protects an important range of minority rights, and by means of a range of international instruments, including in particular the UN International Covenant on Civil and Political Rights, adopted by General Assembly Resolution 2200 A (XXI) of 16 December 1966, entered into force on 23 March 1976, and the International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly Resolution 2200 A (XXI) of 16 December 1966, entered into force on 3 January 1976, which contain equality clauses protecting the right of members of minorities not to be subjected to discrimination—and, indeed, all EU Member States are bound by Article 27 of the International Covenant on Civil and Political Rights, which recognizes the rights of ethnic, religious or linguistic minorities (France, it should be noted, has made a reservation to this provision). See EU Network of Independent Experts on Fundamental Rights, *The Protection of Minorities in the European Union, Thematic Comment No. 3*, 25 April 2005.
- 11 On this point, see Daniele Ferrari, *Religious Minorities from the Past to the Future: A New Legal Definition in the International Framework?*, in this Special Issue.
- 12 On this point, see HRC, *J. Ballantyne, E. Davidsson and G. McIntyre v. Canada*, Communications Nos. 359 and 358/1989, UN Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (1993), Views adopted on 31 March 1993. In this decision, the UN Human Rights Committee refused to consider Quebec anglophones a “minority” because they are a majority in Canada, although in a minority within Quebec. In contrast, the monitoring system established by the Framework Convention on the Protection of National Minorities provides expressly for the need to include in the reports due from the Member States, under the Framework Convention, “information on the existence of so-called minority-in-minority situations in certain areas”. ACFC, *Outline for the Reports to be submitted pursuant to Article 25 Paragraph 1 of the FCNM*, 30 September 1998, ACFC/INF(98)001, para.2.
- 13 The non-dominance criterion is not expressed in the CoE PACE Recommendation 1201 (1993) *Additional protocol on the rights of minorities to the European Convention on Human Rights*, and it has not been considered by the Advisory Committee of the FCNM as a precondition for protecting a group under the Framework Convention. In contrast, the CoE European Commission for Democracy through Law (better known as the Venice Commission) considered non-dominance as an essential element in defining a minority: “It is necessary to exclude from the scope of application of the Framework Convention those groups of persons that, although inferior in number to the rest or to other groups of the population, find themselves, *de jure* or *de facto*, in a dominant or *co-dominant* position” (CoE Venice Commission, *Opinion on Possible Groups of Persons to which the FCNM Could be Applied in Belgium*, adopted at the Fiftieth Plenary Meeting, Strasbourg, 12 March 2002, CDL-AD (2002) 1, para. 7 (emphasis added).
- 14 On this point, see Silvia Angeletti, *Religious Minorities’ Rights in International Law: Acknowledging Intersectionality, Enhancing Synergy*, in this Special Issue.
- 15 One of the principles established under the FCNM is that every person belonging to a national minority is free to decide whether or not he or she wishes to come under the protection stemming from the principles of the Framework Convention, and that no disadvantage will result from the choice made by the respondent (Article 3(1) FCNM). The OSCE High Commissioner on National Minorities further clarifies this point by saying: “Individuals identify themselves in numerous ways in addition to their identity as members of a national minority. The decision as to whether an individual is a member of a minority, the majority, or neither rests with that individual and shall not be imposed on her or him. Moreover, no person shall suffer any disadvantage as a result of such a choice or a refusal to choose” (*The Lund Recommendations Regarding the Effective Participation of National Minorities and Explanatory Note*, Recommendation No. 4, OSCE/HCNM, The Hague, 1999). Obviously, this principle does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual’s subjective choice is inseparably linked to objective criteria relevant to the person’s identity. The Explanatory Report of the FCNM clarifies that the right freely to choose to be treated or not to be treated as a person belonging to a national minority as enshrined in Article 3(1) FCNM “does not imply

a right for an individual to choose arbitrarily to belong to any national minority. The individual's subjective choice is inseparably linked to objective criteria relevant to the person's identity" (para. 35).

- 16 For a discussion of this issue, see Bielefeldt, Heiner. 2015. *Privileging the "Homo Religiosus"? Towards a Clear Conceptualization of Freedom of Religion or Belief*. In *The Changing Nature of Religious Rights under International Law*. Edited by Malcolm Evans, Peter Petkoff, and Julian Rivers. Oxford: Oxford University Press, pp. 14–16.
- 17 The debate was triggered by the request of some Pastafarians to wear a colander on their heads when taking a photo for official identification. On 15 August 2018, the Administrative Jurisdiction Division of the Dutch Council of State stated that the wearing of a colander does not constitute "a religious or ideological expression for which . . . an exception has to be made to the requirement laid down in the Photo Matrix for an uncovered head", as "Pastafarianism cannot be regarded as a religion" (case number 201707148/1, available online: <https://www.raadvanstate.nl/@112548/pastafarianism-not/> accessed on 8 June 2020). Five years before, a Czech government spokesperson had stated that wearing a colander on one's head while being photographed for an official government ID "complies with the laws of the Czech Republic where headgear for religious or medical reasons is permitted if it does not hide the face" ('Pastafarian' Man Wins Religious Liberty Battle To Wear A Pasta Strainer On His Government ID Card, in *ThinkProgress*, 2 August 2013, available online: <https://archive.thinkprogress.org/pastafarian-man-wins-religious-liberty-battle-to-wear-a-pasta-strainer-on-his-government-id-card-6a43803531b7/> accessed on 8 June 2020).
- 18 Article 3 of the Religious Liberty Law of Spain (General Act 7 of 5 July 1980, in B.O.E. no. 177, 24 July 1980) declares: "Activities, purposes and entities relating to or engaging in the study of and experimentation with psychic or parapsychological phenomena or the dissemination of humanistic or spiritualistic values or other similar non-religious aims do not qualify for the protection provided in this Act".
- 19 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, United Nations General Assembly resolution 36/55 of 25 November 1981, preamble.
- 20 On the approach of the South African Constitutional Court in this respect, see Yonathan T. Fessha and Beza Dessalegn, *Freedom of Religion and Minority Rights in South Africa*, in this Special Issue.
- 21 The factual existence criterion for minorities has been recognized by international law at least since the Greco-Bulgarian Communities case in which the International Court of Justice stated: "The existence of communities is a question of fact; it is not a question of law." PCIJ, Advisory Opinion regarding Greco-Bulgarian communities, 31 July 1930, PCJ Reports, Series B No. 17, at 22.
- 22 See also ECtHR, *Gozelik v. Poland*, Appl. No. 44158/98, judgment (Grand Chamber) of 17 February 2004, in which, on the practice regarding official recognition by states of national, ethnic or other minorities within their population, the Court noted: "The choice as to what form such recognition should take . . . must, by the nature of things, be left largely to the State concerned, as it will depend on particular national circumstances", and further, it reiterates: ". . . it cannot be said that the Contracting States are obliged by international law to adopt a particular concept of 'national minority' in their legislation or to introduce a procedure for the official recognition of minority groups", paras. 67–68.
- 23 For an overview of the different systems, see Robbers, Gerhard. 2019. *State and Church in the European Union*. Baden-Baden: Nomos.
- 24 As emphasized by Topidi ". . . it is on states to act on a number of levels that implicitly acknowledges that members of religious minorities certainly act as individuals but also as groups members", see Kyriaki Topidi, *Religious Minority Identity in the Work of the Advisory Committee of the Framework Convention for the Protection of National Minorities: A Multifaceted Challenge in Evolution*, in this Special Issue.
- 25 On the struggle between individual rights against community-centric assertions in the Indian context, see Vikas K. Coudhary, *The Idea of Religious Minority and Social Cohesion in the Indian Constitution: Reflection on the Indian Experience*, in this Special Issue.
- 26 *Cha'are Shalom Ve Tsedek v. France* [GC], 27417/95, 27 June 2000, § 72; *Leela Förderkreis e.V. and Others v Germany*, 58911/00, 6 February 2009, § 79.
- 27 *Williamson v. the United Kingdom*, Commission decision, 27008/95, 17 May 1995; *Karlsson v. Sweden*, Commission decision, 12356/86, 8 September 1988.
- 28 *Schiith v. Germany*, 1620/03, 23 September 2010.
- 29 *Obst v. Germany*, 425/03, 23 September 2010.
- 30 On the concept of reasonable accommodation for religious minorities, see Bribosia, Emmanuelle, Ringelheim, Julie, and Rorive, Isabelle. 2010. Reasonable Accommodation for Religious Minorities: A Promising Concept for European Antidiscrimination Law? *Maastricht Journal of European and Comparative Law* 17 (2): pp. 137–61; Pérez de la Fuente, Oscar. 2018. Reasonable Accommodation Based on Religious Beliefs or Practices. A Comparative Perspective Between the American, Canadian and European Approaches. *The Age of Human Rights Journal* 10: 85–118.
- 31 As indicated by the controversy stirred up by the case of Rachel Dolezal, the white woman who, pretending to have black ancestors, became branch president of the National Association for the Advancement of Colored People (see Hynes, Claire. 2017. Rachel Dolezal's pick-your-race policy works brilliantly—as long as you're white. *The Guardian*, 27 March. Available online: <https://www.theguardian.com/commentisfree/2017/mar/27/rachel-dolezal-race-white> (accessed on 5 March 2021).

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