

Droits de l'Homme et Religions

Human Rights and Religions

Provisional report of the Working Group established within the Human Right Committee of the INGO Conference of the Council of Europe

Rapporteur: François Becker, European Network Church on the Move (EN-RE)

Three texts that resulted from this report were adopted by the INGO Conference. They are introduced page 7 and reproduced from page 7 to page 25. They have been published by the Council of Europe and may be downloaded from the following url:

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The provisional report is the explanatory memorandum displayed from page 26 to the end. **This provisional report does not commit nor the Human Rights Committee nor the INGO Conference of the Council of Europe.**

Members of the working group

The working group consisted of the following persons (in alphabetical order) members of the NGOs indicated after their names:

Michel Aguilar, European Buddhist Union
James Barnett, Commission Intereuropéenne sur l'Eglise et l'Ecole,
François Becker, Réseau Européen Eglises et Libertés (EN/RE), rapporteur,
Monique Bouaziz, Conseil Européen des Fédérations WIZO, (CEFW) (ECWF)
Sophie Dimitroulias, Association des Femmes de l'Europe Méridionale, (AFEM)
Jean Philippe Durrenberger, Association Européenne des Institutions de Loisirs des Enfants et des Jeunes ACMF (EAICY),
Olivier Flury, Volonteuropé,
Gabriela Frey, European Buddhist Union
Marc Genève, Fédération Internationale des Centres d'Entrainement aux Méthodes d'Education Active (FI Céméa)
Renée Gérard, University Women of Europe (UWE), Groupe Européen des Femmes diplômées des Universités (GEFDU)
Daniel Guéry, MIAMSI
Beata Hildebrand, Association Internationale des Urbanistes, (AIU)
Julien Houben, International Humanist and Ethical Union,
Vera John-Mikolajews, University Women of Europe (UWE), Groupe Européen des Femmes diplômées des Universités (GEFDU)
Thierry Kopernik, Union des Familles Laïques (UFAL),
Freda Lambert, Andante (European Alliance of Catholic Women's organisations),
Brigitte Legouis, Centre Européen du Conseil International des Femmes, CECIF/ECICW
Mary Leling Conseil International des Femmes Juives, International Council of Jewish women,
Danielle Levy, Conseil Européen des Fédérations WIZO, (CEFW) (ECWF)
Marc Leyenberger, Caritas Europa,
Jean-Bernard Marie, Justice et Paix
Odile Moreau, Fédération Internationale des Universités Catholiques (FIUC),
Gilbert Nerson, Conseil International B'nai'Brith (ICBB),
Gabriel Nissim, Association Mondiale Catholique pour la Communication (SIGNIS)
David Pollock, International Humanist and Ethical Union,
Maritchu Rall, Association Internationale des Charités
Jean Pierre Ribaut Pax Christi
Michaël Vermeulen, European Buddhist Union
Nigel Warner, Council of Europe advisers of the European region of ILGA (Association Lesbienne et Gay Internationale-RégionEurope),
Anje Wersinga, International Alliance of Women,
Marie-Louise van Wijk, Andante (European Alliance of Catholic Women's organisations),

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Presentation of the three texts on Human Rights and Religions adopted by the INGO Conference

Human rights and religions: this has been a topical question ever since religion came to the forefront of current events. Religious diversity is, in fact, integrally connected with cultural diversity, which, as a result of globalisation, has become an unavoidable issue in society, in Europe and elsewhere.

The basis of the message conveyed by the religions goes beyond respect, that is love of one's neighbour (who can often be the «distant one»). as we see from activities, particularly in the fields of charitable and social work. But then, how is it that religions do not play a more active role in defending and promoting Human Rights, or indeed that they sometimes suspect them as a matter of principle ? Above all, how is it that, among certain groups of religious adherents, there arise new and murderous fanatical ideas that poison so many current conflicts ?

This is the contradiction that gave rise to the report on human rights and religion (http://www.coe.int/t/ngo/Source/Conf_HR_GT_DH_religions_fr.pdf) and the production of the three texts set out in the pages that follow.

While some of these religions have played a determining role in valuing the recognition of rights, as an expression of inalienable human dignity either together or at least through some of their members, and indeed in the name of their teaching, it remains is for us to ask how we can ensure that, in accordance with this principle, they continue to collaborate, in their own way, in the promotion and defence of human rights? In what ways can states, and religions themselves, through their members, their leaders and civil society contribute together to this objective ?

This question is particularly important for the Council of Europe with its responsibility for the European Convention on Human Rights in its 47 member states.

That is why the Conference of INGOs of the Council of Europe undertook an examination of this question: because of the responsibilities and commitments that are within its ambit in the Council, because INGOs members of the Conference share the values of the Council of Europe and bring their specific contribution to its work.

In this document we present the three texts on this matter adopted by the Conference:

1. The Recommendation «Human Rights and religions» addressed to Council of Europe member states, adopted on 27 June 2013 CONF/PLE(2013)REC4
2. The Decision «Religions and human rights»: suggested fields of reflection and activity for members and leaders of religions», adopted by the Conference of INGOs on 30 January 2014 CONF/PLE(2014)DEC2
3. The Appeal «Human rights and religions: An appeal to the citizens of Europe, go International non-governmental organisations (INGOs),» adopted by the Conference of INGOs on 30th January 2014 CONF/PLE(2014)APP1

These texts are the result of long-term work which has involved

- – first taking note, insofar as it is possible, of a lot of study and research undertaken in different areas that include this theme, in such a way as to grasp the complexity of the questions and to understand their order of importance;
- – to bring our own experience to bear in this field, in particular because several of our INGOs have religious or convictional terms of reference;
- – to organise discussion and debate on these difficulties among ourselves;
- – finally to draw conclusions for ourselves and for the partners involved in the whole of society, and that in such a way as to offer solutions for ourselves, (INGOs), and recommendations directed as much to political authorities as to religious organisations.

In doing so we take our place in the process initiated by Alvaro Gil-Roblès, when he was Commissioner for Human Rights in the Council of Europe. He also wanted to encourage the involvement of religions in this work, so as to further human rights through regular meetings between the Council of Europe and religious leaders. These meetings, for which the Committee of Ministers is responsible, take place annually.

The texts in this document aim to contribute to in that field as well.

This report is also a way for the Conference of INGOs, once again to make a contribution to the application of the Council's White Paper on intercultural dialogue and in particular to the religious dimension. One of the chief objectives of this White Paper is to use the Human rights platform as the foundation of living together in pluralist society, which is what our society will be henceforth, while also respecting cultural and religious differences. That is also our aim in these three texts.

Texts adopted by the Conference of INGO of the Council of Europe

Everywhere in Europe and in the world we see the rise of populism and xenophobia, as well as hostile acts towards «other » people, and the proliferation of hate speech on the internet. Living together becomes more and more difficult, and conflicts that take place in one place have immediate repercussions in the whole world, with sometimes very violent «fundamentalist» reactions. It is not just that the field of religious difference is not spared, but it is a very important aspect of this kind of behaviour, especially because many political authorities call on the religions to «defend» their national and/or cultural identity. Many people have a feeling as irrational as it is insurmountable that there is a direct threat from the growing presence of immigrants of a different religion. That is particularly true of the presence of Muslims in Europe as it is in respect of the presence of Christians in certain countries in the Middle East.

From that point on it becomes very urgent for members of religious communities and convictional groups, from the bottom and at the top of society, to take action so as to favour respect of fundamental rights, without any discrimination at all, and founded on the recognition of a common dignity. This is not a matter of giving priority to the protection of those who are close to us, but rather of taking action for each person who is in difficulty. For «if we are (concerned) for ourselves alone, what are we?» according to the contribution of Professor Daniel Boyarin²

If these texts can bring a contribution, however small, our Conference and, in particular M. Francois Becker, of the European network «Church on the Move,» who has been an assiduous president in this work will have attained the goal that they were given.

Gabriel Nissim, President of the Human Rights committee 2004 – 2011

and main supporter of those texts

Michel Aguilar, President of the Human Rights Committee 2014 - 2017

I Recommendation adopted on 27 June 2013

CONF/PLE(2013)REC4

Human Rights and Religions

The Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe

1. Taking note of the great expansion in cultural and religious pluralism in Europe, aware that this diversity can cause isolationism, tension, differences or even conflicts between people from different cultures and religions;

2. Believing nevertheless that this religious and cultural pluralism can be a great human and spiritual asset if human rights are universally respected in full and if, as recommended in the Council of Europe's White Paper on Intercultural Dialogue, "Living Together as Equals in Dignity", intercultural dialogue is used to achieve understanding, respect and mutual recognition between people of different beliefs;

3. Stressing that, against the background of this cultural and religious diversity, peaceful "living together" will be possible only if the social and economic injustices causing suffering and great poverty that are still the most serious violations of human rights are eradicated for good, and acknowledging the work done by religious, humanist and secular organisations to support the victims of these violations of human rights;

4. Also recognising the contribution made by religions and other systems of beliefs both to thinking about human rights, as an expression of the dignity and respect owed to every individual, and to the defence of those rights;

5. Noting with concern that some public authorities, some religious authorities and organisations and some groups of conviction are manifesting their disagreement with certain human rights as recognised in the international legal instruments ratified by the Council of Europe's member states;

6. Affirming the universal, indivisible and inalienable nature of human rights and underlining their primacy over any social or religious rules which might conflict with them, and believing it to be contrary to these principles that some religious leaders should consider themselves to have sole authority for saying what human rights should be, sometimes going so far as to claim that theocracy is the best system.

7. Concerned, in particular, about the calling into question of gender equality in human rights by public authorities, religious institutions and groups of convictions;

8. Concerned also about discrimination based, on behalf of religions and convictions, on sexual orientation or gender identity and the failure to respect the human rights of Lesbian, Gay, Transgender, Bisexual (LGBT) persons;

9. Taking account the work of the different bodies of the Council of Europe and their positions³, and referring to the work presented in the “Human Rights and Religions” report⁴ drawn up over the last three years by the Human Rights and Religions working group which it set up for this purpose;

I. Emphasises that Council of Europe member states committed themselves to:

10. Take, in accordance with Articles 9, 10, 11 and 14 and Protocol 12 of the European Convention on Human Rights and Article 14 of the Convention on the Rights of the Child, the necessary steps to ensure that public and private players duly respect:

– freedom of thought, conscience and religion, including the freedom to have or not to have a religion and to change religion, these freedoms attaching progressively to children as they grow towards and attain maturity,

– freedom of expression,

– equality of rights and non-discrimination between persons, whatever their sex or sexual orientation, whether or not they belong to a religion and whatever their philosophical beliefs;

11. Implement the texts adopted within the Council of Europe to achieve equality and parity between women and men in all public policies, and accept no opposition to them on cultural or religious grounds;

12. Refuse the application on their territory of family codes and juridical rules which fail to respect the principle of equality between women and men; equally make sure that their family codes respect the principle of equality between women and men and guarantee the possibility of freely choosing one’s spouse or partner;

13. Combat all forms of violence against women, including genital mutilation, regardless of who commits them or where they are committed, and whatever the reasons invoked, including the victim’s alleged consent;

14. Combat all forms of discrimination and violence against LGBT persons and punish all violations of their rights, whatever the reason invoked, in particular any alleged cultural or religious pretext, by implementing the recommendations adopted by the Committee of Ministers in this field.

II. Recommends that Council of Europe member states:

15. Guarantee the application of the texts of the Council of Europe in implementing human rights, in particular those mentioned in § 10 above and hence:

i. take steps to ensure due respect for

- the mutual independence and separation of the state and religious institutions,
- state neutrality towards religions and philosophies, in keeping with the case-law of the European Convention on Human Rights,

ii. take steps to ensure that no one is subjected to policies and laws contrary to human rights, in particular in the areas of employment law, the family, marriage, divorce, chosen motherhood and reproductive health, which presupposes a refusal to instrumentalise religion;

16. Ensure the right to freedom of expression and information, including criticism of and by religions, remove the offence of blasphemy from the statute book and take into account differing perceptions of sacredness, while remaining equally vigilant regarding acts of violence or “hate speech” against and from the followers and leaders of these religions;

17. Guard against factors which contribute to a rise in any forms of fundamentalism and ensure that religious authorities do not impose rules contrary to human rights on the members of their religions;

18. Combat any discriminatory attitudes or persecution which members of a religion or followers of any other system of belief may suffer on account of their adherence to that religion or philosophy;

19. Continue organising annual meetings between the Council of Europe, leaders and members of religions and philosophies, and representatives of NGOs:

- with a view to inter-faith and inter-belief dialogue,
- and with the primary aim of enhancing the contribution of religions and philosophies to respect for human rights;

20. Engage in permanent co-operation at both European level and international level with religious organisations, philosophies and the NGOs concerned on the recognition and implementation of human rights;

21. Respect, implement and protect economic, social and cultural rights, which are integral components of human rights, of people forced to live in serious poverty so that support by religious, humanist or secular INGOs for such people becomes less and less necessary;

22. Ratify and implement the “European Convention on Preventing and Combating Violence against Women and Domestic Violence”, alert international bodies to, and ensure they act against, the systematic violations of which women and girls are victims, including those defended on religious, philosophical or cultural grounds or grounds purported to be such;

23. Lift the reservations in respect of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and ensure that religions are not the cause of violence and discrimination against women;

24. Take steps, in the framework of a dialogue with the parents concerned to ensure that in particular girls in their minority enjoy their rights, in particular in access to education, including emotional and sexual education, health, informed contraception and respect for their bodily integrity, not least by the prohibition of forced and early marriages;

25. Encourage exchanges and work between LGBT associations and religious leaders so that the latter adopt a policy on attitudes and the use of language respecting LGBT persons, their dignity and their rights;

26. Include in school curricula education about religions and philosophies encouraging, in conformity with Human Rights, openness to and respect for others, a critical spirit and dialogue. Promote to this end teacher training in this area.

II Decision adopted by the Conference of INGOs on 30 January 2014 CONF/PLE(2014)DEC2

Religions and human rights

Proposed avenues of approach and action for members and leaders of religions

1. The message of religions comprises, in its very essence, the requirement to show respect for every human being on account of the dignity acknowledged to every individual. Furthermore, this message teaches and calls for justice, compassion and love for one another. This respect and love are embodied in countless acts of kindness and services provided to those in need or suffering.

2. For this reason, several religions, in line with the very message they convey, have throughout their history contributed significantly, and still do so today, to the recognition and expression of human rights, and certain of their members have played a decisive role in the formulation of those rights.

3. In the current world situation, their role and responsibility in the recognition of human rights is even more important:

- On the one hand, by promoting human rights education, since each new generation must reclaim these rights. Despite considerable progress in this field since 1948, there continue to be many serious violations of these rights in the world.

- On the other, with regard to the universality of the very concept of human rights, today called into question in the name of the diversity of cultures. Human rights, as enshrined in international texts having a universal scope, come up against many cultural practices and conceptions, themselves frequently rooted in religions as experienced today. Here too, religions, precisely because of their universal vocation, have a vital role to play.

4. However, all too often, instead of playing a role promoting human rights, it can happen that religions call them into question, in both principle and practice, especially where fanaticism develops. This is why, given the growing role and influence of religions in all social relations, the problem of the relationship between religions and human rights has today become a key issue in Europe and in the world.

5. **The Council of Europe** has addressed this issue on various occasions: it is the international institution which is responsible for the **European Convention on Human Rights**, the major instrument for the promotion and defence of human rights, democracy and the rule of law in Europe.

The international NGOs which together form **the Council of Europe's Conference of INGOs**, (several of which are faith-based or directly linked to religions), therefore also wished to make their contribution to the relationship between religions and human rights by addressing here **the members and leaders of religions** present today in Europe, in all their diverse components, **and suggesting a number of avenues of approach and action in this field of human rights.**

Without any claims to being exhaustive, we shall look at a number of areas of human rights in relation to which religions are more directly concerned:

I. Areas in which they are involved as religions: freedom of conscience, discrimination, separation of the state and religious institutions, violence for which a religious justification is claimed.

II. Two more specific controversial areas: gender equality/parity, and sexuality and sexual orientation.

III. Economic and social rights, given the importance of the contribution of religions in the social and charitable field.

Above all, however, we should not forget the key contribution that religions can make in promoting and defending all human rights without exception:

6. The members, institutions and leaders of the various religions, as such, cannot, because of the very essence of their message, remain silent and inactive in the face of the serious and repeated human rights violations suffered continuously and in multiple ways by so many of our contemporaries. For while sharing with all human beings the recognition of these rights, followers of religions find in their own tradition a concern for the dignity of all individuals, who most of them recognise as creatures of God.

It is therefore their duty to think long and hard about the religious foundations of human dignity, the fundamental rights that derive therefrom and the extent of those rights so as to make their own specific contribution to respect for and application of those rights. Individuals and communities should, as a priority objective, develop their own motivations in this area.

Such a contribution could then constitute a basis for inter-faith dialogue on human rights, and a basis for dialogue with humanist and secular organisations. A dialogue of this nature would doubtless be a major step forward for human rights in Europe and in the world.

7. Human rights will not become a reality unless they are recognised and applied on the ground by everyone. This is why, in addition to the necessary legislation, it is essential to educate people so that human rights become a personal conviction. For convictions cannot be taught or imposed, but need to be cultivated.

Everyone has the innate capacity to appreciate the dignity of every human being and the human rights that derive from that dignity for each man and woman; but this capacity must very often be awakened and developed: the members, institutions (particularly educational) and leaders of religions could, in line with the very message of religions, make a significant contribution to human rights education among both young people and adults.

I. Areas in which religions, as such, are particularly involved

Freedom of thought, conscience and religion

8. Freedom of thought, conscience and religion for everyone is a fundamental right, and the members and leaders of religions quite rightly emphasise this. However, one must not forget that this right means everyone has the right to change religion or have no religion. Furthermore, in the current situation of religious and humanist pluralism, those religions which are or have been the majority religion in a country or which are more particularly linked to its culture will have to give some thought to the way in which the members of other religions and beliefs can enjoy that freedom in practice. This presupposes in particular that no religion may impose its doctrine or practices on those who do not share them.

9. There is no contradiction between this fundamental freedom and the criticism that may be levelled at religions, whether from outside or within. Such criticism derives from the legitimate exercise of freedom of expression. In contrast, this criticism is unacceptable when members of a religion are stigmatised, become victims of discrimination or indeed of incitement to hatred, simply for being members of that religion.

Discrimination

10. Any form of discrimination based on individuals belonging or not belonging to a religion, in particular a minority religion, must be firmly fought against, and first and foremost by the members and leaders of religions. More and more frequently, these forms of discrimination can become persecution: members and leaders of religions must therefore ensure that they do not take action only to support persecuted members of their own religion, but should protest just as much whenever anyone is a victim of persecution on account of his or her religious or humanist beliefs.

Separation of the state and religious institutions

11. Independence from each other and separation between the state and religious institutions are an advantage for everyone and a requirement of democracy. Such separation can clearly take on a variety of forms depending on national traditions and cultures, but members and leaders of religions must always take care to avoid any attempts to exploit one another or form allegiances, especially in the case of the majority religion in a country and even more so in the case of a state religion.

However, this should not prevent members and leaders of religions from playing an active part in democratic debate in order to shed light on the challenges facing society on the basis of their principles, putting forward their positions but without seeking to impose them on the whole of society.

Violence for which a religious justification is claimed

12. No use of violence can ever be justified in the name of any religion whatsoever. Members and leaders of religions must therefore firmly distance themselves from any form of fanaticism, explicitly condemn the violence, hate speech or calls for murder from extremists and resolutely combat all forms of violence for which a religious justification is claimed.

II. Controversial areas

II-1. Gender equality/parity

13. The question of gender equality/parity still raises heated debate within religions themselves, with each having both supporters of keeping women in a secondary position and supporters of gender equality in access to positions of responsibility, including holding offices in religious organisations.

In this area, possible avenues of approach and action are:

14. To give women a say in religions so that they themselves can voice their expectations in terms of their role and respect for their dignity within religions and society.

15. To build on the commitment of women both in religions and in society, by underlining how decisive their role is for the well-being of all. To seek ways of not forgoing the skills and assets which women could contribute to the discussions, action and life of religious groups and of society if they were granted the full role to which they are entitled.

16. To reconsider their traditions regarding the position of women in religious institutions and society and reinterpret them on the basis of the issues arising in this area today; to foster dialogue within religions between the various tendencies and positions on issues of gender equality and parity both in the religious and in the social and political fields.

II-2. Sexuality and sexual orientation

17. It is to be welcomed that the official stance of some religions has moved in recent years from outright homophobia combined with moral and religious condemnation to the expression of respect and concern with regard to lesbian, gay, bisexual and transgender (LGBT) persons. However, this undeniable progress is still too limited. More broadly, it is the overall attitude of certain religions in the area of human sexuality that is called into question here. However, many members, institutions and leaders of religions continue to refuse to address this issue from the human rights angle

In this area, possible avenues of approach and action are:

18. To pursue the progress achieved regarding respect for and attention given to LGBT persons and to make more widespread effort to combat the discrimination, violence and disregard which are still prevalent in religions and in society with regard to these individuals.

19. To speak with moderation and tact on issues of sexuality, without judging or condemning individuals, while recognising the misunderstandings, injustices, exclusions or indeed violence to which the statements of religious leaders can give rise, particularly with regard to LGBT persons. To refrain totally, therefore, from making any statements or adopting any stances which would endanger their lives, safety or health.

20. To continue and step up dialogue within religions themselves on sexuality as a fundamental human reality, taking care to involve all members of religions who wish to take part and feeding the debate with dialogue with other people who reflect on these issues in contemporary society.

21. To initiate or continue the same dialogue with more specific regard to the situation of LGBT persons, giving LGBT persons themselves the first say and remembering that they also number among the ranks of the members of these religions.

III. Economic and social rights

22. For centuries and right up to the present, followers of religions and religious organisations have done a tremendous amount to assist the victims of injustice or those in a situation of suffering, poverty or destitution. The practical aid they provide, and more importantly the awakening of people's conscience in the field of mutual assistance and solidarity, are inestimable. Largely as a result of their influence, society has realised that situations of poverty are a violation of fundamental human rights, which have now been extended from the civil and political sphere to the social and economic field. This is why, alongside the European Convention on Human Rights, the Council of Europe drew up the European Social Charter guaranteeing social and economic rights.

23. Followers of religions are therefore called upon today to view their action in the charitable and social sphere from this angle: above and beyond the immediately imperative assistance-based approach, it is essential to recognise situations of poverty and destitution as violations of fundamental rights and to put forward ways of remedying them, also in a structural way.

24. The action pursued in this area should be geared to involving the victims themselves in the steps taken, enabling them to once again partake in the enjoyment of their fundamental rights, in particular through political action by the public authorities and, in many cases, through a joint learning process involving the people experiencing these situations and the public services.

Such action should be taken further, as is often the case, by means of co-operation in the international institutions and advocating the case for defending and promoting economic and social rights and the democratic participation of the most vulnerable.

25. It is therefore to be hoped that the major religious charitable and social organisations, over and above the provision of the necessary assistance, sensitise members and leaders of religions to the need to make the human rights of the victims of poverty and injustice the ultimate goal of all action in this area.

III Appeal adopted by the Conference of INGOs on 30 January 2014 CONF/PLE(2014)APP1

Human Rights and Religions

An appeal to the citizens of Europe and International Non-Governmental Organisations (INGOs)

State of play

A. Violence is infecting community life, and certain religious groups are contributing to the problem even though the religions themselves promote peace. Demeaning or slanderous comments and actions, notably on the ground of religious affiliation, are stoking social tension, creating a breeding ground for sectarianism and exclusion. Some religious leaders are also guilty of using current events and social issues to inflame public opinion.

B. Such behaviour is an indication of the degree of suffering endured by those who perpetuate it. All violent outrages are an affront to human rights and the dignity of all people, whether children, adolescents, women, men or elderly persons.

Concerns

C. Troubled by the spread of these acts of violence and by the harsh public stances adopted by representatives of religions in social debate, posing a direct threat to democracy;

D. Alarmed by the frequency of remarks along the lines of “It’s not our country any more”, fuelled by a lack of regard among certain elites for the rightful place of religion in cultural identity;

E. Indignant at the fact that in some European countries, the introduction of so-called “traditional” courts shows the danger of cultural relativism which, in pushing for the creation of different rights according to religion, contradicts human rights (cf. the Vienna Declaration of 1993)⁵;

F. Alarmed also by the contempt shown for responsibility, which is inextricably linked to freedom of expression;

G. Alerted to the ongoing erosion of the principle of the equal dignity of every person, which forms the basis of human rights;

H. Concerned at the manifest confusion indicating the doubts that exist, in all religions, about the priority to be accorded, in everyday life, to religious teachings and human rights, not least with regard to the position of women;

I. Aware of the prominent role now played by religion in the public sphere;

For all these reasons,

Representatives of the INGOs of the Council of Europe have decided to tackle these challenging issues, and to provide as much clarification as possible in order to minimise confusion and guesswork.

Determined to safeguard, whatever happens, democracy, human rights and the rule of law, the Conference of INGOs of the Council of Europe is launching an appeal to the men and women of Europe and to NGOs operating on the ground so that, together, everyone can take action at their own level and in their own setting to ensure continued respect for the equal dignity of all individuals and of the values connected with this inviolable principle.

The Conference of INGOs therefore recommends:

Equal dignity of all individuals, as a source of universal human rights

1. Far from being a privilege bestowed by some external authority or other, human rights are the birth right of all human beings - children, women and men – because they spring from the equal dignity and respect owed to each individual. It is this universal recognition of the dignity of all individuals that makes human rights universal. In ratifying the relevant European and international conventions, states make a commitment to protect human rights.

2. Because they concern everyone, i.e. each member of the human family, everyone is responsible for the observance of fundamental rights with respect to others.

3. The recognition that human rights concern each individual as a human being worthy of respect and as an actor in society makes it incontrovertible that no one, whether child or adult, should be discriminated against on the ground that they belong to a particular religious or philosophical community.

Religious pluralism – Freedom of conscience

4. Human rights necessarily require us to suppose that other persons may be the bearers of a truth other than the one to which we ourselves subscribe, without either belief system being diminished as a result.

Such freedom of conscience,

– paves the way for the lifelong development of beliefs and the right to criticise religions;

– is proof of the inseparable nature of upholding freedoms, equal rights and non-discrimination, whether one is religious or not;

– is directly linked to the separation of state and religion, and state neutrality towards religions and belief systems in a democracy.

5. The ban which prevents women from holding certain offices reserved for men in many religions shows that equality between women and men on the basis of their equal dignity is still subject to different interpretations and needs to be discussed in inter- and intra-faith dialogue.

6. The Conference of INGOs, which has no competence in theological matters, observes that religions proclaim the equal dignity of lesbian, gay, bisexual and transgender (LGBT) people while failing, however, to grant them access to all human rights. Many LGBT people who are followers and/or leaders of religions have to keep their sexuality a secret.

7. Certain assertions considered “truths” by religions on the basis of their founding texts can be mutually exclusive. The secularisation of modern society allows the various truths to be expressed and to exist peacefully alongside one another. It provides a framework for dealing with the conflicts liable to arise from exclusive assertions of this kind.

Visibility and religious practices

8. The visibility enjoyed by “newcomer” religions is apt to jar with the cultural concepts derived from the more established religions and beliefs. The new religious buildings challenge traditional ideas while disused places of worship are sold off or demolished. Faced with a changing landscape and seemingly strange religious practices, local communities need to be supported and consulted and given time to adjust. Educating people, from school age, about religion and the principle of the separation of state and religion is crucial for combating racism, sectarianism and stigmatisation.

Separation of state and religion

9. Aware of the wide range of situations that exist in Europe, as pointed out in Resolution 1928 (2013)⁶ of the Parliamentary Assembly of the Council of Europe, we affirm *

- the vital separation of religion and politics in order to ensure:

- the exercise of freedom of conscience whenever states formally recognise it. Accordingly, each individual is free to have or not to have a religion and to change religion, provided this does not cause personal injury or mental harm or pose a threat to the state⁷;

-the protection of human rights in relation to religion and belief;

-the neutrality of public institutions vis-à-vis religions and belief systems, while at the same organising co-operation between believers and the civil authorities;

- the full exercise of equal citizenship for all, irrespective of a person’s religious, political or social status, and the opportunity to be a fully functioning citizen and, at the same time, to join, or not to join, an organisation, faith-based or other.

To conclude, an appeal:

In order that human rights may be respected and observed in a harmonious manner, the Conference of INGOs of the Council of Europe calls on all European NGOs and each and every citizen of Europe, whatever their family background, whatever organisation they belong to and whatever their status, beliefs, professional or other responsibilities;

10. To be guided by the five key principles, namely 1) freedom of conscience, 2) non-discrimination, 3) mutual autonomy and separation of the state and religious institutions, 4) state neutrality in relation to religions and belief systems, 5) education in intercultural dialogue, with due regard for its religious and philosophical dimension.

11. To take care to ensure that the state and religious institutions are effectively independent from one another, while avoiding any attempts by the two to exploit one another or to form alliances.

12. To realise that no one can possess the whole truth and that individual progression towards the truth can occur only if there is a willingness to reach out to, and converse with, others in a way that respects the individuals concerned (without necessarily sharing their ideas); note that adopting this attitude does not mean giving way to relativism.

13. To pursue inter-faith, intra-faith and inter-belief dialogue which helps to promote awareness that people can have the same values, but for different reasons.

14. To engage or pursue, in the case of believers, dialogue with members and leaders of their respective religions with a view to:

- promoting within these religions acceptance of and respect for human rights to resolve conflicts between rights in society;

- ensuring that, when making public statements, official representatives of religions are guided by the principles of human rights;

- clarifying the position of women within religious institutions;

15. To rule out any attitudes or language of intolerance towards anyone and combat any religiously-motivated hate speech on the part of members of organisations.

16. To respect and ensure respect for gender equality in practice and in law.

17. To refrain from making any statements or adopting any stances that would threaten the lives, health, safety or social participation of LGBT persons and to speak with moderation and tact on issues of sexuality, without judging or condemning individuals, while recognising the misunderstandings and injustices or even violence to which recklessly expressed opinions can lead.

18. To increase the amount of attention paid by civil society and religious institutions to children's rights⁸.

19. To oppose all forms of discrimination based on religion or non-religion. To realise that no one can be reduced to their beliefs or religious affiliations alone.

20. Lastly, NGOs are encouraged to lobby European and international bodies to defend and promote human rights.

Appendix 1 – Information on the Council of Europe and the Conference of INGOs

20. Founded on 5 May 1949 by the Treaty of London, the Council of Europe is the oldest European institution. It seeks to safeguard and develop human rights and democracy, and operates smoothly thanks to the complementary nature of its four institutional pillars: the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities and the Conference of INGOs.

21. The Council of Europe, notably through the European Court of Human Rights (ECHR) which is a constituent part thereof, is responsible for upholding human rights and democracy Europe-wide, and for creating a common democratic and legal area so that everyone can find their place in a society which practises mutual respect.

22. If all citizens of Europe are to have the full and equal enjoyment of all of these rights, without any tests as to eligibility, each individual must assume full responsibility for the exercise and day-to-day observance of these rights, both in respect of themselves and in respect of others. This implies the existence of duties as well as rights.

23. Taking in account the fact that human rights form a coherent and inseparable whole and are the birth right of all human beings, rather than something that is bestowed, the Conference of representatives of civil society (INGOs) contributes, through its numerous initiatives, to the affirmation of these key principles and to the implementation of human rights.

It carries out its work within the framework of the rule of law and democracy, the principles of which are set out in its declaration on genuine democracy CONF/PLE(2013)DEC1¹.

24. Condemning the numerous human rights violations and the calling into question of the universal nature of human rights, due in particular to growing cultural and religious diversity, and mindful of the current importance of interaction between religions and human rights, representatives of civil society at the Council of Europe have decided to examine the relationship between human rights and religions, specifically the areas of convergence and areas of tension between them.

¹ The declaration on genuine democracy adopted by the Conference of INGOs on 24 January 2013

Texts adopted by the Conference of INGO of the Council of Europe

25. This work, which was conducted over three years and features in a report entitled “Human rights and religions”², aims to generate among European citizens faced with the everyday frictions and discomfort engendered by the current changes an informed awareness of the social issues that exist across Europe and indeed worldwide so that we can explore them and act on the proposals made.

Appendix 2 – Some key Council of Europe texts

Doc. 10673 of 19 September 2005 of the Parliamentary Assembly ‘Education and religion’

Doc. 11298 of 8 June 2007 of the Parliamentary Assembly ‘State, Religion, secularity and human rights’

Doc. 12788 of 10 November 2011 of the Parliamentary Assembly ‘Combatting all forms of discrimination based on religion’

Recommendation 1805(2007) adopted on 29 June 2007 by the Parliamentary Assembly ‘Blasphemy, religious insults and hate speech against persons on grounds of their religion

Recommendation 1720 (2005) adopted on 4 October 2005 by the Parliamentary Assembly ‘Education and religion’

² This provisional report is the following explanatory memorandum from page 26 to the end

Conference of INGOs of the Council of Europe

Human Rights Committee

Human Rights and Religions

Explanatory Memorandum

Main Findings and Results of the Work

(1) Placing the law as the guarantor of fundamental freedoms, the Council of Europe declares itself to be "responsible for creating a common democratic and legal area throughout the European continent, ensuring respect for fundamental values: human rights, democracy and the rule of law, so that everyone has his or her place in a tolerant society". Now, religions, which provide meaning as the ultimate paths to fulfilment or salvation, have to be seen in relation to human rights, which express human dignity and formalise its values.

(2) This report therefore examines the points of convergence as well as the lines of tension in the relationship between human rights and religions. The reflection has been structured around eight difficulties and three lines of tension. This order pointed out from the outset to the fact that no religion, whether it is organised in a highly centralised system like Catholicism or whether it has no pyramidal structure like Buddhism or Islam, escapes the difficulties arising from the dialectic that is being established as to the primacy of human rights over doctrines or dogmas, or the reverse.

(3) This reflection carried out by NGOs, based on their practice and experience in the field, has led to the following achievements:

I. The formulation of human rights. (Chapter II - § I & II)

(4) The Universal Declaration of Human Rights sets out the ways in which everyone, without distinction, is entitled to equal dignity. Chapter II develops the two problematic aspects arising from this formulation, one related to the notion of dignity, the other consisting in knowing whether the individual takes precedence over the collective or whether the social group enjoys precedence.

First Finding: The universality of human rights is that they do not deal with the individual, but with the person. Fundamental rights therefore have a collective dimension, which implies an undeniable injunction of solidarity by all towards all. This understanding, in addition to protecting each and every person while imposing solidarity, indisputably highlights the fact that the person cannot be reduced to membership of a community of belief.

Second Finding: The clear statement of the dissociation of politics and religion promotes freedom of conscience which guarantees everyone the right to change religion without the State being called into question.

Third Finding: While the concept of human dignity is advocated by all religions, in which they are in line with the universality of human rights, the content of this concept is not separable from the theological or philosophical approaches to which each one refers.

II. The universality of human rights. (Chapter II - § III)

(5) The universal scope of human rights is sometimes questioned today by certain religious leaders.

Fourth Finding: The continuation of inter-religious, intra-religious and inter-convictional dialogues is important and necessary to reveal the values unanimously recognized by all religions and schools of thought. To do so, however, it is necessary to know that values are one thing and the reasons that justify them are another; similarly, it is necessary to know that the formulation of concepts in the field of values will inevitably be culturally marked.

Fifth Finding: The ethical approach is the means of election by which religions, philosophies, schools of thought in all their diversity, will manage to define universal values, thus free from their atheistic, Muslim, Christian, Jewish, Buddhist, agnostic, etc. epithets. No reference to the Absolute, in fact, is autonomous from the culture in which it manifests itself. It is thus that the human factor in this ethical approach will favour the reconciliation of the founding texts with the demands of our times.

III. Pluralism of convictions and secularization. (Chapter II - § IV)

(6) Certain truths affirmed as such by religions on the basis of their founding texts are mutually exclusive. Secularization allows these different truths to be expressed. It ensures the regulation of conflicts that may result from these exclusive assertions.

Sixth Finding: Freedom of thought, conscience and religion is inseparable from the duty to consider that others can be convinced by a truth other than that to which one adheres, without in any way diminishing one's own conviction.

Seventh Finding: The articulation of universal values in association with the duty to respect, and even welcome, the convictions of others allows: 1) the definition of universal values without religious or philosophical epithets, 2) the recognition of convictions other than one's own, as part of the contemporary process of secularism.

IV. Delimitation of the scope of human rights. (Chapters IV & V)

(7) The ban on women's access to certain functions reserved for men in many religions, or the refusal to recognise certain rights for women, institutionalises a differentiation of status which, for many, is in conflict with human rights advocating equality between women and men on the basis of their equal dignity. This difficulty is one of the nodes in the conflicting relationship between religious doctrines and human rights. In some European countries, the establishment of "traditional" courts of justice testifies to the danger of cultural relativism, which threatens the equal rights of all. At the same time, the delicate question of LGBT people is being raised.

Eighth Finding: Given the power of resistance of each one on its positions, it seems necessary to especially not close this project opened by the interreligious and intra-religious dialogues, ethics, the considerable jurisprudence of the European Court of Human Rights and the work of the INGOs.

Ninth Finding: The reminder of treaties, declarations and the case law of the European Court of Human Rights is recognised as a basis for discussion between different religions and schools of thought, including between their internal trends.

Tenth Finding: The issue of women's rights remains highly topical. Efforts must be made to ensure that the State's legal system is not under the influence of religions, in particular so that equal rights between women and men become a reality.

Eleventh Finding: Significant progress in the democratic debate and respect for secularism remains to be made in the field of sexual life so that, whatever arguments religious leaders develop in the public sphere, they do not incite discrimination. Intra-religious dialogue and ethical reflection were seen as major means of progress.

V. The absence of a legal definition of a religion is a wealth that imposes responsibilities (Chapter III).

(8) It is one thing for a legal text to state that a religion is a state religion. Defining the religion, specifying its content, is another. The absence of a legal definition of religion in many countries is a carefully protected value which ensures that all religions enjoy an equal place in the secular public space. Defining religions would be tantamount to deciding from the outside what they are, and therefore what they should and should not be. Moreover, a hierarchy of religions would become inevitable because, given their diversity, some would be more "religions" than others.

(9) This renunciation of a legal definition of religions is advantageous because the demands that come in return are not negligible. Indeed, not defining what a religion is does not mean opening the door to all the spiritualist irruptions that flourish over time. A religion asserts its credibility in the public space by holding a canonical, historically dated corpus that, over time, has consistently aggregated followers and dignitaries and recognized the inspiring journeys of outstanding personalities. It is therefore the responsibility of each religion to live up to this omission in the legal definition of religions.

Twelfth Finding: A State cannot define a religion but has the competence to oppose religious practices that violate human rights.

Thirteenth Finding: The autonomy of the religious and the political, one of the conditions of secularism, guarantees a right applicable to all.

VI. Identity of the believer and religion (Chapters I - III & III - II + III).

(10) Religious freedom, guaranteed by fundamental rights, secularism and the rule of law, enables everyone to embrace the conviction he or she wishes. However, no person may be reduced to his or her religious affiliation, as this would lead to stigmatisation of a discriminatory nature. On the other hand, the legitimacy of criticism, both internal and external, of religions must be recognised, although it is not without impact on their members. In this respect, the Council of Europe's reference texts exist, but it is up to governments to ensure their application. This differentiation is important and has highlighted the following points:

Fourteenth Finding: Distinguishing the person from his or her religion is essential. No one is reducible to their religion.

Fifteenth Finding: Freedom of expression is legitimate to criticize a religion, but defamation of the person practising it must be prohibited.

VII. Visibility and practices of religions (Chapter III §VI):

(11) The visibility in the landscape of newly established religions can clash with the cultural imagination of long-established religions. New religious buildings question traditional representations while disused places of worship are sold or demolished. A changing landscape, religious practices that seem unusual, require indigenous populations to adapt and integrate new landmarks. To make this often difficult adaptation possible, there must be support, consultation and mutual "accommodation". They will be facilitated by an education in the aspects of religions and secularism from the time of schooling.

Sixteenth Finding: The visibility of religions is part of the right of everyone to practice his or her religion. It manifests itself in various ways in the public space through signs, some of which have become elements of the country's culture and markers of the landscape, which as such have the right to be seen there: buildings, public events, special clothing, etc. However, it must not go against the laws of the country, nor impose the rules of a religion on those who do not profess it, nor lead to proselytism.

Seventeenth Finding: Ignorance of other people's religions or philosophies is one of the reasons for reactions of mistrust or hostility towards them, or even exasperation at the visibility of their religion. It is therefore essential to educate children about the existence of religions and their characteristics and to develop their attitude of openness and respect for others.

VIII. The different relations to the sacred (Chapter III).

(12) The sacred designates the inviolable. Often attached to the religious sphere, the sacred also characterizes objects, buildings, principles, values which are not necessarily religious. The "sacred" has proved to be very variable from one religion to another, from one person to another. For example, it has been observed that, for some people, an attack on a building of worship constitutes an offence to the divine, a profanation, while for others, it is the profaner who offends himself in that the intention that guides his gesture degrades his potential for transcendence.

Eighteenth Finding: Subject to a clear definition of vocabulary, all convictions, religious and non-religious, unanimously adhere to the sanctity of the human person and his or her dignity.

Nineteenth Finding: The diversity of understandings of the sacred reveals the disparity of religious concepts. Only the documented and scholarly examination of vocabulary will make it possible to establish reliable and easily communicable bridges of mutual understanding. This research should be combined with a careful examination of the boundaries of the sacred.

Twentieth Finding: The plurality of convictions calls for education in the different cultures in which these convictions are rooted. In this context, education is a factor of emancipation and the crucible of living together.

IX. Secularism for Europe (Chapter VI).

(13) Secularism occupies a very special place in the system analysed by this report. As understood by the Council of Europe, it guarantees the neutrality of institutions, organises relations of co-operation between the bearers of convictions and the civil authorities and promotes the fluidity of life in society. It implies that there is no precedence of any religious rule over the democratically established human rights-based rules of community life. In this way, secularism provides a framework for the expression of all convictions and religions. It encourages them on the one hand to rediscover human rights values in their own inspirations and on the other hand to engage in dialogue among themselves on their implementation.

Twenty-first Finding: Secularism simultaneously guarantees the full exercise of equal citizenship for all, regardless of the religious, political or social status of each person, and ensures the full possibility of being both a fully-fledged citizen and a member or not of a conviction-based organization, whether religious or humanist.

Twenty-second Finding: Secularism, although conceived differently from one State to another, is becoming a cultural reference point for European society, insofar as it defines a willingness to know and recognise the other who is different and to live together by sharing our common humanity.

General Finding.

(14) The representatives of the INGOs who took part in the drafting of this report agree that European society, shaped by the encounter of multiple cultures, spurred on by the spirit of liberal competition, bewildered by exacerbated individualism, and faced with the difficulty of reaching a shared understanding of secularism, is generating much suffering. In this context of offences against democracy, a role of moderation and appeasement falls to movements of conviction.

People of all generations expect substantial support from faith-based organizations while at the same time becoming increasingly suspicious of membership. No longer listening to society as a whole, the challenge facing religious institutions is to propose, on the basis of the authentic traditions of which they are the repositories, convincing formulations for today. They have to propose, without seeking to impose it, their vision of the human being, of his future and of what this implies for life in society today.

In conclusion,

(15) If one limitation has repeatedly emerged during the preparation of this report, it is the difficulty for all religions to engage in intra-religious dialogue. We have all been able to measure its imperious necessity, and we have tested the resistance that remains to be overcome. Within the working group, some of us drew a twofold conclusion from the shared path: 1) it did not seem to us that one religion is spared more than another by the lack of internal dialogue, 2) intra-religious dialogue is certainly one of the major levers

EXPLANATORY MEMORANDUM Main Findings

of the remaining rapprochement between the universality of human rights and religions, the stakes of power constituting the main blockages.

(16) Five key principles have been identified to guide further reflection in this area: 1) secularism for Europe, 2) freedom of conscience, 3) non-discrimination, 4) autonomy of religions and politics, 5) education for intercultural dialogue, taking into account its religious and convictional dimension.

(17) It appeared to the working group that the exercise of freedom of conscience plays a particular role in the implementation of these five principles. Indeed, the obligation for each individual to build his or her own autonomy in a pluralist European society leads in many places to a creeping mistrust of the fundamental rights treaties, so that the haunting question of the right to freedom of conscience can no longer be overlooked: while freedom of conscience, in essence, is not limited, actions carried out by conscientious objection (often on religious grounds for believers) must be decided responsibly so as not to deprive others of the exercise of their rights. Thus, the primacy of freedom of conscience exercised in the context of human rights can be questioned. This brings us back to the question already raised as to whether human rights take precedence over the doctrines and dogmas of religions or whether the opposite prevails, not only in terms of principles, but in the practice of each individual.

(18) Focusing on the relationship between religions and law, the working group frankly addressed the complexity of the situation and recognised that law, secularisation, dialogue between States and religions are in flux. This dynamic reflects the diversity of positions and claims. The challenge is to foster the evolution of the debate.

(19) This study, although not exhaustive, was extensive, documented and detailed. Probably one of the most meritorious contributions is the fact that the issues were worked on without restraint, tensions were not elucidated but addressed collectively, with courage. Nevertheless, strong lines of tension remain. This is an important achievement because the way forward is clear. This is largely due to the fact that each and everyone in this group will have had the chance to benefit from the quality contributions of each participant and the fine and sober guidance of Mr François Becker

(20) Beyond the contributions that we can draw individually from this experience, there will undoubtedly remain an experience that will make each member of this working group a little better equipped to participate, in other contexts, in the indispensable interreligious and intra-religious dialogues. Indeed, the "religion-secularity" couple after an absence of several decades from the public space has become a hot spot in the daily news. It is not a question of lamenting this, but, on the contrary, of using the precious resources of this document to contribute, at all levels of responsibility, to reducing misunderstandings and easing social tensions which, at bottom, are more often based on misunderstandings than on well-founded arguments.

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Introduction and Issues

I A consensus called into question and to be rediscovered

(1) Europe, be it the Council of Europe¹⁰₄ or the European Union¹¹₅, is built on three essential pillars: (a) democracy, (b) the rule of law and (c) human rights¹², inalienable values enshrined in the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms¹³₇, the European Union treaties including the Charter of Fundamental Rights of the European Union¹⁴, in accordance with international human rights law¹⁵ enriched, since the Charter of the United Nations, by the Universal Declaration of Human Rights, the founding covenants, but also by numerous general and specific treaties and major world conferences, including the one that led in 1993 to the Vienna Declaration¹⁶ of the United Nations. These rights are supplemented in Europe by the European Social Charter¹⁷ and many other legal instruments, including the case law of treaty monitoring bodies such as the European Court of Human Rights (ECHR)¹⁸ of the Council of Europe and the European Court of Justice (ECJ)¹⁹ of the European Union.

(2) For several years now, however, there has been a growing sense in Europe of a loss of confidence in the strength of these treaties and conventions to guarantee the rights of every person regardless of gender, social status and sexual orientation, as well as the protection of the diversity of their way of life protected by these rights. More and more people are claiming to be victims of human rights violations, even if some of these violations are not judged as such by the European Court of Human Rights (ECHR)²⁰. While most religions claim to support human rights or even to have contributed to their emergence, as will be explained in Chapter I, why are some of these violations suffered or provoked by believers of religions, sometimes seriously enough to lead to applications to the ECHR? What are these violations? What are they due to? How can they be remedied? How can the INGOs of the Council of Europe intervene to contribute to the resolution of the conflicts resulting from these violations?

These are some of the questions that motivate the reflection and proposals set out in this report.

(3) If these issues have arisen more particularly in recent years it is partly because, amplified by the development of religious and cultural plurality and the increasing secularisation of European society, the crises we are experiencing are not simply social, economic and financial, but also cultural, philosophical, spiritual and religious.

(3a) On the one hand, the financialisation of the economy and the unbridled race for maximum profit in the short term are leading to a paradigm shift which puts certain values on which Europe was built into the background and even in some cases makes them disappear: instead of having an economy at the service of human beings for which money is a means, an economy at the service of money is being set up for which human beings are becoming a means.

As the dignity of men and women and the rights that result from it are increasingly subject to financial profit, these crises develop selfishness to the detriment of solidarity, which can lead each person to claim their rights and neglect their duties, the counterpart inherent in their rights, if only to respect for the rights of others.

(3b) On the other hand, challenging people in their deepest being and their convictions, these crises, and the need to live in pluralism, place great demands on each person who has to construct himself, find and identity, find individual consistency in a complex pluralist context. This requirement can cause some people to be uprooted culturally, and often religiously, which can lead them to be afraid of others, to lose their certainties and points of reference and to have to question their identity. In order to guard against their fear, disorientation, destabilization and unreliability in projecting themselves into the future, to protect themselves from a universalization perceived as lacking culture, anchoring and meaning, many people seek meaning, strength and security in new affiliations or religious organizations that support and structure them, but which can also lead them to an apparent security confinement in a cultural tradition, a faith, a religion or a philosophy. This attitude may lead them to affirm their religious identity, in particular by demanding the wearing of religious clothing or signs, or by practising particular traditions considered to be religious.

(4) We are thus witnessing a **return** of religions to the preoccupations of society (in fact, very often, **recourse** to religions), because for believers, religion makes sense according to the three meanings of the term: (a) meaning as significance and interpretation, (b) meaning as direction, orientation and horizon-opening perspective, and (c) meaning as sensation, sensitivity, which explains why there are different sensitivities. However, diversity between religions and within each religion, which can be a source of richness, can also contribute to calling into question the consensus on which Europe was built, in particular because of the different perspectives they offer, the sometimes contradictory values and rules of life they advocate, with the risk of an increase in the confinement of people within traditions or identity-based particularisms, or even religious fundamentalism.

(4b) Thus, while recognizing the fundamental rights of each person to freedom of conscience and religion, as well as the freedom not to believe, this report raises the question from the outset: can it be accepted that the value, dignity and rights of human beings, and in particular of women, who make up half of humanity, vary according to the dictates of the cultural or religious community or the political system in which that person was born and lives? Can everything be tolerated in the name of respect for traditions, cultures, customs and religions? Who has the right to determine the nature, content and scope of human rights, to confirm or deny their existence? In the name of what?

(5) It is therefore essential to regain a consensus to create the conditions for harmonious living together, so that every person living in Europe can give meaning to his or her life, live it to the full, develop it to the full and freely fulfil his or her destiny. The report therefore poses a second series of questions to which it attempts to provide answers: what values to share, what attitudes to adopt and how to organise oneself to rebuild the consensus that will enable us to live together well? How can we make people aware that these values are precisely those underpinned by human rights?

What is perhaps the role and place of religions and schools of thought in society in this awareness? How can INGOs contribute to helping members of religions and schools of thought to mobilise themselves in this work of raising awareness, which is necessary for the advancement of human rights? This raises the question of the link between religions, schools of thought and human rights so that living together can be based on human rights and does not penalise a part of the population.

II Religions and human rights: eight sources of difficulties to be taken into account

(6) These questions reveal eight sources of difficulties of different natures which may lead to tensions or even conflicts, which will be addressed in this report:

II.1 First source of difficulty: formulation of human rights and appreciation of what they cover, individual, person and society

(7) Even if it is relatively easy to identify human rights insofar as they are defined by charters, treaties, conventions and declarations explained in this report, their formulation may reveal tensions with certain religions, although most of them have contributed to the emergence of these rights, as will be explained in Chapter I. In particular, the leaders of these religions formulate two recurrent criticisms, which are also shared by certain political leaders: 1) the formulation of human rights in treaties, conventions or charters is not universal because it is too closely linked to a culture, Western culture, or to a particular socio-political and historical context; 2) the legitimacy of the persons proposing or approving these formulations, and that of the process of their adoption, is questionable because they believe that they are the only ones to have the requisite legitimacy and authority, since it comes from God.

(7a) A particular aspect of this difficulty concerning the formulation of human rights is the individual/society dialectic. It largely covers the differences in Western and Eastern cultures in the perception of what a person is and his or her relationship to society. Because of these differences, declarations of human rights have emerged in Islamic countries and in Africa. Is it then up to the religions to formulate human rights? On what basis? These difficulties will be discussed and analysed mainly in Chapter II.

II.2 Second source of difficulty: no legal definition of religions, great variability within them, sects and new religions,

(8) In several articles defining human rights, reference is made to religions while there is no "legal" definition of a religion. The understanding of what is covered by a religion is all the more difficult because religions are not monolithic and have many trends, currents or schools within them. As Daniele Hervieu Léger²¹ points out, more and more believers are becoming autonomous, i.e. "their beliefs are largely beyond the control of the major churches and religious institutions", as Grace Davie puts it "believing without belonging"²².

The lack of a legal definition and the diversity within them makes the outline of what each religion covers rather vague, and thus the interpretation of rights concerning freedoms related to religion and its practice, as will be discussed in Chapter III. Diversity within a religion also makes it difficult to perceive the position of a religion in relation to a right. Is it the position of officials when this position is not democratically defined? Is it the position of organized pressure groups?

(9) This vagueness leads to differences in the perception of what a religion is, and therefore in the criteria used by certain States to "recognize" a religion, a sectarian aberration within it and a sect. As stated in paragraph 1 of article 17 of the treaty on the functioning of the European Union, Europe relies on the principle of subsidiarity to leave it up to each country to make these distinctions, which leads to significant differences between the countries of Europe. For example, Scientology is recognized as a religion in Spain, but not in France²³, which prevents Europe from taking a position on it.

10) For its part, the conference of INGOs of the Council of Europe adopted on 27 January 2011 on the initiative of the European Federation of Research and Information Centres on Sectarianism (FECRIS)²⁴ a recommendation on "Sectarian aberrations and violation of human rights" and a resolution of the same name²⁵,¹⁹ inviting INGOs to increase general vigilance with regard to the phenomenon of sectarian aberrations. This shows that schools of thought and organisations which have practices calling into question human rights, the physical integrity of individuals and in particular the moral and physical integrity of women and children can never be considered as religions with a legitimate place in the public space and whose practitioners must be protected by States in the name of freedom of conscience. This difficulty is analysed in Chapter III, in connection with conflicts of law concerning religious freedom.

(11) While it is difficult to grasp what each religion covers, it is recognised²⁰ that none of them can be reduced to the convictions it stands for, for every religion is also a social organisation which is part of the components of every society. This specificity of religions to have both a private character and a social dimension, this private/public duality of religions, can thus generate conflicts over the social consequences of their practices, particularly their visibility. These conflicts will be analysed in particular in Chapter III. The conditions under which this duality can be implemented in such a way as to minimise these conflicts are discussed in Chapter VI.

II.3 Third source of difficulties: Absolutism or relativism, contingency and immanence, interweaving religion-cultures, differentiated temporal evolutions

(12) The formulation of expressions of religions, especially in their holy books, like that of rights, is made by human beings and therefore depends on the particular sociological, historical, political and cultural contexts in which these religions and rights have emerged. It can thus be said that there is no such thing as an "in abstracto" religion, as the traditions, interrelationships and interferences between religions, languages and cultures are constant and strong²⁶.

These interrelationships have had an impact on the drafting of their founding texts, and today influence their interpretation. The differences in the interpretation of the founding texts and thus their significance for our times shows the importance of the human factor in this interpretation, since no one has direct access to the divine message. These different interpretations give rise to different currents in all religions, to intra-religious diversity, which is also a source of difficulties, as indicated below.

(13) Thus, as in several places in this report, the terms "correct interpretation", "orthodox interpretation", "misinterpretation", etc., come up. The refusal to take account of this difficulty by many religious authorities in all religions leads them to consider as a commandment from God what is only their interpretation of the founding texts, hence the importance of the religious dimension of intercultural dialogue noted in the Council of Europe's White Paper on Intercultural Dialogue²⁷, and conversely of the cultural dimension of inter-religious and intra-religious dialogue.

(14) It is no less important to note that human rights are also the result of many developments and that their formulation has also taken place in different socio-political and cultural contexts. Their elaboration, both in their formulation and in their content, is not yet complete, with the result that some rights are not recognized in all countries or take different forms depending on the country. In chapter I, therefore, this report provides a brief history of the emergence and development of human rights, highlighting the important positive role of religions and schools of thought in this history, but also the tensions that will arise between religions and human rights in the course of this history.

(15) This cultural differentiation raises the following question: Is there no absolute or universal value that transcends religions and schools of thought? Elements of an answer to this question are given in Chapter I.

II.4 Fourth source of difficulty: pluralism of religious and philosophical options, secularization, conflicts of truths or multiple aspects and expressions of truth²⁸.

(16) The presence in Europe of pluralism of religious and philosophical options and the development of the process of secularization can exacerbate the dangerous perversions that are in the very nature of religions. As Bernard Quelquejeu²⁹ points out, the main established religions have two types of expressions which are intimately linked and each can lead to a dangerous perversion:

-a) a "horizontal" expression ... that responds to the need to know one's identity, to the need to know one is "related"³⁰ to one's fellow human beings. As soon as it becomes absolute, this expression can lead to "pathologies" based on the negation of difference such as racism, anti-Semitism, delirious messianisms, extreme communitarianism, violent identity revivals, etc., which can lead to all kinds of discrimination or violence.

-b) a "vertical" expression..., which responds to the quest for meaning, allowing people to "collect themselves" ³¹, to reflect on the fundamental questions they carry and on the meaning of their lives. As soon as it is transformed into certainty, this expression can lead to all the excesses of the monopoly of access to truth: dogmatic fanaticism, proud sectarianism, irrationalism of all kinds, etc., which can lead to wars and strong attacks on the freedoms of thought, expression and conscience.

(17) It is important to be aware that references to the Absolute (or the Ultimate) evolve according to the surrounding cultures and in the course of history, which relativizes attempts to essentialize some of these references, with the risk for each person of confusing God with "his" own representation of God. Not everything that is held to be divine comes from God²⁷³². This human and cultural dimension of religions thus relativizes their propensity to think that, in essence, they are each alone in "having" THE truth both about man and the human condition and about the interpretation of natural law and the social practices that result from it, with the temptation to deny others the right to think differently.

(18) Thus, in order to avoid religion-specific claims which might give rise to a hardening of identity that could lead to an alteration of international law, it is essential that each person should learn to combine his or her possible conviction that he or she is the sole depositary of THE truth³³ with the imperative of symmetrically recognizing other persons' right to believe that they are the true ones. These different "truths" must be capable of being put forward in a democratic debate, but not imposed on the whole of humanity, so that the resulting behaviour does not lead to conflicts of rights as discussed in Chapters III, IV and V.

II.5 Fifth source of difficulties: Delimitation of the field of human rights, law, morality or ethics, culture

(19) The different developments in society and religions lead to differences in appreciation of acts that are increasingly regarded in society as the exercise of rights that are part of human rights, while some religious leaders consider that they are moral or ethical and therefore outside the scope of human rights.

Thus, for example, for women, is freely chosen motherhood with all that it entails a matter of law or of ethics and morals? For LGBT people, is the exercise of their sexuality a matter of law or morality? Conversely, acts considered by some to be a violation of human rights are for others merely the expression of cultural or religious traditions that do not fall under human rights. This difficulty in appreciating the scope of human rights, which is increased by the rapid changes in society and the divergences that are emerging both among religions and in society, which are particularly present with regard to women's rights and the rights of LGBT persons, will be addressed in particular in chapters IV and V.

II.6 Sixth source of difficulties: individual right, collective right, identity and religions

(20) This source of difficulty stems from two types of confusion or amalgamation: (1) that resulting from the private/public duality of religions, noted above, which can lead to confusion between religion understood as a set of doctrines and religion understood as a society of believers, and (2) that which assimilates the believer to the religion he professes. This difficulty may lead to conflicts between freedom of expression and criticism of a religion, and the right to respect for believers, the right of believers not to be defamed or subjected to hate speech, as will be discussed in Chapter V.

(21) Considering the right of every believer of a religion to be able to practise his or her religion, it is sometimes referred to as the "right of religions"³⁴, as a collective right of the followers of that religion exercising their right to practise. However, this is not a right of the convictions and teachings advocated by that religion. In this sense, there is no right of religions, because a religion is not a person. These two aspects of religion can thus be a source of conflict if they are amalgamated, as will be seen in Chapter III. This is why the terms Islamophobia and Christianophobia should not be used.

(22) It is essential to distinguish clearly between the person of the believer and the religion he professes. The believer cannot be identified solely by their religious conviction³⁵. To confuse the two, which is implicitly done when one says "a Christian" or "a Muslim" instead of "a person of the Christian faith" or "a person of the Muslim faith", is to be avoided for at least two reasons. Indeed, to equate what a person is with what he or she believes:

(a) is to identify a person with his or her religion and thus to reduce a person to what he or she professes, whereas each person is a combination of multiple identities. It is therefore to deny the fundamental nature of that person of which religion is only one aspect.

(b) leads to confusing criticism of a religion or religious belief with criticism of a person for what he or she is.

That is why there is a difference in essence between anti-Semitism, which attacks a Jewish person for what he or she is, whether a believer or an atheist, and criticism of a religion, whether Judaism, Christianity or Islam, sometimes referred to as Islamophobia or Christianophobia. This amalgamation is complete when we put "Islamophobia", "Christianophobia" and "anti-Semitism" on the same level.

(23) That said, the line is not always clear between defamation of a person and criticism of his or her religion or religious practice. This creates a conflict between freedom of expression and the right to respect for the individual. In fact, the European Court of Human Rights recommends, to this end, that it should be clearly discerned whether a critical expression is hostility that is admitted, or is an offence or even incitement to hatred that is not admitted. This is why the use of terms such as "Islamophobia" or "Christianophobia", which are identified with racism or defamation, must be prohibited, because there is no right to religion, but there are rights for people with religious convictions and those who practise them, as the European Commission noted in its explanation of vote at the UN on its refusal to penalise the defamation of religions³⁶.

II.7 Seventh source of difficulties: the dual dialectic of right/responsibility, right/duty, and limits in the exercise of rights

(24) Since these are rights, the state legal system with its body of laws intervenes to protect, preserve and enforce them. This implies, as will be discussed in Chapter VI, that the state acts in a neutral manner with regard to religions and schools of thought (for the Council of Europe, this is the role of the European Court of Human Rights, and for the European Union, that of the European Court of Justice), and thus the separation of the political from the religious. But the protection of rights is not of the same nature for what can be called "rights of...". (such as freedom of thought, freedom of conscience, etc.) which essentially cover individual freedoms, and the "rights to...". (right to housing, right to education...) which imply a requirement and creates a duty on the part of others and therefore requires the assistance of the state, and a certain ethic in this assistance. Should the state be neutral with regard to ethics as it is neutral with regard to religions?

(25) Thus, as noted above, "human rights" imply the responsibility of each person in the exercise of his or her rights, which is part of the "human duties", even if only for each person the duty to respect the rights of others, and to be aware of the impact that the exercise of one's rights can have on others, which raises the question of the limit between the responsible exercise of one's freedoms and self-censorship. It can be said that the duties of some define the rights of others and by mirror effect define their own rights. This principle of reciprocity is essential: without duties and without responsibility in the exercise of one's rights, there can be no real rights, which raises the question of the limit of these rights.

(26) The analysis of the tensions resulting from this double dialectic of right/duty and right/responsibility will be present in most chapters of this report, and more particularly in Chapter III, since the rights of certain persons with regard to their religion or philosophy may conflict with those of others in their different living spaces, which necessitates a regulation of these conflicts of law in these different spaces, hence the importance of the case law of the European Court of Human Rights to which reference will be made.

II.8 Eighth source of difficulties: sacred and profane, blasphemy and profanation

(27) Although they are not the only ones to do so, almost all religions have defined sacred entities, i.e. entities that are related to the divine and/or to which absolute respect is due. These may be deities, objects of worship, persons (saints, prophets), writings, symbols or places in reference to these deities. Some followers of a religion believe that any person who violates or simply disrespects what they consider sacred commits blasphemy, profanation, and should therefore be condemned or even sentenced to death. Such a condemnation, insofar as it respects human rights, may have meaning within the community of believers of a religion for those believers. However, it is meaningless and must be condemned in a multi-religious and multi-convictional state, since people outside a given religion do not recognise the sanctity of that religion.

By creating a separation between what has been declared sacred by a religion and what is profane, the sacred is a source of tension, particularly in relation to freedom of expression, freedom of thought or freedom from religion. Indeed, some believers may feel personally hurt because something they consider sacred has been violated, because a universal value is degraded or because they identify with the representation, doctrine or person recognized as sacred that has been blasphemed or profaned. Does freedom of expression stop at the border of the sacred? This is discussed in Chapter III.

III. Three pitfalls to avoid

(28) These difficulties may lead to several pitfalls which it is essential to avoid in order to enable human rights to be implemented. Among these pitfalls, there are three that can more particularly lead to human rights violations, as the following chapters will show: communitarianism, the instrumentalization of religions and the ostracism of religions.

III.1 First pitfall: **Communitarianism** that subjects human rights to religious laws

(29) Communitarianism is a diversion from the need to find one another that is felt by people who share the same religion, who wish to help one another, and thus wish to form open communities. Communitarianism is the confinement of the believers of a religion in a group with its own rules which take precedence over those of the country where the community is located, sometimes opposing them. Communitarianism leads to the identification of these believers, not as individuals, but as members of the community. Each member of the community thus loses his or her autonomy and rights that are not recognised by the internal law of the community. Within this framework, there is a major danger **when there is a conflict between the law of a religion and the law of a country**. Thus, human rights not recognized for religious reasons by the leader of the community are denied to its members, even if they are part of the laws of the country, under the pretext of freedom of religion. This, even if these religious laws are the translation of cultural traditions, leading to equating **cultural relativism with freedom of religion**.

(30) Democracies are unfortunately victims of this pitfall when there are attempts, as recently in Canada, "to have religious laws (by definition immutable, unchanging and imposed in the name of God on populations presumed to be believers) take precedence over common law (by definition voted, i.e. changeable by the will of the people³⁷). The wave is now reaching Europe, where England is allowing "traditional" courts of justice to take over from the legal justice of the Kingdom in certain cases. The Archbishop of Canterbury³⁸ stated in February 2008 that it is inevitable to introduce certain aspects of Sharia law into British society and law, calling for an open-minded and far-sighted approach to Islamic law³⁹ As in Canada, where the September 8, 2005 demonstrations called for "one secular law for all," it is here that feminist and secular activists of Muslim culture will mobilize to reject such a regression under the slogan "One law for all".

III.2 Instrumentalization of religions: misuse of religions for political reasons

(31) When a leader of a religious organisation transforms his religious legitimacy into political representativeness, his worship service into political power, he instrumentalises his religion. He uses his religion for political purposes instead of serving his religion. Such a pitfall, which transforms a legitimacy of religious origin into political legitimacy, is both an attack on religion thus instrumentalized, because it is transformed into a political body, and an attack on democracy, because the power of the people is subject to that which religious leaders have given themselves. It is very often also an infringement of human rights, because in several situations that will be described in the following chapters, these religious leaders oppose certain human rights.

III.3 Ostracism of religions: rejecting religions under the pretext of certain deviations

(32) In spite of the sources of difficulty noted above and the pitfalls which may result from them, there is an equally dangerous pitfall which must be avoided just as firmly: the ostracism of religions. Depriving members of a religious organization of their freedom of expression, their freedom to practice their religion in accordance with the law, or even persecuting them, is an unacceptable violation of human rights. As shown in Chapter VI, the framework to avoid this pitfall is secularism, as explained in this chapter.

IV. Organisation of the explanatory memorandum

(33) While there is a strong consensus with all religions and schools of thought on many of the values on which human rights are based, such as the indivisibility of the dignity of every human person and the respect that flows from it, if there is increasing convergence between religions and human rights, as shown by the statements of support from religious leaders (cf. for example the declaration of The Hague⁴⁰, the declaration of Pope Paul VI to the UN⁴¹ or that of the Dalai Lama⁴² and the new Arab Charter on Human Rights of 2004⁴³), the sources of difficulties noted above lead to tensions, even conflicts between religions and human rights, the analysis of which is one of the objectives of this report.

(34) The aim is obviously not to deal with human rights as such, but to present the point of view of the INGOs of the Council of Europe on the reciprocal interactions between human rights, religions and schools of thought and to give some elements of response to the questions raised in § I above. This reflection is carried out within the normative framework of international and European conventions and treaties, and is based on the reflections and recommendations of the White Paper on Intercultural Dialogue⁴⁴, and on the numerous works carried out both by the different bodies of the Council of Europe and by specialised institutes and international organisations responsible for human rights, many of whose texts will be indicated in the appendix.

(35) The sources of difficulties and pitfalls mentioned above lead to different tensions and disagreements between human rights and religions. This report proposes to group these tensions and disagreements into three types: (a) tensions in the formulation of certain rights themselves, (b) tensions resulting from conflicts of rights, and (c) disagreements on the delimitation of the scope of human rights, mainly with regard to women's rights and the rights of LGBT persons. In order to enable us to live together in the face of these tensions, there is a need for a regulatory body, the European Court of Human Rights, and a normative framework, called secularism, which enforces the rights of all, especially those relating to religions and schools of thought, in a neutral manner.

(36) This explanatory memorandum will therefore be divided into six chapters:

- Chapter I: Role and impact of religions and schools of thought in the emergence and evolution of human rights and economic and social rights.
- Chapter II: Tensions in the formulation of human rights
- Chapter III: Conflicts of Rights: Human rights, freedom of religion, expression and conscientious objection.
- Chapter IV: Tensions on the scope of human rights: Religions and women's rights
- Chapter V: Tensions on the scope of human rights: Religions and LGBT rights
- Chapter VI: A normative framework: secularism for Europe, a guarantee of a constructive articulation between religions, schools of thought and Human Rights

Chapter I

Emergence and evolution of human rights, role and impact of religions and schools of thought

I. Emergence of Human Rights⁴⁵

(1) The emergence of human rights is the result of the progressive awareness by human beings of what they are, of their dignity, of their common humanity and therefore of the existence of certain rights attached to their common dignity and common humanity, rights which require the establishment of rules for life in society. Anthropologists' studies show that this awareness goes back a long way in history and that it has taken place on all continents almost simultaneously, albeit with forms of expression linked to the culture of each people. Religions, like currents of thought, have played a very important role in this awareness and its explanation, in particular through their contributions to the identification of many values and the rights attached to those values. The preamble to the Charter of Fundamental Rights of the European Union explicitly recognises this: "BEING INSPIRED by the cultural, religious and humanist heritage of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person and of freedom, democracy, equality and the rule of law".

It is not the intention here to provide a complete history of human rights, but to highlight the place and role of religions and schools of thought in their emergence, the origin of the important interrelation between human rights, religions and currents of thought. It is this perception common to all humankind that makes it universal and transcends each human being⁴¹. What has been and still is at issue is the origin of this common perception, the means to access it and the content of this perception, as will be analysed in Chapter II.

(2) The first written record of a legal code establishing rights that is currently being updated is the Ur-Namu Code written in Sumerian around 2000 BC. It invokes the deities of that time and equity in the nation. Three centuries later, Hammurabi's code⁴⁶, referring to the sun god and the divinity of justice, gives rules so that the "strong do not oppress the weak"⁴⁷. Little by little, the awareness emerges that both must be able to benefit from the same attention, which leads to the explanation of what is called the golden rule⁴⁸ "Do not do to others what you would not like them to do to you".

This rule, which appears in Persia around the year 1000 B.C. in Zoroastrianism⁴⁹, is a rule of reciprocity⁵⁰ found in most religions and philosophies, notably Confucianism⁵¹, Hinduism⁵², Buddhism⁵³, Judaism⁵⁴, Christianity⁵⁵ and Islam⁵⁶. It will also be present in the emergence at the beginning of the 9th century of gender equality in marriage advocated by Bishop Jonas of Orleans⁵⁷.

(3) The concept of human dignity on which the Universal Declaration of Human Rights is based begins to emerge around the 7th century BC in the creation account of the Bible. This account marks a radical change of perspective. While it uses the materials of the Sumerian religion, especially its cosmogony, it radically changes its view of the divinity, Man and his relationship to the divinity. Unlike the Sumerian creation account, the Genesis account in the Bible describes a God, transcendent, creating Man, certainly from the earth as in the Sumerian account, but an earth animated by the breath of the Creator God and not by the blood of an inferior god killed for having revolted. In the Bible, Man is created in the image of God⁵⁸ and gratuitously to live in peace and cultivate a garden, whereas in the Sumerian account, he is created to replace the revolting inferior gods in their work. This radical difference changes the perception of what Man is. In the Bible, created for himself in the image of God, Man is called to continue the work of creation and to share in the divinity⁵⁹, which confers upon him an unparalleled dignity⁶⁰ as a free man who is a free actor in his own destiny, whereas the Sumerian narrative leads to a Man perceived as the consequence of punishment and created to suffer in the place of the gods, with the consequence of the divinization of the omnipotence and the acceptance of a certain legitimacy to the oppression of the strongest towards the weakest, but also a certain fatalism towards pain and suffering.

(4) In 539 B.C., Cyrus the Great of the Achaemenid Empire of Persia (ancient Iran), after his conquest of Babylon, wrote a text, often regarded as the first human rights document, known as the Cyrus Cylinder, in which freedom of religion⁶¹ appears. In the fourth century BC, freedom of conscience was staged by Sophocles in his tragedy *Antigone*, in which Antigone opposes a decision of King Creon which she declares illegitimate, claiming unwritten and eternal divine laws. At the end of the fourth century BC, Aristotle distinguished the "common law" for all human beings from the "particular law" for each people, thus introducing the concept of a "natural law" universally shared by humanity, a concept taken up by many philosophies and religions and explicitly by the Christian Churches. This natural law is one of the pillars on which human rights rest, a pillar of which the magisterium of the Catholic Church declares itself the guarantor and the constitutive interpreter⁶², which can lead to the tensions mentioned in the following chapters.

(5) This perception of a natural law is made explicit by prophets, sages, philosophers and jurists. They highlight, in different ways linked to their culture, the values that reflect the awareness of each human being of what he or she is, and then the rules of life that enable them to be implemented in his or her relations with others. Some perceive this "universality" as a transcendence to which they give the name of God, among other things. Many, in fact, are those who, inspired by the teachings of the Bible, the Talmud⁶³, the Gospels⁶⁴, the Tripitaka⁶⁵, the Koran⁶⁶, or by those of philosophers and thinkers throughout the past centuries, have contributed to the emergence of human rights.

Thus we can cite the Hindu sages, Buddha and his disciples for Buddhism, the Chinese sages, the prophets and the writers of the Bible, especially the Decalogue and the Talmud for Judaism, the Greek philosophers, Jesus, his disciples and the evangelists for the different forms of Christianity, Mohammed, the Caliphs who were his successors and the commentators of the Koran and the hadiths for the different forms of Islam and later the philosophers, especially those of the Enlightenment and renowned jurists. We can also mention the awareness in Africa, which from the 13th century led to the charter of Mande solemnly proclaimed on the day of the enthronement of Soundiata Keïta as Emperor of Mali at the end of 1222.

(5a) Thus all religions, but with different meanings linked to cultures and to the differentiated developments in the understanding of what it is to be human and one's relationship to the divinity, have contributed to the emergence, with the contributions of many philosophers, notably Rousseau and Kant, of what will become human dignity⁶⁷ as it is understood today, and which will only appear explicitly in the Universal Declaration of Human Rights of 1948. Thus we have gone from the "law of nations" - the "jus gentium" of Roman law at the end of the Republic of Rome, which regulates the rights of Roman citizens and foreigners, thus giving rise to the notion of rights common to several peoples, which was the beginning of the notion of universality - to human rights, the rights attached to every human being.

(6) In Europe, this awareness of rights, attached to the individual and not granted by a prince, internalized by men and women, most of them believers, was opposed to the conception of those who held power and who believed that it was up to them to grant these rights and to control their exercise. Unfortunately, this view was also held by leaders of religious institutions, including Christian ones from the fourth century onwards, following the transformation of Christianity into the state religion of the Roman Empire by Emperor Theodosius following the conversion of Emperor Constantine. Men and women will have to fight to benefit from the rights thus identified, both the powerful - kings and those subject to them, the pope and his official representatives, and in the Islamic countries of certain caliphs - will oppose a limitation of their power and a challenge to their position. The enjoyment of the rights thus emerging by every human being, including freedom of conscience, freedom of expression and freedom of religion, then required hard fighting.

7) In the European context, after the Edict of Milan of 313 attributed to Constantine and Lucinius, which established religious peace in the Roman Empire by allowing everyone to "worship in their own way the divinity in heaven" and by granting freedom of worship to all religions and in particular by allowing Christians to no longer have to venerate the Emperor as a god, the overtures of St Augustine, Saint Thomas Aquinas and Muslim precursors such as Avicenna in the 10th and 11th centuries and Averroes in the 12th century, and Jews such as Maimonides in the 12th century, it was in England that the barons fought to impose on King John the Landless in 1215 the establishment of the "Magna Carta" which clarified certain individual liberties, the obligation of fair trial and a certain control of royal power.

But, very quickly contested by the king himself and by the Pope, this charter was not implemented and promulgated by Henry III, albeit with amendments reducing its scope, until some twenty years later, after struggles against the arbitrariness of the powerful. (The hegemony and intolerance of the Catholic Church, criticized by Erasmus, will be fought to obtain freedom of conscience and freedom at all. Through his criticisms, his humanist knowledge, especially of Aristotle, his concern to make the Gospel known, Erasmus sought all his life to combine the tolerance of humanism, the spirit of the Gospel and loyalty to the Catholic Church, advocating freedom for each person to follow his free will, thereby sowing the seeds of Protestant reforms. In the sixteenth century, Christian thinkers such as Vitoria, Suarez, Las Casas and the entire Spanish legal school of that time thus developed a doctrine based on the person and his fundamental right⁶⁸. This evolution continued with Descartes in the 17th century, who placed reason at the centre of reflection: the truth about the "sublunar" world, instead of being an object of revelation and faith, became a conquest of the reasonable man⁶⁹.

8) The emergence of tolerance, of freedoms, especially freedom of conscience, of the importance of reflection based on reason, is thus the combined fruit of humanism, philosophy and reflection based on the books or founding thoughts of religions. Associated with the work begun in the 16th century by Spanish Catholic theologians⁷⁰ and developed in the 17th century by jurists such as Hugo Grotius in the Netherlands, these reflections led to the emergence of an international law based on "natural law" and led politically, after the English Revolution, to the establishment of the Habeas Corpus of 1679 and the Bill of Rights of 1689 which made many rights and liberties explicit⁷¹. During the English Revolution, groups of men formed to demand that the equal rights advocated by the Gospel be put into practice at the political level, hence the name "Levelers" that was given to them. They demanded freedom of conscience and religious freedom against the dominant Anglicanism, asserting that the individual person is pre-eminent in the state and should therefore be protected against its abuses.

9) This awareness of rights and the need to implement them goes beyond the strictly European framework with the "discoveries" by Europeans of the existence of other peoples on the other side of the Atlantic, which give rise to debates on their humanity, and therefore their rights. The recognition of the same rights for the inhabitants of these faraway lands, formally defended by the Dominicans Vitoria and Las Cases⁷² against their denial by the colonizers, the condemnation of slavery by Pope Paul III⁷³ in 1537, and his defence of the rights of the Indians, led to the expansion of the nascent perception of the universality of these rights.

(10) These nascent rights were made explicit and transformed into a concept by 17th and 18th century jurists and philosophers such as Locke, Rousseau and the philosophers of the "Enlightenment", who campaigned to put them into practice in the government of societies, often opposing the reluctance of those in power, whether political or religious.

A few years later, it would be the role of the people to draw inspiration from them in order to conceive, first in the United States, the Declaration of Independence of 1776, then in France to draft the "Declaration of the Rights of Man and of the Citizen" of 1789, and then the Declaration of 1793 which introduced three social rights and above all specified that sovereignty resides in the people.

(11) The explanation thus made of "human rights" in a political declaration, which are imprescriptible rights of every man by the mere fact of his dignity as a human being⁷⁴, and not because these rights are granted by a king, is the joint fruit of the contributions of religions, and of great philosophers and jurists, particularly those of the 17th and 18th centuries, who put forward the notion of the person, their equal dignity, freedom and uniqueness in relation to the group and who were able to base rights on an accepted conception of the intrinsic dignity of every human being, beyond religions and currents of thought. However, during the 19th and early 20th century, the awareness of what freedom of conscience, religion and expression implied, their implementation and the struggles for democracy during the process of secularisation led to a confrontation with the Churches concerned, in particular the Catholic Church^{75,76}, which then condemned these freedoms and democracy⁷⁷. The Church's position on the issue of freedom of conscience, religion and expression is still very much alive today. Developments both in the leadership of the churches concerned and in the various parties during the 20th century led to the Universal Declaration of Human Rights adopted⁷⁸ in 1948 by the United Nations after the disasters of the Second World War. This Universal Declaration of Human Rights was confirmed in 1993 in Vienna by a much larger number of countries, many of which are not from the Western world⁷⁹. It is interesting to note the choice of the word Declaration rather than Promulgation. This choice implicitly shows that Human Rights are somehow pre-existing to their drafting, which is only there to make them explicit. On the contrary, the word promulgation would have meant that these rights were defined by their drafters.

(12) Difficulties between the Catholic Church and human rights have, for the most part, been resolved with expressions of the Roman Magisterium, notably in John XXIII's encyclical *Pacem in Terris*⁸⁰ and the texts of the Second Vatican Council, in particular the Constitution "*Gaudium et Spes*"⁸¹ and the Declaration "*dignitatis humanae*"⁸² on religious freedom, as recalled in the working document of the Pontifical Commission for Justice and Peace on "*The Church and Human Rights*"⁸³. Today, the convergences between religions and human rights are more and more numerous, as mentioned in § III of the Introduction, no religion is formally opposed to human rights and many manifestations of support have emerged. Thus the meetings for a common prayer of almost all the world religions organised in Assisi by the Pope are emblematic of the co-operation they can have in favour of human rights. Each remains faithful to its faith and prays according to its conscience and its vision of God, but all can come together to affirm the eminent dignity of man and the duty to protect him.

(13) After the recognition of human rights, inherent in the person as such, rights-attributes, which can be called "first generation rights"⁸⁴, social rights or rights of claim, "second generation rights" which are not "rights to (think, enjoy freedoms, have or not have a religion, etc.)", have appeared.)" like first generation rights, but "rights to (work, housing, social security, education, etc.)", some of which are mentioned in the 1948 declaration and in the European Social Charter. These rights have the same holder: the person, each person, they are both opposable to a natural or legal person, but they do not have the same object. Second-generation rights have a possible object, like first-generation rights, but involve financial commitments, which is not the case with first-generation rights.

(14) Unfortunately, it should be noted that the evolution of Europe, like many states, has often put economic rationality before human rights, thus violating Articles 22 to 26 of the Universal Declaration of Human Rights⁸⁵ and many rights of the European Social Charter. This violation, denounced by religions, clearly shows the complementarity of civil and legal rights and social and economic rights, as many religions rightly point out. Some states defend themselves against it. Are human rights a luxury reserved for rich countries? Why is it that human rights are not respected more in rich countries than in poor countries?

(15) Religious leaders, as well as the followers of these religions and the many associations and currents of thought of religious, philosophical or humanist inspiration, point out that extreme poverty is a fundamental violation of human rights. This violation is further accentuated when persons living in extreme poverty are accused of being responsible for it when they are the victims. These violations are one of the consequences of the overthrow of values by government authorities, particularly in Europe, which puts people at the service of money for the financial benefit of a few instead of putting money at the service of all. The social inequalities leading to a violation of these fundamental rights are one of the reasons for social decohesion in Europe, a source of conflict and violations of other rights leading to a circle of accelerating frustrations which are a source of violence or the creation of scapegoats.

II. Religions, human dignity and the rights deriving therefrom

(16) Today, the most prominent religions in Europe share the values on which human rights are based, as explained below. They also insist on the importance of the duties attached to the rights of each person⁸⁶, even if only the duty for each person to respect the rights of others, as noted in the international texts which impose limits on certain rights, as will be discussed in Chapter III. They also strongly support the implementation of economic and social rights as defined in the European Social Charter⁸⁷ and in Articles 22 to 28 of the 1948 Universal Declaration of Human Rights. For example, the 2011 Moscow Declaration of the European Council of Religious Leaders on "Advancement of Human Dignity": "The Universal Declaration of Human Rights (1948) is an expression of shared values that are recognised by religions and cultures, and which we, leaders of various religious traditions, strongly support.

Our understanding of human rights is rooted in our understanding of human dignity and incorporates many fundamental religious values. ⁸⁸ *Indeed, on the practical level, there are many followers of all religions, religious institutions and monastic Orders and male and female religious Institutes serving the needy (the sick, the elderly, the destitute) and the human formation of children and young people. They thus contribute to the development of social laws.*

II.1 Buddhism and Human Rights

(17) Radically opposed to the caste system, the Buddha at one time sought to abolish caste in order, there as elsewhere, to fight vigorously against all forms of social discrimination and against all institutionalized inequalities. Along these lines, contemporary Buddhism is expressed in particular by its unfailing support for the universal application of fundamental rights.

(18) Buddhism emphasizes that all beings are equal, that all seek happiness and all try to avoid suffering, irrespective of race, social origin, sex, sexual orientation, language, religion, nationality or socio-economic status. Buddhism, as a non-dogmatic religion, promotes tolerance and freedom of thought as a privileged means of spiritual and existential development. In Buddhist spirituality, attachment to prejudices or rigid conceptions in the cultural, political, religious, economic, philosophical or ideological fields is perceived as an obstacle to such development.

(19) All forms of discrimination as well as all laws maintaining inequalities between women and men and discrimination based on race, sexual orientation and other grounds are to be considered as the modern version of the castes to which the Buddha was opposed and which we must combat in all non-violence and with the greatest compassion⁸⁹. Thus Buddhist societies can contribute significantly to a new reflection on the fact that human rights are universal and must apply to the field of religions.

II.2 Judaism and Human Rights⁹⁰

(20) Judaism is first and foremost Humanism, if by this term one evokes the importance of the human being. "The God of the Covenant is a God who - unlike the ancient mythological "deities" - is benevolent towards man and his destiny. The book of Exodus reveals to us the face of the God of the oppressed and the suffering: initiated into this unfailing covenant since Abraham, the people of Israel had a saving experience of it when they came out of Egypt.

(21) The Decalogue received by Moses on Sinai is as much a social as a religious code, based essentially on respect for others and consideration for the weakest. In classical Hebrew, there is no word for "rights". That is why the Ten Words (the Decalogue) do not speak of the "right to life", nor of the "right to property", nor of the "right to dignity" but say "thou shalt not kill! "You shall not steal! "Do not oppress the widow and the orphan, the stranger or the oppressed! "They do not speak of the "right to just remuneration" or the right to a fair trial, but the Torah enjoins: "Do not exploit the day labourer, whether he is one of your brothers or the foreigner who is in your country! Judge your fellow man impartially", "judge your fellow man impartially" and again "the same law and the same status for the native and the alien! ».

(22) By this imperative, "you must! " the Torah associates with Human Rights, the duties of Man, the duty of righteousness and justice, duties towards the Other, the neighbour who has acquired rights over us! This personal and imperative formulation: "you must" supposes that Man is a person and that there is a person who orders.

23) If Judaism believes in Human Rights, it is because these Rights do not suffer any attenuation or concession⁹¹. However, is this not the end of a world torn apart, a world in which men too often disagree and yet must coexist? We are told in Hebrew, in the Torah (chapter XIX of Leviticus): "you shall love your neighbour as yourself", which André Néher translated: "you shall love your distant one as yourself". This implies, to use Hillel's expression, the reciprocity of perspectives: "What is hateful to you, do not do to others"⁹²₈₇.

(24) No matter how strange the stranger may be, whether he is treated as a subhuman, a superman or a beast, he must always appear to me as a man. The "Other" is the principle of the world, the sense of its universality: The Other questions me, he is not the one who resembles me but the one who concerns me. "He will live with you, in your midst," says the verse: which means with you and in your midst, but still living his own life with his strangeness ("you will choose your life"). I am then challenged by this question of the other: are you able to recognize me?

(25) Thus it is not "from oneself" that man learns what he is, that is, a man who claims his dignity as a man, but from the other who reflects his image back to him as a mirror would. When the other appears, the defences of the self-collapse, revealing the notion of transcendence and the ethical requirement it entails, before this man created in the image of God. Let us take up Vladimir Jankelevitch's expression: the "I" has no other "self" than the "you".

The effort required to renounce the privilege of the first person, and to treat the second person as the first, is called Tzedek, justice. We pass from tolerance, to understanding the other, then to the recognition of his right, because to recognize is also to respect, to salute in the other the one who resists me, not with all his strength, but with all his soul.

Even today, some people still prefer to deny this recognition.

II.3 Christianity and Human Rights⁹³

(26) Article 1 of the Declaration affirms that "All human beings are born free and equal in dignity and rights. All are endowed with reason and conscience and should behave towards one another in a spirit of brotherhood. "For Christians, this contemporary affirmation of human rights, in which they find themselves perfectly at home, is the fruit of a three-thousand-year-old genesis, briefly summarized above, of the awareness of the dignity of men and women because they are "created in the image of their Creator",

(27) For Christians, this revelation of the Bible was lived to perfection by Jesus, the incarnation of God his Father, who revealed its full depth by affirming and testifying that men and women are sons and daughters, like him, of the same father, and his brothers and sisters called to divinity. Bishop of Lyon in the second century and Father of the Church, Saint Irenaeus summed up the Christian faith in this way: "God became man so that man might become God". Jesus affirms this strongly, as St. Matthew reports in the Gospels, by identifying himself with the least ones: "I was naked and you clothed me; I was sick and you visited me; I was in prison and you came to me! (...) Amen, I say to you, whenever you did it to one of these little ones who are my brothers and sisters, you did it to me. "(Mt 25:36-40). Jesus affirms this strongly, as St. Matthew reports in the Gospels, by identifying himself with the least ones: "I was naked and you clothed me; I was sick and you visited me; I was in prison and you came to me! (...) Amen, I say to you, whenever you did it to one of these little ones who are my brothers and sisters, you did it to me. "(Mt 25:36-40).

(28) Jesus thus reveals an ontological bond among all humans, which is translated on the moral level by Christ's central commandment: "Love one another as I have loved you" (Jn 13:34) and "You shall love your neighbour as yourself" (Mk 12:31). The neighbour in Christ's mouth is not just a member of my community or my neighbour, as he illustrates in the parable of the Good Samaritan (Lk 10:25-37). Jesus goes even further, inviting us to love our enemies (Lk 6:27), and to forgive as much as possible (Mt 18:21). Moreover, through his testimony and revelations Jesus freed men (Gal 5:1).

29) Putting this invitation of Jesus into practice in the course of history is at the origin of the great structures of welcome, assistance and care which have arisen, for example, alongside the monasteries. The service of the needy (the sick, the elderly, the destitute) was first taken care of by the monastic and mendicant Orders, then by the various male and female religious Institutes which extended their action to the instruction and human formation of children and young people. The list is long, in fact, of anonymous Christians who, in their hundreds of thousands, have put this first article of human rights into practice. This practice leads to political action. As early as the nineteenth century, the Magisterium's opposition to what is now recognized as being part of human rights, encouraged men, moved by their religious convictions⁹⁴, to work to bring the Magisterium's positions closer to the evolution of society, which is not always without difficulties, and to contribute to the development of social laws.

(30) Indeed, for Christianity, human rights are both universal and concrete, as Pope Benedict XVI emphasizes in his Encyclical Letter "God is Love": "The concept of neighbour is universalized and yet remains concrete. Although it is extended to all people, it is not reduced to the expression of a generic and abstract love, which in itself is not very binding, but requires my concrete commitment here and now". The Pope underlines here the double challenge of human rights which the parable of the Good Samaritan commits us to take up, on the one hand a universal respect, but which on the other hand is concretized in a relationship with real people for whom I can do something. Likewise, the Ecumenical Patriarch of Constantinople, Bartholomew I, affirmed⁹⁵ that "human rights" are not merely an invention of the Enlightenment: they belong to the very essence of the Christian faith and of every religion that naturally promotes religious freedom and tolerance. Thus, there is no opposition between the Gospel message and human rights. On the contrary, they are in harmony, and many consider them to be one of the fruits⁹⁶.

(31) In many countries, States have taken over the work of religious institutions. In other countries where the public authorities have very little responsibility for the need for solidarity, religious communities of different denominations in different parts of the world are actively involved in overcoming these shortcomings.

II.4 Islam and Human Rights⁹⁷

(32) Like other religions, Islam believes that human rights are proclaimed in the Qur'an, ranging from the right to life "All human life is sacred, and no one is allowed to take the life of another (17, 70) except in good right (just war)" to the right to freedom of conscience "No coercion in religion" (2, 256), or "And if your Lord had so willed, all who are on earth would have believed. Is it your duty to compel people until they become believers?" (10:99), through the right to equality between men and women (4:1).

(33) Islam has from the outset reserved for man the best place in its teachings and rights. Thus, the teachings of Islam have prohibited, among others, suicide. The Qur'an states: "And kill not yourselves. Truly, God has mercy on you", (4:29-30)⁹⁸. And these teachings have forbidden homicide as well. We read in the Qur'an: "Therefore we have commanded the sons of Israel: 'He who has killed a man who himself has not killed, or who has not committed violence on earth, is considered as if he had killed all men, and he who saves one man is considered as if he had saved all men', (5, 32). On the other hand, respect for the life of a Muslim never excludes respect for the life of a non-Muslim, for life is a sacred thing beyond any colour or creed etc. (5, 32). The Qur'an and the Sunnah have been very clear in this regard as Massignon explained: "From the time of the Prophet Muhammad, there was a tendency to grant the Dhimmiyun (non-Muslims) full and equal human personality; the dying Prophet said: Maintain the protection (dhimma) that I have granted to my non-Muslim subjects⁹⁹.

(34) After respect for human life comes respect for the dignity of the human person in all circumstances and situations¹⁰⁰. This respect, together with respect for others, are concepts defined and encouraged by Muslim law. The concept of human dignity in Islam does not allow any distinction between people, even with regard to their religion, because this dignity is related to the human being beyond his convictions and beliefs. The Qur'an reads: "And most certainly, We have given nobility to the children of Adam", (17, 70). On the other hand, the Muslim must show all due respect, even towards the enemy: "O you who believe! Stand firm as witnesses before God, practicing justice. Do not let hatred of a people incite you to commit injustice" (5:8).

(35) Finally, the characteristics of human rights in Islam are grouped around three pivots: equality, freedom and justice. Thus, the preamble to the Arab Charter revised in 2004¹⁰¹ states: "Proceeding from the faith of the Arab nation in the dignity of man whom God has honoured since the creation of the world and in the fact that the Arab homeland is the cradle of religions and civilizations whose noble values have enshrined the human right to a life of dignity based on freedom, justice and equality, ...".

(36) From the Muslim perspective, human rights in Islam are rooted in the belief that God, and God alone, is the author of the Law and the source of all human rights¹⁰². Because of this divine origin, no ruler, government, assembly or authority can restrict, abrogate or violate these God-given rights. But the reverse side of this conviction is that the divine origin of all Creation cannot be questioned. Therefore human rights and God's rights are intrinsically linked. It is because God's rights are respected that creatures called to this obedience are compelled to respect human rights. In other words, respect for human rights is an aspect and a condition of respect for God's rights. This implies that human rights are defined within the Covenant with God and therefore concern first and foremost believers. They are universal only to the extent that all men are called to enter into this Covenant. Believers of the two other monotheistic religions ("people of the Book") are protected but polytheists and non-believers are therefore outside the guarantees provided by the divine Law.

37) The Qur'an states: "No coercion in religion" (2,256). In theory, freedom of conscience is recognized, but in practice many Muslim countries severely repress apostasy. "Muslim society holds certain values, but others are not recognized, such as human rights, equality between men and women, the dignity of all, equality between believers and non-believers" (with the status of dhimmi). Thus, while the Arab Charter on Human Rights of 1994¹⁰³ explicitly refers to the Sharia, the Revised Arab Charter of 2004¹⁰⁴ only implicitly refers to it by "taking into account" the Cairo Declaration on Human Rights in Islam of 1990¹⁰⁵.

III. Different Perceptions of Human Rights by Religions

(38) Although most religions share the values underpinning human rights, human rights violations in the name of religions still persist today and it is one of the aims of this report to identify and analyse them in the following chapters on the basis of the difficulties referred to in the introduction. It is worth noting that the more religions are linked to political power, the more human rights violations by religions increase. Moreover, in this case their leaders hardly oppose human rights violations committed by these powers, despite the fact that many of their followers are often arrested and repressed by these powers, hence the importance of the separation of religion and state, which will be discussed in Chapter VI. Suffice it to cite religious wars, the exactions of the Inquisition, violations of freedom of religion and conscience, power struggles, restrictions of freedom, etc., as well as the violations of the right to freedom of religion and conscience. Many jurists point out that human rights are still not applied in many Muslim countries.

(39) Lastly, it should be stressed that human rights concern the rights of individuals with regard to religions or the currents of thought and practices resulting therefrom, but that they are not, strictly speaking, "rights of religions"¹⁰⁶, although many research teams call themselves so. Human rights concern the individual and each person in his or her uniqueness, but not their philosophy or religion.

This distinction raises many topical issues, including those arising from the spurious reduction of a person to his or her religious identity, as might be implied by the use of the terms Christian, Jew, Buddhist, Muslim or atheist to identify a person. The difference between a religion and the person who adheres to it must be well marked to counter the danger¹⁰⁷ of threatened and murderous identities and to avoid equating criticism of the foundations of a religion and its practices with that of its adherents. This raises the issue of freedom of expression and religion discussed in Chapter III. Generally speaking, under no circumstances should a person be reduced to one of the elements of what constitutes him or her, particularly since identities are multiple. Thus, no person should be reduced to his or her sexual orientation and thus identified as heterosexual or homosexual. These points will be discussed in Chapters III to VI.

Chapter II

Tensions in the formulation of human rights

I. A formulation containing implicit choices or deficiencies

(1) Human rights, two words that are heavy in meaning, but whose meaning can be perceived differently depending on culture, philosophy or religion. Thus, for example, is the purpose of the law to protect some from the desires, whims or impulses of others? Is it only the legal cover for certain desires of a pressure group or a majority strong enough to legalize its desires? Who has the authority and legitimacy to decide that a right is legitimate and that everyone should enjoy it? On what basis is this decision based?

Another set of questions concerning Man, that is, the human being: Who is he, what characterizes him? Is he born Man or is he conceived Man? Is an embryo a human being from the moment of conception? This series of questions underlies several conflicts which will be analysed in Chapters IV and V.

(2) It may already be mentioned that the wording of the 1948 Universal Declaration of Human Rights may seem to give implicit answers to some of these questions, answers which are not necessarily shared and which have been made explicit in certain regional conventions. For example, by stating "All men are BORN and remain equal in dignity and rights", this formulation can be understood as implicitly giving an answer to the question concerning the embryo, since human rights according to this interpretation would only concern human beings after birth, which is not the understanding of many religions, nor of the legislation of some States. This assertion has consequences for the future, in particular for the right to life. Thus, it should be noted that many declarations and conventions specify this point or refer to States, as is the case with the European Union. For its part, the European Court of Human Rights stresses the absence of a "scientific and legal definition of the beginnings of life", leaving it to the free appreciation of States to determine this starting point¹⁰⁸.

(3) Since the UN Declaration of Human Rights is based on human dignity which, in the Judeo-Christian perspective, is inherent once and for all in the God-given nature of man, several currents of Islam and the Muslims who are faithful to it are uncomfortable with this vision. Indeed, for these currents, the source of rights is only in God who is the only one who can legislate because He created the world as it is in an indefinite present for Him, but which develops in a history for Man. Thus, the different Muslim institutions, while showing interest in human rights, have felt the need to proclaim each one a declaration in which fundamental reference is made to the Sharia: the Islamic Council of Europe drew up the Universal Declaration of Human Rights in Islam¹⁰⁹, presented in September 1981 to UNESCO the League of Arab States adopted in Cairo in 1994 the first version of the Arab Charter of Human Rights¹¹⁰ which also refers to the Sharia.

However, the reference to the Sharia is judged by the European Court of Human Rights¹¹¹ to be "incompatible with the principles of democracy as they result from the European Convention on Human Rights", which is not without raising tensions between certain currents of Islam and human rights. However, a development is taking place in the Muslim world since the Charter revised in 2004¹¹² no longer makes explicit reference to Sharia law.

4) Deficiencies are noted by various religions or currents of thought in various regions of the world. For example, African countries point to the lack of reference to the community and the resulting solidarity. They wanted to stress the importance of community in which every human being lives, and thus proclaimed in 1981 "The African Charter on Human and Peoples' Rights"¹¹³.

Even more different is the perception of human rights in some religions:

- The Eastern religions, believe that Man is not separated from nature or from animals. For them, it is the Westerners who create the rupture. If one of the declaration of human rights is freedom, in the far east the key word would be harmony.

- Others insist that "human rights" do not explicitly refer to duties. They do not presuppose positive feelings that Men would have one another towards others, while religions strive to have and express them. For their part, the human rights regime can be interpreted as a regime of tolerance, which may be of mutual ignorance and even indifference but not necessarily of recognition of the other. Between tolerance and contempt the transition is insensitive, and one can slip too easily from one to the other.

(4a) However, the rights of some implicitly imply duties for others, if only for each person the duty to respect the rights of others, and for States the duty to create the conditions for everyone to be able to benefit from their rights. This is, moreover, what the various international texts stress, such as Articles¹¹⁴ 9.2 and 10.2 of the Convention for the Protection of Human Rights. It can indeed be said that the Duties of some define the Rights of others and by mirror effect define their own rights. This principle of reciprocity is essential: without Duties there can be no true Rights. We should rather speak of Rights and Duties of Men towards each other whatever their position in the political, social or economic order.

II. A formulation whose universalism is criticized:

(4b) The universality of the wording of the 1948 Universal Declaration of Human Rights is not recognized by all religious leaders, as this wording reflects, in their view, a vision of mankind that is not their own. They conclude that the attitudes and ways of life advocated by their religion are not constrained by the totality of the rights thus formulated and by the way in which they are implemented. Moreover, even if there is consensus on most of the values underlying human rights, there are differences of perception between different religions on what these values mean and what their implementation implies.

This is particularly the case for the different conceptions of the relationship between people and society, person and community, as well as for the different perceptions of the relationship between God and Man.

(5) Thus, the implicit choices and shortcomings noted by certain religious or philosophical currents in the formulation of human rights have led them to question the universality of human rights by asserting that their formulation is the mark of the hold of a particular regional culture that is materialistic or overestimates the individual to the detriment of society and runs the risk of denying solidarity¹¹⁵ Thus some leaders of Islam and dictators of Islamic countries¹¹⁶ claim that human rights, being the product of Western culture, do not concern the believers of Islam. It should be noted, however, that these challenges to the universal nature of human rights are not taken up by all men and women of Arab culture and/or the Muslim religion, especially those who are under the yoke of these leaders or dictators. It may be added that the Vienna Declaration¹¹⁷ confirming in 1993 the 1948 declaration was approved by a number of non-Western states.

II.1 individual, person and society

(6) It is questionable whether the deficiencies identified in this way do not primarily correspond to differences in the perception of who a person is. In the first place, if a person is understood as an individual in society and is built up through the society that surrounds him or her, it is the result of a balance between his or her needs and aspirations and those of other people. Thus, since human rights concern each person (and not individuals), they also constitute collective rights by the fact that they concern all men and women¹¹⁸ and therefore ipso facto imply solidarity. Thus, for example, if human rights prohibit the treatment of men and women as slaves¹¹⁹, they also prohibit slavery, which is a societal problem. The same is true for equality/parity between women and men: one proof of this is that many countries legislate on these issues.

(6a) Indeed, the balance between the individual and society, between the satisfaction of personal needs (with the dangers of selfishness, of crushing the other) and the search for the common good (with the danger of sacrificing the person on the altar of the common good) can be a source of tension between religions and States. Indeed, the individualisation of society, as a recognition of the dignity of the person, is positive (each individual, each person is unique; liberation from collective constraints), but as a constituent of a society, it becomes negative (selfishness, breaking of solidarity and exclusive pursuit of one's own interests). But refusing individualization is also dangerous because it can lead to a destructive collectivism of the person. Thus, the search for this balance can be a source of tension between religions and human rights, as will be analysed in Chapter VI. There is thus an important difference in the appreciation of human rights for each person between religions for which man is not defined by his belonging to a community and those for which he belongs absolutely to a community, as is the case for the ummah in Islam or Orthodox society, according to Metropolitan Cyril¹²⁰. This person/society relationship is also perceived differently in the East and in the West.

II.2 Nature of the relations between God and Men

7) One may also wonder whether the disagreement on certain formulations of human rights does not stem from differences in the perception of the nature of the relationship between God and men. This difference is, as Abdelwahab Meddeb¹²¹ says very clearly, "the one that distances the 'great separation' from the 'consubstantiality' between politics and religion, the first perfectly represented by the West, the other, common to historical traditions, coming to be polemically actualized by Islam. And it is by this polarity that human rights are judged. Historically, the declaration of 1789 and that of 1948 were formulated from the "great separation". And they have come to be challenged in the name of a difference that continues to claim "consustantiality". This led Mohamed Arkoun¹²² to say: "Islam is theologically Protestant since the Muslim is free in his relationship with God, and politically Catholic since since the Umayyads, the State (i.e. the political power) has confiscated this freedom proper to Islam to constitute itself as an autonomous sphere of the spiritual".

(8) In such a perception of "consustantiality", there is no room for several of the human rights, in particular for freedom of conscience, thought and religion, which implies the freedom to have or not to have a religion, the freedom to practise it if one has one and to be able to change it if one so wishes. Any challenge to religion becomes a challenge to the State. This difficulty appears in particular for the Orthodox Church in Russia and for Islam in countries with a Muslim majority.

(8a) For the Orthodox Church in Russia, there is, according to Sylvie Peyrou-Pistouley¹²³ "a real ideological conflict over the concept of freedom of conscience and religion and human rights in general. Indeed, from the orthodox point of view, the concepts of human rights and freedom of conscience appear to be the product of Western civilization, with its roots in the philosophy of the Enlightenment, which laid down the foundations for a rationalist and individualistic, legalized and positivist society. However, the Orthodox world does not recognize itself in these Western human rights values, which mark the triumph of individualism. Thus, Metropolitan Cyril "opposes the Western conception of human rights 'in the name of the original Russian civilization', an orthodox perception in which the individual defines himself above all in relation to the collective" (which is precisely a question of balance between the individual and society as noted above).

8b) For its part, can Islam continue to impose respect for Sharia law on non-Muslims, as implied in the Cairo Declaration on Human Rights in Islam¹²⁴, while the European Court of Human Rights has declared Sharia law contrary to human rights¹²⁵ and democracy¹²⁶? Article 10 of the 1990 Cairo Declaration¹²⁷ proclaims "Islam is the religion of innate nature", i.e. for the signatories of this declaration all men are born Muslims.

The assassinations of Christians in Islamic countries and of political leaders in Pakistan who oppose the blasphemy law and the repression in Iran are recent illustrations of this. In fact, Article 22 (a) of the 1990 Cairo Declaration states: "Everyone has the right to express his opinion freely provided it is not in contradiction with the principles of the Sharia", and

Article 24: "All the rights and freedoms set forth in this Declaration are subject to the provisions of the Sharia. "While the Sharia can be interpreted in various ways, which leaves a possibility of compatibility with human rights, the majority interpretations coming from fundamentalist currents prohibit in most cases changing religion¹²⁸ or not having one, and proclaim inequality between men and women, which is contrary to the ECHR as the European Court of Human Rights noted in its 2003 report¹²⁹.

III. Universality, Human Rights and Religions: a goal to be achieved through dialogue

(9) These points of tension or disagreement on the formulation of human rights show that the process of internalization of human rights by all religions and their followers is not yet complete, even if all recognize the need to define human rights as discussed in Chapter I. Some religious leaders, especially those of fundamentalist currents of various religions, do not recognize human rights in their entirety. This is, for example, the case of certain Islamic leaders and dictators in Islamic countries¹³⁰ who claim that human rights are the product of Western culture and therefore do not concern the believers of Islam. It should be noted, however, that these challenges to the universal nature of human rights are by no means taken up by all men and women of Arab culture and/or the Muslim religion. Thus, as many opponents in countries of Muslim culture who are under the yoke of these leaders or dictators are fighting to promote human rights in accordance with the Vienna Declaration signed by many countries of Muslim culture.

(9a) The recognition of the universal character of human rights must therefore be understood as a limit, an objective to be achieved. This objective can only be achieved through intercultural, inter-religious and intra-religious dialogue, as advocated by the Council of Europe in its White Paper¹³¹ on intercultural dialogue and its religious dimension. This dialogue, which must also be inter-confessional in order to bring together all currents of thought in society, is the only way to highlight what constitutes and characterises our common humanity and thus the unity of humankind beyond the differences between religions, philosophies and cultures. This dialogue must thus make it possible to bring out values recognized by every man and woman (the inalienable dignity of every human being, for example), values which transcend religions, philosophies and cultures and can thus be affirmed and supported by all religions and currents of thought.

(10) This is a long and difficult process. The universality of a value (such as human dignity and the golden rule¹³² for example) cannot be declared arbitrarily. It must be recognised as such by each person who must make it his own, whatever his culture, religion or country. Such appropriation imposes two conditions:

a) the need to dissociate a value from the reasons that justify it. A right or a value can, in fact, be recognized as universal even if the reasons given by religions and schools of thought to justify it are different. For example, for atheists, it is the "very nature" of every man and every woman that is brought to light as a result of a historical process and philosophical research that forms the basis of human rights; for believers, it is their God

who forms the basis of these rights because He created mankind, and moreover, for the Jewish and Christian religions, He created them in His image. In fact, when this dissociation is not made, it can happen that the differences between the reasons justifying human dignity lead to different interpretations of the texts of the declaration.

(b) the need to distinguish the concept from its formulation, which necessarily depends on the culture in which it is formulated. It is indeed essential to bring out texts written in a given historical, sociological and cultural context that is no longer ours, which is immanent to what is contingent, and to find the meaning and express it in today's culture for each person. Such a work would avoid the rejection of human rights by those who see in their formulation only the result of the era of colonial enterprises that justified themselves by invoking their civilizing mission. This is one of the reasons that led many religious leaders to draft the Universal Declaration of Human Rights by the World's Religions¹³³.

(11) Thus a value becomes universal when it is recognized and approved by all human beings, even if this recognition is based on religious, philosophical or other reasons that are not universally shared and if its expression differs from one culture, religion or philosophy to another. This is why atheists and believers can recognize each other in the same human rights, as was mentioned in Chapter I. But it also implies that a value, whose origin is considered by some to be Christian, Jewish, Muslim or philosophical, loses its qualifier as a Christian, Jewish, Muslim or philosophical value and becomes a universal value when it is shared by all, whether Christian, Jewish, Muslim or atheist.

(11a) This work of universalization is often delicate because its conclusions can be difficult to accept, especially since they may call into question values or rules of life asserted as immanent "truths" flowing from the "law of God", then that they were only contingent. For example, when dealing with "religions and human rights", Mohamed Arkoun¹³⁴ has often denounced anachronisms and design projections to the Inaugural Time, and this for all religions.

(12) Through such work, the ethics defined by the religions and those resulting from the rights of should come together when these rights reach their universal limit, and when the ethics defined by religions are refined in the dialogue within it and with society. But in this double process, it is essential that each partner accepts the dialogue and does not encroach on each other's prerogatives.

IV. Authority and legitimacy: Tensions in the process of universalization in the formulation of human rights

(13) Is there a conflict between the expertise and legitimacy that result from the reflection of humanity as a whole based for centuries on the experiences of its history and on the contributions of its thinkers, believers and non-believers (spiritualists, philosophers, writers) on the one hand, and those of the leaders of the churches based on their claimed role as interpreters of God's will on the other?

Are human rights under the authority of religions, even for non-believers? Who has authority to impose standards? Are the believers of a religion consulted or does the magisterium alone have authority? These are a series of questions whose answers are not unanimous.

(14) When a religion commands the political form and defines the social bond, one of the foundations of society is submission to the injunctions of that religion. This is no longer the case today in most Western countries, following the process of secularisation and empowerment that Europe is undergoing, but it is still the case in other regions of the world, particularly in countries with a Muslim majority. Nevertheless, some religious leaders still believe that they alone have the authority and legitimacy to define or approve the values on which any human society must be based, not only in Islamic countries where religious leaders still have political power, but also in Europe, because they say that human laws must derive from God's will, which they alone can interpret. They can thus create tensions in the process of universalization, whereas the political legitimacy of states that originate from their people as a result of a democratic process and the legitimacy of religious leaders that is spiritual and religious but not political are indeed of a different order. That is why, while religious leaders must help to mature among believers their religion, their convictions and what they imply, within the framework of their church or association, or in public debates, they do not have to dictate to them how they should act politically, nor do they have to put pressure on them. They have to trust them, which unfortunately is not always the case¹³⁵.

(15) There may indeed be a conflict when

- religious leaders transform into power their spiritual and ritual legitimacy, which is appealing, first into spiritual power and then into political power, seeking to impose their point of view on everyone, including non-believers¹³⁶, which is not acceptable¹³⁷;
- political leaders transform their political legitimacy into spiritual legitimacy and impose a way of thinking or prohibit religious expressions for themselves, as was the case in the Soviet regime.
- the proponents of one expertise, religion or current of thought disqualify others because they believe they are the only ones who hold the truth and have the legitimacy to impose it. This is an aberration of many churches and totalitarian states.
- certain religions or currents of thought appropriate what belongs to all and is part of the heritage of humanity¹³⁸.

(16) For this reason, these different expertise, religions and schools of thought must and can express themselves, within society and within the Churches for their believers, without obscuring the differences existing within each religion. For the universalization of human rights to progress and for tensions over their formulation to lessen, each man and each woman must be able to make his or her contribution in the framework that suits him or her best (religion, current of thought, association, political party, etc.).

This is why the interaction between human rights and religion can only be lived in a constructive and peaceful manner within the framework of secularism. Indeed, by ensuring the neutrality of the State vis-à-vis religions and the conditions for each person to enjoy the required freedoms, secularism allows for the necessary dialogue and recognition of the other, as set out in Chapter VI. Council of Europe NGOs have a particular responsibility in this process.

(17) Thus, in a respectful dialogue with each other, with religions, currents of thought and their various tendencies - not only between leaders - human rights will continue to progress towards a limitless universality that will transcend them all and provide a framework for living harmoniously in peace. Human rights are not an end in themselves, but are necessary conditions to enable every man and woman to realize their full potential, to discover their humanity in depth and to live it to the full...and thus to enable society to enable each and every one to live well together. This is solemnly recalled in § 5 of the 1993 Vienna Final Declaration¹³⁹:

"All human rights are universal, indivisible, interdependent and intimately interrelated. The international community must treat human rights globally in a fair and balanced manner, on the same footing and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

Chapter III

Conflicts of rights amongst freedoms:

freedoms of religion, expression and conscientious objection

I. Introduction

(1) Freedoms, hard-won over the centuries¹⁴⁰, often at the cost of persecution, are one of the cornerstones of European democracy, as rightly recalled by the European Court of Human Rights¹⁴¹ and the numerous recommendations of the European Parliament and the Parliamentary Assembly of the Council of Europe set out in the Appendix, as well as the conclusions of the Council of the European Union on freedom of religion and belief of 16 November 2009¹⁴² and 21 February 2011¹⁴³. These freedoms include freedom of thought, freedom of conscience and religion, which implies the freedom to have no religion, as well as freedom of expression and freedom to practise one's religion, which implies the visibility of these religions in the public space. The relationship between religions and these freedoms is complex and burning as it concerns aspects affecting the individual (individual freedom), the community of belief or conviction to which he or she belongs, as well as the society in which he or she lives and the norms of that society, such as democracy¹⁴⁴ and the rule of law, to safeguard the public/common good. What these freedoms cover in relation to religions, the conflicts of law that may result from them, and therefore the limits of these rights admitted by the European Court of Human Rights in order to protect these freedoms for each person, are the essential object of this chapter¹⁴⁵. But it is essential to note at this level, and this will be made explicit in Chapters IV and V, that a freedom is not an obligation or a right a necessity.

(2) Fundamental individual and collective freedoms are protected¹⁴⁶ by numerous treaties, conventions and declarations, the texts of which are noted in the Appendix. In principle, these freedoms may not be subject to any limits other than those which are lawful and necessary for the maintenance of public order, as defined by Article 9 of the European Convention on Human Rights (ECHR) and Article 52 of the Charter of Fundamental Rights of the European Union (see Appendix). Recognition of the right of conscientious objection reflects constitutional traditions and the state of national legislation. The Venice Commission of the Council of Europe and the Council of Experts on Freedom of Religion and Belief of the OSCE Office for Democratic Institutions and Human Rights published in 2004 "Guidelines for reviewing legislation concerning freedom of religion and belief"¹⁴⁷.

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Since these are rights, the state legal system with its body of laws intervenes to protect these rights, preserve them and ensure that they are respected **in a neutral manner** with regard to religions and schools of thought (for Europe, this is the role of the European Court of Human Rights).

(3) These freedoms are guaranteed, within the framework of the United Nations, in particular by :

- Article 18 of the Universal Declaration of Human Rights (UDHR) of December 10, 1948.
- Article 18 of the International Covenant on Civil and Political Rights (ICCPR)¹⁴⁸ of 16 December 1966. According to AM Franchi, this Pact, which came into force in 1976) would be in retreat on the right to change religion or belief because it only mentions the freedom to have or adopt a religion or belief of one's choice (art. 18 of the Pact) whereas the European Convention on Human Rights takes up the text of the Universal Declaration of 1948.
- Article 1 of General Assembly Resolution 36/55: "Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Conviction.
- General Assembly Resolution 52/122 of 23 February 1998¹⁴⁹ (Elimination of all forms of religious intolerance).
- Resolution 2005/40 of 20 April 2005¹⁵⁰ of the Commission on Human Rights of the Office of the High Commissioner for Human Rights, "Elimination of all forms of intolerance and of discrimination based on religion or conviction".

To facilitate the implementation of these freedoms, the United Nations Assembly established the Alliance of Civilizations¹⁵¹ on 14 July 2005. Mention may also be made of Article 1.4 of the Declaration of Principles on Tolerance, UNESCO¹⁵² 16 November 1995.

(4) These freedoms are guaranteed within the framework of the Council of Europe, in particular by:

- the Convention for the Protection of Human Rights and Fundamental Freedoms (CDEH) (ETS No. 005). Article 9.1 of the Convention safeguards the freedoms of thought, conscience and religion and Article 9.2 indicates the limits to these freedoms. A guide to the implementation of these freedoms has been published by the Directorate General of Human Rights of the Council of Europe¹⁵³
- the numerous recommendations of the Parliamentary Assembly of the Council of Europe : Recommendation 1178 (1992) of 5 February 1992 on sects and new religious movements, Recommendation 1202 (1993) 2 February 1993 on religious tolerance in a democratic society, Recommendation 1296 (1999) of 27 January 1999 on "religion and democracy", Recommendation 1412 (1999) of 22 June 1999 on the unlawful activities of sects, Recommendation 1720 (2005) of 4 October 2005 on "Education and religion", Resolution 1510 (2006) of 28 June 2006 on "Freedom of expression and respect for religious convictions"¹⁵⁴.

(5) These freedoms are guaranteed within the framework of the European Union, in particular by :

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- Articles 10 and 11, and 82 of the Charter of Fundamental Rights¹⁵⁵, There is a limit to these rights specified in Article 52.1
- Article 16 E of the Treaty on the Functioning of the European Union (Treaty 1 of Lisbon)¹⁵⁶;
- Articles 106 to 110 of European Parliament resolution A7 0086/2012 of 18 April 2012 on human rights in the world and the European Union's policy on the matter¹⁵⁷, condemns all persecution on the basis of religion and belief and recommends that the European Union combat such persecution within the European Union and at international level.

(6) The case-law of the European Court of Justice has upheld not only religious convictions but also atheistic or agnostic convictions, stressing that such convictions must deserve respect in a democratic society, must not be incompatible with the dignity of the person and that their manifestations must not disturb public order. Various forms of discrimination under Article 14 of the Council of Europe Convention for the Protection of Human Rights¹⁵⁸, Article 1 of Additional Protocol 12¹⁵⁹ or Articles 20, 21 and 23 of the Charter of Fundamental Human Rights of the European Union¹⁶⁰ either on the part of religions and schools of thought or against believers of religions and followers of schools of thought are fortunately becoming less and less frequent in Europe. However, we must be vigilant because in states where a religion is recognised as a state religion, there may be a risk of discrimination, as Heiner Bielefeldt, Special Rapporteur on freedom of religion and belief, recently pointed out at the 19th session of the Human Rights Council on 5 March 2012¹⁶¹.

(7) Several religious leaders, aware of the risk of instrumentalization of religions in their relationship to the rights and freedoms they define, have proposed, on the occasion of the United Nations Day in Geneva on 24 October 1999, to all participants and to the people of the world to sign the Geneva Spiritual Appeal¹⁶². "Because our religions or personal convictions have in common the respect for the dignity of the human person, because our religions or personal convictions have in common the rejection of hatred and violence, because our religions or personal convictions have in common the hope for a better and just world, We, representatives of religious communities and representatives of civil society, call on the world's decision-makers, whatever their field of activity, to respect in an absolute manner the following three precepts (1) Not to invoke any religious or spiritual force to justify violence of any kind. (2) Not to invoke a religious or spiritual force to justify any discrimination and exclusion. (3) Not to use one's strength, intellectual or spiritual capacity, wealth or social status to exploit or dominate the other."

(8) As some of our associations working with the poorest have pointed out, these freedoms also depend on conditions of extreme deprivation and poverty which impose another limit, a kind of paralysis or "lack of awareness" which can go as far as the loss of awareness of the respect due to the other when survival is concerned. Examples were given of people who were only able to assert freedom of conscience when their living conditions and educational efforts made them progress. In such situations of poverty, religion and especially its practices can represent security in a context of insecurity, which reinforces the responsibility of religions in the affirmation of human rights which implies equal dignity of all members of society.

II. Issues

(9) Our more secularized modern world is geographically open and therefore increasingly composed of people who are more and more mobile, whether by choice (seeking better jobs or tourism) or by necessity (seeking work or a higher lifestyle). In addition, increasing access to education, physical and virtual mobility, access to real-time information (such as an attack on a mosque, synagogue or church) induce profound changes in the behaviour and way of thinking of many people. The mobility of people and ideas (conversions) has thus changed the balance of power between religions within the same geographical space, generally where dominant religions tolerated minority religions. Today, it seems European society this balance of power is changing, and that the rise of Islam in particular is upsetting not only religious beliefs but also the social identity of individuals in what used to enable them to make society: culture, ethnic group, family, education....

(10) As a result of this situation, several of the freedoms guaranteed by human rights, in particular the freedom of expression and the visibility of religious practices in the public arena, which are permitted by the individual and collective freedoms of individuals, may be called into question by certain religions, certain groups of belief or their most extremist forms. Each of these freedoms, in particular freedom of religion, freedom to have no religion or freedom of thought, can indeed challenge host societies in what has hitherto been the basis of their social and cultural consensus, and thus put certain people in difficulty in their deepest being and their convictions. These challenges are all the more difficult to accept for the leaders of religions the more they are linked to State policy or serve as a cultural or identity reference. This is, for example, the case for the Orthodox religion in countries such as Russia and Greece, or for Islam in most Muslim-majority countries. Conversely, it is also the case for the followers of a majority religion in their country of origin and a minority religion in the host country, as may be the case for persons of Muslim conviction in Europe.

(11) As will be illustrated below, it can be said that it is very often racism, religious or atheistic fundamentalism and the close link between politics and religion which, when instrumentalized by religions, are at the origin of or contribute to the development of most of the legal conflicts between religions and the freedoms inherent in human rights. These conflicts of rights will only be resolved by dissociating the practitioner of a religion from his or her religion, by separating politics and religion as discussed in Chapter VI, and by accepting a dialogue that is at once interconvictional, intercultural, intra-religious and intra-cultural in the historical-sociological analysis and exegesis of the dogmas and practices of religions whose formulations are often linked to the historical-sociological environment in which they were formulated and lived. Indeed, the difficult distinction between what is the domain of culture and what is the domain of worship or religious manifestation, what is immanent to what is contingent, must be taken into account.

(12) In the present, it is only possible to live together with these conflicts of rights by accepting the limits imposed on these freedoms, which can only be imposed by law, as clearly imposed by Article 9.2 of the European Charter on Human Rights of the Council of Europe and Article 10.2 of the European Union Convention for the Protection of Human Rights, and as constantly recalled by the case law of the European Court of Human Rights. The law would, in fact, go against its own principle by accepting, in the name of these freedoms, to grant the freedom to strangle them to those who dream of them while insisting that this same freedom be denied them. The European Court of Human Rights has a delicate task in balancing two conflicting rights, and the responsibility for this lies with the European Court of Human Rights when such conflicts are brought before it.

III. Freedom of religion, freedom from religion, freedom of conscience¹⁶³, the case cases of sects

(13) The European Court of Human Rights has emphasised that freedom of religion entails the freedom to hold or not hold religious beliefs and to practise or not to practise a religion. It has also noted the importance for a state to act neutrally and impartially in all matters relating to the exercise of this right¹⁶⁴. For most religions, religious freedom has its very foundation in the dignity of the human person and consists in the fact that no one is forced to act against his or her conscience. This raises the question of the freedoms of the followers of a religion within their religion and in relation to the various aspects of the doctrine of that religion.

III.1 Practices of these freedoms

(14) Most religious leaders consider, as recalled in the previous chapter, that freedom of conscience, belief and religion and freedom of expression in their collective and communal dimension are absolute individual rights consistent with the convictions and moral rules they profess: indeed, these freedoms are part of the founding values of Buddhism and Protestantism. They have been recognized by Judaism since the destruction of the Temple of Jerusalem in 70 AD. After having violently condemned them in the 19th century¹⁶⁵, the Catholic Church has made these freedoms its own, as the working document of the Pontifical Commission for Justice and Peace on "The Church and Human Rights"¹⁶⁶ recalls, following the encyclical "Pacem in terris"¹⁶⁷ and the declaration on religious freedom¹⁶⁸ of the Second Vatican Council. The position of the Orthodox Churches¹⁶⁹ is more ambiguous¹⁷⁰ because of their close links with states, particularly in Russia and Greece, where the Orthodox religion is a structuring element of identity which makes other religions appear as "exogenous"¹⁷¹. Muslims also claim that Islam is an open and tolerant religion towards other religions with reference to the three verses (2:256), (18:29) and (10:99-100) of the Koran¹⁷².

(15) However, most religions have an ambivalent attitude¹⁷³. Some of these freedoms are contested in concrete life by leaders and followers of certain religions, in the very name of the freedoms that human rights recognise for them, or by States if a religion is linked to the policy of that State.

For example, pressure has been brought to bear in Europe on citizens by the obligation to take a religious oath or to declare their religion on official documents¹⁷⁴ and on identity cards¹⁷⁵. The implementation of freedom of religion and freedom from religion may still cause difficulties for the Orthodox Church¹⁷⁶ which, because of its dominant position and its structuring role, particularly in Russia, does not always facilitate, as it should, the free development of other religions.

(16) The exercise of this freedom is also a source of difficulty for Islam, which is conceived by several currents "*not only as a religion but also as a social, legal and political code of conduct*". For these currents "*in no way does Islam recognize the separation of religion and the State*"¹⁷⁷. Thus, in several countries with a Muslim majority, the practice of other religions is made very difficult, if not impossible, which has been unanimously condemned by European and international bodies. Moreover, Islam still strongly condemns apostasy, relying on two of the hadiths of the Prophet: "*He who changes his religion, kill him*"¹⁷⁸, or "*It is permissible to attempt on the life of a Muslim only in the following three cases: disbelief after faith, adultery after marriage, and murder without cause*"¹⁷⁹. Even if killing for apostasy is not carried out in Europe, although it may still be carried out in some Muslim-majority countries, strong pressure can be brought to bear by the proponents of these currents on those who leave Islam or do not practice what they consider to be obligations. For example, even in Paris we have seen people having lunch during Ramadan being attacked by fanatics. This is a fundamental issue in working with Muslims to ensure living together in Europe, as recommended by PACE in its Recommendation 1927(2010) with the agreement of the Committee of Ministers.

III.2 The Case of sects and sectarian deviations

(17) Freedom of religion for sects or of what are called "new religions" divides the countries of Europe and is still pending, since there is no international definition as to whether these "new religions" can be considered as religions and thus their followers can benefit from the rights recognised in the Charter or the Convention¹⁸⁰. Sectarian movements do not fail to put pressure on governments by claiming to be victims of violations of these articles. They intervene very vigorously in many international organisations such as the UN, the OSCE and its ODIHR (Office for Democratic Institutions and Human Rights)¹⁸¹ and in the colloquia they organise. While the European Court of Human Rights is cautious in this area, it may be noted, for example, that it has already ruled in several judgments that Article 9 protects the free exercise of the right to freedom of religion of Jehovah's Witnesses.

18) If freedom of conscience and conviction is applicable in the area of sectarian type memberships, it may be challenged when it is a question of protecting vulnerable persons. This is, for example, the case of children retained in a sect by one of the parents, or when the "right to teach religion" in a lucrative manner leads to the indebtedness or even ruin of the followers.

Limits are then set by appealing to the justice of the State and the European Court of Human Rights.

The recommendation of the Conference of INGOs, "Sectarian deviations and violation of human rights" adopted on 27 January 2011 and Resolution CONF/PLE(2011)RES1 "Sectarian deviations and violation of human rights" and the follow-up note of June 2011 by Danièle Muller-Tulli of the FECRIS (European Federation of Centres of Research and Information on cults and Sects) are very clear in this respect and their implementation recommended by the working group.

IV. Conscientious objection

19) Conscientious objection, which allows a person to challenge decisions of society which he or she considers contrary to his or her convictions, often religious, is guaranteed by Article 10 of the Charter of Fundamental Rights of the European Union, but not explicitly by the European Convention for the Protection of Human Rights (cf. Appendix). However, from a psychological point of view, the notion of freedom of conscience is challenged when practices that may alter an individual's states of consciousness are observed ("rape of conscience", being put under influence, confessions under torture, and more recently, drugs that alter consciousness).

(20) Most of the conflicts linked to conscientious objection concern armed service and its replacement by civilian service, from which members of the clergy are exempted in some countries, which could be a source of discrimination under Article 14 of the Convention. The establishment of a civilian service for all conscientious objectors resolves these difficulties, as requested by the European Court of Human Rights¹⁸².

(21) However, conscientious objection can lead to a conflict of rights by making it impossible for others to apply legal measures. This may be the case of merchants who refuse to sell or serve certain products, such as alcohol, to persons for whom that product is not prohibited. It may also be the case when some doctors refuse to perform legal medical procedures, such as legal termination of pregnancy, out of conscientious objection, mainly on religious grounds, and thereby prevent women who wish to do so from benefiting from such procedures if there are no other doctors in the vicinity who are willing to do so. This is a recognised conflict of rights which must be resolved in a manner consistent with the rights of each individual, as recommended by PACE¹⁸³ in its resolution of 7 October 2010 and confirmed by the European Court of Human Rights in its judgment RR.v.Poland (No. 27617/04) of 26 May 2011: a doctor refusing to perform an act out of conscientious objection must indicate doctors in the vicinity who can perform such acts under the same conditions.

Until recently, the European Court of Human Rights examined the case of two persons charged with civil liability who were dismissed by their employer for refusing to perform acts concerning homosexual persons because they were contrary to their conscience¹⁸⁴.

V. Freedom of thought, expression and education

(22) Freedom of expression, which includes the right of the followers of a religion to express themselves freely, but also the right to criticise religions, their practice and the prohibitions it imposes, as confirmed by the European Court of Human Rights¹⁸⁵, is undoubtedly the most frequently questioned. Numerous violations of the freedoms of thought and expression occur, even in Europe as discussed below, under the false pretext that certain forms of expression, described as blasphemy or defamation, should be banned because they may give rise to violence or incitement to hatred, whereas it is this attempt to ban them that generates violence. This is an unacceptable use of a religion to limit the freedom to criticise its foundations, which is, moreover, in contradiction with the Geneva Declaration.

V.1 Criticism of a religion and its practices, blasphemy, defamation and hate speech.

(23) Several members of the UN Human Rights Council in Geneva (mainly Islamist states) are seeking to have the UN condemn criticism of a religion in international treaties by introducing the concept of defamation of a religion¹⁸⁶ and then criminalise defamation of religions¹⁸⁷. It should be noted that the European Union has consistently voted against these repeated attempts¹⁸⁸. It should be noted that such attempts exist in Europe. In Spain, for example, bishops have recently condemned "acts which suppose an offence against the Catholic religion" or "those who, in order to offend the feelings of the members of a religious denomination, publicly deride their dogmas, beliefs, rites or ceremonies"¹⁸⁹. All these attempts seek to outlaw criticism of the foundations of any religion or current of thought and are to be condemned because criticism of a religion or current of thought and of its foundations is not an offence to the person who practises that religion or who identifies with the philosophy of that current of thought. It is therefore not defamatory.

(24) Some states have introduced the offence of blasphemy¹⁹⁰ whereas blasphemy¹⁹¹, being specific to a religion¹⁹², can only concern believers of that religion¹⁹³. This is therefore nonsense for a multi-religious Europe, all the more so as, in the context of the separation of state and religion, a state has no authority to decree that blasphemy exists. While the classification of blasphemy applied to a believer of a religion by the religious institutions concerned may legitimately justify appropriate disapproval of his religious community while respecting his personal freedom, it is in no way likely to have any civil, and a fortiori penal, consequences. In fact, very few states in Europe still consider blasphemy to be an offence¹⁹⁴ and it is in fact practically no longer penalised^{195,196}. This is unfortunately not the case in countries whose governments do not respect neutrality or the separation of religion and state, as in many Muslim-majority countries, or whose governments recognise a dominant religion which often structures society, as in many countries with an Orthodox majority.

(25) That said, such criticism may indeed become racism, incitement to hatred or "offence" of persons, and therefore be prohibited, if it is no longer directed at religion but at the person practising that religion¹⁹⁷ because it is contrary to human rights, as the Council of Europe clearly stated in the report of 8 June 2007¹⁹⁸ of its Parliamentary Assembly with the support of Council of Europe INGOs. It is essential, as recommended by the European Court of Human Rights, to clearly discern whether a critical expression is a hostility that is admitted, or an offence or even incitement to hatred that is not admitted¹⁹⁹.

This assessment is made on a case-by-case basis by the European Court of Human Rights²⁰⁰.

(26) Human rights and non-discrimination laws do indeed protect believers, but not their beliefs. This is why the use of terms such as "Islamophobia" or "Christianophobia", identified with racism or defamation, is dangerous and must be prohibited, as the European Commission noted in its explanation of vote at the UN on its refusal to penalise defamation of religions²⁰¹. This is indeed a very dangerous shift in language and amalgamation for two reasons: 1) it identifies the believers of these religions with their religion, which is a negation of the notion of the person, 2) it denies freedom of thought, here the right to challenge the foundations of a religion²⁰². By casting opprobrium on those who criticise or reject certain forms of Islam or Christianity under the false pretext that they reject the believers of these religions, these terms risk leading to violations of freedom of expression and thus of Article 10 of the Council of Europe Convention for the Protection of Human Rights²⁰³ or Article 11 of the Charter of Fundamental Rights of the European Union²⁰⁴.

The term anti-Semitism, which unequivocally expresses a racist attitude, is quite different, as it always attacks Jewish people as such, whether they are believers or atheists. Thus confusion, or amalgamation, is total when Islamophobia and Christianophobia are placed on the same level as anti-Semitism.

V.2 Opposition to freedom of thought and expression deemed contrary to the dogmas or practices of a religion or current of thought. Blasphemy and Sacrilege.

(27) This opposition to freedom of expression and thought is the work of certain religious leaders and some of their co-religionists who want to prohibit expressions that they consider blasphemous or a violation of what they consider sacred, even if they come from persons not belonging to their religion for whom these expressions are neither blasphemous nor sacrilegious. This attitude, which violates freedoms, must be condemned insofar as it respects the limits imposed by the law on all freedoms, as explicit in the international conventions and charters cited above. These violations manifest themselves in various ways, ranging from verbal altercation, to demonstrations preventing expression or leading to the destruction of disputed objects, and even to murder, as the examples below show:

- violent demonstrations by extremists claiming to be Catholic against certain films, plays they consider to be attacks on their religion, or attacks on clinics performing legal abortions to which they are opposed.

- oppositions of certain anticlerical currents to the expression of religions or of representatives of religions²⁰⁵.
- Pressure from religious adherents on non-practicing members of a religion. For example, such pressures, often with the use of force, have been exerted by Muslims during Ramadan on Arabic-speaking people who do not practice Ramadan.
- these violations of freedom of expression can go as far as death sentences resulting from international fatwas issued by Muslim leaders against critics of the Muslim religion against writers or thinkers (cf. the Rushdie or Redeker case) or cartoonists who in fact reflect the image that these extremists of their religion.

It should be noted that within each religion there is a very wide diversity of reactions to what some consider blasphemy or sacrilege. Many people in every religion believe that it is contrary to what is considered blasphemy or sacrilege that they perceive from their divinity to lend him human feelings and contrary to this that their religion teaches to react contrary to what it preaches.

27b) That said, the line is not always clear between defamation of a person and defamation of a religion, criticism of his or her religion or religious practice. There is a conflict between freedom of religion and freedom of expression and the right to respect for the individual. In fact, the European Court of Human Rights recommends, to this end, to discern whether a critical expression is a "critical expression" or not, is a hostility which is admitted, or is an offence or even incitement to hatred which is not admitted.

(28) It is quite clear that any person who feels offended by an expression that he considers blasphemous or sacrilegious also has the freedom to express it, but he must do so within the framework of the law and can ask the courts to say what everyone is entitled to. Should certain expressions that might be considered provocative be prohibited on the pretext that they might provoke violent reactions? Human rights provide the answer: freedom of expression is inalienable. Thus, organizations and individuals have the right to use language that is provocative, exaggerated and even immoderate. However, freedom of expression implies duties and responsibilities, and in political discourse, a certain moderation and a minimum of decorum, as recommended by the European Court of Human Rights. Thus language that incites violence and hatred is a misuse of this right. Provocateurs, if recognised as such by the courts, will suffer the consequences of their expressions. On the other hand, to respond violently with illegal acts that are contrary to human rights to what some consider to be provocation is both to justify the provocations and to give them publicity.

V3 Abuse, Proselytism and Limitations on Freedom of Expression

(29) Abuse of these freedoms, such as proselytising, ostentatious or provocative manifestations of religion, may run counter to the freedoms of others. Restrictions on freedoms may also be exercised by extremist and fundamentalist sects and currents in religions that seek to recruit their followers or to limit this principle of freedom according to their views.

Abuses using religion for political purposes, by disturbing public order, such as the burning down of newspaper premises to prevent their publication or the invasion of places of entertainment to prevent their publication, are prohibited under Article 9.2 of the ECHR and call on states to set limits that protect the fundamental rights of others.

Here again, the line between freedom of expression of religions and proselytism is not always clear. It can be said that the element that makes the difference is the nature of the means used in expression, means that amount to the imposition of religious conviction: force, blackmail, financial or in-kind donations, favouritism, etc.

(29a) This raises in particular the question of the freedom of expression of religious leaders seeking to influence in the legislative process²⁰⁶ persons with political responsibilities and followers of those religions. The freedom of religious expression of state officials in the exercise of their functions also raises questions, as a delicate balance must be struck between the freedoms and constraints of public service. As a citizen, the civil servant enjoys the freedoms of every man or woman, but as a servant of the State, he or she must be neutral with regard to religions²⁰⁷ and currents of thought.

V.4 Freedom of thought and capacity for expression

(30) Freedom of thought is meaningful only if it can be expressed with the requisite freedom, which implies having not only freedom of expression but also the appropriate means of expression. It is well known that not being able to verbalize or write down a thought or resentment can lead to great violence and that discovering the expression of one's thoughts is liberating, which can only be done through language and therefore culture. Thought must also be able to free itself from commonplaces, a priori, stereotypes or being locked up in a thought formatted by different mechanisms. Freedom of thought must thus be nurtured. This implies that everyone should be open to the thought and culture of the other and to developments in thinking since human beings have been thinking. It also implies reference to what others have thought and formulated, in order to articulate one's thinking.

(31) Education, through the family, schools, associations and the media, as well as intercultural and interconvictional dialogue, play an essential role in the acquisition of the knowledge, experience and tools necessary for the development of reflective thinking that can be expressed without violence and with respect for individuals. Such expression must indeed be done with respect for the freedoms of others. Without such education and openness, there is a great risk of becoming locked into "one-track thinking" and of transforming freedom of thought into an illusion, since thought is enclosed in a closed box.

(32) It must also be recognized that individual conscience varies with the maturity of the individual, and freedom of conscience allows him or her to make different choices at different stages of life, hence the right to change his or her religion or no longer to have one. However, attention must be paid to the factors which, in the course of a person's life, have an influence on individual conscience and those which may even alter it: civilization, ethnic group, family, education.

A legal provision recognises in particular that parents have the right to choose the religion of their children (cf. Article 13 of the International Covenant on Economic, Social and Cultural Rights²⁰⁸). If the spouses have different beliefs, they must be able to determine by mutual agreement the education, religious or otherwise, that they wish to give their children. In order to enable children to build the critical thinking skills and freedom of conscience they will need in their adult lives, they should be able to open their minds to different thoughts, philosophies and spiritualities in order to acquire the references they need. This is in particular one of the common roles of parents, associations and schools, and even the media.

(33) The right to express one's convictions must allow every religion and school of thought to be able to express itself in the media. This expression should not be limited to institutions, but should be open to all organised currents of these religions and schools of thought. It is the role of the state to ensure that such expression is in accordance with justice and in particular that minority religions, such as Buddhism, can also express themselves. In these times of uncomplicated attacks on fundamental rights and the heightened risk of a multi-speed European citizenship, it is important to encourage intellectuals with religious convictions to speak out alongside others in the written media (newspapers and blogs), so that everyone can contribute to the major changes we are going through, enlightened by the spiritual wealth that religions and schools of thought in their diversity can bring.

VI. Visibility of religions, religious symbols, proselytism and freedom of expression, worship and culture

(34) The freedom that allows the visibility of religions in the public space is defined by the right of each individual to choose values, principles and ideas that will inspire his or her life, to express them and to manifest them in the public space within the limits permitted by the law of each country, in accordance with human rights²⁰⁹, as discussed in Chapter VI. It has enabled all religions to express themselves and to manifest their visibility individually or collectively, by displaying external signs of recognition and grouping. The individual manifestation can take different forms: clothing (especially that of clerics and monks or nuns), external signs, particular behaviours, food, etc. Collective manifestation in the public space may take forms such as pilgrimages, processions, calls to prayer or the construction of landmark buildings in the public space that are places of prayer, pilgrimage or ex-voto.

VI.1 Cults and culture

(35) These different manifestations of the visibility of religions can become cultural manifestations to the extent that they have been able to shape and structure a society at a given point in its history. Thus, for example,

- the construction of Christian cathedrals, many of which are part of the cultural heritage and whose stained-glass windows and capitals were used for education,
- the construction of synagogues which are historical monuments also recalling the history of the Jewish communities.

Similarly, according to the precepts of Buddhism²¹⁰, pagodas, temples and monasteries are physical manifestations which bear witness to the teaching of the Buddha and within which teachings are given. Many of them are also cultural marks - are religious processions in the streets an expression of religious belief or respect for a tradition that has become cultural?

- Did the vote in Switzerland on the construction of minarets concern a religious question or a problem of town planning and architecture?

(36) Is the prohibition of such manifestations a violation of freedom of religion, a violation of a particular cultural expression, or is it a manifestation of neutrality towards religions and schools of thought? According to Gérard Fellous²¹¹, the European Court's case-law upholds religious convictions by referring to cultural specificities invoked either by the state in question, which invokes the particularities it represents to justify itself, or by the applicant, who claims that obstacles have been placed in the way of the practice of his religion. In his view, "while the law is clear, the Court has not systematically dismissed this type of argument (specificities) and has accepted that, in the circumstances, the cultural characteristics of the state, region or community are a relevant factor to be taken into account in assessing whether there has been a violation of the Convention" (cf. for example, the recent Lautsi judgment²¹² in which the European Court of Human Rights²¹³ held that the predominant place of a religion in a country's history may justify the fact that a particular place is given to it in the public arena).

(37) In order to be able to carry out its mission as guarantor of the good life together, a State must be able, in its relation to the visibility of these signs, to discern what is a form of freedom of expression of religions or of bearers of convictions, what is a violation of the freedom of others and to assess what is an infringement of the freedom of thought or expression of persons. This raises the difficult question of the boundary between the legitimate public expression of different religions and the freedom of non-believers and believers of a particular religion, and thus the question of the legitimacy of exposing them to expressions of a religion that does not concern them.

VI.2 Limits to freedom of visibility

(38) While these visible signs of religions may respond to necessities (having places to gather), needs to manifest themselves and to exist that have become habits, or even rights (presence of places of worship, religious signs such as crosses, oratories, temples, cemeteries...), they can also be used to proselytize or exert pressure on people whether or not they are followers of a religion.

The visibility of religions and currents of thought must therefore be placed in the context of other fundamental freedoms, and of the coexistence of individual and collective freedoms, which imposes limits guaranteeing the fundamental rights of other people so as not to impose on them rules that they do not share. These limits are assessed by the ECHR in particular in the context of Articles 9.2 and 14 of the Convention for the Protection of Human Rights.

EXPLANATORY MEMORANDUM Chapter III
Conflicts of rights amongst freedoms

What was accepted in a mono-cultural society can no longer be accepted in the same form in a multicultural, multi-ethnic or multi-religious society:

- The wearing of the Islamic veil under certain conditions and in certain public places by women of the Muslim faith has thus been the subject of numerous conflicts of rights which have all been resolved by the European Court of Human Rights²¹⁴ in the sense of the contested states.

- food bans, demonstrations on the public highway, public holidays....

- ostentatious or provocative demonstrations, often by proselytising, abuses using religion for purposes other than religious, disturb public order.

For example, the European Court of Human Rights recently had to deal with the case of two persons whose employers had placed restrictions on the wearing of Christian crosses during their service²¹⁵.

39) The visible manifestations of a religion have in part the function of symbolizing access to transcendence through peace and tolerance, i.e. non-violence. It is just as much the task of the followers of religions through their ethics as it is for society in general, while avoiding stigmatization, to maintain the right balance that allows for living together and mutual enrichment.

Chapter IV

Religions and Human Rights for Women

I. Introduction and Issues

(1) As early as 1945, the founding Charter of the United Nations affirmed in its Preamble "faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women" and called for the implementation of human rights and fundamental freedoms for all without discrimination as to sex (Articles 13, 55 and 75). Three years later, the Universal Declaration of Human Rights (UDHR) affirmed that recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and recalled that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour or sex" (art. 2). These same principles of equality between women and men and non-discrimination on grounds of sex are systematically guaranteed by the International Covenant on Civil and Political Rights (art. 3) and the Covenant on Economic, Social and Cultural Rights (art. 3) adopted on 16 December 1966²¹⁶ and many other general instruments.

(2) In spite of this international recognition, it must be borne in mind that equality between women and men is the most contested universal value today in the international relations of States in the name of their sovereignty, cultural difference and religious autonomy. Religions and different currents of thought sometimes have different conceptions of the humanity of mankind, of what constitutes the essence of each man and woman, and therefore different conceptions of the difference between the sexes and of their social vocation, as shown by gender studies. Religions give meaning to these differences, a meaning that may, for some of them, contradict some of the human rights or their implementation, particularly with regard to the equality of men and women before these rights.

(2b) Religious leaders who oppose these rights do not consider that they are in contradiction with the equality of men and women they advocate, nor do they violate the human rights they support, because in their view the rights they oppose do not fall within the scope of human rights, but of ethics and morality.

This position raises the question of the scope of human rights. This is a fundamental question which must be resolved in the framework of the intercultural dialogue advocated by the Council of Europe White Paper and its religious dimension.

(3) Thus, equality between women and men and all that it implies at the societal level are at the heart of an incessant conflict of values, an arm wrestling that cuts across all cultures and religions and which today culminates in the rise of religious and identity-based fundamentalism, all of which is highly misogynistic and whose first victims are women. In this conflict of values that is breaking out in broad daylight, the universal is in danger of succumbing to the most reactionary claims of values against modernity, including sexism or fundamentalism, to the cultural relativism that serves as justification for these values and to the inflation of derogations from international law that result from them. Taslima Nasreen has testified to this in a shocking way²¹⁷. The great breach tearing through the façade of the universal is opening up at the very heart of the law of Western democracies, including European ones.

(4) No one can deny that it is in the name of respect for the right to be different and cultural relativism that all the excesses and abuses against women legitimised by culture, tradition, custom or religion are perpetuated. At the dawn of the 21st century in Europe, there is still a wide gap between the universal human rights of women proclaimed by the Treaties and the real condition of women in everyday life. In the name of traditions, cultures or religions, violations of their most basic rights to life, physical integrity, liberty and equality are commonplace in laws and practices and illustrate violations of international and regional Treaties despite the commitments of States.

(5) The contribution of this report is an extension of this problem. It is limited to a legal elucidation: (I) how women's universal human rights come into conflict with traditions, customs, cultures and religions, and (II) the serious implications for law and policy at the international and European levels of a political instrumentalization of religions that may undermine equality between women and men and limit women's access to the full enjoyment of their universal human rights. The report focuses on three aspects which are the sources of the most important tensions between religions and human rights: equality between women and men, equality in the resulting rights, and finally women's control over their bodies, reproductive health and chosen motherhood.

II. Equality between women and men, a value, a human right and a universal goal.

II.1 Recognition by international treaties

(6) Equality between women and men, as a universal value and right expressing the value of human dignity and specifying the more general value of equality, enjoys a pre-eminent status in the international and European legal order.

EXPLANATORY MEMORANDUM Chapter IV
Religions and Human Rights for women

The 20th century has seen a deepening of the philosophy and standards of the international and European regime for the protection of fundamental rights²¹⁸ whose horizon is to achieve, far beyond formal equality of rights, "real", "substantial" equality between women and men in all areas and the elimination, in law and in fact, of all forms of inequality and discrimination against women, a condition for their empowerment. Today, this imperative has the force of a legal obligation and a priority objective that is clearly and absolutely binding on the international community and all of its actors.

(7) Since the 1990s, the imperative of promoting real equality between men and women has been established as a priority objective of the international community as part of a comprehensive approach to human rights, democracy and the rule of law. In this connection, the Declaration of the World Conference on Human Rights in Vienna, adopted unanimously by 171 States in 1993, is of historic importance in that it reaffirms that all human rights are universal, indivisible and interdependent and that the fundamental rights of women are an inalienable, integral and indivisible part of universal rights. It urges States to eliminate attitudes and practices based on cultural and religious norms that are harmful to human rights and to put an end to all forms of discrimination and violence against women even *"while bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds"*.

(8) Thus, under articles 2 and 3 of the Covenant, States have an obligation to ensure that historical, religious traditions or cultural attitudes, including forced marriages, exclusion of girls from education and health care, crimes of honour and all types of violence against women, such as rape, forced sterilization or abortion, genital mutilation, or polygamy, are not used to justify violations of women's rights to equality before the law and equal enjoyment of all Covenant rights²¹⁹. To this end, States are required to take appropriate legislative measures.

(9) In addition, these treaties require States to take measures to modify or eradicate traditions and practices, including cultural and religious ones, which are contrary to women's rights. This obligation is emphasized in the body of the Treaties, which further establish that this requirement is inherent in all human rights standards and applies even if not expressly stipulated²²⁰. The obligation to take steps to modify or eradicate is also emphasized in the body of the Treaties.

(10) The same express requirement for "substantive equality" is affirmed in the Preamble and the body of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²²¹ adopted by the UN in 1979. It condemns the direct or indirect inequalities and discrimination affecting women in all fields (art. 1) and imposes "by all appropriate means and without delay a policy designed to eliminate" such inequalities and "to ensure the full development and advancement of women, with a view to guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men" (arts. 2 and 3)²²².

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²²³ is also based on the principle of equality between men and women. CEDAW requires the elimination of "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" (art. 5) in all areas, for example in education (art. 10), marriage and family (art. 16) or in the case of violence against women. The CEDAW Committee cites all fundamentalisms: for example, through a misinterpretation of Islam, the use of intimidation or violence that impedes the enjoyment of the human rights of women and girls.

(11) Equality between women and men is also "part of the foundations of the European Community"²²⁴ as a fundamental right and general principle whose respect is ensured by the Court of Justice of the European Community (ECJ). In the Charter of Fundamental Rights of the European Union and the new Treaty of Lisbon (1 December 2009), equality between women and men is expressly included at the highest level of the constitutional norms of the European Union, as a value (Art. 2 TEU) and an inalienable fundamental right of the European democratic identity (Art. 23 Charter). The Union's aim is "to eliminate inequalities, and to promote equality, between women and men", in law and in fact, both within the Union and in its relations with the rest of the world (Articles 3(5) and 21 TEU). The European Parliament recalls that²¹⁹ "women's rights should form an important part of the human rights dialogues conducted by the Union and of the political dialogue between the Union and third countries with which it has signed cooperation or association agreements, in accordance with the human rights clauses provided for in those agreements, and that the participation of women in peaceful transitions should be enhanced, both at the negotiating table and in active roles; calls on the Commission and the Council to take all appropriate measures in the event of any violation of these provisions;"

(12) At the level of Greater Europe (47 countries) the same principle of prohibition of discrimination on the basis of sex have been included in :

- The European Convention for the Protection of Human Rights and Fundamental Liberties s (ECHR)²²⁵ 4 November 1950) and its Protocol No. 12
- The European Social Charter revised in 1996
- The Plan of Action adopted by the Heads of State and Government of the Council of Europe at the 3rd Summit in Warsaw (16 and 17 May 2005)
- The Declaration "Making equality between women and men a reality in practice" of the Committee of Ministers of the Council of Europe (12 May 2009 Madrid)²²⁶ ²²¹
- Declaration to the 7th Council of Europe Ministerial Conference on Equality between women and men, 24-25 May Baku 2010
- New Council of Europe Convention on Preventing and Combating Violence against women and domestic violence²²⁷.
- Resolution 1615 of the Parliamentary Assembly of the Council of Europe (PACE) of 2008: "*Empowering the autonomy of Women in a Modern and Multicultural Society*".
- White Paper on Intercultural Dialogue "*Living together as equals in dignity*" of the Council of Europe May 2008.

- Thus, PACE, emphasising in its Resolution 1464 of 2005 "Women and religion in Europe", stated²²⁸ that "*freedom of religion cannot be accepted as a pretext for justifying violations of women's rights*", reaffirms that "it is incumbent upon States members of the Council of Europe...to promote and fully implement equality between the sexes",

(13) It should be noted that these principles are also proclaimed by several regional charters, notably that of the African Union²²⁹ and the Arab Charter revised in 2004²³⁰, which legally invalidates any argument of cultural relativism²³¹. It should be noted, however, that cultural relativism may be reflected more in the modalities of application than in the general principles. For example, the concept of decency evolves rapidly according to circumstances and places, and defining decent dress in a certain situation is impossible.

II.2 The positions of religions

(14) All religions affirm the equal dignity of men and women and thus their intrinsic equality. Accused of being a factor of conflict, "religions" seek to demonstrate that they defend the equality of men and women, in contrast to those who present social harmony as the result of the rejection of "religions". However, the implementation of this defence of gender equality is ambivalent and therefore not always without tension, as interpretations of what is meant by gender equality vary both within and across religions. These ambivalences have given rise within each religion to feminist movements that campaign for the implementation of gender equality and show that feminism is not built against religions, but on the basis of the founding texts.

(15) Religious leaders affirm that their religion is subject to the laws of the countries in which they find themselves. Thus, for example, the position of Judaism vis-à-vis the laws of states is very clear. The law of the country in which the Jew lives prevails over religious law. Thus even if polygamy was once permitted by Jewish law, it is now impossible in a country that forbids it, since religious marriage can be obtained only after contracting a civil marriage: "the law of the country is my law".

In Christianity:

(16) The entire Christian tradition affirms the intrinsic equality of women and men both created in the image of God: "God created man in his own image, in the image of God he created him, male and female he created them" (Gen 1:27). It is also based on Jesus' attitude towards women, which shows a great concern for equality. He speaks to them, restores to them the dignity that men have scorned, forgives sinners instead of condemning them, accepts to be challenged by women who open him to the universality of his message, revolutionary attitudes in the cultural and religious context in which he lived. Thus St. Paul was able to write: "There is neither Jew nor Greek; there is neither slave nor free; there is neither male nor female; for you are all one in Christ Jesus" (Gal 3:27-28). 22] Thus, in the Roman Catholic Church, many have worked for the equal dignity of man and woman, respecting their different natures.

(17) Nevertheless, this attitude of equality in dignity was not immediately translated into the practice of all his followers by equality of rights and responsibilities, as is revealed, for example, in the same St. Paul who also writes: "You who fear Christ, submit yourselves to one another; wives, be subject to your husbands as to the Lord. For the husband is the head of the wife, just as Christ is the head of the Church, the Saviour of **her** body". But as the Church is subject to Christ, so let the wives be subject in all things to their husbands" (Eph 5:22-24).

This perception is reflected in more recent statements. For example, in 1880, Leo XIII said [quoting St. Paul 1 Cor 11:3]: "The man is the head of the woman, just as Christ is the head of the Church"²³². It should be noted that St. Paul adds in return: "Husbands, love your wives, just as Christ loved the Church and gave himself up for her, ... So husbands should love their wives as their own bodies. He who loves his wife loves himself" (Eph 5:25, 28).

In Judaism²³³:

(19) In Judaism, there is no inferiority of women vis-à-vis men, for both are created in the image of God (cf. the Genesis text quoted above). Man and woman have complementary roles²³⁴. The role of woman is even primordial according to the texts. As a famous rabbi rightly wrote (Baba Metsia - 59a) "there are no real blessings in the home except through her". From the beginning, woman can be a prophet like man (Deborah), and her prophecy is often considered superior to that of man. In the Talmudic period (-500 + 300), when study was generally reserved for men, some women made themselves known through their relevant opinions and knowledge²³⁵.

(20) The presence of women is also proven in synagogal worship, so that they have the right to read the Torah and to touch the sacred objects, things which are currently the preserve of men. In fact, the exclusion of women from the priesthood is relatively recent and seems to be due to a misinterpretation of the Halakhah (jurisprudential rabbinic treatise on religious obligations towards God and men). It should be noted that in Jewish law and history, women were exempted, excluded and even "forbidden" from this commandment to study the Torah, especially the Talmud, until the beginning of the 20th century²³⁶, in particular because "women's interest in talmudic study is thus perceived as a confusion of genders ... and not as an enrichment"²³⁷.

(21) This point is controversial since in many traditional rabbinic narratives it is the mother and not the woman who is referred to. Thus, Rivon Krygier, expressing a minority point of view, points out that the inequality between man and woman is considered by most rabbis²³⁸ if not congenital, at least almost original, whereas in the biblical account itself, the empire of man over woman really begins only as a curse resulting from the original fault: "and he shall have dominion over you" (Genesis 3:16). Rivon Krygier draws the reader's attention to the fact that many interpretations focus on verses that precede the episode of "original sin"²³⁹. He quotes a Talmudic master, Rabbi Bana (Tanna, 3rd century), who is quite explicit: "Eve is to Adam as the ape is to man, and Adam himself is to the Shekhinah (divine presence) as the ape is to man" (Baba Batra 58a).»²⁴⁰.

(22) Once the "original sin" has been committed, another Talmud master, Rav Dimi (4th century rabbinic teacher) states: "The woman will be veiled (head covered) like a mourner, banished (at the time of menstruation), held in prison (confined at home) (Erouvin 100b). The author also quotes from a midrash, which evokes the words of the Apostle Paul: "Why does the man go out with his head uncovered and the woman with her head covered? It is as if one has committed a fault and is ashamed before others (Gen. Rabbah 17:8)."²⁴¹ In fact, ultra-Orthodox circles still impose this view on women, which is not without causing conflicts, especially in Jerusalem, with the more open currents.

(23) Today, Jewish society is undergoing the same transformations as the societies in which it is fully involved. The proportion of Jewish women engaged in professional life is more or less the same as elsewhere. Women occupy eminent positions in society and no competence is denied them. The explosion in the number of divorces follows the general increase even among the most orthodox Jews, and domestic and sexual violence is also rife.

(24) Jewish women today, however, face specific difficulties arising from rabbinic jurisprudence, the Halakhah, because the majority of Jews continue to refer to it for their personal and marital status both in the diaspora and in Israel. This is particularly the case with regard to divorce, which is governed by the Ketubbah, a religious marriage contract. It is the husband who has to give the watch (religious divorce) to his wife. Outside Israel, rabbinical leaders have no authority to compel him to comply with their directives. The wife then remains an agounah (a "bound" woman) and cannot remarry according to Jewish law.

(25) This situation has been changing since the adoption in 1953 by the (conservative) Rabbinical Assembly of an amendment calling for the insertion in the Ketubbah of a clause according to which the husband or wife in case of serious dissension agrees to comply with the decision of the Rabbinical Court. This is beginning to be recognized in orthodox circles, and in Israel the recalcitrant husband even risks prison. Reform Judaism, which is much more liberal, accepts civil divorce as sufficient, but this creates serious religious problems for the children in case of remarriage in Orthodox circles.

(26) It is also interesting to note that Judaism, like other religions, is permeated by the surrounding civilizations and that among women of the communities, especially Orthodox, there is a growing interest in all areas of Jewish study. With this development, we are witnessing the development of structures of study of a very high level accessible to women. This corroborates the fact that "one of the fundamental ideas of Jewish life is that women should succeed in maintaining a balance between their personal development and the strength of their families."

(27) This ambivalence gives rise to the presence of Jewish feminist movements which, on the basis of the Bible and traditions, militate for the equal rights and responsibilities of women and men both in society and in religious bodies.

In Islam

(28) The same ambivalence as in other religions can be found: the equality of women and men is proclaimed in the Koran: "O you men, fear your Lord, who created you from a single being, and from him he created his wife ..." (4,1 or 39,6). He also specifies: "I will never cause any of you, man or woman, to lose the benefit of his works" (3,195).

(29) That said, although it is claimed to be an advance on the status of women in that region at that time, the Qur'an places women under the dominion of men in many verses, such as: "Men have authority over women by virtue of the preference God has given them,.... ", men can beat them (4, 34), they can have several concubines. The woman is worth half the man. She is at the service of men, even of their pleasures, as the many verses of Sura 4 make clear. Thus, they are part of the rewards of paradise (2,25; 3,15; 4,57). It is always the interpretation of the Koranic verses that poses a problem. A more open and moderate interpretation will give another reading to these verses.

(30) This ambivalence, and the need to reflect on how to interpret many verses of the Qur'an, has led to the presence of Muslim feminist movements which, on the basis of the Qur'an and the Hadiths, are campaigning for equal rights and responsibilities for women and men both in society and in religious circles.

In Buddhism^{242,243}

(31) The spiritual goal of Buddhism is the attainment of enlightenment. The proposed spiritual path is equally effective for women and men, both having, by nature, the same potential for liberation.

(32) The teachings of the Buddha clearly reject the cultural and religious assumptions that establish the generalized inferiority of women in societies. The Buddha clearly rejected the subordinate position of women in the society of his time, especially since the cultural and religious beliefs underlying it induced a biological and spiritual inferiority of women. Since women and men are equal parts of human nature, it is obvious that they enjoy the same rights and that no form of discrimination can be justified. The Buddha himself did not discriminate between women and men; he taught not only that equality was possible, but also that equality of the sexes in society is a necessity.

(33) In the time of the historical Buddha, communities of renouncing women were founded in his immediate vicinity because fully ordained women (skr bhikkhuni) and fully ordained men (skr bhikkhu) have the same spiritual potentials and abilities. This was received as totally revolutionary by the society of that time. Note that female renunciators were subject to more and different rules than male renunciators, which appears shocking and sexist. This can be explained by the fact that the monastic rules were elaborated by the Buddha as errors and difficulties appeared in monastic life. These rules, not written in advance, were intended to provide remedies for the pitfalls encountered or foreseeable in monastic life.

The order of nuns was founded after that of monks. The nuns had to take the rules already given for men as well. And since the life of women, in a very divided society, was more difficult than that of men, more particular precautions were enacted. It was better for the women to be accompanied for their safety when they walked the streets to ask for alms for their food. At the end of his life, the Buddha specified that certain rules (for both women and men) could be abrogated.

(34) Western Buddhists have initiated changes in this direction since the 1980s. As early as 1987, the Sakyadhita association was created, a Sanskrit term literally meaning "Daughters of the Buddha", which works internationally for the access of women of all Buddhist branches and schools to full ordination. Supported by H.H. the Dalai Lama and other Buddhist spiritual authorities, a movement towards the return to full ordination of women in the different branches and schools of Buddhism has been initiated. This is an orientation to which Westerners (nuns and lay people) and religious dignitaries from South East Asia are opposed in the name of tradition.

(35) Contemporary Buddhism is caught between the maintenance of the conciliar tradition which organized the principles of monastic life after the death of the Buddha and the imperative of fundamental rights, including the equality of men and women in contemporary society. It will be observed that the tradition is an adaptation to worldly circumstances and has no existence in itself, which should make it possible to direct the change towards an adaptation of women's religious life to contemporary social conventions.

(36) Ultimately, it is for the authorities of contemporary Buddhism to exhaust the question of whether the autonomy of religions justifies a differentiation of status between male and female monastic vocations in the twenty-first century. Inspired by the life of the Buddha and his teachings, many contemporary Buddhists strongly oppose all forms of discrimination and institutionalized inequality. Discrimination is nothing but a source of terrible suffering for those who suffer from it as well as for those who cause it.

(37) However, the vicissitudes of history have interrupted several traditions of transmitting the full ordination of women in many Asian countries. Today, full ordination exists in Taiwan, Korea, China, among others, and has been reintroduced in Sri Lanka.

Nuns have long suffered from a lack of consideration on the part of religious and contemporary Buddhists are well aware that positive developments against social injustices must be applied to their own institutions because they follow the same canonical ethical precepts as men and women.

II.3 Observed situations

(38) In spite of this "revolution" in international and European law, some States have made reservations to these treaties: "a way of refusing universality and returning to the traditional "each according to local customs"²⁴⁴, and this is particularly blatant in the case of reservations to women's rights, which "under the pretext of cultural traditions, result in emptying State commitments of all meaning and content"²⁴⁵.

Thus CEDAW, ratified by 186 States, is limited in its application by the reservations of 51 countries from all continents and 23 interpretative declarations.

(39) The equal dignity of men and women and their common ontological belonging to the humanity advocated by religions²⁴⁶ should lead them to accept and promote the equality and parity of rights and responsibilities between women and men both in society and in their midst, and thus have a progressive influence. Unfortunately, this is not always the case²⁴⁷ because, as many studies show²⁴⁸, religions are far from challenging the patterns of a patriarchal culture that emphasizes gender difference and hierarchical relationships and legitimizes the subjugation of women as wives and mothers in the home²⁴⁹, all the more so for the more traditional, even fundamentalist, currents of these religions. According to these conceptions, women do not have an equal place with men in all areas, including in terms of moral authority and power. The refusal by some religions to give women access to religious functions²⁵⁰ is perceived by some as being the demonstration par excellence²⁵¹.

(40) Thus, many women representatives of European states at the UN and women's INGOs are constantly alarming public opinion about "the presence of certain ultra-conservative religious pressure groups, identified as fundamentalists, which seek to exert influence, for example within the EU and the United Nations, in particular at the annual session of the Commission on the Status of Women, against rights that have been acquired with great difficulty over a long time and which allow for women's equality and autonomy"²⁵².

(41) Within the United Nations today, it is true to say, there has been a "creeping regression" in women's rights, a renunciation by Western countries in the face of religious offensives and attacks on secularism, and an increasingly important role for the Organisation for Islamic Cooperation (OIC), the only UN influence group of a religious nature that has been taken over, with 57 member states, not forgetting the strengthening of Orthodox influence in Russia and Ukraine and the growing influence of the churches in South America. According to the French government's women's rights department: "*It is true that things are becoming increasingly difficult; there is indeed a rise in Islamic competition, increasingly uninhibited, to promote cultural relativism*"²⁵³.

(42) In the context of UN World Conferences, the interactions between women's rights and discourses explicitly based on religious authorities have been noted since the 1990s. Some states defend the priority of religions and particular cultures over the universality of women's rights and, with reservations, limit women's autonomy and freedom of action, particularly in the areas of reproductive and sexual health in relation to a certain conception of the family. The Holy See, certain religions and schools of thought consider that human life exists and must be respected and therefore defended from the moment of conception. "There is a difficulty in reconciling universality and the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions"²⁵⁴.

(43) Also noteworthy are the numerous decisions of the European Court of Human Rights (ECHR) in cases involving Switzerland, Germany, France and Turkey, in which, while placing emphasis on each State's particular understanding of its relationship to religion, the Court concluded that, in a democratic society, the State may prohibit the wearing of the Islamic veil if it is detrimental to the objective of protecting the rights and freedoms of others, public order and public security²⁵⁵.

III. Women's control over their bodies, Reproductive health, chosen motherhood

III.1 International Treaties

(44) The Resolution adopted on 16 April 2008 by the PACE of the Council of Europe calls on member states to decriminalise abortion and to guarantee women's "right ... to have access to safe and legal abortion". It should also be emphasised that likewise women's rights prohibit forced abortion for which women often face pressures, which can range from blackmail to physical violence.

III.2 Position of religious institutions

(45) The attitude of many leaders of faith-based organisations to the issue of gender equality and contraception varies widely, as it does with regard to the issue of sexual orientation. Some religions use the expression: men and women are complementary (not equal), while others speak of equality. The differences in attitude are the result of differences in the interpretation of the founding texts and therefore their meaning for our times. The refusal to take this difficulty into account by many religious authorities in all religions leads them to consider as a commandment from God what is only their interpretation of the founding texts.

Several religions challenge women's control over their bodies (prostitution, rape, honour killings) and their rights to reproductive health (contraception, consensual or forced abortion).

(46) For its part, although affirming the primacy of conscience and therefore that women and men must be aware of their responsibility in matters of reproductive health, the Magisterium of the Catholic Church declares contrary to Catholic doctrine the use of contraceptives other than during periods of infertility in the natural female cycle. As the Encyclical *Humanae Vitae* states, "every conjugal act must remain open to the transmission of human life" (HV No. 11) and must respect "the indissoluble bond, which God has willed and which man cannot break at his own initiative, between the two meanings of the conjugal act: union and procreation" (HV No. 12). In its public interventions, the magisterium of the Catholic Church does not claim to apply its laws to politicians, but to enlighten consciences on the respect for life towards all people, even the weakest. This enlightenment can go as far as asking politicians to vote against a law which would go against the recommendations of the Magisterium²⁵⁶.

(47) This is a major disagreement between the majority of Catholics and the Magisterium. It should be noted, in this regard, that several episcopates have given a flexible interpretation in the implementation of this encyclical. It may be added that this position of the Magisterium has a significant negative impact on the effectiveness of campaigns to protect against the AIDS virus through the use of condoms in underprivileged Catholic environments.

(48) It should be noted that in the Jewish religion, there is no prohibition for a woman to protect herself against an unwanted pregnancy by means of medication or an internal mechanical process (IUD). However, only therapeutic termination of pregnancy is permissible.

In Islam, as far as women are concerned, we can see that in the speeches of Muslim fuqâhas, Islam makes a difference between mothers and women. A fatwa approves the use of the contraceptive pill for a limited time for a valid reason²⁵⁷. The Ligue Française des Femmes Musulmanes (LFFM) believes that the Koran can be interpreted in a way that allows for birth control²⁵⁸.

III. 3 observed situations

(49) While European legislation prohibits and combats practices of another age (such as honour killings, genital mutilation, polygamy, forced marriages, exclusion of girls from education, subordination and guardianship status in the family, repudiation, deprivation of custody of children....),

all these forms of violence, practised in many cases in the name of a religion, are opposed to the effectiveness of women's human rights and are insufficiently reflected in the organisation of certain States.

(50) At the European Union level, the lack of a guarantee of the "right to freely chosen maternity", which some women's organisations urged when drawing up the EU Charter of Fundamental Rights and the European Constitutional Treaty in order to obtain a legal basis enabling the Union to legislate in this area, is due to the opposition of certain States, such as Ireland, on religious grounds. As a result, the criminalisation of abortion, although a minority, in Europe is maintained in certain countries such as Ireland, Malta, Portugal and Poland, where, according to the texts²⁵⁹ currently in force, a woman who tries to terminate her pregnancy risks imprisonment. Nevertheless, the ECHR by its decisions of 16 December 2010 concerning Ireland²⁶⁰, the exception granted by the EU to Poland, but the recognition by the European Court of Human Rights of a violation of Article 3 of the Convention in Poland²⁶¹ show the complexity of this issue linked to the principle of subsidiarity with perhaps the risk of a crack in the European constitutional order and reveal the lack of consensus on these issues between the governments of the different European countries, leaving the danger of a Europe of fundamental rights "à la carte". It is worth noting that the Irish government has promised to review the law in this area since the death of a woman following a refusal to have an abortion.

(51) Numerous bilateral Conventions that European States sign and incorporate into their domestic law²⁶² to implement codes of personal and family status and laws of other States based on Islamic law; these Conventions are discriminatory against women and in flagrant contradiction with national Constitutions and the ECHR (art. 14). Thus, even European women of non-EU origin who hold two nationalities are not protected in the same way as "native" European citizens who do not have family ties with immigrants. National public authorities claim to be incompetent and powerless to settle legal disputes concerning them. In the name of their ethnicity or supposed religious affiliation, these women are excluded from the essential constitutional values and rights of the European legal order and there is general inertia on the part of European states when it comes to repealing bilateral conventions that are contrary to their foundations.

(52) Moreover, serious violations of the human rights of women facing acute problems such as marginalisation, forced marriages, gender inequality in inheritance, female genital mutilation, forced abortions and honour killings in some migrant communities are still perpetuated in Europe today, making the task of the political and judicial authorities very difficult, all the more so as these customs are sometimes taught and practised by women themselves. Therefore, the European Parliament, in Articles 103 and 104 of its Resolution A7 0086/2012 of 18 April 2012 on human rights in the world and the European Union's policy on the matter²⁶³, strongly condemns these practices and urges member states to take legislative measures to prohibit them.

IV. Cultural and Religious Relativism: A Threat to Women's Human Rights

(53) In the presence of different cultures and religions, [former 4] can it be accepted that the value, dignity and rights of women, who make up half of humanity, vary according to the dictates of the cultural or religious community or the political system in which that person was born and lives? Can everything be tolerated in the name of respect for traditions, cultures, customs and religions? Who has the authority to impose norms? Who transcends cultural differences and convictions? How can the special conditions and needs of women be duly taken into account? How can women's rights be separated from their financial dependence on men if they do not have the right to sufficient resources to live with dignity?

(54) Recent attempts in Western democracies (Canada) "to have religious laws (by definition immutable, unchangeable and imposed in the name of God on presumed believing populations) take precedence over common law (by definition voted, i.e. changeable by the will of the people)"²⁶⁴. The wave is now reaching Europe, where England is allowing "traditional" courts of justice to take over from the legal justice of the Kingdom in certain cases. The Archbishop of Canterbury²⁶⁵ stated in February 2008 that it is inevitable to introduce certain aspects of Sharia law into British society and law, calling for an open-minded and far-sighted approach to Islamic law. One of England's highest court justices, Lord Philips de Worth Maltravers, in a speech in Whitechapel, considered that sharia principles can be useful in mediation or other forms of alternative dispute resolution.

As in Canada, where the September 8, 2005 protests called for "one secular law for all", it is here that feminist and secular activists of Muslim culture mobilized to reject such regression under the slogan "One law for all". Indeed, any other position would lead to a dangerous return to communitarianism.

(55) More seriously, this cultural relativism, which is incompatible with human rights, is at the very heart of the institutions of the Council of Europe, the debate on the burqa being a prime example. For example, the Council of Europe Commissioner for Human Rights Thomas Hammarberg stated, on the occasion of Women's Day 2010, that banning the burqa would not liberate oppressed women but could, on the contrary, worsen their exclusion from European societies. PACE adopted Resolution 1743 (2010)²⁶⁶ "Islam, Islamism and Islamophobia in Europe" of 23 June 2010²⁶⁷.

(56) These considerations are clearly in flagrant contradiction with the obligations arising from the founding treaties which also inspire the ECHR, as the Preamble to the ECHR emphasises with regard to equality between women and men and the elimination of adverse traditional practices. This is why the PACE Resolution was denounced by the many women's and feminist INGOs which are members of the Conference of INGOs of the Council of Europe at its round table on this subject on 22 June 2010²⁶⁸, as well as on the occasion of their participation in United Nations bodies.

(57) Fortunately, the year 2010 was marked by a series of initiatives by the national public authorities in a number of European States and municipalities with a general or partial ban on the wearing of the burqa, despite the terrorist threat hanging over these countries for this reason: Belgium, France, Italy, Spain, and particularly the municipality of Barcelona²⁶⁹.

(58) Taken one by one, these concessions may seem insignificant, whereas "they form the framework of a massive renunciation"²⁷⁰. They lead to a shift from general positive law to particular rights attached to religions, which is one of the foundations of communitarianism. All these attempts to trade off women's rights under the pretext of maintaining social peace are mainly detrimental to women and highlight all the danger of an anti-democratic challenge to the universal values enshrined in international law. What is at stake is none other than the defence of equality and freedom in the face of regression. The issue in the debate on equality between women and men and on women's rights is the very safeguarding of the values and rights that underpin human rights in their integrity, one of the constituent pillars of our European humanism, together with democracy and the rule of law. The question therefore remains: Is a united Europe capable of defending and promoting its values on its own territory and in its relations with the rest of the world? As we will see in Chapter VI, secularism is the framework that allows each religion and current of thought to evolve and not be held hostage by the various political discourses²⁷¹.

V. Conclusions

(59) The struggle for women's rights remains a pressing issue. The future of the standards of international and European fundamental rights law is more than ever in the hands of women and men, who through their collective action and struggles can and must invoke their rights and demand their effective respect, safeguard and development before all international and European public authorities, including the courts. In this respect, the quest for universality could not be better expressed than by recalling the struggles of women's organisations and more generally of civil society for dignity, freedom, democracy and human rights, which are often ignored and are now exploding in the Arab world revolution.

(60) In this extremely difficult context, INGOs constantly affirm with courage and determination that "equality between women and men is inseparable from a secularization of the law". In the name of everyone's freedom and equal dignity, NGOs want to "advance" and "improve" the situation of women, in particular through education and dialogue that respects the free will of each woman, and by monitoring the application of new laws that are favourable to them. Through their mobilisations, they call for the effective application of international and European treaties in this area²⁷².

(61) If the world's religions offered women in their institutions equal opportunities and equal situations with men and gave them the same responsibilities, this would be a strong signal to society and a leap forward to signify that the subordination of women is no longer acceptable and would contribute to rethinking outdated attitudes.

(62) This is not yet the case for most monotheistic religions, which rely on reasons inherent in those religions or in the cultures originating from those religions²⁷³ to maintain these differences in responsibilities and/or status between men and women, considered by some to be contrary to human rights and by others to be outside the scope of those rights. Thus, while many religions no longer make distinctions between men and women for access to the priesthood or the presidency of the cult (Anglicanism, Buddhism, Protestantism), the magisterium of the Catholic Church²⁷⁴, like that of the Orthodox Church and conservative Anglicans, continues to refuse²⁷⁵ to ordain women to the priesthood on the basis of theological arguments²⁷⁶ which are contested by some Catholics and theologians²⁷⁷ throughout the world.

(63) As the Parliamentary Assembly of the Council of Europe points out in paragraphs 14 and 15 of its report on "Women and religion in Europe" of 2005²⁷⁸. "... *women's rights are often restricted or violated in the name of religion. While most religions teach equality between women and men before God, they attribute different roles to women on earth. Gender stereotypes motivated by religious beliefs have given men a sense of superiority that has led to discriminatory treatment of women by men, including the recourse to violence.* The step forward to be taken in the name of human rights is therefore that women must move from the status of object to the status of subject, when this is not the case.

Chapter V

Religions and the human rights of LGBT persons

Introduction

(1) The analysis in this chapter focuses on the position of faith-based organisations concerning homosexual (Lesbian, Gay), bisexual and transgender ("LGBT") persons in the public sphere with regard to human rights. It depends on the organisation and within these organisations it may depend on the currents that are present. Moreover, these positions, as well as those of States, vary over time, as these issues are still being debated. Thus, there are faith-based organisations that believe that certain rights, which are explained in this chapter and claimed by LGBT people, do not fall within the scope of human rights but within the scope of ethics and morality. For their leaders, opposing these rights is not a violation of human rights, but the repression of what they consider to be vices from which society must be protected. They therefore believe that they are not in any way opposed to the equal dignity of all persons and the respect due to them, as advocated by their religion, nor to the human rights of LGBT persons. These leaders thus plead to deny LGBT persons certain rights presented in this chapter on the basis of their religious doctrine, which thus goes against international human rights standards, thus generating discrimination against LGBT persons. Such advocacy leads to conflicts between, on the one hand, the rights of LGBT persons to a private and family life and freedom from discrimination and, on the other hand, the freedom of expression of these faith organisations, as will be explained in this chapter.

(2) This is noted in the recent report of the Council of Europe's Commissioner for Human Rights²⁷⁹ which notes that "negative attitudes towards LGBT persons are also the result of religious beliefs that LGBT persons are sinful and act against religious teachings. Such arguments rely on a particular interpretation of religion to argue that LGBT persons are detrimental to religions and followers of those religions". This report found many examples of such claims made by influential religious leaders, as well as opinion leaders. In 2010, prior to a debate in the Parliamentary Assembly of the Council of Europe on a report dealing with the human rights of LGBT people, different religious communities in Georgia collectively protested "anomalies, such as homosexuality, bisexuality and other sexual perversions which are considered not only by Christianity but also by other traditional religions as the greatest sin at the root of degeneration and physical and mental illnesses"²⁸⁰.

(3) However, while many religious leaders describe homosexuality as immoral and a serious threat to the population, others, such as Archbishop Desmond Tutu, have highlighted the fact that combating discrimination against LGBT people is a matter of simple justice: "*We fought against apartheid in South Africa because we were responsible and forced to suffer for something we could do nothing about. It is the same with homosexuality*"²⁸¹. It should be added that many followers of these religions challenge the positions of their leaders on these issues, as will be seen below.

(4) Furthermore, the European Parliament, in Articles 113 and 114 of its Resolution A7 0086/2012 of 18 April 2012 on human rights in the world and the European Union's policy on the matter²⁸², commends the Council, the Commission and the Member States for their commitment to the rights of LGBT persons and insists on the prohibition of discrimination against them, and calls on the Commission to address the structural factors leading to violations of their fundamental rights.

(5) In order to analyse the conflicts that result from these differences in the perception of human rights, this chapter sets out the rights in question and presents the doctrines and behaviour, often homophobic, as highlighted by the Parliamentary Assembly of the Council of Europe²⁸³, that result from these differences on the part of some of the largest faith-based organisations, and briefly suggests how such behaviour could be changed to ensure that it adequately respects what human rights require in a democratic society.

II. Attitudes and positions of different religions²⁸⁴, controversies within religions

(6) The conflict of law discussed in this chapter does not concern the freedom of religion of faith organizations and their members since advocacy to discriminate or impose restrictions on the rights of others outside the private religious sphere is a matter of freedom of thought and freedom of expression, notably on choices of society, rather than the freedom of religion which is discussed in Chapter III.

(7) For reasons of brevity, it is not possible to examine in detail the position of all religions. For this reason, the following analysis focuses mainly on Christianity, which is the dominant religion in most European countries. It examines the official position and actions of two of the churches most opposed to the equal enjoyment of human rights by LGBT people, the Roman Catholic Church and the Russian Orthodox Church, as well as those of a church with a less clear-cut position, the Church of England. This analysis also briefly outlines the position of Judaism and Islam (but without seeking to list examples of advocacy on disagreements with international human rights standards) as well as that of Buddhism, a religion with a very different tradition.

(8) It is important to recognise, first and foremost, that religions are by no means unanimous in their position regarding LGBT persons and their opposition to same-sex sexual relations. Their official doctrines can range from absolute condemnation to total acceptance.

Among the first category are the Roman Catholic Church, the Orthodox Church of the Eastern countries, conservative Evangelical churches, Pentecostal churches and traditionalist currents of Islam. At the other end of the spectrum are many Protestant churches and elements of the Lutheran and Anglican churches and Buddhism, which does not generally have a negative attitude towards homosexuality. In this category are the Church of Sweden and the United Church of Canada, which allow same-sex marriage and accept lesbian or gay priests and bishops²⁸⁵. The Church of Sweden and the United Church of Canada are in this category.) Over the years, support for LGBT positions has grown within the Church of England, although it remains deeply divided²⁸⁶.

(9) Even within the major religions in Europe, Christianity, Islam and Judaism, different organisations have very different positions. It is also important to note that even within those organisations that advocate for discrimination, many members (and among them LGBT people) disagree with this advocacy. Therefore, a distinction must be made between the position of leaders of faith-based organisations regarding LGBT people and the position of the followers of these organisations who are opposed to it. For example, as recent polls in the USA²⁸⁷ and France²⁸⁸ have shown, more than 40% of practising Catholics are not hostile to same-sex marriage, contrary to the magisterium of their Church. These differences in appreciation can generate conflicts within the institution itself, as shown by the recent election of a homosexual person to a parish council against the opinion of the parish priest²⁸⁹. Some of these Catholics express their position through international organisations such as "We Are Church" or the European Network Church on the Move.

There are associations of LGBT people in several religions whose leaders have a discriminatory attitude towards them. For example, in many countries there are associations of LGBT Christians, such as David and Jonathan²⁹⁰, associations of Jewish gays and lesbians, such as Beit-Haverim²⁹¹ in France, which campaigns for greater recognition of homosexuality among the Jewish community, and gay and lesbian associations that claim their Muslim identity²⁹², as well as progressive and inclusive Muslim associations, which support the defence of the rights of sexual minorities within Islam²⁹³. The right to freedom of expression and the right to freedom of expression are also part of the right to freedom of religion. In France the Collectif citoyen des Homosexuelles Musulman-es de France, HM2F²⁹⁴ is an association that campaigns for a truly inclusive Islam and a secularism that is truly respectful of all beliefs.

(10) The problem is that national and international political institutions often only take into account the official positions of those in charge and neglect those of the faithful and the INGOs that represent them. It is therefore essential that in these institutions the floor be given to all, as the Council of Europe does, in particular through its Conference of INGOs. Indeed, challenging the discrimination imposed by particular religious organisations is not at all a confrontation with religions or people of faith in general, but a challenge to certain positions defended by their leaders.

III. Positions of religions with regard to homosexuality and same-sex sexual relations

(11) Freedom of thought, conscience and religion: Article 9 of the ECHR implies "the freedom to change religion or belief, and the freedom, either individually or in community with others and in public or private, to manifest one's religion or conviction in worship, teaching, practice and observance of rites".

These rules of law concerning freedom of thought, conscience and religion were recently reaffirmed in relation to sexual orientation and gender identity²⁹⁵ by the Committee of Ministers of the Council of Europe²⁹⁶ "... *neither cultural, traditional or religious values nor the rules of 'dominant culture' may be invoked to justify hate speech or any other form of discrimination, including that based on sexual orientation or gender identity*". The Secretary General of the United Nations confirms: "*Any attack against you (LGBT people) is an attack on the universal values of human rights*"²⁹⁷.

12) Although the Gospel says nothing about homosexuality, the magisterium of the Catholic Church considers²⁹⁸ that "although not in itself a sin, the particular inclination of the homosexual person nevertheless constitutes a tendency, more or less strong, towards behaviour that is intrinsically bad from the moral point of view. For this reason, the inclination itself must be considered objectively disorderly. "Thus, when a person makes homosexual use of his or her [sexual] faculties, the person is acting in an immoral manner. The Church "is aware that the view that homosexuality is equivalent to, or as acceptable as, the sexual expression of conjugal love has a direct impact on society's understanding of the nature and rights of the family and puts these at serious risk." The Magisterium in fact considers that the homosexual relationship is not open to otherness and does not allow the covenant of the spouses to be lived out in all the richness of humanity as man and woman, since the Church does not consider it a source of good for persons. The Russian Orthodox Church also teaches that homosexual relations are "a vicious distortion of human nature created by God" and a "perverse [manifestation] of sexuality".

(13) For Judaism, the attitude is more nuanced. The Torah is considered to prohibit sexual intercourse between men²⁹⁹. Although rejected by Judaism, male homosexuality is not pilloried. What is forbidden is not the homosexual inclination but the sexual act itself. The forbidden, as in onanism, is the ejaculation of sperm for purposes other than fertilization. The Torah does not mention and therefore does not condemn female homosexuality, but it has traditionally been considered forbidden by most rabbis. It should be noted, however, that the rabbis of the Talmud (Yebamot 76a, Shabbat 65 a-b, Sanhedrin 69b) discuss it in connection with marriage, whether lesbian practices can lead to an impediment to marriage. They conclude that this is not a serious enough matter to prevent marriage. Maimonides (Mishneh Torah, Prohibited Sexual Intercourse) states that there is no specific prohibition. Some contemporary texts are stricter than those of the past.

Contemporary writing states, for example, that lesbianism is a "*perversion of nature and the divine order*" However, no one worries or attacks them in Europe or elsewhere.

(14) It is the position of the Church of England that proper sexual relations are the prerogative of married persons and that homosexual genital acts are a failure of this ideal³⁰⁰. It also argues that the association of two persons of the same sex is acceptable to the laity, but that gay clergy are expected to be abstinent³⁰¹.

(15) Traditionally, certain passages in the Qur'an referring to "the acts of the people of Loth (7/80-81, 26/165-166, 29/28-30) have been interpreted as saying that homosexuality is an "*outrageous act*", a turpitude, a sin and this is reflected in the consensus that same-sex sexual relations are a violation of the Islamic law. Male homosexuality is a crime in most Muslim majority-ruled countries, although the Koran makes no mention of punishment. However, lesbianism is one in only about half of these countries. Indeed, although often also repressed, female homosexuality is generally less frowned upon than male homosexuality in countries with a Muslim tradition.

(16) Nowhere in his canonical writings does the Buddha condemn homosexuality or make negative comments about sexual relations between persons of the same sex. On the contrary, the Buddha apparently takes a neutral and pragmatic position regarding sexual and transsexual orientations. His teaching says only that people should not use sexual relations in a way that causes suffering. The negative references to sexual behaviour in the Buddhist canon are only intended to encourage monks and nuns not to break their vows of celibacy, but in no way constitute a negative commentary on sexuality as such.

(17) Such a diversity of appreciation should lead faith-based organisations to develop inter-religious and intra-religious dialogue, not only between the leaders of the various religions, but including organisations of the faithful, especially those particularly concerned with LGBT persons.

IV. Language that is sometimes irresponsible, discrimination against LGBT persons

(18) Freedom of expression and language: As discussed in Chapter III, freedom of expression includes, according to Article 10 of the European Convention for the Protection of Human Rights (ECHR), "freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers...". Thus, organisations and individuals have the right to use language that is provocative, exaggerated and even immoderate. However, freedom of expression implies "duties and responsibilities", and in political discourse, a certain moderation and a minimum of decorum, as recommended by the European Court of Human Rights.

(19) Thus language that incites violence to hatred is a misuse of this right. Language that incites hatred and violence may be considered contrary to the right to life (Article 2), as it may lead to endangerment of life or exposure to violent attacks, and contrary to the right not to be subjected to torture or inhuman or degrading treatment (Article 3). However, language that does not directly incite hatred or violence may also endanger these rights by contributing to an ambient climate of intolerance and by implying that it legitimizes extreme behaviour. Indeed, in a recent judgment, the Court upheld the conviction of individuals who distributed pamphlets in a school that claimed that homosexuality was "a deviant sexual tendency" and had a "destructive moral effect on the foundations of society"³⁰².

(20) Regrettably, some church leaders sometimes express their position on homosexuality in radical terms³⁰³ or in irresponsible language liable³⁰⁴ of "spreading, inciting, promoting or justifying hatred based on intolerance"³⁰⁵. Thus, for example, Cardinal Pujat has stated³⁰⁶ that "*homosexuality is not a sexual orientation but a sexual perversion ... an acquired vice comparable to an addiction to drugs, alcohol or tobacco...*". Homosexuality was presented by Patriarch Alexis II to the Parliamentary Assembly of the Council of Europe as "*a disease and a distortion of the human personality*" comparable to kleptomania³⁰⁷. Other leaders of the Russian Orthodox Church added: "*If people refuse to procreate, the nation goes downhill. Therefore, the ultimate goal of gay propaganda is to ruin our nation...it would be strange for a sovereign nation...to create the legal conditions for its own destruction...*"³⁰⁸.

"We must show them [the children] a homosexual man in his unhappy 40's and an aging prostitute...Otherwise, in 30 years our children will turn into animals influenced by the cult of seduction and debauchery."³⁰⁹

(21) Article 10 of the ECHR emphasises that the exercise of freedom of expression carries with it "duties and responsibilities". Any homophobic or transphobic language that potentially incites violence or discrimination must undoubtedly be qualified as "irresponsible". Therefore, faith organisations must ensure that their leaders and followers no longer use such language. NGOs within these organisations are invited to take action in this regard.

V. Actions vis-à-vis LGBT persons

(22) In its doctrine, the Catholic Church distinguishes the LGBT person from his or her behaviour since "every human being has the same fundamental identity"³¹⁰ regardless of sexual orientation". It therefore condemns all disrespectful behaviour towards homosexual persons, as it states in § 7 of the "declaration persona humana"³¹¹, and clarifies this in the Catechism of the Catholic Church³¹². It condemns any "sign of unjust discrimination against homosexual persons"^{313,314}, which raises the question of the appropriateness of discrimination. It "refuses to regard the human person as 'heterosexual' or 'homosexual' and "stresses that every human being has the same fundamental identity".

It should be noted in this connection that the European Court of Human Rights recognised in its judgment in *Clift v. UK* (application 7205/07 13 July 2010³¹⁵ § 57, that "*sexual orientation is part of the 'status' (i.e. an identifiable, objective or personal (innate or inherent) characteristic) of each person, such as sex and ethnicity, protected by Article 14 of the Convention*". For Islam, Professor Yakoub Mahi states "*One must dissociate the act from the person, which Islam does from the outset*."³¹⁶

(23) That said, based on their doctrine, the leaders of several religions are de facto opposed to equal treatment of heterosexual and homosexual orientations and refuse to recognise certain rights granted to homosexual persons over and above those granted to heterosexual persons, such as respect for privacy (Article 8 of the ECHR), freedom of expression (Article 10 of the ECHR), freedom of assembly and association, and the right to be protected from discrimination and violence (Article 14 of the ECHR). This applies, for example, to public demonstrations by gay and lesbian organisations³¹⁷. In 2007, Patriarch Alexy II, in an address to the Parliamentary Assembly of the Council of Europe, pointed out that the "Gay Pride" march in Moscow was "*propaganda for sin*"³¹⁸. This is also true in some cases of access to jobs as "*teachers*", "*sports trainers*" or in the army³¹⁹. The Russian Orthodox Church "*denounces all propaganda of homosexuality*", and recommends that "*those who propagate the homosexual way of life should not be allowed to work (education or otherwise) with children and young people, nor to hold senior positions in armies and rehabilitation centres*"³²⁰. For the leaders of the Catholic Church, this does not constitute violations of human rights or unjust³²¹ discrimination³²², but is part of their struggle against tendencies which they consider harmful to those who practice them and which they consider to be a disorder and a "*moral evil*" from which society and children must be protected.

(24) It should be noted that the argument that visible homosexuality is harmful to children has been refuted by the European Court of Human Rights. In its *Alekseyev v. Russia* judgment, it is clearly stated: "The Court has no scientific evidence or sociological data to suggest that mere mention of homosexuality or open public debate about the social status of sexual minorities would be harmful to children"³²³. The UN Commission on Human Rights came to the same conclusions³²⁴, ³²⁵. Furthermore, the Committee of Ministers' Recommendation 2010 (5), far from suggesting that information on homosexuality is dangerous for children, recommends that "member states provide children with objective information on sexual orientation and gender identity, for example in school curricula and teaching materials" and "provide all pupils and students with the information, protection and support required to enable them to live in accordance with their sexual orientation and gender identity."³²⁶

(25) Although there is a debate within some traditions of Buddhism about LGBT Buddhists, the Dalai Lama is very clear in his demand that homosexuals do not stop being Buddhists because they are actively homosexual. Today, many socially committed Buddhists are translating the Buddha's opposition to the caste system into strong support for the universal application of human rights, especially for vulnerable minorities such as LGBT people.

(26) There are differences of opinion among the many Islamic legal currents about the punishments to be given and the evidence to be provided. Imam Tarek Oubrou notes that "There is no passage in the Qur'an or any authentic and formal tradition of the Prophet Muhammad (Sunnah) that reserves any criminal sanction for the one who practices it. Even though homosexuality is clearly morally condemned in the Qur'an and the Sunnah³²⁷. Some consider that punishment should be left to the discretion of the judge, while others order the death penalty or caning. In practice seven states in which Islam is the main faith maintain the death penalty for homosexual acts committed in all or part of their territory³²⁸, while many others, while penalizing such acts, punish them with less extreme penalties.

VI. Position and actions concerning the life of couples and family life of LGBT persons

(27) Right to respect for private and family life: According to Article 8 of the ECHR, "Everyone has the right to respect for his/her private and family life.... ». Certain restrictions are permitted, inter alia, for "the protection of health or morals, or the protection of the rights and freedoms of others". Nevertheless, the European Court of Human Rights (ECHR) in judgments concerning areas of private and family life such as sexual offences, employment, parental rights, and adoption by a single person, has insisted both that LGBT people enjoy these rights and that restrictions on these rights cannot apply. In addition, it added that according to article 14, discrimination on the basis of sexual orientation is as unacceptable as discrimination on the basis of race, sex or religion³²⁹.

(28) Issues concerning LGBT people's marital life, marriage, sexual relations, family life and the place of children are the subject of much debate in different countries. Indeed, international treaties and conventions allow for many interpretations. As a result, at the legal level, the question of same-sex marriage is regulated differently from one State to another and is evolving rapidly. Thus, if in *Schalk and Kopf v. Austria*, the Court rejected the application for legal access to marriage for the two same-sex partners concerned, it was only because this position was the result of insufficient consensus in Europe on this issue (subsidiarity) and not because the partners were of the same sex³³⁰.

(29) As a result, the case law of the European Court of Human Rights concerning the rights of same-sex families is still evolving. It considers that unmarried same-sex partners should enjoy the same rights as unmarried different-sex partners, in areas such as the continued rental of a common apartment for the surviving partner, life insurance coverage, and the payment of pensions for the upbringing of children³³¹. The Court confirmed this position in 2010 by recognising for the first time that same-sex partners enjoy "family life" within the meaning of Article 8 of the European Convention on Human Rights³³². While in this judgment it rejected the application for legal access to marriage for the two same-sex partners concerned, it made it clear that this position was the result of insufficient consensus in Europe on this issue and not because the partners were of the same sex³³³, as stated above.

(30) Thus, in *Gas and Dubois v. France*³³⁴ the ECHR ruled on 15 March 2012 that France had not violated the European Convention on Human Rights by denying a homosexual woman the right to adopt her partner's child. The court found that there was no discrimination in the context of French law which did not legalise same-sex marriage. Here again, the only reason given for rejecting the application is that France has not legalized same-sex marriage and not that it involves a same-sex couple. On the latter point, however, the Council of Europe Convention on the Adoption of Children allows (but does not oblige) member states to extend the scope of the Convention to same-sex couples who are married or in an officially registered partnership³³⁵. This interpretation is confirmed by the Grand Chamber's judgment of 19 February 2013 condemning Austria's refusal to allow adoption by a same-sex spouse when it is permitted for a different-sex spouse (case *X and others v. Austria* (no. 19010/07)).

(31) The Catholic Church advocates that unions between persons of the same sex should not be consecrated in civil law. This position does not call into question³³⁶ the generosity of LGBT persons, but concerns the meaning of marriage union which, for the Church, must be based on sexual otherness and the complementarity of men and women. This is why the Catholic Church considers that "the State cannot legalize same-sex unions without failing in its duty to promote and protect marriage³³⁷, an institution essential to the common good"³³⁸, and must not "expose the younger generations to an erroneous conception of sexuality and marriage which would deprive them of the necessary defences and which, moreover, would contribute to the spread of the phenomenon itself".

(32) However, the argument that denial of same-sex marriage is necessary to protect the family³³⁹ is challenged by the European Court of Human Rights. For example, in the case of *Karner v. Austria* (2003)³⁴⁰ considered by the European Court of Human Rights, the Austrian government argued that discrimination against same-sex couples regarding the right to succeed to a tenancy agreement was necessary to protect the "traditional family unit. The Court found that the Austrian government was unable to advance an argument that could justify such discrimination. Furthermore, the Court recognised for the first time in 2010 in *Schalk and Kopf v. Austria*³⁴¹ that same-sex partners enjoy "family life" within the meaning of Article 8 of the European Convention on Human Rights.

(33) Within Judaism today there is a wide variety of attitudes towards same-sex sexual relations, ranging from the most formal condemnation (mainly in the conservative wing of Judaism) to complete acceptance. Just as Jewish tradition prohibits a man from entering into a sexual union with a woman married to another man, so it requires a man to forbid himself from entering into a loving relationship with another man, no matter how much he may love him. This is certainly the attitude of Orthodox rabbis, although the positions are in fact often much more complex (Rabbi Steven Greenberg in particular). But even within the conservative wing of Judaism, the prohibition of same-sex sexual relations has become increasingly controversial in the last decade. Liberal currents of Judaism accept homosexuality.

34) The overwhelming majority of Islam condemns the marriage of two persons of the same sex, although a study of the Koran³⁴² has suggested that it does not condemn such a union. In fact, an imam was recently able to celebrate the marriage of two men in France, and such marriages take place in several countries around the world.

(35) From the point of view of Buddhism, every person should be able to organize his or her life in a non-violent manner. For this reason, European Buddhism has no religious objection to civil marriage of persons of the same sex. Civil society must strive for the best possible fairness and non-discrimination among all its citizens, including sexual minorities. Many Buddhist institutions celebrate blessings or weddings in a religious context for same-sex couples³⁴³.

(36) It may be noted that marriage, a civil law concept compatible with same-sex marriage, has its origins in antiquity, long before the birth of Christianity. Again, as noted in the introduction, if a law permits same-sex marriage, it does not impose it.

VII. Political actions concerning LGBT persons

(37) The positions of religious leaders opposing the visibility of homosexual acts amount to denying LGBT persons the protection of anti-discrimination laws and denying them the enjoyment of a wide range of internationally recognised rights, as also noted in the report of the Commissioner for Human Rights³⁴⁴, although the scope of these rights is still debated, particularly with regard to legal marriage between two persons of the same sex. This is the case when they recommend limiting access to public/private housing and wage benefits³⁴⁵³⁴⁰ to LGBT persons, which is contested by the Catholic institution³⁴⁶. This was for example the case in the Council of Europe when they opposed the introduction of wording intended to ensure that the Convention on Preventing and Combating Violence against Women would protect lesbian, bisexual and transgender women from violence motivated by their sexual orientation or gender identity³⁴⁷.

(38) The Holy See, Cardinals or the Conference of Catholic Bishops³⁴⁸ in many countries in the world and in international institutions³⁴⁹ have taken action in accordance with the policies and doctrines presented above. These actions include the use, on many occasions, of the Holy See's status³⁵⁰ to oppose measures in international institutions that were intended to support the rights of LGBT persons, such as at the United Nations, by opposing the inclusion of sexual orientation and gender identity in the 2010 resolution on extrajudicial, summary and arbitrary executions³⁵¹, or at the OSCE, by repeatedly opposing work on hate crimes based on sexual orientation or gender identity from 2005 to 2010³⁵².

Recently, while speaking out against violence against LGBT persons, the Holy See has recently requested that the principle of subsidiarity be applied in the implementation of their defence, thus excluding LGBT persons from the protection of international human rights mechanisms³⁵³. Although the Vatican has not opposed the decriminalisation of same-sex³⁵⁴ sexual relations since 2008³⁵⁵, it continues to oppose the introduction of anti-discrimination³⁵⁶ and anti-hate crime³⁵⁷ provisions, which it does not consider as such.

(39) The international bodies of the Muslim religion also intervene in international bodies, as was the case at the UN Human Rights Council in Geneva³⁵⁸, to reject the decriminalisation of homosexual acts. If such an approach were implemented, it would lead to the violation of the fundamental human rights of tens of millions of human beings in Europe³⁵⁹.

(40) While the Church of England does not appear to have a formal policy of opposition to the fulfilment of LGBT rights, it has nevertheless engaged in public sphere campaigns to support discrimination. For example, in 1998, it campaigned against government proposals to eliminate discrimination on the legal age for sexual relations³⁶⁰ in accordance with a decision of the European Court of Human Rights³⁶¹.

(41) The attitude of some leaders of faith organisations towards their followers with political responsibilities may indeed raise questions with regard to freedom of thought and freedom of conscience. For example, the magisterium of the Catholic Church goes so far as to remind the Catholic jurist that he "*has a moral duty to express clearly and publicly his opposition and to vote against such laws*", because "*to vote in favour of a law which is so harmful to the common good is gravely immoral*"³⁶². The same is not true of Judaism, which in Europe does not give "Jewish" instructions to groups or politicians, Jewish or not, in any political field, even in the field of sexuality, leaving each person free to choose according to his own sensitivity, as is increasingly the case in the USA, while in Europe many conservative synagogues continue to maintain a complete ban on homosexual conduct, homosexual clergy and homosexual unions. There is a motto in Judaism "the law of the country where I live is my law" and a consensus "*Live and let live*".

VIII. Conclusions

(42) Thus, tensions between certain religions and human rights in relation to LGBT persons arise not only from differences in assessments about homosexuality and same-sex sexual relations, but also from a deep disagreement about the scope of human rights. These disagreements lead the leaders of these religions to oppose, as far as LGBT persons are concerned, rights that are internationally recognised, in particular by the Council of Europe, as part of human rights, while affirming that they are not opposed to human rights but simply to the practice of moral and ethical deviations³⁶³. By these refusals of legal recognition, these leaders give no other means of combating aggression, violence and discrimination against LGBT persons than to abstain from sexual relations³⁶⁴₃₅₉, to conceal their sexual orientation³⁶⁵, which amounts to preventing them from defending their rights as LGBT persons. For example, this is what is suggested by the magisterium of the Catholic Church in the "*Observations on proposed legislation on non-discrimination against homosexual persons*"³⁶⁶ of the Congregation for the Doctrine of the Faith (1992). Such an attitude provokes the suffering of persons torn between their sexual orientation, their faith and the doctrine of the institution on the subject, as many testimonies show³⁶⁷.

(43) As recalled in Chapter III and will be discussed in Chapter VI, representatives of faith-based organisations have the right to exercise their freedom of expression even if it tends to discriminate against LGBT persons on the basis of their sexual orientation and resulting practices in the democratic debate, or if it tends to deny them the protection afforded by human rights, on the basis of religious doctrines even if they are not in conformity with international human rights standards³⁶⁸.

(44) But such behaviour is detrimental to the common good, since it shows a lack of respect for human rights and thus weakens those human rights on which a democratic society is based. Such behaviour is also detrimental to faith-based organisations because democracy and human rights are the best guarantors of freedom of religion. Faith organisations that undermine human rights weaken precisely the system of protection on which their members depend for the free practice of their beliefs.

(45) Those who act on behalf of these faith organizations by seeking to impose restrictions on the lives of all LGBT persons, many of whom are not members of the faith organizations in question or do not share their doctrine, beyond the just and necessary democratic debate, violate respect for the freedom of religion or lack thereof of others and their freedom of conscience. Moreover, by seeking to impose these restrictions through political actions in the public sphere outside the democratic debate and the ensuing decision-making process (in particular by putting pressure on politicians who are members of these faith organisations), they are using their freedom of expression in a way that threatens the role of the state as a "neutral and impartial organiser of the practice of various religions".

(46) Faith-based organisations that wish to advocate in the public sphere for discrimination against LGBT persons in a responsible manner should do so only on the basis of arguments in accordance with human rights principles, and using responsible language. In relation to the latter, they could judge whether a statement they intend to make about the rights of LGBT persons in the public sphere is a responsible use of their freedom of expression by asking themselves the following questions: (1) "Given the attitudes towards LGBT people in my community, is there a possibility that the words I plan to utter could lead to an increased risk of violence and discrimination against LGBT people?" (2) "Would this language be acceptable if it were intended for another minority? »

Irresponsible use of language by leaders of faith organisations is, indeed, harmful not only to LGBT persons but to the common good as a whole, including the faith institutions themselves, by encouraging others to use such language by discrediting these faith organisations.

Chapter VI

For a constructive articulation between religions, schools of thought and Human Rights: Secularism for Europe

I. Introduction

(1) The previous chapters have shown a great deal of consistency between the various proposals made for the implementation of human rights. These are :

- respect for people regardless of their origin, religion, philosophical positions or sexual orientation and gender identity
- respect for freedom of expression, including the freedom to criticise religions or philosophical positions, such as the freedom of religions to criticise positions contrary to their doctrine, using language that respects people and the freedom of others
- respect for freedom of conscience, the right to have or not to have a religion, the right to be able to practise it while respecting the rights of others, and the right to change religion or belief.

(2) What is the framework at European level to ensure that human rights can be respected in the diversity of religions and cultures? The purpose of this chapter is to show that the set of provisions put forward by the Council of Europe, and brought together in this report under the heading of secularism, is a framework enabling a constructive link to be established between the different religions, currents of thought and human rights. We shall see in section VI that the attitude resulting from the implementation of secularism is a value that must be taught in schools if it is to be shared, as recommended by the Council of Europe³⁶⁹ and its Parliamentary Assembly, particularly in Recommendations 1720 of 2005³⁷⁰.

II. The four principles allowing a constructive articulation between religions, currents of thought and human rights: secularism for Europe.

(3) Religions and states are very old partners in Europe. The history of their relations is one of a struggle for influence and mutual support, even if in Europe we are witnessing a decline in the temporal power of the churches and a strengthening of the temporal power of the states.

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In general, the basis and nature of these relations depend on the traditional presence of the churches, some of them, or of non-Christian religions on the territory of each state³⁷¹, on the history of these states and on their multi-religious composition. The intensity and privileged nature of relations also depend on the attachment of populations to their religion, which is often a factor of cultural³⁷² or even national identity.

(4) In view of the mosaic of Church/State relations³⁷³, which reflects the very wide variety of legal regimes concerning the Church/State relationship, as PACE recalls in its Recommendation 1804 of 2007³⁷⁴, can we speak of secularism in relation to Europe? It should be noted that these relations must comply with the articles of the European Charter of Fundamental Rights, in particular Articles 10, 11, and Articles 9, 11 and 14 of the European Convention for the Protection of Human Rights, which gives a certain degree of convergence as explained by J.P. Willaime³⁷⁵ and set out in point 7 of the 2007 San Marino final declaration approved by the Committee of Ministers of the Council of Europe³⁷⁶ and in PACE recommendations 1720 and 1804. These principles are also recalled in the Committee of Ministers' reply³⁷⁷ to PACE Recommendation 1804 (2007) on "State, religion, secularity and human rights".

(5) Thus relations between states, religions and religious institutions must be based on the following four principles which form the backbone of what can be called secularism for Europe:

(a) the neutrality of Europe's decision-making bodies vis-à-vis religions and schools of thought.

Europe must neither privilege nor discriminate against any religion or school of thought as long as it respects the normative framework of human rights, democracy and the rule of law. Moreover, the European Court of Human Rights has noted the importance for a state to act in a neutral and impartial manner in all matters relating to the exercise of human rights^{378, 379}.

(b) the principle of freedom

This principle is based on Article 9³⁸⁰ of the European Convention for the Protection of Human Rights (and Articles 10 and 11³⁸¹ of the Charter of Fundamental Rights). This principle of freedom includes freedom of conscience, thought and religion (which implies the freedom to have or not to have a religion), the freedom to practise it if one has one and to be able to change it if one wishes. The adoption of the conclusions of the Council of the European Union on freedom of religion and belief³⁸² of 16 November 2009 reflects the values of secularism. It affirms, inter alia, the need to provide sufficient and effective guarantees of freedom of thought, conscience, religion and belief and stresses that freedom of expression is intrinsically linked to it, mentioning in particular the right to criticise religion. However, as recalled in Recommendation³⁸³ of the Parliamentary Assembly of the Council of Europe, which is based on Article 9.2 of the Convention, as well as the case-law of the European Court of Human Rights, this freedom is limited by respect for human rights, democracy and the rule of law and the two other principles set out below.

(c) the principle of non-discrimination

This principle is based on Article 14³⁸⁴ of the European Convention for the Protection of Human Rights, Articles 20 and 21 of the Charter of Fundamental Rights³⁸⁵ and Article II 10 of the consolidated Treaty of Lisbon³⁸⁶. It is consistent with the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief³⁸⁷ proclaimed by the United Nations General Assembly in 1981. This principle of non-discrimination includes the principle of equal rights, duties and respect for all persons, irrespective of their sex, religious or other beliefs, in other words, non-discrimination of persons on the basis of their membership or non-membership of a religion or belief, their sex or sexual orientation.

(d) the principle of respective autonomy/separation of the State and religious institutions.

This principle is clearly expressed by the Committee of Ministers in point 7 of the 2007 San Marino Final Declaration "respective autonomy of state and religion", and in Recommendation 1804 of the Parliamentary Assembly of the Council of Europe, adopted in 2007³⁸⁸ "separation of church and state". » It is not for religions to say what the law is in society. State/Religions and currents of thought relationships are organised at the level of the European Union within the framework of Article 17 of the Treaty on the Functioning of the European Union of Lisbon³⁸⁹. This can be summed up in one sentence: "The law protects faith as long as faith does not want to make law".

(5a) By its principles, secularism is also a cultural value, an attitude which, when internalised, must be part of the culture of every European. This culture implies an attitude of dialogue as stated in the Council of Europe's White Paper³⁹⁰ on Intercultural Dialogue, a dialogue in truth as Albert Camus³⁹¹ points out. It also implies recognition and respect for the other under the principle of non-discrimination, which requires knowledge of the other's religion or belief and culture. It also implies respect for freedom of conscience, without any value judgement other than that of respect for human rights.

(6) Secularism thus includes, through its principle of freedom, the freedom to criticise the foundations of the religion or philosophical conviction of others, with respect for individuals, as well as the freedom of religions to criticise positions contrary to their doctrine. That is why it is very important to distinguish, as recommended by the European Court of Human Rights, whether a critical expression is "hostility" which is admitted, or is an "offence or even incitement to hatred" which is not admitted. The Council of Europe must therefore oppose the criminalisation of the defamation of a religion which amounts to denying the right to criticism wrongly equated with defamation. Such an attitude must be not only that of individuals, but also that of leaders of religions and currents of thought, as well as that of political leaders. Paul Ricoeur thus speaks of a secularity of confrontation³⁹².

III. Secularism put to the test

III.1 The separation/relationship duality

(7) In the construction of Europe, religious groups and groups of thought and conviction constitute riches which it would be absurd to deprive ourselves of. They must be able to participate in democratic debate, as has been noted in most chapters of this report³⁹³. Secularism precisely allows them to do so with respect for people whose convictions may be diverse and for the principles that underpin it in the civil space and the space of references. Moreover, it is necessary to organise relations between bearers of religious or humanist convictions on the one hand and persons with political responsibilities on the other, while maintaining the respective autonomy of the political and the religious, which the Council of Europe recommends achieving through a structural separation of the political and the religious.

(8) While religions and schools of thought have a recognised right to express themselves and to have visibility in the public space and to intervene in public debate as discussed in Chapter III, they should not interfere structurally in the public sphere. This autonomy expresses the private nature of religion or humanistic convictions. Private nature does not mean that religions and currents of thought cannot express themselves in the public space, but simply that when religions or currents of thought express themselves, their words have no civil or legal authority and therefore only engage those who recognize their authority. Hence, the word duality which covers a "separation/relationship". Secularism is the framework for implementing this duality.

(8b) Indeed, the right of everyone to freedom of conscience means that a law considered by a religion of divine inspiration or expressing its convictions cannot be imposed by that religion on the citizens of a country outside the legal democratic processes they have established, even if that religion is entitled to make it a matter of public debate. Such a law can only be imposed if it is democratically approved in accordance with the legal rules of the country by those who have the legitimate power to do so. It should be noted from the outset that if a law protects a right, no one is obliged to take advantage of that right (if a law authorizes divorce, no one is obliged to divorce). In other words, "divine law" as translated by the hierarchies or "scholars" of religions cannot be above the laws that people give themselves democratically, this is the meaning of secularism and what makes it possible to make society. Recent challenges by religions and certain states to the decisions of the European Court of Human Rights³⁹⁴ show how topical these issues are for the implementation of human rights and how difficult it is to legally define the differences between religion, worship and culture originating from a religion and the impact of religious signs in the public space depending on the way they are used³⁹⁵. These important and often controversial questions concerning the relationship between religions, schools of thought and states in the implementation of human rights are the subject of this chapter VI.

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(9) While there is a European consensus on the principles on which secularism in Europe is based, their implementation in practice, and particularly that of the principle of the respective autonomy of politics and religion and thus the organisation of the "separation/relationship" duality between religions and states, varies from one state to another³⁹⁶. Some states have organised structures for relations with religions, others do so in a less organised way, the European Union does so under Article 17 of the Treaty of Lisbon on the Functioning of the European Union. The implementation of secularism, in particular the duality of "separation/relationship" depends on the different spaces in which each person can find himself or herself and act, but in no way reduces religion to the private sphere. It is therefore necessary to clarify the notions of public and private spaces and the public and private sphere.

III.2) Differentiation of relations between the State, religions and religious institutions within the different spaces³⁹⁷.

1) Private spaces

(1a) each person's personal space, deep inside or private sphere.

(10) It is the space of each person's being that is part of his or her private domain. It is inviolable, each person unique in his or her history and destiny is equal in right to every other person, is as important and as worthy of respect and recognition as every other. The first principle of secularism, set out above in § (5) b, like Article 8 of the ECHR, requires the State and Europe to protect this area of persons in accordance with the law. This is the space of freedom of thought, freedom of conscience.

(1b) the space specific to each NGO or private institution

(11) Secularism implies the freedom to organise oneself freely in accordance with human rights and the laws of the country, for associations, for religions and the cults which are their expression, for currents of thought and socially organised convictions. The State is not required to intervene in the internal organisation of organisations of conviction, nor in that of organisations of faith, particularly for the latter in the way they celebrate their worship, provided that they do not violate either the laws of the countries where these organisations are located or human rights.

2) Public or civil spaces

(12) In public spaces, what Paul Ricoeur³⁹⁸ called the secularism of confrontation should be exercised, that is, the secularism of dialogue and sharing, without abuse of a dominant position, without one of the interlocutors wanting to impose his point of view, possibly by force. These spaces include :

(2a) the civil space or space of civil society.

(13) It is the space freely open to any person (the street, for example). In this area, each person must be able to exercise his or her freedom in accordance with the three principles of secularism and the constituent values of Europe: the rule of law, democracy and human rights. Religions, their different tendencies and currents of thought have the freedom to express themselves in this space in a public way and to practise the corresponding cults. However, such expressions and demonstrations must respect the freedoms of others in accordance with Article 9.2 of the ECHR and are binding only on those who freely express themselves and those who freely join them. These expressions are not binding on others, on the State or on politics. Thus any violent action against followers of a law-abiding religion by those of other religions or schools of thought is an attack on secularism and human rights. Similarly, the appropriation, without legal authorization, of the public space, even momentarily, by the followers of a religion or current of thought, to the detriment of others is a violation of secularism and human rights.

(14) That is why the State must preserve in this area the freedom of expression of religions, their different tendencies and currents of thought. Similarly, religious organizations must respect the expressions of those who are not part of their organization. The State must therefore preserve in this space the freedom to criticise the foundations of religions and currents of thought, while opposing all forms of discrimination against their followers.

2b) the abstract space of references, ideas and representations.

(15) This is the space of ethics, spiritualities, values, moral, religious and convictional references, and cultural facts. It is a common social and spiritual good that belongs to everyone, be it cultures, religions, convictions or States. The State must ensure that no person, no religion or current of thought, no culture appropriates this space or reduces it to its own vision because this appropriation and reduction is the door open to communitarianism, exclusion or totalitarianism. It is therefore very important at the level of civil society to discern what is culturally and culturally relevant.

(2c) The implementation of these rights may depend on the spaces considered, as permitted by paragraphs 9.2 and 10.2 of the Convention and the Charter. This is the case for businesses and schools³⁹⁹, among others, which is the source of much debate.

3) The public and political sphere

(16) It is the set of services to the public under the responsibility of the State and the bodies of State authority. **In this sphere, secularism implies the institutional and legal separation between the State and religious organizations.** The State and the public authorities must thus refrain from any inclination or aversion to belief or non-belief, and conversely no religious or belief institution must intervene other than by contributing to democratic debate in this political sphere, which raises the delicate question of the limits of

political lobbying and advocacy of religions and currents of thought In this sphere there must be a **secularism of neutrality or abstention** according to the expression of Paul Ricoeur⁴⁰⁰ : "secularism knows all religions but does not recognise any of them".

(17) It should be noted that different European countries have different positions on how to implement the separation/relationship duality in the public sphere, in particular under the first paragraph of Article 17 of the Lisbon Treaty on the Functioning of the European Union. For example, some European states recognise religions (such as Germany or Italy) or even state religions, such as Anglicanism in England and the Orthodox religion in Greece.

IV. Secularism and Religions

(18) All religions have had to reflect on themselves in order to move from confusion to a separation between religion and politics, between the authority conferred by virtue of worship within religious organizations and the power conferred by democratic decision, some of the modalities of this separation sometimes being made explicit by agreements or for the Holy See by concordats⁴⁰¹.

This transition from confusion to the separation of the political from the religious, of the state from religious institutions is one of the necessary conditions for the existence of multi-confessional democratic societies. Even if there are still religious leaders in all religions, such as fundamentalist practitioners, who still seek to impose the point of view of their religion (especially on certain points of moral or ethical conduct) outside the democratic debate on all believers or atheists, most religious leaders and people who recognise themselves in one of the religions in Europe have integrated this process of secularisation⁴⁰², which is the foundation of secularism for Europe. The Christian religions have done so, especially on the basis of Jesus' famous response, "*Render to Caesar what is Caesar's, and to God what is God's.*" (Mt 22:19-21).

(19) The attitude of Muslim leaders criticizing the universal character of human rights stems from a fundamental difference in the way of considering the relationship between religion and state. This difference is, as Abdelwahab Meddeb⁴⁰³ says very clearly, "the one that distances the 'great separation' from the 'consubstantiality' between politics and religion, the first perfectly represented by the West, the other, common to historical traditions, coming to be polemically actualized by Islam. And it is by this polarity that human rights are judged. Historically, the 1789 declaration and the 1948 declaration were formulated after the "Great Separation". And they come to be challenged in the name of a difference that continues to claim "consubstantiality". This led Mohamed Arkoun⁴⁰⁴ to say: "Islam is theologically Protestant since the Muslim is free in his relationship with God, and politically Catholic because since the Umayyads, the State (i.e. the political power) has confiscated this freedom proper to Islam to constitute itself as an autonomous sphere of the spiritual".

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(20) In such a perception of "consubstantiality", there is no place for secularism, nor therefore for the principles that characterize it, in particular for freedom of conscience, thought and religion, which implies the freedom to have or not to have a religion, the freedom to practise it if one has one and to be able to change it if one so wishes. Can Islam continue to impose respect for Sharia law on non-Muslims, as implied in the Cairo Declaration on Human Rights in Islam⁴⁰⁵, while the European Court of Human Rights has declared Sharia law to be contrary to human rights⁴⁰⁶ and democracy⁴⁰⁷? Article 10 of the 1990 Cairo Declaration⁴⁰⁸ proclaims "Islam is the religion of innateness". The murders of Christians in Islamic countries and of politicians in Pakistan who oppose the blasphemy law and the repression in Iran are recent illustrations of this. Indeed, article 22 (a) of the 1990 Cairo Declaration states: "Everyone has the right to express his opinion freely, provided that it is not inconsistent with the principles of sharia law", and article 24: "All the rights and freedoms set forth in this Declaration are subject to the provisions of sharia law." If Sharia can be interpreted in various ways, which leaves a possibility of compatibility with secularism, the majority interpretations coming from fundamentalist currents prohibit in most cases to change one's religion⁴⁰⁹ or not to have one and proclaim the inequality between men and women, which is contrary to the ECHR as the European Court of Human Rights noted in its 2003 report⁴¹⁰.

(21) It should be noted, however, that the transition from "consubstantiality" (which was the case of the Christian religions during the period of Christianity) to the "great separation" is progressing in Islam, as it did during secularization in Christianity. The attitude of the vast majority of Muslims in European countries, as shown by the numerous debates and documents⁴¹¹, is an optimistic element. It should be noted, however, that European Muslim leaders, because of their close links with the authorities in their countries of origin, find it difficult to take a stand on issues relating to freedom of conscience, the right to change religion or the murder of Christians. The French Muslim Council, for example, has taken no position on the murder of Christians or the persecution of converts to Christian religions in Algeria. They play only a minor role in violations of freedom of expression in Tunisia.

This process of separation nevertheless seems to be under way in the countries of Islam⁴¹², as the recent practice of King Abdullah in Saudi Arabia would tend to show, even if there is still a great deal of reluctance and the massacre of Christians in these countries is still taking place and anti-Semitism seems to be a state policy. Indeed, it can be noted that the Arab Charter of Human Rights (1994)⁴¹³ makes less reference to the Sharia than the Cairo Declaration of 1990 and the revised version in 2004⁴¹⁴ of this charter, even less so.

(22) This transition is, however, far from complete, nor is it accepted for all religions. It involves reflection for Islam on the Sharia and for other religions on their internal laws so that the spirit and the letter of human rights are universally recognised by all religions and internalised by all practitioners of these religions. Such a transition also requires education, as we are going to discuss below.

V. Secularism and teaching

(23) The "and" in this subtitle should be understood in both senses: the teaching of secularism as well as secularism in school and teaching. The Council of Europe therefore recommends that states introduce human rights education and education in religious facts and beliefs⁴¹⁵.

(24) Since secularism is a cultural value, an attitude, as well as a set of principles to regulate the interactions between religion, politics and society, with respect for human rights, it is essential to teach it to both young children and adolescents. Such teaching implies the establishment in states of human rights education and education in religious fact and belief⁴¹⁶, as recommended by the Council of Europe. This education must enable everyone to move from form to the meaning of a text, a work of art or even an action. This education must be open to all children regardless of their beliefs and those of their parents so as to foster social cohesion in multi-convictional societies, in particular by ensuring mutual knowledge of socio-cultural diversities, especially in the field of religions, their current reality, their history and their role in civilizations, but also the place and role of agnostic and atheistic philosophies.

(25) Given the non-denominational awareness of the school, the right of everyone to manifest and share their convictions while respecting the rights of others, the right of parents to transmit their values and their faith or philosophy, how can the implementation of these rights be organised politically? The Lautsi case concerning the presence of crucifixes in public schools in Italy^{417, 418} and the repercussions of the judgment of the European Court of Human Rights⁴¹⁹, shows that this is a difficult issue, all the more so as culture and religions are intertwined in some countries.

(26) How can we educate for the recognition of others and their riches, while preserving the non-confessional character of a formation in the religious context? If the public school does not know if God exists, it knows and must know that there are individuals and collectives who believe that God exists and that this fact has all kinds of interferences in individual and social life. What difference do we make between an awareness of the religious context and a sensitivity to religious acts? Do we have to do both? What facts should be put forward to enable a transparent and accessible dialogue? These are some important questions to be debated for an education respectful of secularism, teaching about secularism in its respect for people of different beliefs and open to all beliefs.

VI. Conclusions

(27) Secularism as defined by the bodies of the Council of Europe is thus the adequate framework for the implementation of human rights, since it allows to satisfy the rights and duties protected by the Convention for the Protection of Human Rights in respect for persons, as recalled by the European Court of Human Rights in its rulings.

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Secularism thus provides a framework that allows every male and female citizen of Europe to benefit from human rights, whether or not they have a religion, while at the same time being able to practise their religion if they have one, to change their religion, to discuss their religion or their philosophy with others.

(28) Secularism is also the normative framework for regulating the relations between religions, currents of thought and the state. It also ensures that every male and female citizen has access to the possibility of intervening in political life on the basis of their convictions, whether they be religious or atheists, to make proposals in appropriate places concerning life in society, in short to participate in the life of Europe as a citizen.

(29) Secularism enables everyone to be both a citizen AND a follower of a religion, faith or atheistic philosophy, instead of being forced to choose between being citizen OR follower of a religion, faith or current of thought. That is why secularism is becoming an essential value of European construction which must be taught from a very young age, together with human rights and the the various religions. This is in line with what the White Paper on Intercultural Dialogue of the Council of Europe.

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APPENDIX

Treaties, conventions, case laws quoted in the text

I. International Treaties

I.1. The Universal Declaration of Human Rights (1948)

Article	text	Chapter, section
Clause		I, I
1	All human beings are BORN free and equal in dignity and rights	II, I
2		IV, IV.II
3		IV, IV.II
10		III,II.3
18	Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change one's religion or belief, and freedom, either alone or in community with others and in public or private, to manifest their religion or belief in teaching, practice, worship and observance.	III, I
22	Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.	II
23	1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. 2. Everyone, without any discrimination, has the right to equal pay for equal work. 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. 4. Everyone has the right to form and to join trade unions for the protection of their interests.	II
Article 25	1. Everyone has the right to a standard of living adequate for the health and well-being of oneself and of one's family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond one's control. 2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.	II

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Article 26	<p>1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.</p> <p>2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.</p> <p>3. Parents have a prior right to choose the kind of education that shall be given to their children.</p>	II
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I.2 UN Declaration of Vienna of 1993

Ensemble		Intro, I I, I ; II, II
5		III.VI, IV.II

I.3 International Covenant on Economic, Social and Cultural Rights (UN 1996)

Article	text	Chapter, section
2		IV, IV.II
3		IV, IV.II
13	(3) The States party to the present Covenant undertake to respect the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.	III, III.2;

I.4 International Covenant on Civil and Political Rights (ICCPR) 16 December 1966

Article	text	Chapter, section
2		IV, IV.II
		IV, IV.II
18	<p>1. The first paragraph is similar to that of the Universal Declaration.</p> <p>2. No one shall be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.</p>	III,

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	<p>3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.</p> <p>4. The States parties to the present Covenant undertake to respect the liberty of parents, and where applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.</p> <p>Translated with www.DeepL.com/Translator (free version)</p>	
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I.5 Resolutions of the United Nations General Assembly

N°	texte	Chapter, section
35/55	<p>"Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief:</p> <p>Art 1: Everyone has the right to freedom of thought, conscience and religion; this right includes ... freedom, either alone or in community with others and in public or private, to manifest his or her religion or belief in teaching, practice, worship and observance".</p>	III,I
52/122	Elimination of all forms of religious intolerance	
HCDH 2005/40	Elimination of all forms of intolerance and discrimination based on religion or belief".	

I.6 CEDAW: CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Article	text	Chapter, section
Ensemble		IV
1	For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.	IV.II
2	States parties condemn discrimination against women in all its	IV.II

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	forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women	
5	States parties shall take all appropriate measures to : (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; (b) To ensure that family education contributes to a proper understanding of maternity as a social function and to the recognition of the common responsibility of men and women for the upbringing and development of their children, it being understood that the interests of the children are the paramount consideration in all cases	IV.II
10	States parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and, in particular, to ensure, on a basis of equality of men and women:....	IV.II
16	States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.... Translated with www.DeepL.com/Translator (free version)	IV.II

UNESCO : Declaration of Principle on Tolerance 16 November 1995

Article	text	Chapter, section
1.4	The practice of tolerance means that everyone has a free choice of beliefs and accepts that the other person enjoys the same freedom. It means accepting the fact that human beings, who are naturally characterized by the diversity of their physical appearance, situation, mode of expression, behaviour and values, have the right to live in peace and to be as they are. It also means that no one should impose his or her opinions on others.	III, I

II. Regional treaties and conventions, case laws

II.1 Europe

II.1.1 Treaties of Lisbon (TFUE et TUE)

Article	text	Chapter, section

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16 TFUE	E	Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.	III, III
2 TUE			IV.II
3 TUE			IV.II
21 TUE			IV.II
17 TFUE		The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.	VI, III

II.1.2 Charter of Fundamental Rights of the European Union

Article	texte	Chapter, section
Whole article		Intro, I
10	<p>1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.</p> <p>2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.</p>	III.I VI, II
11	<p>1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.</p> <p>2. The freedom and pluralism of the media shall be respected.</p>	III,I ; III,II VI, II
52	<p>1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.</p>	III, I ; III, II
82	"The Union respects the cultural, religious and linguistic diversity"	

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II.1.3 European Parliament

Resolution	text	Chapter, section
Resolution A7 0086/2012 18 April 2012	<p>Human Rights in the world and the European Union's policy on the matter: Articles 106 to 110</p> <p>Human Rights, liberty of religion and persecution of christians in the world</p> <p>The European Parliament ... strongly condemns any persecution on the basis of religion or belief; reaffirms its commitment to the realisation of freedom of religion in all parts of the world as part of the Union's strengthened bilateral and multilateral efforts; reiterates its concern about the full respect for the freedom of religion of all religious minorities in several third countries...Categorically condemns all acts of violence against Christians, Jews, Muslims and other religious communities as well as all forms of discrimination and intolerance based on religion and belief against religious populations, apostates and non-believers..</p> <p>Articles 113 and 114</p>	I, I V, II

II.1.4 European Court of Justice

judgment	text	Chapter, section
<i>Defrenne II</i> , (1976), aff. 43/75, Rec. 455, para.12.		III

II.1.5 European Convention of Human Rights and Fundamental Freedoms of the Council of Europe

Article	text	Chapter, section
Whole article		Intro, I
8		
9	<p>Freedom of thought, conscience and religion</p> <p>1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change their religion or belief and freedom, either alone or in community with others and in public or private, to manifest their religion or belief, in worship, teaching, practice and observance.</p> <p>2. Freedom to manifest one's religion or s shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.</p>	II, I ; III, II.3 III, II.2 V, II

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10	<p>1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.</p> <p>2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.</p>	II, I V,V
11		VI, II
14	The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.	IV, II V,V VI,I
Protocol 12		IV. II

II.1.6 European Social Charter

Article	text	Chapter, section
Complete		Intro, I, II, IV

II.1.7 Case Law of the European Court of Human Rights

Case	text	Chapter, section
Refah Partisi case (2001)	(72) The Court notes that, read together, the declarations in question, which contain explicit references to the establishment of Sharia law, are difficult to reconcile with the fundamental principles of democracy, as they result from the Convention, understood as a whole. It is difficult both to declare respect for democracy and human rights and to support a regime based on Sharia law, which differs markedly from the values of the Convention, particularly with regard to its rules of criminal law and criminal procedure, its place for women in the legal system and its intervention in all areas of private and public life in accordance with religious norms.	II, I ; II, II

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Refah Partisi judgment 13 February 2003	The Court shares the Chamber's analysis* as to the incompatibility of Sharia law with the fundamental principles of democracy, as enshrined in the Convention.	II, II
ECHR judgments 7 Dec. 1976 Handyside c/UK	The Court therefore accepts that the essential aim of the judgment of 29 October 1971, applying the laws of 1959/1964, was to protect the morals of young persons, a legitimate aim under Article 10 para. 2 (art. 10-2).	III, I
25 may 1993, Kokkinakis c/Greece,	(31) ...According to Article 9 (art. (31) According to article 9 (art. 9), the freedom to manifest one's religion is not only exercised collectively, "in public" and within the circle of those whose faith one shares, but also "individually" and "in private"; moreover, it includes in principle the right to try to convince one's fellow human beings, for example by means of "teaching", without which "the freedom to change religion or belief" enshrined in article 9 (art. 9) might otherwise remain a dead letter....	III, I
Refah Partisi (Welfare Party) v. Turkey (31 July 2001) paras. 43, 49, 51		III, III
20 sept. 1994 Otto-Preminger-Institute c/Austria		III, II.2E
ECHR Günduz v. Turkey n° 35071/95	§40	III,II.2
2 mai 2006 Aydin Tatlav c/Turkey		III,II.2 ;
judgment RR.v.Poland (n° 27617/04) of 26 may 2011		III, III.2 ;
Lautsi and others case c. Italy (requête no 30814/06),...	the European Court of Human Rights has held that the preponderant place of a religion in a country's history can justify the fact that a particular place is given to it in the public space).	III, VI.1
Leyla Sahin c. Turkey judgment of 10 november 2005, par. 115).	La Grande Chambre de la Cour s'est, entre autres, fondée sur le principe de l'égalité des sexes afin de déclarer compatible avec la CEDH l'interdiction du port du foulard islamique dans les établissements universitaires en Turquie	IV, IV.3
Irlande (Cour EDH, G.C. 16 décembre 2010, Req. n° 25579/05)		IV, III
Vejdeland and Others v. Sweden (Application no. 1813/07) 9 February 2012		V, II
Smith & Grady v. U.K		V

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<i>and, Lustig-Prean & Beckett v. U.K</i>		V
<i>L. and V. v. Austria,</i>		V
<i>Mouta v. Portugal;</i>		V
Karner v. Austria,		V
Kozak v. Poland,		V
P.B & J.S. v. Austria,		V
J.M. v. UK		V
Schalk & Kopf v. Austria paragraph 61		
Gas et Dubois c. France, Request n° 25951/07 judgment of 15 March 2012		
Refah Partisi (Welfare Party) v. Turkey (31 July 2001) paras. 43, 49, 51		
judgment Clift v. UK (application 7205/07 13 July 2010 , § 57	Sexual orientation is part of the "status" (i.e. an identifiable, objective or personal (innate or inherent) characteristic of each person, such as gender and ethnicity, protected by Article 14 of the Convention.	V
judgment of 21 October 2010 (Alekseyev v. Russia) , n° 4916/07, 25924/08 and 14599/09) paragraph 86	"The Court has no scientific evidence or sociological data to suggest that the mere mention of homosexuality or an open public debate on the social status of sexual minorities would harm children".	V
judgment of 4 december 2008, Dogru c. France	Banning the Islamic veil in schools is not a violation of Article 9 of the ECHR	VI
judgment of 4 december 2008 Kervanci c. France	Banning the Islamic veil in schools is not a violation of Article 9 of the ECHR	VI

II.1.8 Council of Europe White Paper on intercultural dialogue

section	texte	Chapter, section
complete		Intro, I,II, III, IV

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II.1.9 Council of Europe Committee of Ministers

	text	Chapter, section
Recommendation CM/Rec(2010)5	Preamble: measures to be taken to combat discrimination on grounds of sexual orientation or gender identity.	V, II
Joint reply from the Committee of Ministers adopted at the 1036th meeting of the Ministers' Deputies (16 September 2008)	It [the Committee of Ministers] reaffirms its attachment to the common European principle of separation between governance and religion in the Member States of the Council of Europe in full compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This principle, together with that of freedom of conscience and thought and that of non-discrimination, is an intrinsic part of the concept of European secularisation.	VI

II.1.10 Recommendations and resolutions de the PACE

Reference	text	Chapter, section
Resolution 1763 adopted 7 October 2010 § 2	The Parliamentary Assembly underlines the need to affirm the right of conscientious objection and the responsibility of the state to ensure the right of every patient to receive legal medical treatment within an appropriate period of time. The Assembly is concerned about the way in which the non-regulation of this practice unequally affects women, especially those on low incomes or living in rural areas.	III, II.1
<u>1178 (1992)</u> of 5 February 1992	regarding sects and new religious movements	III
<u>1202 (1993)</u> of 2 February 1993	regarding religious tolerance in a democratic society	III
<u>1296 (1999)</u> of 27 January 1999	"religion and democracy"	III
<u>1412 (1999)</u> of 22 June 1999	illegal activities of sects	III
Resolution 1464 (2005)	Women and religion in Europe	IV
DOC 10670 4 octobre 2005	Women and religion in Europe	IV
<u>1720 (2005)</u> of 4 October 2005	"Education and religion"	III, IV
<u>1510 (2006)</u> of 28 June 2006	Freedom of expression and respect for religious beliefs	III
Resolution 1615 2008	"Empowering Women in a Modern Multicultural Society"	IV
Doc 11537 17 March 2008	Access to safe and legal abortion in Europe	IV

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Resolution 1607 (2008)	Access to safe and legal abortion in Europe	IV
Doc 12266 25 may 2010		IV
Recommendation 1927 (2010)		IV
Resolution (RES) 1728 29 April 2010.	Discrimination on the basis of sexual orientation and gender identity voted by PACE	V
DOC 12195 of 23 March 2010 of Mr. Andréas Gross	"Discrimination on the basis of sexual orientation and gender identity"	V
Resolution 1846 (2011)	"Combat all forms of discrimination based on religion"	VI, IV, V
Recommendation 1804 29 juin 2007	State, religion, secularism and human rights	VI, II
Report DOC 11298	Etat, religion, laïcité et droits de l'Homme	VI, II
Recommendation n° 1805, 2007	"Blasphemy and insults of a religious nature"	

II.1.11 Declarations, Resolutions, Recommendations of the INGO Conference

Article	text	Chapter, section
Resolution CONF/PLE(2011)RES1 (27 01 2011)	Sectarian abuses and violation of Human Rights	Intro, II.2 III, III.2

II.2 Islamic countries

II.2.1 Universal Declaration of Human Rights in Islam (1981 UNESCO)

Article	text	Chapter, section
Whole		II, I

II.2.2 Cairo Declaration on Human Rights in Islam (Cairo 1990)

Article	text	Chapter,

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		section
Whole		II, I ; II, II ;
10	Islam is the religion of the innate	II, II
22a	Every person has the right to express their opinions freely, provided they do not contradict the principles of sharia law.	II, II
24	All the rights and freedoms set forth in this Declaration shall be subject to the provisions of the Shariah.	

II.2.3 The Arab Charter of Human Rights (Tunis 2004)

Article	text	Chapter, section
Whole		II, I

II.2.3 The African Charter of Human and Peoples' Rights

Article	text	Chapter, section
Whole		II, I

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¹ NOTES

TEXTS ADOPTED BY THE CONFERENCE OF INGOs

² D. Boyarin, *La partition du judaïsme et du christianisme*, Paris, Cerf, 2011, p.18

³ analyses by the Commissioner for Human Rights and the Venice Commission, in particular those set out in the latter's report CDL-AD(2008)026 on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred;

- Recommendation of the Conference of INGOs CONF/PLE(2012)REC5 on "Gender Equality: a universal value, principle and human right to be respected and promoted in all fields" and CONF/PLE(2012)REC3 on "Combating discrimination on grounds of sexual orientation and gender identity" and its Resolution CONF/PLE(2011)RES1 on "Sectarian excesses and violations of human rights",

- recommendations and resolutions of the PACE, in particular the recommendations on "State, religion, secularity and human rights" [Rec. 1804 (2007)], "Blasphemy, religious insults and hate speech against persons on grounds of their religion" [Rec. 1805 (2007)], and the resolutions on "Women and religion in Europe" [Res. 1464 (2005)], "Discrimination on the basis of sexual orientation and gender identity" [Res. 1728 (2010)], "Access to safe and legal abortion in Europe" [Res. 1607 (2008)], "Combating all forms of discrimination based on religion" [Res. 1846 (2011)] and "Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence" [Res. 1928 (2013)];

⁴ Provisional report of the Working Group established within the Human Right Committee of the INGO Conference of the Council of Europe. This report is the explanatory memorandum below from page 22

⁵ The Vienna Declaration of 25 June 1993

⁶ Resolution 1928(2013) of the parliamentary Assembly of the Council of Europe
<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19695&lang=en>

⁷ A threat to the state is deemed to exist in cases where the state is a guarantor of the official religions, with no separation between the two.

⁸ The Convention on the rights of the Child of the United Nations

⁹ The declaration on genuine democracy adopted by the Conference of INGOs on 24 January 2013.

Introduction and Issues

¹⁰ The Europe of the Council of Europe comprises 47 States including Turkey, Russia, Georgia

¹¹ The Europe of the European Union only comprises 27 States amongst the 47 Member States of the Council of Europe

EXPLANATORY MEMORANDUM Notes

¹² The most appropriate term in French should be "the rights of human beings", since the rights of Man include all human beings and therefore Women. But this word is not used internationally and can lead to confusion.

¹³ This convention, signed and ratified by all the member states of the Council of Europe (47 States) and approved by the European Union, via Article 6 of the Treaty of Lisbon, is different from the European Charter of Fundamental Rights which corresponds to the European Union. Cette convention, signée et ratifiée par tous les états membres du Conseil de l'Europe (47 états) et approuvée par l'Union. Click on [Council of Europe Human Rights](#) for the safeguard convention

¹⁴ Click on [Charter of Fundamental Rights of the European Union](#) to read the document.

¹⁵ A set of 5 documents of the UN, namely, the Universal Declaration of Human Rights (1948); The International Covenant on Economic, Social and Cultural Rights (signed on 16 December 1966 came into force on 3 January 1976); The international covenant about civil and political rights (Adopted and open to signature, ratification and adherence by the General Assembly in its resolution 2200 A (XXI) of 16 December 1966, came into force on 23 March 1976) Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Adopted and proclaimed by the General Assembly in its resolution 44/128 of 15 December 1989)

¹⁶ <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>

¹⁷ European Social Charter (revised)
<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163>

¹⁸ European Court of Human Rights <https://www.echr.coe.int/Pages/home.aspx?p=home&c=>

¹⁹ European court of Justice https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en

²⁰ Applications and Jurisprudence of the judgments of the European Court of Human Rights
<https://hudoc.echr.coe.int/eng#%20>

²¹ D. Hervieu-Léger « Le pèlerin et le converti, la religion en mouvement » Paris Flammarion 1999, (*The Pilgrim and the Convert*, 11. European Social Charter (revised)

²² Grace Davie "Religion in Britain since 1945, Believing without Belonging" September 1994, Wiley-Blackwell . Cf. also "Believing Without Belonging: Just How Secular Is Europe?":
<https://www.pewforum.org/2005/12/05/believing-without-belonging-just-how-secular-is-europe/>

²³ France has thus created MIVILUDES Interministerial Mission of Vigilance and Combat againsts sectarian abuses (misuse of freedom of thought) <https://www.derives-sectes.gouv.fr/quest-ce-quune-d%C3%A9rive-sectaire>

²⁴ FECRIS <https://www.fecris.org/>

²⁵ Recommendation "Sectarian abuses and violation of human rights" adopted 27 January 2011 and Resolution CONF/PLE(2011)RES1 "Sectarian abuses and violation of human rights"

²⁶ One of the reasons given by the defence in the judgment of the European Court of Human Rights in the Lautsi case in Italy, since the crucifix can be considered as an element of culture, a symbol of peace and not necessarily as a religious symbol.

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²⁷ White Paper on Intercultural Dialogue, Council of Europe (French). (Made registration to request English version)³ See also Hans Ucko "Religious pluralism and social cohesion: making religions an element of mutual recognition" in Trends in Social Cohesion n°19 Council of Europe Publishing 2008

²⁸ Bernard Quelquejeu " Sur les chemins de la non-violence, Etudes de philosophie morale et politique ", Librairie philosophique J.Vrin Paris 2010, p 132-133. (Studies of moral and political philosophy. "Religions appear to any observer as systems of belief, rites and actions that allow humans to collectively relate to what they present as the "Ultimate" or the Absolute... They are thus concerned with all that concerns the relationship of Humanity to the Ultimate..." To do this, they propose three types of content: representations of the Ultimate (stories, founding texts, myths, etc.), rites or cults to be practiced in order to relate to the Ultimate (celebrations, liturgies, sacred spaces and monuments, etc.) and finally moral norms prescribed as forbidden or obligations defining rules of conduct"

²⁹ According to B. Quelquejeu, *ibid.* p 134-135

³⁰ This word translates a first etymology of the word religion: religio coming from religare, to connect, to attach.

³¹ This word translates the second etymology of the word religion: religio coming from relegere, to gather in oneself, to reflect.

³² Bernard Quelquejeu, *ibid.* p 129

³³ Many texts of these religions reflect this: for example, the Council's Declaration "Dignitatis Humanae" Vatican II or the encyclical "Veritatis Splendor" (1993) for the Catholic Church; the verses (3, 19; 3, 83-85) of the Koran, for Islam,

³⁴ Cf. for example the report on the "religious dimension of intercultural dialogue" by Mrs Brasseur (doc 12553 of 25 March 2011) adopted by the PACE which explicitly mentions a right of religions in its § 50, 56 and 59, or the Dictionnaire du Droit des Religions (Dictionary of the law of religions) (published on 3 /02/2011 by CNRS, author Francis Messner). It is in fact the establishment of the organization of cults and the implementation of human rights with regard to religions and religious practice.

³⁵ This remark also applies to any qualification. Thus, a person should not be equated with his or her sexual orientation. It is why this report is about the homosexual person and not about homosexuals.

³⁶ Explanation of the European Union's vote Human Rights Council - 13th Session Resolution L.1 - Defamation of religions

³⁷ Siawi, "Secularism is a Women's Affair - Appeal against UN Resolutions on 'Defamation of Religions'", Sisyphé info, 2 June 2007.³⁰ This remark also applies to any qualification. Thus, a person should not be equated with his or her sexual orientation. It is why this report is about the homosexual person and not about homosexuals.

³⁸ from the Anglican Church

³⁹ It may be added that one of the highest figures of the High Court of England, Lord Philips of Worth Matravers, in a speech in Whitechapel, considered that Sharia principles can be useful in mediation and other forms of non legal dispute resolution.

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⁴⁰ Hague Declaration: Conference on Faith and Human Rights December 2008 (not found) : "We recognize our responsibility to our believers and to the world at large and we reaffirm our intention to take the necessary steps both within our communities and in cooperation with others to promote and to protect the human rights and fundamental freedoms of each and every person, regardless of religion or beliefs."

See also Declaration of Human Rights by the World's Religions: <http://worldsreligions2016.org/declaration/>

⁴¹ "Human Rights ... are ... the highest in human wisdom ... They have a ... sacred character", from Paul VI's statement at the United Nations in 1965.

⁴² Dalai Lama on the occasion of the 60th anniversary of the Universal Declaration of Human Rights (2008) :: Our rich diversity of cultures and religions should help to strengthen fundamental human rights internationally in all communities. Underlying this diversity are fundamental human principles that bind us all together as a community, members of the same human family. The issue of human rights is so fundamentally important that there should be no different views about them. We all have common needs and concerns. We all seek happiness and try to avoid suffering no matter what our race, religion, gender or social status. However, the simple maintenance of the diversity of traditions must never justify human rights violations. Thus, discrimination against people of different races, against women, and against the weakest members of society may be traditional in some regions, but if they are in contradiction with universally recognized human rights, these types of behaviour need to change. The universal principle of the equality of all human beings must take precedence. HH the 14 th Dalai Lama in Buddhist Approaches to Human Rights: Dissonances and Resonances, C. Meinert, H.-B. Zöllner (eds.), Transcript Publishers, 2010, p 192

⁴³ New Arab Charter for Human Rights (May 2004)

⁴⁴ [White Paper on Intercultural Dialogue, Council of Europe June 2008.](https://www.coe.int/t/dg4/intercultural/source/white%20paper_final_revised_en.pdf)
https://www.coe.int/t/dg4/intercultural/source/white%20paper_final_revised_en.pdf

Chapter I

⁴⁵ The emergence and evolution of Human Rights. It is worthwhile consulting:
- the General Report of Edouard Jagodnik, delivered at the Forum of Oslo on the Universality of Human Rights on 22 October 2010.

Link to: http://forumoslo.fede.org/textes/fr/EdouardJagodnik_RapportGeneral_FR.pdf (now invalid, will check with FEDE)- Chapter I of the text of the International Theological Committee: Search for a universal ethic: A new look on Natural Law

⁴⁶ Wikipedia Code of Hammurabi

⁴⁷ From Code of Hammurabi

⁴⁸ . cf. for example The Golden Rule : https://en.wikipedia.org/wiki/Golden_Rule

⁴⁹ "Whatever disgusts thee, do not do it to others either." (Shayast-na-Shayast 13:29, circa 1000 B.C.)

⁵⁰ "One word that can be used as a rule of conduct for life is 'reciprocity'. Do not inflict upon others what you do not aspire to...even." Confucius (Middle Way Teaching) 13:3.

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⁵¹ Confucius, Interviews 15, 23 (translation by A. Cheng, Paris, 1981, p. 125). The first question is: 'Compassion (shù)', isn't that the key word? What you would not want to be done to you, do not inflict it on others.

⁵² "One shall not do to another what one considers harmful to oneself. This is, in short, the rule of virtue" Mahābhārata, Anusasana parva, 113, 3-9 (ed. Ishwar Chundra Sharma and O.N. Bimali; transl. according to M.N. Dutt, Parimal Publications, Delhi, robbery. IX, p. 469).

⁵³ "Don't hurt others in ways that you yourself would find hurtful." (Udana-Varga, 5:18 to 500 BC)

⁵⁴ "Whatever is hateful to you, don't do it to your neighbour. This is the whole law, everything else is commentary." (The Talmud.) Shabbat, 31a

⁵⁵ "Whatever you want men to do for you, do it yourself for them, for it is the law and the prophets." (New Testament, Matthew 7:12). See also Lk 6:31.

⁵⁶ According to Abû Hamza Anas ibn Malik, the Prophet said, "None of you is a true believer unless he loves for his brother what he loves for himself." 13th of Nawawi's 40 Hadiths, reported by al-Bukhari and Muslim. Cf. the text at : Charh des 40 Hadîth de l'Imâm An-Nawâwî par Shaykh Al-'Uthaymîn (apparently no English version) It should be noted that the the commentary specifies that this is the brother in Islam, which reduces the scope of this hadith. However, there is no unanimity among Muslim scholars about the word "brother" and whether that word means only a Muslim. I think we need to interpret the word "brother" more broadly without limiting it to the "Muslim" brother. There is an opinion that says that "love"...in this hadith (said of the Prophet) also concerns non-Muslims. Here is the link (in Arabic):

⁵⁷ Thomas Deswarte Pouvoirs Eglise et société (Powers, Church and Society) CNED Capes Agrégation Histoire éditions Sedes page_251

⁵⁸ "God created Man in his own image, in the image of God he created him, he created them male and female" Gen 1:27.

⁵⁹ as Jesus will do perfectly for Christians

⁶⁰ Cf. human dignity, Bruno Feillet March 2003. (No English version)

⁶¹ "I have given all men freedom to worship their own gods, and commanded that no one should be allowed to abuse them for the sake of this. »

⁶² "Certainly, the natural law is by right accessible to human reason common to believers and unbelievers, and the Church has no exclusivity, but, since Revelation assumes the requirements of natural law, the Church's magisterium is constituted by it as the guarantor and interpreter". the International Theological Committee: Search for a universal ethic: A new look on Natural Law §34
http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_en.html#

⁶³ The Talmud says for example: "To save one man is to save the whole of humanity.

⁶⁴ See for example Philippe de la Chapelle, "La déclaration Universelle des Droits de l'Homme et le catholicisme" Editions Pichon (The Universal Declaration of Human Rights & Catholicism") Durand Dauzias 1967 and an easy to read text: Frédéric Lenoir " Le Christ Philosophe " Editions Plon Paris 2007, 306 p (Christ the Philosopher)

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⁶⁵ <https://fr.wikipedia.org/wiki/Tripitaka> (Canon of all the teachings of the Buddha): Renounce all evil, cultivate good, purify your thoughts,Dhamapada 183

⁶⁶ Cf. for example the preamble to the Arab Charter on Human Rights: "Proclaiming the Arab nation's faith in dignity since God privileged this nation by making the Arab world the cradle of divine revelations and the place of humankind, civilizations have stressed his right to a life of dignity by applying principles of freedom, justice and peace". https://en.wikipedia.org/wiki/Arab_Charter_on_Human_Rights
[Click on the 2004 Arab Charter on Human Rights.](#) ,

⁶⁷ The notion of human dignity and its meaning have evolved since its first appearances in antiquity with the Stoic philosophers <https://en.wikipedia.org/wiki/Dignity>

⁶⁸ Pontifical Commission "Justicia et Pax":[The Church and Human Rights](#), II § 16

⁶⁹ Cf. human dignity, Bruno Feillet March 2003.

⁷⁰ Yves Bruley Que sais-je? L'histoire du catholicisme éditions PUF Page 69 (What do I know? The History of Catholicism)

⁷¹ See A.C. Grayling, "Towards the light, the story of the struggles for Liberty and Rights that made the Modern West" Bloomsbury, London 2007

⁷² See for example the famous Valladolid debate in the 16th century.
https://en.wikipedia.org/wiki/Valladolid_debate

⁷³ Cf. Paul III's bull "Veritas ipsa" of 2 June 1537 and Sublimis Deus of 9 June 1537.

⁷⁴ In the words of the **Universal Declaration of Human Rights**, "Recognition of the inherent dignity of all human beings is a fundamental human right. Members of the human family and their equal and inalienable rights constitute the foundation of freedom, justice and peace internationally"

⁷⁵ 70 Pontifical Commission "Justicia et Pax": [The Church and Human Rights](#) 2nd edition Vatican City 2011 (II §17 and 18)

⁷⁶ cf. e.g. Encyclicals Vehementer Nos. (1906) and "Caritas in Veritate" (1993) in which the Pope writes "The doctrine of Human Rights was not born in the Church, but against it",

⁷⁷ for example in the encyclical "Mirari Vos" 1832: "...from this poisonous source of indifferentism stems this maxim false and absurd, or rather this delusion: that we must provide and guarantee freedom of conscience... ", or again, " ...to which is connected...freedom of the press, the most fateful freedom, the most execrable freedom, for which we can never have enough horror... » . We find in the encyclical "quanta cura" 1865: among the inventory of the "main errors of our sad times, such as misconceptions and misleading and perverse opinion...the idea that the will of the people is the supreme law free from any divine right", or "The full power left to all to openly and publicly manifest all their thoughts and opinions, throws more easily the people in the corruption of morals and spirit... »

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⁷⁸ According to the Wikipedia encyclopedia, 48 States out of the 58 participants were to adopt this universal charter. No state has voted against and only eight abstained. Among them, South Africa (of the apartheid) refuses to assert the right to equality without distinction of birth or race; Saudi Arabia contests equality between men and women. Poland, Czechoslovakia, and Yugoslavia and the Soviet Union (Russia, Ukraine, Belarus), for their part, abstained because of a dispute concerning the definition of the fundamental principle of **universality** as set out in Article 2 paragraph 1. Finally, the last two States having not taking part in the vote are Yemen and Honduras.

⁷⁹ The Vienna Declaration and Programme of Action
<https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>

⁸⁰ Pacem in Terris encyclical
http://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html

⁸¹ Gaudium et Spes Pastoral Constitution
http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html

⁸² Dignitatus Humanae Declaration on Religious Freedom
http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html

⁸³ Pontifical Commission "Justicia et Pax": The Church and Human Rights 2nd edition Vatican City 2011 This document states in II, §34 : Stimulated by the rapid advance of modern culture, the Church has enriched her own comprehensive notion of the rights of the human person, always fully human and open to his supernatural vocation, so that, without in any way weakening her condemnation of false rights, she has adopted an attitude which is positive and encouraging rather than negative and disapproving, and now supports and even reinforces the historical process, as it is.

⁸⁴ The elements in brackets are borrowed from Bernard Quelquejeu in his book "Sur les chemins de la non-violence" (On the ways of non-violence) op cit.p 41

⁸⁵ Universal Declaration of Human Rights <https://www.un.org/en/universal-declaration-human-rights/> cf. appendix

⁸⁶ 81 Thus, for example, the working document of the Pontifical Commission "Justicia et Pax": The Church and Human Rights 2nd edition Vatican City 2011 (I, §3-7): "In the first place, the document wishes to stress the fundamental importance and the relationship the inseparable and necessary relationship between the rights and duties of man".

⁸⁷ European social charter :
<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cf93>

1948 Universal Declaration of Human Rights <https://www.un.org/en/universal-declaration-human-rights/>

⁸⁸ 83 ECRL Moscow Declaration Advancing Human Dignity – through human rights and traditional values § 5 and 6

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⁸⁹ "The maintenance of the diversity of traditions cannot justify any violation of fundamental human rights. Thus discrimination against people of different races, against women and against the most precarious members of society, in order due to traditional practices of some religions cannot be universally validated and should therefore be repealed. The universal principle of equality should take precedence." (Le Dalai Lama, *Buddhist Approaches to Human Rights: Dissonances and Resonances*, C. Meinert, H.-B. Zöllner (eds.), Transcript Publishers, 2010, p 192)

⁹⁰ This text benefited from the contributions of Chief Rabbi René GUTMAN, Chief Rabbi of the Lower Rhine).

⁹¹ It should be pointed out that in Judaism respect for the Rights of the Individual is pushed very far: Thus "a man, coming out of a a dead man with a bloody knife in his hand cannot be convicted unless there is a direct eyewitness to the crime supposed" (Makkot-Talmud treatise of Babylon) . Today, of course, modern means of investigation can provide evidence of his guilt...

⁹² This is also another form of the golden rule presented above.

⁹³ For the position of the Catholic magisterium see the Pontifical Commission "Justicia et Pax": [The Church and Human Rights](#) 2nd edition Vatican City 2011

⁹⁴ like Albert de Mun, or François René de La Tour du Pin, or Marc Sanguier in France,

⁹⁵ Press conference given on April 12, 2011 at the éditions du Cerf

⁹⁶ See Frédéric Lenoir "Christ the Philosopher" Plon 2007. Chapter II deals with the human person and the ethics of Christ : equality, the freedom of the individual, the emancipation of women, social justice, the separation of powers, non-violence and the forgiveness, love of neighbour. cf. [the International Theological Committee: Search for a universal ethic: A new look on Natural Law](#)
http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_en.html#1.1%20Les%20sagesse%20et%20religions%20du%20monde

⁹⁷ This paragraph has benefited from the contributions of Dounia Bouzar, Cults and Cultures, and Professor Al-Midani.

⁹⁸ [\(Qur'an. Introduction, translation and notes by D. Masson, Gallimard, 1967,](#)

⁹⁹ L. Massignon, " Le respect de la personne humaine en Islam et la priorité du droit d'asile sur le devoir de juste guerre ", *Revue Red Cross International*, 1952, p. 454.

¹⁰⁰ M. A. Al-Midani, "Human Dignity and War: The Islamic Perspective", in *Humanitarian Law and Religions*, 2 nd International Course for the Formation of Catholic Military Chaplains to Humanitarian Law, Rome, 12-13 October 2007, Pontifical Council for the Formation of Catholic Military Chaplains to Humanitarian Law, Rome, 12-13 October 2007, Pontifical Council for Justice and Peace. Libreria Editrice Vaticana, Vaticana, 2009, pp. 37-46.

¹⁰¹ See Al-Midani *Human Rights and Islam. Texts of Arab and Islamic Organizations*. 2nd edition, Preface Jean-François Collange, Foreword Alexandre Kiss, University of Strasbourg, 2010, pp. 85 et seq.). You will find the text of the new charter at the address <https://www.jus.uio.no/english/services/library/treaties/02/2-01/arab-human-rights-revised.xml>

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¹⁰² "The holy Koran constitutes the primary source of Shariah and of human rights from which the other sources arise". Dr Suliman Ibn Abdal Rahman Al Hukail "Human rights in Islam and the refutation of prejudices raised against Islam" Kingdom of Saudi Arabia 1999

¹⁰³ Revue Universelle des Droits de l'Homme, vol. 7, n° 4-6, 23 juin 1995

¹⁰⁴ Op.cit. http://www.acihl.org/texts.htm?article_id=16

¹⁰⁵ Cf. texte at the address : <https://www.jus.uio.no/english/services/library/treaties/02/2-01/arab-human-rights-revised.xml>

¹⁰⁶ This assertion is contested by some members of the group on the basis of the report on the "religious dimension of the Intercultural dialogue" by Mrs Bresseur (doc 12553 of 25 March 2011) adopted by PACE which explicitly mentions a law of religions in its § 50, 56 and 59, or on the existence of a Dictionary of the Law of Religions (published on 3 /02/2011 in the editions of the CNRS, author Francis Messner). It is in fact the establishment of the way in which cults are organised and the implementation of human rights with regard to religions and religious practice.

¹⁰⁷ This danger is present in the wording of Article 10 of the Cairo Declaration on Human Rights in Islam (adopted on 5 August 1990 in Cairo, Egypt, at the 19th Islamic Conference of Foreign Ministers). <https://www.fmreview.org/Human-Rights/cairo> or <http://hrlibrary.umn.edu/instree/cairodeclaration.html>

Chapter 2

¹⁰⁸ [Guide on Article 2 on the European Convention of Human Rights: Right to Life](#)

¹⁰⁹ [English Version of the Statute of the Arab Court of Human Rights](#)

¹¹⁰ http://www.acihl.org/texts.htm?article_id=16

¹¹¹ Cf. Judgment of 13 February 2003 Refah Partisi Affair of the European Court of Human Rights

¹¹² http://www.acihl.org/texts.htm?article_id=16

¹¹³ <https://www.achpr.org/legalinstruments/detail?id=49>

¹¹⁴ Cf., Articles 9.2 and 10.2 in the Appendix pages 120 and 121

¹¹⁵ It should be noted here that African countries have adopted an "[African Charter on Human and Peoples' Rights](#)"

¹¹⁶ Although at the [Vienna Conference of 1993](#), the confirmation of the universal character of human rights was approved by many countries of Arab culture.

¹¹⁷ <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>

¹¹⁸ It should be noted that while this individual/society duality is implicit in human rights, it is not as explicit as in [the African Charter on Human and Peoples' Rights](#)

¹¹⁹ cf Article 15 of the [Charter of Fundamental Rights of the European Union](#)

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¹²⁰ Quoted by Sylvie Peyrou-Pistouley in « La liberté de conscience et de religion en Russie : une question parasitée par la définition d'une nouvelle identité nationale dans la Russie post-communiste » Est-Europa 1-2011 (« Liberty of conscience and religion in Russia: an issue parasitised by the definition of a new national identity in post-communist Russia »)

¹²¹ Abdelwahab Meddeb "Human Rights, Divine Right" Minutes of the Oslo Forum on the Universality of human rights. OSLO 22-29 October 2010

¹²² Quoted by Rachid Benzine in « les nouveaux penseurs de l'islam » Albin Michel 2004, p 97 (the new thinkers of Islam)

¹²³ See 121 Sylvie Peyrou-Pistouley

¹²⁴ Cairo Declaration on human rights in Islam, adopted August 5 1990, at Cairo (Egypt) during the 19th Islamic Conference of Ministers of Foreign Affairs, <http://hrlibrary.umn.edu/instreet/cairodeclaration.html>

¹²⁵ Judgment of 2001 Refah/Partisi Affair European Court of Human Rights

¹²⁶ Judgment of 13 February 2003: the Court agrees with the Chamber's analysis* as to the incompatibility of Sharia law with the fundamental principles of democracy, as they result from the Convention.** Cf. ECHR *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC] nos. 41340/98, 41342/98, 41343/98, and 41344/98, 13 February 2003, § 123) of 13 February 2003, the Strasbourg judges had already noted "that sharia is incompatible with the fundamental principles of democracy, as set forth in the Convention."

¹²⁷ Cairo Declaration on human rights in Islam.1990
<https://www.refworld.org/docid/3ae6b3822c.html>
[Declaration of Human Rights by the World's Religions](#)

¹²⁸ Cf; Al-Midnai, « La Déclaration universelle des droits de l'homme et le droit musulman », in Lectures contemporaines du droit islamique. Europe et monde arabe, Franck Frégosi (dir.), Presses Universitaires de Strasbourg, Strasbourg, 2004, pp. 154-186). (The universal Declaration of human rights and moslem right" in Contemporary readings of islamic right. Europe and the Arab world)

¹²⁹ European Court of Human Rights Annual report 2003
https://www.echr.coe.int/Documents/Annual_report_2003_ENG.pdf) Registry of the European Court of Human Rights (see page 66 second paragraph and its notes 156,157 and 158): This time, in the Refah Partisi judgment, the Court examined in depth the relationship between the Convention, democracy, political parties and religion, concluding that a Sharia-based regime was incompatible with the Convention, in particular with regard to its rules of criminal law and procedure, the place it reserves for women in the legal order and its intervention in all areas of private and public life in accordance with religious norms.

¹³⁰ Although at the 1993 Vienna Conference, the confirmation of the universal character of human rights was endorsed by many countries of Arab culture.

¹³¹ White paper on Intercultural Dialogue of the Council of Europe
https://www.coe.int/t/dg4/intercultural/Publication_WhitePaper_ID_en.asp

¹³² As it is in the Golden Rule, (see for instance : <https://effectiviology.com/golden-rule/>) [Shared belief in the Golden Rule, Ethics of reciprocity](#)) and the resulting values from it (Declaration for a Planetary Ethic) [The Global Ethic Project](#)

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¹³³ The preamble of the declaration of 2003 states: "As is well known, the Universal Declaration of Human Rights has been criticised as "Western", a criticism rooted in the feeling that when such efforts emanate from the West, they are merely an extension of the age of imperialism, a continuous effort on the part of the West to impose its own values on rest of the world under the pretext, or rather under the mask, of universalism. Also the Faculty of Religious Studies of MacGill University invited .. the religions leader to write the Universal declaration of Human Rights by the World's Religions McGill University 2003 This declaration was updated in 2016 : [Declaration of Human Rights by the World's Religions](#)

¹³⁴ Cf. for example : M. Arkoun Humanisme et Islam, combats et propositions Vrin, 2e éd. corrigée 2006 (Humanism and Islam, combats and proposals)

¹³⁵ See for example "Doctrinal note on some questions regarding The Participation of Catholics in Political Life" of (24.11.2002) https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20021124_politica_en.html

¹³⁶ *for the Catholic Church for example :*

"Church, Ecumenism and Politics" J. Ratzinger Fayard 1987: "The State must recognise that a system of fundamental values based on Christianity is its precondition (...) It must understand that there is a set of truths that are not subject to consensus that precedes it and makes it possible".

See also Veritatis Splendor (1993) by John Paul II: "The Catholic Church is mistress of the Truth. Her function is to express and to teach authentically the truth which is Christ, at the same time declaring and confirming, by virtue of his authority, the principles of the moral order deriving from the very nature of mankind".

Cf. also John Paul II (2005) in the Enlightenment and Ideology chapter of his book "Memory and Identity" published in 2005, "The moral code coming from God is the intangible basis of all human legislation in any system, especially in the democratic system."

For the Orthodox Church,

The Patriarchate of Moscow is on the same line, as Patriarch Alexis II said before the Parliamentary Assembly of the Council of Europe in October 2007. In the same vein, the new Patriarch Cyril, in a speech delivered before the Russian Academy of Civil Service, claimed for the Church in Russia the "right to moral expertise" of all political, economic, social and cultural programmes (Cf. [Henri Tincq's article of 7 March 2010](#), (in French)

For Islam,

All human rights are subject to Sharia law, as underlined in the Cairo Declaration, article 10 of which states that to the point of declaring that Islam is the religion of the innate, which means that every person is born a Muslim. Cf. the Cairo Declaration on Human Rights in Islam adopted on 5 August 1990 in Cairo, Egypt, at the 19th Conference of Islamic Foreign Ministers. <https://www.refworld.org/docid/3ae6b3822c.html>

¹³⁷ As some religious leaders have stated and as CEC-KEK has committed itself to: "We commit ourselves to defend fundamental values against all infringements and to resist any attempt to abuse religion for political purposes. See for instance the "Open letter from church leaders to political leaders in Europe of 13 December 2006 from the European Conference of Churches (ECCC) : <http://www.cec-kek.org/content/openletter13.shtml>

¹³⁸ It is in this spirit, moreover, that the ICOs of the Council of Europe appealed to their hierarchy in this respect during the Third Ecumenical Assembly in Sibiu in September 2007. cf. <http://www.european-catholic-people.eu/sibiureligion.pdf> : "Thus, each of our religions is invited to :

1) Acknowledge that it does not possess the whole truth and that others also have their share of truth. Each religion would thus avoid to transform the message of Jesus, which is a call, into a power that limits the space of freedom within the churches, that reduces the space left to other religions and which seeks to impose its truth on others, both in the religious field and in management social and political affairs.

2) Recognise that it is not alone in developing values and seeking ethical behaviour, and therefore acknowledge that the values it advocates are not necessarily its own and can be shared by other men and women

¹³⁹ [World Conference on Human Rights, Vienna 1993](#)

Chapter III

¹⁴⁰ This principle has indeed been hard fought against the pretensions of anti-religious movements and most religious institutions, despite their founding texts, by written condemnations (encyclicals such as "Mirari vos" or "cura quanta", fatwas,) judgments to eliminate those men and women who thought differently by death, exile or imprisonment; depending on the epoch, the following can be mentioned: martyrdom of Christians in the first centuries, killings during the Inquisition, fatwas of death, exile or elimination, etc., of believers of other religions or non-believers by Christians or Muslims, wars of religion, prohibition of the practice of religions under the communist regimes,) . It is not possible to make a detailed history of it all here.

¹⁴¹ cf, For example: paragraph 31 of the judgment of 25 May 1993 Kokkinakis v. Greece in the European Court of Human Rights "As enshrined in Article 9 (art. 9), freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it."

[Case of Kokkinakis v. Greece](#)

¹⁴² http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/fr/gena/111308.pdf

¹⁴³ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/FR/genaff/119405.pdf

¹⁴⁴ Cf. Judgments ECHR 7 Dec 1976 Handyside v. UK and ECHR 25 May 1993, Kokkinakis v. Greece, recalled by Frédérique Ast in the symposium organised in Luxembourg by the Committee of Ministers in November 2011: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57827%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57827%22]})

¹⁴⁵ Cf. the report " Human Rights in a multicultural society. Hate Speech" by the Committee of Experts for the development of Human Rights GT-DH-DEV A (2006)008

¹⁴⁶ Cf. [Study Guide Freedom of Religion or Belief](#)

¹⁴⁷ [Guidelines for Review of Legislation pertaining to Religion or Belief](#)

¹⁴⁸ <https://www.un.org/en/universal-declaration-human-rights/>

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁴⁹ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>

¹⁵⁰ ap.ohchr.org/documents/F/.../resolutions/E-CN_4-RES-2005-40.doc

¹⁵¹ <https://www.unaoc.org/repository/report.htm>

¹⁵² <https://unesdoc.unesco.org/ark:/48223/pf0000101344>

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[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/13.DeclarationofPrinciplesonTolerance\(1995\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/13.DeclarationofPrinciplesonTolerance(1995).aspx)

¹⁵³ Freedom of thought, conscience and religion, a guide from the Directorate of Human Rights of the Council of Europe <http://www.co-guide.org/conscientious-objectors-guide-international-human-rights-system>

¹⁵⁴ <http://semantic-pace.net/?search=KjoqfGNhdGVnb3J5X3N0cl9lbjoiQWRvcHRIZCB0ZXh0lg==&lang=en>

¹⁵⁵ [Treaty of Lisbon](#)

¹⁵⁶ Treaty of Lisbon (See 150)

¹⁵⁷ Human rights in the world and the European Union's policy on the matter including implications for the EU's strategic human rights policy

¹⁵⁸ Cf. Appendix

¹⁵⁹ Cf. Appendix

¹⁶⁰ Cf. Appendix

¹⁶¹ "I would like to reiterate in this context that while the notion of State religion is not per se prohibited under international human rights law, States have to ensure that this does not lead to a de jure or de facto discrimination of members of other religions or beliefs. As the Human Rights Committee has clearly stated in its General Comment No. 22, "the fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers.."

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11934&LangID=E>

¹⁶² http://www.aidh.org/dial_rel/appeal.htm

¹⁶³ Cf. « La liberté de conscience dans le champ de la religion » Patrice Meyer-Bisch et Jean-Bernard Marie éditeurs ([Freedom of conscience in the field of religion](#)) (Result of converting below link to English)

<http://www.unifr.ch/iiedh/assets/files/Publications/publicdt04.pdf>

<https://www3.unifr.ch/ethique/en/>

¹⁶⁴ For example, Refah Partisi (Welfare Party) v. Turkey (31 July 2001) (European Court of Human Rights), paras. 43, 49, 51

¹⁶⁵ Cf. for example in the encyclical "Mirari Vos" 1832: the words against freedom of conscience: "...from this source poisonous indifference stems from this false and absurd maxim, or rather this delusion: that one must provide and guarantee the freedom of conscience... and against freedom of the press: "...to this is attached freedom of the press, the most fatal freedom, an atrocious freedom for which we can never have enough horror... or in the encyclical "quanta cura" 1865, the words against freedom of expression: "the full power left to all to manifest openly and publicly all their thoughts and opinions, throws people more easily into the corruption of morals and spirit..."

¹⁶⁶ For the position of the Catholic magisterium see the Pontifical Commission "Justicia et Pax": 2nd edition Vatican City 2011

¹⁶⁷ [John XXIII Pacem in Terris](#)

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¹⁶⁸ Cf. for example: "Declaration on religious freedom "[Dignitatis humanae](#)" Vatican II. One reads in N.3: "On his part, man perceives and acknowledges the imperatives of the divine law through the mediation of conscience. In all his activity a man is bound to follow his conscience in order that he may come to God, the end and purpose of life. It follows that he is not to be forced to act in a manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious"

¹⁶⁹ "Fondements de la doctrine sociale" proposed by the Russian Orthodox Church in 2000, Ouvrage publié aux Editions du Cerf, collection Istina, Paris, 2007. (Foundations of social doctrine)

¹⁷⁰ Quoted by Sylvie Peyrou-Pistouley in « La liberté de conscience et de religion en Russie : une question parasitée par la définition d'une nouvelle identité nationale dans la Russie post-communiste » Est-Europa 1-2011 (Liberty of conscience and religion in Russia: an issue parasitised by the definition of a new national identity in post-communist Russia)

¹⁷¹ Cf. for example the report of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe for the respect of the obligations and commitments of the Member States of the Council of Europe, dated 3 June 2005, quoted by Sylvie Peyrou-Pistouley. It notes that "...this new legislation [2003] is criticised, both at home and abroad, on the grounds that it disregards the principle of the equality of religions. The preamble of the law specifically mentions Orthodoxy, Christianity, Islam, Buddhism and Judaism. In practice, administrative bodies and courts, interpreting the law as a whole in the preamble often treat 'non-traditional religious organisations' as 'totalitarian sects'.
<https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10910&lang=EN>

¹⁷² The three verses are quoted : (2:256): No compulsion in religion; (18:29): The truth is from your Lord. Let him whowill therefore believe, and let him that will not believe be unbelieving"), and (10:99-100): If it had been thy Lord's will, all the inhabitants of the earth would have believed. Is it up to you to compel men to be believers when it belongs to no one to believe without the permission of God

¹⁷³ Several texts in the Bible reflect this ambivalence, as does the Koran. "The Qur'anic text which has been gradually built up between 610 and 632 reflects this alternation between intolerance and the call to fight against the infidels and the heretics, and the quest for tolerance and respect for freedom of conscience" in Ferjani, Freedom of conscience in the Islamic field [Mohamed Cherif Ferjani](#)
See also Abdullah Saeed : <https://www.abc.net.au/religion/religious-freedom-in-islam/10419798>
[See a recent article](#) : Musa, Aisha Y. "Freedom of Conscience in the Qur'an and Hadith." *Journal of Islamic and Muslim Studies*, vol. 4, no. 1, 2019, pp. 129–134. *JSTOR*, www.jstor.org/stable/10.2979/jims.4.1.10.

¹⁷⁴ [Freedom of Religion in European Court of Human Rights](#)

¹⁷⁵ Such as has been the case in Greece for the Orthodox religion,

¹⁷⁶ Cf for example Dimitras v. Greece of 3 June 2010 par exemple Dimitras et autre c. Grèce du 3 juin 2010. Submissions n os 42837/06, 3237/07, 3269/07, 35793/07 and 6099/08

¹⁷⁷ Cf. Resolution 1927 (2010) of the PACE: Islam, Islamism and Islamophobia in Europe

¹⁷⁸ Sahîh Bukhari, vol. 9, livre 84, numéro 57, reported by Ibn Abbas

¹⁷⁹ Sahîh Bukhari, vol. 9, livre 83, numéro 17, reported by Abdullah

¹⁸⁰ Cf. Chapitre 12 of the book by Bérengère Massignon and Virginie Riva op.cit.

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¹⁸¹ <https://www.osce.org/odihr> cf. also the agenda commented for this conference

¹⁸² Cf. for example: judgment of the grand chamber Bayatyan v. Armenia SUBMISSION 23459/03 of 7 July 2011 judgment Erçep v. Turkey of 2 November 2011 submission 43965/04

¹⁸³ Cf. Resolution 1763 adopted 7 October 2010 by the PACE <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17909>

¹⁸⁴ Cf. Macfarlane and others v. United Kingdom (ECHR 329 (2012))

¹⁸⁵ Cf. for example: ECHR 20 sept. 1994 Otto-Preminger-Institut V. Austria, or ECHR 2 May 2006 Aydin Tatlav v. Turkey

¹⁸⁶ In recent years, members of the UN Human Rights Council in Geneva have been campaigning to question the legitimacy of criticism of Islam that they consider defamatory.

¹⁸⁷ Resolution submitted to the UN Human Rights Council for approval by the Assembly on 26 March 2009: submission to the UN which adopts it of a (non-binding) ICO resolution condemning defamation of religions, 12 November 2009 letter from the representative of Pakistan at the UN requesting the criminalisation of criticism of religion.

¹⁸⁸ Explanation of vote of the European Union Human Rights Council - 13th Session Resolution L.1 - Defamation of religions: religions : http://www.delegfrance-onu-geneve.org/IMG/pdf/CDH13_EoV_L1_Diffamation_des_religions.pdf (link to [Permanent Mission of France](#) but not to specific text

¹⁸⁹ Letter of the Spanish Government of 16 April 2012 addressed to Mr Luis Vega Domingo (Madrid Association of Atheists and Free Thinkers) concerning the request for a demonstration on 20 April 2012 in Madrid

¹⁹⁰ Cf. Chapter 8 of the book by Bérengère Massignon and Virginie Riva « L'Europe avec ou sans Dieu ? Editions de l'Atelier, Paris 2010 ("Europe with or without God)

¹⁹¹ Cf. for example B. Massignon et V. Riva op.cit. chap 8

¹⁹² It should also be noted that what is the basis of the christian religion, the trinity of God, is a blasphemy for some muslims who consider the christians as polytheists

¹⁹³ The crime of blasphemy can only exist in theocratic States, such as the Islamic States, States having a State religion (like some in Europe) or in States in submission to the power of a religious institution such as in Europe in the Middle Ages

¹⁹⁴ Austria, Denmark, Finland, Greece, Italy and Netherlands

¹⁹⁵ Cf. for example B. Massignon and V. Riva op.cit. chap 8

¹⁹⁶ 191 some examples:

- In Italy, the crime of blasphemy is still in force but it is longer invoked;
- In Denmark, there is still an article (140) repressing "public outrage to the faith", but freedom of expression is very broad
- In Greece, the Church (orthodox) cannot be "offended"

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¹⁹⁷ Cf. the discussion of chapter II

¹⁹⁸ Report 11296 of 8 June 2007 on "Blasphemy, insults with a religious nature and incitation to hate speech against persons due to their religion"

<https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11521&lang=EN>

This report was the subject of an opinion by the Committee on Legal Affairs and Human Rights. This Committee proposed several amendments in doc 11319 of 25 June 2007 at the following address:

<http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11683&lang=en>

and of Recommendation 1805 on "blasphemy and insults of a religious nature"

<http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17569&lang=en>

¹⁹⁹ Cf. for example: [Judgment ECHR *Günduz v. Turkey* n° 35071/95 §40](#)

²⁰⁰ Cf. The analysis by Frédérique Ast on several example of the Conference of Luxembourg in November 2011 (French only) https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016804c464d

²⁰¹ Explanation of vote of the European Union's Council of Human Rights - 13th Session Resolution L.1: Conseil des Droits de l'Homme – 13ème Session Résolution L.1 – Defamation of religions: [Permanent Mission of France](#) (text out of date)

²⁰² On this subject see the follow up conferences of the [Durban Conference of September 2001](#) must be closely monitored. Islamist countries are indeed pressing for "defamation of religions" to be penalised in the same manner as racism. This is unacceptable, as it is contrary to the principle of freedom and would subject the human rights to religions.

²⁰³ Cf. Appendix

²⁰⁴ Cf. Appendix

²⁰⁵ Cf. for example, the recent lawsuits in Turkey against the Christians Turan Topal and Hakan Tastan for "insulting Turkish identity". It is fortunate that the Silivri court acquitted these people on 17 October 2010.

²⁰⁶ Cf. for example the [Doctrinal Note of the Congregation for the Doctrine of the Faith](#) concerning some questions regarding the Participation of Catholics in Political Life.

²⁰⁷ Cf. for example, the comparative study by Esther Schmidt ENA, for Germany and France (2005).

https://www.ena.fr/search?actimage_search%5Bkeyword%5D=Esther+Schmitt+2005&validate=

²⁰⁸ <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

²⁰⁹ Cf. Art. 9 of the Council of Europe Convention for the Protection of Human Rights and Article 10 of the 1948 UDHR, explained in the Appendix.

²¹⁰ The teaching of Buddha and the Historical Masters says that anyone who sees, hears or touches the manifestations of the dharma (the word of Buddha) will benefit from it . Pagodas, temples and monasteries are physical manifestations that bear witness to the Buddha's teaching and within which the teachings are given. As such, Buddhism must be identifiable in the public space by its singular monuments.

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²¹¹ Gérard Fellous : LES DROITS DE L'HOMME AUX DEFIS DU XXI ème. SIECLE : Une universalité menacée, intervention au Forum d'Oslo de 2010 sur l'universalité des droits de l'Homme: <https://gerardfellous.com/forum-sur-luniversalite-des-droits-de-lhomme-oslo-21-22-octobre-2010/>

²¹² [ECHR Lautsi and others case v. Italy \(cause? no 30814/06\)](#)

²¹³ [Press Release of the Registrar of the Court No. 234 of 18.03.2011](#)

²¹⁴ cf. for example the judgments of 4th December, Dogru v. France and Kervanci v. France

²¹⁵ cf. for example the judgments of 4th December, Dogru v. France and Kervanci v. France

Chapter IV

²¹⁶ Entered into force on 23 March 1976 and 3 January 1976 respectively

²¹⁷ Taslima Nasreen, "No religion advocates equality between men and women", 10 April 2009,

²¹⁸ For a legal analysis see in particular, Marangopoulos Alice (ed.) Equality and Development, Fifty years of UN contribution to their evolution. Athens: Sakkoulas, 1998 ; See Spiliotopoulos Sophia: From formal to substantive gender, Brussels: Sakkoulas-Bruylant, 2001. See also ALSTON, P. (ed.) (1999) The EU and Human Rights, Oxford: Oxford University Press; SUDRE, F. (2001) Droit international et européen des droits de l'homme, Paris: PUF (International and European Human Rights); for an abundant bibliography see: [Bora Laskin Law Library, University of Toronto](#):

²¹⁹ See Human Rights Committee, General Recommendation No. 25 20.3.2000 and General Comment No. 31

²²⁰ For an in-depth analysis, see Spiliotopoulos Sophia, "The limits of Cultural Traditions", in *Annuaire International des Human Rights*, Volume III, Athens Brussels: Ed. Sakkoulas, Bruylant, 2008.

²²¹ [Convention on the Elimination of all forms of Discrimination against Women](#)

²²² See also the Additional Protocol to CEDAW adopted on 10 December 1999

²²³ See CJEC, Defrenne II Judgment, (1976), aff. 43/75, Rec. 455, para.12.

²²⁴ § 52 Resolution of the European Parliament of 18 April 2012 on the annual report on human rights in the world in 2010 and the European Union's policy in this area, including the implications for the policy EU human rights strategy

²²⁵ CETS No. 5 and its Protocols. see, inter alia, O'BOYLE H., (2009) Law of the European Convention or Human Rights, Second Oxford edition: Oxford University Press.

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²²⁶ See also Recommendation Rec(2007)17 of the Committee of Ministers to member states on equality standards and mechanisms between men and women

²²⁷ [Council of Europe Convention on preventing and combating violence against women and domestic violence](#)

²²⁸ Resolution 1464 (2005) Council of Europe Parliamentary Assembly
<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17372&lang=en>
See also the report "[Women and Religion in Europe](#)"

²²⁹ The African Charter by its Article 18§3 imposes on States Parties "the duty to ensure the elimination of all discrimination against women".

²³⁰ The Arab Charter on Human Rights revised in 2004 contains a specific clause on equality between women and men (art.3§2) which requires States to "take all necessary measures to ensure equal opportunities and effective equality between women and men and the enjoyment of all the rights established by this Charter".

²³¹ [Asian Human Rights Commission - AHRC](#)

²³² Quoted by (G.Duby and M.Perrot, Histoire des femmes, 1991

²³³ With contributions from Dr. H. Ackermann and (1) Liliane Ackermann Doctoral Thesis, University of Strasbourg (12 Oct.1999) "Education of Jewish Women Theories and Realities
(2)Sonia Sarah Lipsyc, (dir.), "Quand les femmes lisent la bible" Pardès n° 43, éditions In Press, Paris, 2007 and "Women and the Bible", Paris, 2007. (When Women read the Bible)
Judaism Today", In Press Publishing, 2008, .
(3)Joelle Bernheim on the "Massorti.com website"-Modern Judaism 11/1/2007
(4)Jean Zacklad "For a Jewish ethic in the feminine".

²³⁴ Cf. Jean Zacklad ("Pour une éthique juive au féminin" = For a Jewish ethic in the feminine) in his study of the feminine in the Torah, as a pole in tension. Without these two poles, there can be no elaboration of a monotheistic culture and a people accepting this monotheism.

²³⁵ See Beruria "Women in Judaism" Metuchen N.J.The Scarecrow Press 1976.
Thus for example: Isaac without Rebekah would have made the mistake of choosing Esau (Genesis) (d), Moses owes life and glory to 4 women: his mother, his sister, the Pharaoh's sister and his wife, as for Rabbi Aquiba, without his wife he would have remained a simple shepherd for he could not have studied long enough to become the great sage recognised by all.

²³⁶ Sonia Sarah Lipsyc, op.cit. note n°1 p.23.

²³⁷ Romney Wegner (Judith), 'The Image and Sattus of Women in Classical Rabbinic Judaism' in Jewish Women in Historical edited by Baskin (Judith R.), Detroit, Wayne State University Press, 1991 note 1 p.25.

²³⁸ See Julia Schwartzmann, "The Medieval Philosophical Interpretation of the Creation of Woman" (in Hebrew), in Daat magazine. (N°39), Bar-Ilan, 1997, p.69-87, Schwartzmann shows that illustrious rabbinical figures such as David Kimhi (1160-1235), Gersonides (1288-1344) and Isaac Abarbanel (1437-1508) asserted the ontic superiority of men and justified metaphysically the subordination of women (...). Cited by the author p. 216.

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²³⁹ Ibid. note No. 1 p. 208, Rivon Krygier notes that the earliest known source of the woman's blame for her primordial fault is a deuterocanonic Jewish source, the Sirach or Ecclesiasticus, in the 2nd century before the common era: "It is by the woman that sin began and for her sake we all die" (SI 25:24), already quoted. This author attracts attention to the fact that this source precedes the episode of "original sin", as if the "apple episode" had not come before to endorse a version that already existed in the mentalities of that time

²⁴⁰ Ibid N°1, p.208.

²⁴¹ Ibid N°1, p. 208.

²⁴² See "[A Summary Report of the 2007 International Congress on the Women's Role in ... The Revival of a Dual Ordination for Korean Buddhist Nuns in the Modern ... The Changing Roles of Thai Buddhist Women](#)

²⁴³ Buddhist women and social justice Karma Lekshe Tsomo and

²⁴⁴ Mireille Delmas Marty, "L'universalité de l'immédiat après guerre face à l'universalité d'aujourd'hui", (The universality of the immediate post-war period in the face of today's universality) colloquium of the CNCDH, Paris: La Documentation française, 1999.

²⁴⁵ Gérard Cohen Jonathan, "Les réserves dans les traités relatifs aux droits de l'homme, nouveaux aspects européens et internationaux" (Reservations in human rights treaties, new European and international aspects) , in Revue générale de droit international public, 1996.

²⁴⁶ The working document of the Pontifical Commission for Justice and Peace on 'The Church and Human Rights' indeed states ((II §38,7) "Women, out of respect for their dignity as human beings, are recognised as having equal rights with men to participate in the cultural, economic, social and political life of the State". It adds to (II §38, 10: "As for women, they have the right to working conditions reconcilable with their requirements and duties as wives and mothers".and in (II, §43) "any form of discrimination affecting fundamental human rights, whether social or cultural, whether based on sex, gender, age, religion or belief, the race, skin colour, social condition, language or religion, must be overcome and eliminated, as contrary to purpose of God".

Although paradoxical in view of the misogynistic theories of Luther and Calvin, Protestant feminism appeared as early as the 19th century. Thus the women from the Protestant countries of Northern Europe have initiated the long march towards gender equality. Thanks to the opening of Protestantism to the word of women and to the different functions assigned to women pastors' wives.

²⁴⁷ Philippe de la Chapelle « La déclaration universelle des droits de l'Homme et le catholicisme » Editions Persée 2010 pp 113-123 (the Universal Declaration of Human Rights & Catholicism
Cf. also the letter of the Congregation of the Faith "[The collaboration of men and women in the Church and in the world](#)" signed by Cardinal Ratzinger § 1.2, 6 et 16
Le § C The Zapfl-Helbling Report in the PACE "[Women and Women and religion in Europe religions in Europe](#)" Doc. 10670 rév. 22 September 2005. cf. also the Cairo Declaration

²⁴⁸ Amnesty International, French Section, Human Rights and Religions, Women, public document of the Commission Philosophies and Religions" (PhiR) February 2006, <[www.amnesty.asso.fr](#)> (not found); European Women's Lobby, Religion and Rights Human Rights of Women, Position paper of 27 May 2006 in <[Sisyph.info](#)> 30 May 2007 ; ; Anne Chemin, " Ni putes ni soumises (neither whores nor submissive) Manifesto for "diversity" and against "all forms of fundamentalism", Le Monde, 08/03/2005.

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²⁴⁹ Parliamentary Assembly of the Council of Europe, Resolution 1464 (2005), Women and religion in Europe, adopted on 4 October 2005 (26th Sitting) (see Doc. 10670, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Zapfl-Helbling).

²⁵⁰ In the case of Buddhism, this is full ordination, which for Catholics corresponds to the religious vows. [Congress on Buddhist women](#)

²⁵¹ Members of the working group requested that this topic should not be mentioned in this report as they believe that the issue of women's priesthood in the Catholic Church is not a human rights violation or a conflict of rights, but an internal matter for the Catholic Church, according to the principle of autonomy (freedom of organisation and self-determination). The majority considered that it was necessary to note how this issue could be perceived both inside and outside the Catholic Church.

²⁵² EWL, op. cit. and CLEF Press Conference "Religion eats away into Women's Rights at the UN", 13 January 2011.

²⁵³ This relativism increasingly permeates UN texts, as revealed in the resolution against defamation of religions adopted by the Human Rights Council on 28 March 2008, implying that any criticism of Islam, whether from a feminist or secular point of view, can be incriminated as Islamophobic.

²⁵⁴ [UNESCO General Conference, 33rd session, 2005](#). As of October 2008, 93 States and the European Community were parties to the Convention.

²⁵⁵ Thus in the case of Leyla Sahin v. Turkey the Grand Chamber of the Court based itself, inter alia, on the principle of equality of treatment of women and men. The Court of Justice of the Council of Europe has also decided that the prohibition of the wearing of the Islamic headscarf in academic institutions in Turkey is compatible with the ECHR (judgment of 10 November 2005, para. 115).

²⁵⁶ See, for example, "Some considerations regarding the response to proposals for a law on Non-discrimination of homosexual persons", published by the Congregation for the Doctrine of the Faith on 22 July 1992 and "Considerations on the proposal to give legal recognition to the union between two homosexuals" published by the Congregation for the Doctrine of the Faith on 3 June 2003. Cf. also the doctrinal note of the [Congregation for the Doctrine of the Faith concerning certain questions on the commitment and the behaviour of Catholics in political life](#)

²⁵⁷ See, for example, Fatawa by Sheikh ibn 'Theimin (vol. 2/ page 764).

²⁵⁸ See the website of the French League of Muslim Women LFFM: <http://www.lffm.org/modules.php?name=News&file=article&sid=86>

²⁵⁹ some of these members wished to put restrictive texts

²⁶⁰ Ireland (ECtHR, G.C. 16 December 2010, Req. No 25579/05) ... The ECHR has condemned Ireland only in the third case where the pregnancy posed a risk to the mother's life (on the grounds that the ability to abort when there is a risk to the mother is not organised either in the health system or in domestic law). In the other two cases (risk of depression, alcoholism, childcare problems), the Court, relying on "the moral values of the the majority of the Irish people" has found that the Irish State should be given a "wide margin of appreciation" between the protection of the life of the unborn child and the right of both applicants to respect for their private life.

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²⁶¹ RR.v. judgment. Poland no. 27617/04 of 26 May 2011

²⁶² See for example the bilateral agreements between France and the three Maghreb countries and art. 3 of the French Civil Code. Some conventions thus recognise the right to repudiation or polygamy, in accordance with the personal status of a certain person in a number of countries in the Maghreb, the Middle East, Africa and Asia.

²⁶³ [Human rights in the world and the European Union's policy on the matter including implications for the EU's strategic human rights policy](#)

²⁶⁴ Siawi, "Secularism is women's business - Appeal against UN resolutions on 'defamation of religions'", Sisyphus. info, 2 June 2007.

²⁶⁵ from the Anglican Church

²⁶⁶ [Islam, Islamism and Islamophobia in Europe](#)

²⁶⁷ Further to the report of the Committee on Equal Opportunities for Women and Men prepared by the Turkish MP Nursuna Memecan (ALDE) and that of the Culture Committee drawn up by Danish MEP Mogens Jensen (GS), considering that "... the Commission's report on culture is a very important step forward in the development of the EU's cultural policy, European countries need to strike the right balance between allowing Muslim women the freedom to wear the headscarf or the burka when they do so out of conviction and the need to protect those who are forced to do so by their parents, husbands, children or other family members, or under peer pressure. The blanket ban could have perverse effects and encourage families and the Muslim community to put pressure on women" (§61).

²⁶⁸ V. Conference of INGOs of the Council of Europe Summer Session Strasbourg, 21-24 June 2010, statement by the rapporteur Sophie Dimitroulias, Vice-President of the AFEM on behalf of the Gender Equality Transversal Group at the round table "the Burka symbol of oppression or identity affirmation", 22 June 2010. See also the intervention "Burka and Human Rights" and the Declaration of the Marangopoulos Foundation for Human Rights.

²⁶⁹ V. Conference of INGOs of the Council of Europe Summer Session Strasbourg, 21-24 June 2010, statement by the rapporteur Sophie Dimitroulias, Vice-President of the AFEM on behalf of the Gender Equality Transversal Group at the round table "the Burka symbol of oppression or identity affirmation", 22 June 2010. See also the intervention "Burka and Human Rights" and the Declaration of the Marangopoulos Foundation for Human Rights.

²⁷⁰ Caroline Fourest, *La tentation obscurantiste*, (Grasset, 2009,) (The obscurantist temptartion) and also "the last utopia threatens universalism". Grasset 2009 ; Taslima Nasreen and Caroline Fourest *Libres de le dire*, (Free to say It) Flammarion, 2010 ; see also Elie Barnavi, *L'Europe frigide*, (Frigid Europe) André Versaille 2008.

²⁷¹ Dounia Bouzar, private communication

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²⁷² Their conclusions at the Euromed Civil Forum in Alicante, 250 autonomous civil society organisations from 43 countries in the two shores of the Mediterranean paid tribute to the struggles of the women's movement for equality "expressing deep concern about the aggravated violations of women's human rights in the current crisis context and the rise of fundamentalisms (and) stress that gender equality is a value and an integral part of the universal right, a sine qua non for democratisation processes and one of the essential objectives of the Euromed Partnership. No cultural or religious specificity can be used to justify gender inequalities and violence against women."

²⁷³ See for example the recently published report in Poland ["Religion, Politics and Gender Equality in Poland"](#) Institute of United Nations Research for Social Development

²⁷⁴ Some members of the Working Group felt that the issue of women's ordination should not be mentioned in this report, as these are internal religious issues. The report only highlights what many people think so much about both inside and outside the Catholic Church.

²⁷⁵ Declaration of the Sacred Congregation of the Faith 15 October 1976 "Inter insigniores" § 5
cf. also ["Apostolic Letter Ordinatio Sacerdotalis of John Paul II"](#) to the bishops of the Catholic Church reserving priestly vocation to men alone

²⁷⁶ "the priest then acts not only through the efficacy conferred on him by Christ, but in persona Christi, (16) playing the role of the Christ, to the point of being his very image, when he pronounces the words of consecration "Inter signores (25)

²⁷⁷ Cf. inter alia, the opinion of the Pontifical Biblical Commission requested by Pope Paul VI in Golias Hors Série n°2, June 2005, p. 272. 51, Joseph Moingt, "Les femmes et l'avenir de l'Eglise" (Women and the Future of the Church) in Les Etudes, January 2011 pp 67-76, Hans Küng, "Mémoires II, une vérité contestée" Le Cerf 2010 p 435 (Memoirs, a contested Truth)

²⁷⁸ PACE Report, ["Women and religion in Europe"](#) DOC 10670 (2005)

Chapter V

²⁷⁹ ["Discrimination on the grounds of sexual orientation and gender identity"](#)

Report of the Commissioner for Human Rights,
Council of Europe Dec 2011, p 30-32 :

²⁸⁰ Statement, written jointly by the Patriarch of the Orthodox Church of Georgia and the Ambassador Extraordinary and Plenipotentiary of the Holy See in Georgia, the Head of the Eparchy of the Armenian Apostolic Church of Georgia, the Rabbi responsible for Georgia and the Plenipotentiary Representative of the Muslim Organization of Georgia, on 29 January 2010.

²⁸¹ ["Desmond Tutu, preaching at Southwark Cathedral London 2004"](#)

²⁸² ["Human rights in the world and the European Union's policy on the matter"](#) including implications for the EU's strategic human rights policy

²⁸³ ["See the resolution on discrimination on the basis of sexual orientation and gender identity voted by PACE on 29 April."](#)

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²⁸⁴ Gender identity is not discussed here, partly for reasons of brevity and partly because the vast majority of the Faith-based organisations do not appear to have taken a clear position on the rights of transgender people. The main exception being the Roman Catholic Church which rejects the right of transgender people to be recognised as their preferred gender. In response to this question, this report refers to the Gross Report cited at the beginning of this chapter.

²⁸⁵ [Moving Toward Full Inclusion United Church of Canada](#) , [The Church of Sweden says Yes to Gay Marriage](#)

²⁸⁶ The question of acceptance of lesbians as bishops has not yet been raised since the acceptance of women as bishops was only agreed recently.

²⁸⁷ This seems true, even for the most controversial questions like the access to legal marriage for persons of the same sex. A survey carried out in October 2010 with 6,500 persons in the USA by the "Pew Research Center" showed that 46% of the catholics questioned approved or at least were not opposed to the marriage of gays and lesbians, whilst 42% were opposed.

²⁸⁸ IFOP survey of 14 August 2012

²⁸⁹ Cf. [Election](#) of a homosexual person to the Pastoral Council of Stützenhofen, in the Archdiocese of Vienna.

²⁹⁰ [David et Jonathan](#)

²⁹¹ Cf. for example [Beit Haverim](#)

²⁹² Imaan (UK), Merhaba (Belgium), Al-Fatiha foundation (USA), The Inner Circle (South Africa).

²⁹³ Junta Islamica (Spain), Cercles réformistes (France), Muslim for Progressive Values (USA).

²⁹⁴ [Homosexual Muslims of France Citizen Group](#)

²⁹⁵ The concepts "sexual orientation and gender identity" are understood according to the definitions stated in the Gross Report of the PACE Doc 1285 of 23 March 2010:

" Sexual orientation refers to the capacity of each person to feel a deep emotional, affective and sexual attraction to persons of the opposite sex, same sex or more than one sex, and to have intimate and sexual relationships with these persons¹ ; Sexual orientation is a profound part of the identity of each human being; it encompasses heterosexuality, bisexuality and homosexuality. The latter is now decriminalised in all Council of Europe member states.

Gender identity refers to the intimate and personal experience of one's gender as deeply experienced by each person, whether or not it corresponds to the gender assigned at birth, including personal awareness of the body (which may also involve, if freely consented to, modification of bodily appearance or functions by medical, surgical or other means) and other expressions of gender such as the way one dresses, speaks and behaves".

²⁹⁶ Preamble to Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.

²⁹⁷ Statement by the Secretary General of the United Nations at the opening of the 19th session of the Human Rights Council UN Geneva, 7 March 2012

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²⁹⁸ The key to understanding the position of the Magisterium of the Catholic Church is to be found in a series of doctrinal documents, notably [the Declaration "Persona Humana" On certain questions concerning sexual ethics](#) the "[Letter to the bishops of the Catholic Church on the pastoral care of homosexual persons](#)", the document of the Congregation for the Doctrine of the Faith published in 1992 under the title: "[Some considerations concerning legislative proposals on the non-discrimination of homosexual persons](#)" the Catechism of the Catholic Church (CEC 2357)

²⁹⁹ Leviticus, 18,22, and 20, 13.

³⁰⁰ Debate in General Synod - November 1987

³⁰¹ Issues in Human Sexuality A statement by the house of Bishops of the General Synod of the Church of England, December 1991 Church House Publishing

³⁰² Vejdeland and Others v. Sweden (Application no. 1813/07) 9 February 2012

³⁰³ Cf. for example the declaration of Cardinal Pujat, archbishop of Riga, quoted by the American Society for the defense of tradition, family and property May 2010: " Finally, we must assert that homosexuality is an acquired vice that can be likened to addiction to drugs, alcoholism, tobacco smoking, etc., so that those who practice it cannot be treated as a "minority." We must say that sexual perversion cannot be tolerated in the public sphere so that this disorder is not turned into a bad example for all society. If someone has inclinations to vice, vice must be reined in and treated. It cannot be legalized or protected, erroneously invoking the notion of human rights. Homosexuality is not a sexual orientation; it is a sexual perversion". :

³⁰⁴ It is the case, for example, of a language considering homosexuality as "infectious and dangerous" ("[Sexual bragging has reached its apogee](#)" – AFP - August 15 2005 <https://wwrn.org/articles/18265/> or as "a new ideology of evil"(Pope John Paul II "Memory and Identity", Crown,2005 "Gay Marriages are a New Ideology of Evil" - Reuters New Service - February 22 2005), or even leaving to understand that homosexuality is a strange orientation as are the orientations of vampires and kleptomaniacs (Cardinal Pujats of Latvia) "Latviju bez homoseksuālisma!" - Delfi - January 8 2002 – Translation by Mozaika <http://www.delfi.lv/archive/article.php?id=2435101> cf. aussi Catholic Herald 18 janvier 2002 <http://archive.catholicherald.co.uk/article/18th-january-2002/4/europe> : In his essay in Latvia, [Catholic Archbishop Janis Pujats said: "Vampires and kleptomaniacs are also strange orientations\)](#)

³⁰⁵ ECtHR, Gündüz v. Turkey, (no. 35071/97) para. 40 <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-61522%22%5D%7D>

³⁰⁶ <https://www.tfp.org/church-must-protest-against-laws-favoring-homosexuality-cardinal-says/>

³⁰⁷ See PACE website for verbatim account

³⁰⁸ The Moscow Patriarchate Department of External [Church Relations - 2007](#)

³⁰⁹ The Deputy Director of the Department of Relations with External Churches of the Moscow Patriarchate, Archpriest Vsevolod Chaplin, urging teachers to teach children not to follow the examples of "homosexuals and prostitutes". Associated Press/International Herald Tribune -- 8 August 2007 -- "Russian Orthodox Church calls for teaching of morals in school, deplores "ideology of science""

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³¹⁰ Letter to the bishops on the pastoral regarding homosexual persons, 1986
http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html

³¹¹ Declaration persona Humana § 7 op.cit : it is to be "strongly deplored that homosexual persons have been and still are victims of malicious expressions and violent acts" because these acts "show a lack of respect for others which undermines the basic principles on which a just civil society is based. The inherent dignity of every person must always be respected in words, actions and legislation."

³¹² Catechism of the Catholic Church (CCC 2358): "a not insignificant number of men and women present homosexual tendencies in the land. This propensity, objectively disordered, constitutes for most of them a test. They must be welcomed with respect, compassion and delicacy. Any signs of unjust discrimination against them should be avoided. These persons are called to carry out the will of God in their lives, and if they are Christians, to unite with the sacrifice of the Lord's cross the difficulties they may encounter because of their condition".

³¹³ Letter to the bishops on the pastoral regarding homosexual persons (1986) .
http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html

³¹⁴ [Statement by the Delegation of the Holy See to the 63rd General Assembly of the United Nations on the Declaration of Human Rights, Sexual Orientation and Gender Identity, 18 Dec 2008](#)

³¹⁵ [Case of Clift v. UK \(application 7205/07 13 juillet 2010\)](#)

³¹⁶ RTBF Info 13 mai 2012 : [Yacoub Mahi L'Islam considère que l'homosexualité est contre nature](#) (Yacoub Mahi: Islam considers homosexuality is contrary to Nature)

³¹⁷ cf. for example judgment of 21 October (Alekseyev v. Russia) , n° 4916/07, 25924/08 and 14599/09

³¹⁸ See PACE website for verbatim account

³¹⁹ 314 Ibidem § 11 "There are areas where it is not unfair discrimination to take sexual orientation into account, for example in the placement or adoption of children, in the hiring of teachers or sports trainers, and in military recruitment."

³²⁰ Bases of the Social Conception of the Russian Orthodox Church – XII. 9

³²¹ See the document "Comment on the subject...". "cited above at § 11: "There are areas in which it is not unfair discrimination to take sexual orientation into account, for example, in the placement or adoption of children, in the hiring of teachers or sports trainers, and in military recruitment".

³²² Ibidem § 13. cf. also [the recent declaration of Mgr Tomasi at the Human Rights Council of the United Nations](#)

³²³ see Judgment of 21 October 2010 (Alekseyev v. Russia) , n° 4916/07, 25924/08 and 14599/09) paragraphe 86

³²⁴ see UN Human Rights Committee – X v. Colombia

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³²⁵ See *Karner v. Austria*, *Kozak v. Poland*, *P.B & J.S. v. Austria*, and *J.M. v. UK*

³²⁶ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity - para. 32 of the appendix

³²⁷ Interview with Tareq Oubrou, theologian and rector of the Bordeaux mosque Interview by Hanan Ben Rhouma Saphirnews.com from Saturday 29th May 2010: "[Islam, homosexuality and homophobia, seen by Tareq Oubrou](#)"

³²⁸ Iran, Mauritania, Saudi Arabia, Sudan, Yemen, as well as the 12 northern states of Nigeria and the southern part of Somalia.

³²⁹ For race see *Smith & Grady v. U.K* and, *Lustig-Prean & Beckett v. U.K.* and, *Lustig-Prean & Beckett v. U.K.* U.K; for sex see *L. and V. v. Austria*, and *S.L. v. Austria*; for religion see *Mouta v. Portugal*; see also Article 21 of the EU Charter of Fundamental Rights, which prohibits discrimination on the ground of sexual orientation.

³³⁰ See *Schalk & Kopf v. Austria* paragraph 61

³³¹ See *Karner v. Austria*, *Kozak v. Poland*, *P.B & J.S. v. Austria*, and *J.M. v. UK*

³³² See *Schalk & Kopf v. Austria* paragraph 61

³³³ [European Court of Human Rights, Schalk and Kopf v. Austria, Application No. 30141/04, judgment of 24 June 2010, paragraph 108.](#)

³³⁴ [Case of Gas and Dubois v. France, Requête n o 25951/07\) Judgment of 15 March](#)

³³⁵ Article 7 .2 -- European Convention on the Adoption of Children (Revised) -- 27 November 2008

³³⁶ The 1986 Letter to Bishops on the Pastoral Care of Homosexuals, op.cit., states that its opposition to homosexual practices "does not mean that homosexuals are not often generous and capable of self-giving.

³³⁷ understood as the union of a man and a woman

³³⁸ 'Some Considerations on the Response to the Proposals for a Law on Non-Discrimination of Homosexual Persons', published by the Congregation for the Doctrine of the Faith on 22 July 1992).

³³⁹ As Pope Benedict XVI has just recalled before the diplomatic corps on 9 January 2012, same-sex marriage is one of the "policies that undermine the family (i.e. in the context of the speech, families based on the marriage of a man to a woman') and threaten human dignity and the very future of humanity. »

³⁴⁰ Cf. [Karner v. Austria \(Application 40016/98 24 July 2003\)](#)

The analysis of this judgment by Philippe Frumer: "Sexual orientation in relationships of partnership or cohabitation: the question of general interest before the European Court of Human Rights (the *Karner v. Austria* judgment of 24 July 2003): <https://www.rtdh.eu/> (et click on year 2004 then Numéro 59 then page 663 Ph Frumer)

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³⁴¹ European Court of Human Rights, Schalk and Kopf v. Austria, Application No. 30141/04, judgment of 24 June 2010, paragraph 108. See Note 331

³⁴² see. « Le Coran et la Chair » ("The Koran and the Flesh") de Ludovic-Mohamed Zahed, édition Max Milo 2012

³⁴³ The situation is more complex historically and outside of Europe, but is beyond the scope of this chapter, see "[LGBT topics and Buddhism](#)"

³⁴⁴ « Discrimination on grounds of sexual orientation and gender identity in Europe » report of the commissioner for Human rights council of Europe June 2011, P 91. At the date of February 10 2012, 7 countries have legalised homosexual marriage. See also: <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/work-completed/discrimination-on-lgbt>

³⁴⁵ Congregation for the doctrine of the faith : Some considerations concerning the response to legislative proposals on the non-discrimination of homosexual persons*
http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19920724_homosexual-persons_en.html

See § 15Do they (the proposals of laws) confer equivalent family status on homosexual unions, for example, in respect to public housing or by entitling the homosexual partner to the privileges of employment which could include such things as “family” participation in the health benefits given to employees (cf. no. 9)?

³⁴⁶ Regarding the legal protection of the material rights of homosexual persons, the Letter to the Bishops considers that “the argument according to which the legal recognition of homosexual unions would be necessary to prevent homosexuals living under the same roof from losing, by the simple fact of their life together, the effective recognition of the common rights they have as persons and as citizens, is not true. In reality, they can still resort – like all citizens and on the basis of their private autonomy - to common law to settle legal questions of mutual interest. ". This point is debated and debatable insofar as certain rights recognized for married couples are not recognized for unmarried couples, such as retirement reversion, rental succession, etc. In addition, this leads to discrimination against same-sex couples, since they would be forced to pay administrative costs to settle their affairs, which is not the case for couples of different sexes.

³⁴⁷ AD HOC Committee on Preventing and Combating Violence against Women and Domestic Violence - Compilation of Comments on The Draft Convention on Preventing and Combating Violence Against Women and Domestic Violence - 21 April 2010. See also the report of Amnesty International <http://www.amnesty.eu/content/assets/Doc2011/ior610042011en.pdf> or [Amnesty International Report](#)

³⁴⁸ In Poland : <http://www.nytimes.com/1995/07/17/world/shrinking-gap-between-church-and-polish-state.html?pagewanted=2&src=pm>

- In the Philippines : "[Philippines to vote on gay law](#)" - Pinknews.co.uk – August 15 2006

For example: [the plenary meeting of the Bishops' Conference of Lithuania, Vilnius 2007](#)réunion

- "[Pope condemns gay rights march](#)" – BBC - July 9 2000

- "[Vatican called for cancellation of today's 'offensive' Jerusalem Gay Pride](#)" – [LifeSiteNews.com](#) – November 11 2006

<https://catholiccitizens.org/?s=gay+pride> and <https://catholiccitizens.org/?s=gay>

- [What do you think of the decision of the Moscow authorities to ban the holding of a gay parade in the capital city?](#) I think it was a wise decision, complying with all the arguments dictated by Christian faith against such public actions" Interview with Interfax - April 13 2006 –

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³⁴⁹ Report by Françoise Girard '[Negotiating sexual rights and sexual orientation at the UN](#)
Cf Belize: [Global campaign to decriminalise homosexuality to kick off in Belize court](#)

³⁵⁰ As a State, the Holy See has the opportunity to participate in the work of international institutions, under conditions that go far beyond those of other religions or, of course, civil society organisations. The Holy See is a full member of the OSCE and has observer status at the UN and the Council of Europe, which gives it privileged access and a voice in (often) confidential negotiations between states.

³⁵¹ [Position of the Holy See in its Explanation of Position on the General Assembly Resolution "Extrajudicial, summary or arbitrary executions"](#) (A/RES/65/ L.56) - 65th session of the UN General Assembly - New York, 21 December 2010

³⁵² See, for example, [statement by Monsignor Michael W. Banach](#), Permanent Representative of the Holy See, at the 737 th Meeting of the OSCE Permanent Council -- 30 October 2008 – "Re: Report by the Director of the Office for Democratic Institutions and Human Rights" We would not accept to discuss the issue of discrimination on the basis of sexual orientation in the fight against hate crimes, as suggested by some Delegations, as this is not one of the commitments of the Organization."
See also [Statement of the Holy See delegation at the 63rd session of the General Assembly](#) of the UN on the declaration of Human rights, sexual orientation and Gender Identity 18 déc. 2008:

³⁵³ Statement by Archbishop Silvano M. Tomasi, on the general debate on "Discriminatory laws and practices and acts of violence against women and children in the European Union against persons based on their sexual orientation and gender identity" item 3-19 th session of the Human Rights Council, , March 2012 <https://nuntiusge.org/category/statements/> March 7 2012 [19th Session of the UN Human Rights Council Item 3: Panel Discussion on Discriminatory Laws and Practices and Acts of Violence against Individuals based on their Sexual Orientation and Gender Identity](#) :... *In paragraph #68 of her Report, the High Commissioner rightly asserts that "the Human Rights Committee has held that States are not required, under international law, to allow same-sex couples to marry." She immediately proposes, however, that Sates have an obligation to "ensure that unmarried same-sex couples are treated in the same way and entitled to the same benefits as unmarried opposite –sex couples." In this regard, the Holy See expresses grave concern that, under the guise of "protecting" people from discrimination and violence on the basis of perceived sexual differences, this Council may be running the risk of demeaning the sacred and time-honored legal institution of marriage between man and woman, between husband and wife...*

³⁵⁴ Declaration of the delegation of the Holy See at the 63rd General Assembly of the United Nations on the Declaration of Human Rights, sexual orientation and gender identity, 18 Dec 2008
http://www.vatican.va/roman_curia/secretariat_state/2008/documents/rc_seg-st_20081218_statement-sexual-orientation_en.html

³⁵⁵ see for example: Declaration of the delegation of the Holy See concerning "Human rights, sexual orientation and gender identity"
http://www.vatican.va/roman_curia/secretariat_state/2008/documents/rc_seg-st_20081218_statement-sexual-orientation_en.html

"Note on the project of resolution of the United Nations Commission on Human Rights concerning "Sexual Orientation" and Discrimination "of the Permanent Mission of the Holy See to the United Nations Office in Geneva (2004), and
- ["Caribbean bishops oppose Jamaica proposal on gays"](#) - Reuters – December 18 2001
- ["Conference President Criticizes Supreme Court Decision"](#) – Press release by US Conference of Catholic Bishops – June 27 2003

³⁵⁶ Congregation for the Doctrine of the Faith: Some considerations on the response to legislative proposals concerning the non-discrimination of homosexual persons §13

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³⁵⁷ see for example: "[Statement by Mgr Banach at the 685 th meeting of the OECE permanent council 1 nov 2007](#)" "Along similar lines, my Delegation has already made its views known to the Director of the ODIHR concerning some of the content of the recent Draft Report: Human Rights Defenders in the OSCE Region: Threats and Challenges. Some sections of the Report seem to be unbalanced, especially those concerning threats to HRDs in the area of "discrimination on the basis of sexual orientation", a mandate that the ODIHR has not received. The Holy See is also confident that here, as well, the commitments of the ODIHR to safeguard the HRDs will remain within the area of its specific competence, and that its other observations on the Draft Report will be taken into consideration."

³⁵⁸ see The declarations at the 19th session on 7 March 2012

³⁵⁹ [A survey in the UK in 2005 gave a proportion of 6% LGBT people](#). (see Extrapolated to the 800 million inhabitants of the Europe of the 47, that would give an estimation of 48 million LGB persons.

³⁶⁰ Which is the age of 16 for heterosexuals and 18 for homosexuals.

³⁶¹ See Sutherland v. U.K. (1 July 1997) (Commission report)

³⁶² see for example "Some considerations concerning the response to legislative proposals on the non-discrimination of homosexual persons", published by the Congregation for the Doctrine of the Faith on 22 July 1992 and "Considerations on the proposal to give a legal recognition to the union between two homosexuals" published by the Congregation for the Doctrine of the Faith on 3 June 2003

³⁶³ Still more recently, Cardinal Keith O'Brien, head of the Catholic Church in Scotland, stated the legalising the marriage between persons of the same sex would be "[a grotesque subversion of a universally accepted human right](#)" quoted by ICLRS Law and Religion Headlines August 27, 2012 (<https://www.iclrs.org/>)

³⁶⁴ "Some considerations concerning the response to legislative proposals on the non-discrimination of homosexual persons", published by the Congregation for the Doctrine of the Faith on 22 July 1992 § 2, 5, 7, 15

³⁶⁵ Cf. Congregation for the Doctrine of the Faith: [Some considerations concerning the response to legislative proposals on the non-discrimination of homosexual persons § 14](#)
"As a rule, the majority of homosexually oriented persons who seek to lead chaste lives do not publicize their sexual orientation. Hence the problem of discrimination in terms of employment, housing, etc., does not usually arise."

³⁶⁶ [Some considerations concerning the response to legislative proposals on the non-discrimination of homosexual persons](#)

³⁶⁷ Cf. for example « Homosexuels catholiques, sortir de l'impasse » Claude Besson, Editions de l'Atelier, 144 pages, (Catholic homosexuals, breaking the deadlock)

³⁶⁸ Unless these views are so extreme that they lose the protection of the ECHR, either through the limits imposed on freedom of expression in Article 10.2 or in Article 17: "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights or freedoms set forth herein or at their limitation to a greater extent than is provided for herein".

Chapter VI

³⁶⁹ "[Religious diversity and intercultural education: a reference book for schools](#)" Council of Europe Online Bookshop September 2007

³⁷⁰ [In § 7 of PACE Recommendation 1720 adopted 4 October 2005](#)

³⁷¹ Cf. - Commissioner of Human Rights of the Council of Europe 2001: "The relationships Churches-States with regard to the exercise of the right to freedom of religion" (http://www.cfjd.org/cupboard/documentations/html/conseil_de_leurope_et_religion.htm), (Not found) - Michel Miaille : La Laïcité et l'Europe, de la Charte des droits fondamentaux à la Constitution européenne (1999-2004) » [site de la Grande Loge Mixte Universelle](#) (Secularism and Europe, of the Charter of fundamental rights in the European constitution (1999-2004) (English website not found)

³⁷² See Recommendation 1202 (1993) of the Parliamentary Assembly relative to religious tolerance in a democratic society.

³⁷³ Cf. Chapter 2 of B. Massignon et V. Riva « L'Europe, avec ou sans Dieu ?, héritages et nouveaux défis » Editions de l'Atelier 2010, 286 pages, (Europe with or without God? heritages and new challenges)

³⁷⁴ PACE Recommendation 1804 (2007), The State, religions, secularism and human rights "The Assembly notes that, while the European Court of Human Rights protects freedom of expression and freedom of religion, it also recognises the right of individual countries to organise, including by law, relations between the state and religion, in accordance with the provisions of the European Convention on Human Rights (ETS No. 5), and notes that Council of Europe member states today have varying degrees of separation between government and religious institutions, in full compliance with the Convention".

³⁷⁵ J.P. Willaime, « Le retour du religieux dans la sphère publique, vers une laïcité de reconnaissance et de dialogue » editions Olivétan 2008 p 64 (The return of the religious in the public sphere, towards a secularism of recognition and dialogue)

³⁷⁶ [San Marino Declaration](#) " ... the Council of Europe intended to maintain an attitude of neutrality towards religions and schools of thought and to take full account of the following three requirements: (1) freedom of thought, conscience and religion as guaranteed by Article 9 of the ECHR, (2) equality of rights and duties of all citizens irrespective of their religion or belief, and (3) the right to freedom of religion and belief, religious affiliation, (3) the respective autonomy of the state and religions. The Council of Europe will also take into account the role and specific status of religious communities in each of the countries of Europe."

³⁷⁷ Joint reply from the Committee of Ministers adopted at the 1036th meeting of the Ministers' Deputies (16 September 2008): It [the Committee of Ministers] reaffirms its commitment to the common European principle of separation of governance and religion in the Member States of the Council of Europe in full compliance with the Convention for the Protection of Human Rights and Freedoms (ECHR). This principle, together with that of freedom of conscience and thought and that of non-discrimination, is part of the ECHR, intrinsic to the concept of European secularism within the framework of which the Committee of Ministers places its work on the religious dimension of intercultural dialogue <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12026&lang=en>

³⁷⁸ For example Refah Partisi (Welfare Party) v. Turkey (31 July 2001) (European Court of Human Rights), paras. 43, 49, 51

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³⁷⁹ Kervanci v. France judgment "Having regard to the margin of appreciation which must be left to the member States in establishing the delicate relationship between the State and the churches, the religious freedom thus recognised and as limited by the imperatives of secularism appears legitimate in the light of the values underlying the Convention".

³⁸⁰ cf. Appendix

³⁸¹ Cf. Appendix

³⁸² https://www.ceceurope.org/wp-content/uploads/2015/08/CofEU_111190.pdf

³⁸³ [Recommendation 1804 \(2007\) of the Parliamentary Assembly of the Council of Europe Article 16](#)

³⁸⁴ see Appendix

³⁸⁵ [Charter of Fundamental Rights of the European Union](#) see Appendix

³⁸⁶ Treaty of Lisbon see Appendix

³⁸⁷ [Resolution 36/55](#) : Rapporteur's digest on freedom of religion or belief

³⁸⁸ "The Assembly reaffirms that one of the common values in Europe, which transcends national differences, is the separation of church and state. This is a generally accepted principle which dominates political and institutional life in democratic countries.

Thus, in its Recommendation 1720 (2005) on education and religion, the Assembly noted that "everyone's religion, including the option not to have a religion, is a strictly private matter". Recommendation 1804 voted on 29 June 2007

[Recommendation 1804 \(2007\) of the Parliamentary Assembly of the Council of Europe Article 16](#)

³⁸⁹ As far as the European Union is concerned, nothing is made explicit since the consolidated Treaty of Lisbon refers to States in Article II 17: The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.

³⁹⁰ [White Paper on Intercultural Dialogue](#)

³⁹¹ "I won't try to change anything I think, or anything you think (as far as I can judge) in order to achieve a conciliation that would be agreeable to all of us. On the contrary, what I would like to say to you today is that the world needs real dialogue, that the opposite of dialogue is both lies and silence, and that therefore dialogue is only possible between people who stay as they are and who speak the truth." Albert Camus, *Actuelles Ecrits Politiques*, Gallimard Paris 1950

³⁹² Paul Ricœur, *La critique et la conviction*, Entretiens avec François Azouvi et Marc de Launay. Calmann-Lévy, 1995, pages 195-197 (Criticism and Convictions, Conversations with François Azouvi and Marc de Launay)

³⁹³ In its [Recommendation 1804 \(2007\) of the Parliamentary Assembly of the Council of Europe of](#) 29 June 2007, the PACE declared: "Religions organised as such are an integral part of society and, in this respect, they should be considered as institutions constituted and involving citizens who have the right to religious freedom, but also as organisations of civil society, with all its potential for ethical and civic orientation, with a role to play among the national community, be it religious or secular."

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³⁹⁴ see for example the conclusions concerning the affair of the crucifixes in the state schools of Italy (Cf. Lautsi and others v. Italy (judgment no 30814/06) or the Alicia Tysjac affair in Poland

³⁹⁵ See the press release of the court clerk n°234 du 18/03/2011 in the Lautsi vs Italy case

³⁹⁶ see the series of testimonials collected by James Barnett, member of the G3I, in the book he edited : James Barnett editor, «A theology for Europe, the Churches and the European Institutions” Religions and Discourses edited by James M.M Francis, n°28 Peter Lang Bern 2005.

See also Cf. B. Massignon et V. Riva « L'Europe, avec ou sans Dieu ?, héritages et nouveaux défis » Editions de l'Atelier 2010, 286 pages, (Europe with or without God? heritages and new challenges)

³⁹⁷ See, “Religion in Public Spaces ,A European Perspective” Edited by Silvio Ferrari and Sabrina Pastorelli, The University of Milan, Italy; Series : Cultural Diversity and Law in Association with RELIGARE

³⁹⁸ Paul Ricœur, op.cit

³⁹⁹ See. [Case of Dogru v. France, 4 December 2008](#)

⁴⁰⁰ Paul Ricœur, op.cit.

⁴⁰¹ See for example, the analysis made by the European network of independent experts in the field of fundamental rights, opinion n° 4-2005 on "the right to conscientious objection and the conclusion by the Member States of concordats with the Holy See, 14 December 2005 Ref : CFR-CDF.opinion 4-2005.doc

⁴⁰² Cf. The Hague declaration: [Faith in Human Rights](#) December 2008 and Universal Declaration of Human Rights by the World's religions (2003) <http://worldsreligions2016.org/declaration/>

⁴⁰³ Abdelwahab Meddeb “Human Rights, Divine Right” Minutes of the Oslo Forum on the universality of Human Rights http://forumoslo.fede.org/textes/fr/Abdelwahab_Meddeb_Droits_humains_droit_divin_FR.pdf (link not found <https://www.yumpu.com/en/document/read/9564847/press-pack-multivu> page 13

⁴⁰⁴ Quoted by Rachid Benzine in « les nouveaux penseurs de l'islam » Albin Michel 2004, p 97 (New thinkers of Islam)

⁴⁰⁵ [Cairo Declaration of Human Rights in Islam](#) adopted 5 August 1990 in Cairo (Egypt) in the 19th Islamic Conference of Foreign Ministers. See. the text in Mohammed Amin Al-Midani, Human Rights and Islam. Texts of arab and islamic organizations 189pp

⁴⁰⁶ Judgment of 2001 The affair Refah/Partisi

⁴⁰⁷ Judgment of 13 February 2003: the Court shares the Chamber's analysis* as to the incompatibility of Sharia law with the fundamental principles of democracy, as they result from the Convention.** <https://www.refworld.org/cases,ECHR,3fe7097e4.html>
See also <https://eclj.org/religious-autonomy/echr/charia--ce-que-rvle-la-dcision-de-la-cedh>

⁴⁰⁸ [Cairo Declaration of Human Rights in Islam](#) 1990

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⁴⁰⁹ see Al-Midnani, « La Déclaration universelle des droits de l'homme et le droit musulman », in Lectures contemporaines du droit islamique. Europe et monde arabe, Franck Frégosi (dir.), Presses Universitaires de Strasbourg, Strasbourg, 2004, pp. 154-186). (The Universal Declaration of Human Rights and Muslim Rights)

⁴¹⁰ 2003 Annual Report of the European Court of Human Rights / ECHR Court registry see page 8: This time, in the Refah Partisi judgment, the Court examined in depth the relationship between the Convention, democracy, political parties and religion and concluded that a Shariah-based regime was incompatible with the Convention, in particular with regard to its rules of criminal law and procedure, its place for women in the legal order and its intervention in all areas of private and public life in accordance with religious norms).

⁴¹¹ see. the website [Islamlaïcité](#) (Islam Secularism)

Cf. The "[Forum musulman pour un Islam laïc](#)" (Muslim Forum for a Secular Islam)

- "Pour l'Islam de France" de l'imam Hassen Chalghoumi (For the Islam of France)

- Les Musulmans d'Europe et la question de la laïcité Mohammed (The Muslims of Europe and the question of Secularism) Tahar Bensaada

<https://new.oumma.com/les-musulmans-deurope-et-la-question-de-la-laicite/>

- L'Islam est-il hostile à la laïcité ? par Abdou Filali-Ansary Sindbad avril 2002, 143 p Première édition : Le Fennec – 1996 ISBN: 2742737014 (Is Islam hostile to secularism?)

⁴¹² The former rector of the famous Al-Azhar University in Cairo, Mr el-Tantaoui, believes that Islam must be moulded into the structure of the host country in order to live in harmony, and that this country must in turn respect the free exercise of the spirituality of Islam.

⁴¹³ <https://www.refworld.org/docid/3ae6b38540.html>

⁴¹⁴ See the text in Al-Midani, [The Arab Charter of Human Rights](#) (not available in English) Les droits de l'homme et l'Islam. Textes des Organisations arabes et islamiques, p. 85.ou sur le web à l'adresse : http://www.acihl.org/texts.htm?article_id=16 (Human Rights in Islam, Texts of Arab and Islamic organisations) [arab charter on human rights 2004 - EODS](#)

See also : <https://www.brookings.edu/research/the-organization-of-islamic-cooperations-declaration-on-human-rights-promises-and-pitfalls/>

⁴¹⁵ see the conclusions of the meeting of 8 April 2008 organised by the Committee of Ministers of the Council of Europe on [Teaching religious and convictional facts](#)

⁴¹⁶ <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11017&lang=en>

⁴¹⁷ cf. The ECHR judgment of 3 November 2009 Lautsi v. Italy n° 30814/06

⁴¹⁸ [Case of Lautsi and Others v Italy](#) (application no. 30814/06), The Court considered that the preponderant place of a religion in the history of a country can justify the fact that a particular place is given to it in the public space .

⁴¹⁹ [Lautsi Case, Press release issued by the Registrar](#)