



**Religious Autonomy in European Law:
A Practical Guide for Preserving Institutional Identity
in a Developing Legal Landscape**

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For religious organizations in Europe, the boundary between spiritual authority and legal obligation is no longer obvious. While the autonomy of religious communities remains a firmly established principle under both the European Convention on Human Rights (“ECHR”/“Convention”) and European Union (“EU”) law, its exercise is no longer confined to an internal sphere insulated from external scrutiny.¹ Instead, religious autonomy now operates within a broader legal framework in which it must be reconciled with competing rights, in particular the principles of equality and non-discrimination, and with the expectation that autonomy claims can be objectively justified and subjected to judicial review.²

According to the principle of religious autonomy, religious communities and entities, the ethos of which is based on religion or belief, have the right to organize their internal affairs, determine their doctrine, select their leadership, and regulate their membership free from undue State interference.³ The principle has been long recognized in various national legal orders and in different instruments of international law. In particular, the principle has been recognized by the European Court of Human Rights (“ECtHR”) as a central component of religious freedom guaranteed by Article 9 of the Convention and freedom of association enshrined in Article 11 of the Convention.⁴ The protection afforded to religious communities and faith-based organizations reflects the broader role of institutional autonomy in securing religious pluralism and enabling the collective manifestation of belief.⁵ Religious autonomy is therefore examined in this contribution as an institutional dimension of religious freedom that safeguards the capacity of religious communities to preserve their identity, pursue their mission, and organize their affairs according to their own religious convictions.⁶

¹ See, e.g., Ronan McCrea, Religion and the Public Order of the European Union 81–110 (2010); Victor Davio & Elise Muir, The ECHR in the ECJ’s Case Law Post-Charter: A Dual Perspective, 8 Eur. Papers (2023).

² See, e.g., McCrea, *supra* note 1; *Schüth v. Germany*, App. No. 1620/03, ¶¶ 69–73 (Eur. Ct. H.R. 2010); Davio & Muir, *supra* note 1; Case C-414/16, *Egenberger v. Evangelisches Werk für Diakonie und Entwicklung*, EU:C:2018:257.

³ See Roland Minnerath, Church Autonomy in Europe, in Gerhard Robbers (ed), *Church Autonomy: A Comparative Survey* (Frankfurt am Main: Peter Lang, 2001), ch 17 (explaining that religious communities must be able to organize their internal governance, appoint leadership, and operate according to their own norms without State interference); Eur. Ct. H.R., Guide on Article 9 of the European Convention on Human Rights: Freedom of Thought, Conscience and Religion at 10–11, 84–85 (2026) [hereinafter Guide on Article 9]; see also *Fernández Martínez v. Spain* [GC], App. No. 56030/07, ¶¶ 127–132 (Eur. Ct. H.R. 2014).

⁴ *Hasan & Chaush v. Bulgaria*, [GC] App. No. 30985/96, ¶ 62 (Eur. Ct. H.R. 2000); *Sindicatul “Păstorul cel Bun” v. Romania*, App. No. 2330/09, ¶ 159 (Eur. Ct. H.R. 2013); Guide on Article 9, *supra* note 3.

⁵ Guide on Article 9, *supra* note 3, (explaining that the autonomous existence of religious organizations is indispensable for pluralism in a democratic society and forms part of the collective dimension of freedom of religion); *Hasan & Chaush*, ¶ 62.

⁶ See Guide on Article 9, *supra* note 3, at 84–92; *Hasan & Chaush*, ¶ 62; *Metropolitan Church of Bessarabia v. Moldova*, App. No. 45701/99, ¶ 114, 118 (Eur. Ct. H.R. 2001).

The legal significance of religious autonomy lies in the manner in which it is assessed. Rather than functioning as a categorical exemption from general legal norms, religious autonomy has come to be treated as a legally protected interest whose scope depends on context and justification. Both the ECtHR and the Court of Justice of the European Union (“CJEU” / “the Court of Justice”) recognize the importance of institutional autonomy as an element of freedom of religion and freedom of association.⁷ At the same time, their case law demonstrates that claims based on religious autonomy are increasingly subject to structured review, particularly where they affect individuals in legally regulated contexts such as employment, education, or access to services.⁸ The interaction between these two legal orders reflects both common concerns and distinct doctrinal approaches.⁹

The practical implications of these developments are significant for religious institutions operating within Europe. Questions that once appeared predominately internal increasingly arise in contexts governed by broader legal obligations. For example, a religious healthcare provider may seek to refuse participation in procedures that conflict with its ethos, such as abortion or euthanasia. A faith-based educational institution may wish to require teachers to adhere to particular religious and moral standards of conduct. Likewise religious employers may seek to impose loyalty obligations on employees whose roles are closely connected to the institution's mission. These situations illustrate that disputes concerning religious autonomy now frequently emerge at the intersection of religious identity, individual rights, and regulatory frameworks.¹⁰ The challenge now facing religious institutions is how decisions connected to their autonomy are assessed when they affect interests beyond the internal life of the religious community.

This paper examines the application of the principle of religious autonomy under the ECHR and EU law. Its objective is to identify and systematize the underlying structure of judicial reasoning applied by European courts when assessing claims of religious autonomy. It argues that, although neither the ECtHR nor the CJEU has articulated a single doctrinal test, their case law reveals a recurring analytical framework based on a series of interrelated steps, including the definition of

⁷ In the ECtHR’s case law, the principle of religious autonomy clearly stems from religious freedom (Art 9 of the Convention) and freedom of association (Art 11 of the Convention). In the relevant cases, the CJEU has so far explicitly referred only to religious freedom (Art 10 of the Charter); see however the observation of AG Tanchev in his opinion in Case C-414/16 *Egenberger* EU:C:2017:851, paras 105, 116 (Para 116: “the right of religious organisations to autonomy and self-determination is a fundamental right that is recognised and protected under EU law, *as reflected in Articles 10* [religious freedom] *and 12* [freedom of association] *of the Charter*”, emphasis added)

⁸ See McCrea, *supra* note 1, at 102–05; Cole Durham & Brett Scharffs, *Law and Religion: National, International, and Comparative Perspectives* 469–78 (2d ed. 2019); *Hasan & Chaush*, ¶ 62; *Sindicatul “Păstorul cel Bun”*, ¶ 159.

⁹ Romain Tinière, *The Use of ECtHR Case Law by the CJEU: Instrumentalisation or Quest for Autonomy and Legitimacy?*, 8 *Eur. Papers* (2023); Davio & Muir, *supra* note 1; Sionaidh Douglas-Scott, *Fundamental Rights in the European Union* 201–05 (2d ed. 2015).

¹⁰ See e.g. *Fernández Martínez*; *Schüth*, ¶¶ 69–73; *Pichon & Sajous v. France*, App. No. 49853/99 (Eur. Ct. H.R. 2001).

the religious claim, the classification of the activity as internal or external, the identification of competing rights, the assessment of justification and proportionality. Through this analysis, the paper demonstrates that religious autonomy operates as a claim requiring context-specific justification within a framework of judicial review.¹¹

The paper proceeds in four parts. Section I outlines the legal framework governing religious autonomy under international and European law. Focusing primarily on the ECHR system and the EU legal order, it identifies the main points of convergence and divergence between the two systems. Section II reconstructs, from the case law, a comprehensive method of analysis applied by European courts when assessing claims based on religious autonomy. The subsequent sections apply this framework to recurring areas of dispute (section III) and draw out its practical implications for institutional decision-making (section IV). The last section (section V) concludes.

I. The Legal Framework of Religious Autonomy

The principle of religious autonomy has been widely recognized within different national jurisdictions as well as by various instruments of international law (A). In the European legal landscape, the principle of religious autonomy receives special protection both within the ECHR system (B) and the EU legal order (C). A preliminary overview of the scope and sources of religious autonomy in these two legal systems is followed by a comparative synthesis of their respective approaches (D).

A. Recognition of Religious Autonomy in National Legal Orders and International Law

National Legal Orders

The concept of religious autonomy predates the first stages of post-World War II European integration, marked by the creation of the Council of Europe and the European Communities. In fact, even before being “transposed” into the case law of the highest European courts, the principle of religious autonomy had long been recognized within various national jurisdictions.

The principle of religious autonomy has deep roots in the German legal order where the domestic courts have traditionally attached considerable importance to respecting the independence and collective religious freedom of churches and other faith-based institutions. Indeed, Article 140 of the German Constitution (Basic Law - *Grundgesetz*) indicates that the key provisions of the Weimar Constitution of 1919 shall be an integral part of the Basic Law.¹² The provisions in question include in particular Article 137(3) of the Weimar Constitution, according to which

¹¹ See *Egenberger*, ¶ 62; *Fernández Martínez*, ¶ 132; *Schüth*, ¶ 69; McCrea, *supra* note 1, at 105–08.

¹² Basic Law for the Federal Republic of Germany, translation available at: https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html accessed on 22.09.2026.

“[r]eligious societies shall regulate and administer their affairs independently within the limits of the law that applies to all. They shall confer their offices without the participation of the state or the civil community.” In its case law, the German Constitutional Court (*Bundesverfassungsgericht*) has on numerous occasions relied on the principle to prevent the undue intrusion of state measures into the internal sphere of religious communities.¹³

In a similar vein, the Supreme Court of the United States has long time recognized the doctrine of religious autonomy guaranteeing the independence of religious organizations from state interference in matters of internal governance. In the landmark case *Watson v. Jones* from 1872, the Court highlighted that civil courts could not adjudicate matters that were “strictly and purely ecclesiastical” in their character.¹⁴ The doctrine of church autonomy was subsequently given a constitutional foundation in the framework of the Establishment and Free Exercise Clauses of the First Amendment.¹⁵ Furthermore, in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, the Supreme Court recognized the doctrine of “ministerial exception”, which provides heightened protection to employees performing ministerial functions against the application of anti-discrimination legislation.¹⁶

More recently, the principle of institutional autonomy of churches and religious communities has received a formal recognition in the case law of the highest courts in France. In the landmark ruling of 4 April 2025, expressly invoking the principle of autonomy of religious communities, the Court of Cassation (*Cour de cassation*), seating in its most solemn formation (*Assemblée plénière*), held that the civil courts may not assess the validity or merits of decisions concerning the appointment or removal of religious ministers.¹⁷ Furthermore, in its recent decision on the constitutionality of the French “Law on the right to assistance in dying”, the Constitutional Council (*Conseil constitutionnel*) has formulated an important exception to the implementation of the new law (interpretative reservation) by specifying that the obligation to provide access to assisted dying does not apply to institutions whose ethos is grounded in religious convictions.¹⁸ Without explicitly referring to the principle of religious autonomy,¹⁹ the Constitutional Council thus indirectly

¹³ See eg *Bundesverfassungsgericht* (BVerfG), Order of 17 February 1965, 1 BvR 732/64, BVerfG, Order of 16 October 1968, 1 BvR 241/66; for recent application of the principle of church autonomy, see eg BVerfG, Judgment of 29 September 2025, 2 BvR 934/19.

¹⁴ *Watson v. Jones*, 80 U.S. (13 Wall.) 679, (1871), page 80 U. S. 733.

¹⁵ See in particular, *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); *Serbian Eastern Orthodox Diocese v. Milivojevic*, 426 U.S. 696 (1976).

¹⁶ *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012). See also *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732 (2020).

¹⁷ *Cour de cassation, Assemblée plénière*, 4 avril 2025, n° 21-24.439, see in particular para. 16.

¹⁸ *Conseil constitutionnel*, 14 August 2026, n° 2026-910 DC, para. 188.

¹⁹ The Constitutional Council reasoned instead on the basis the freedom of association and the freedom to conduct a business.

acknowledged its pivotal role in preserving the functioning of religion-based institutions against undue intervention of State authorities.

International Law and Soft Law

This “transnational” recognition of the principle of religious autonomy²⁰ finds its reflection in the key instruments of International Human Rights Law as well as in various documents of international “soft law”. A range of international treaties expressly protect the collective dimension of religious freedom. Most importantly, Article 18 of the International Covenant on Civil and Political Rights (“ICCPR”) provides that the right to freedom of thought, conscience and religion “shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually *or in community with others* and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”²¹ Similarly worded provisions may be found in other international instruments such as the American Convention on Human Rights (Article 12)²², the African Charter on Human and Peoples’ Rights (Article 8)²³, as well as in the ECHR (Article 9) and the Charter of Fundamental Rights of the EU (Article 10), which will be analysed in detail below.

On different occasions, the bodies responsible for the construction of these instruments have specified that the protection of the collective dimension of religious freedom encompasses the respect for the principle of religious autonomy. In its General Comment No. 22 (1993) on Article 18 of the ICCPR, the UN Human Rights Committee underscored that “the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as, inter alia, the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.”²⁴ The UN Committee thus openly acknowledges the importance of the right to self-organisation of religious groups.

Along similar lines, in her recent contribution to the French Constitutional Council, the UN Special Rapporteur on Freedom of Religion or Belief recalled that the right to religious freedom

²⁰ The three analysed examples adequately illustrate the key role of the principle of autonomy in various national legal orders. Yet, naturally, the principle has been applied in numerous other jurisdictions in Europe and beyond; for a more detailed overview of its application in various individual countries, see eg Diana Verm Thomson and Kayla A Toney, ‘Sacred Spheres: Religious Autonomy As An International Human Right’ (2023) 72 Cath. UL Rev. 151, pp. 171 et seq.

²¹ International Covenant on Civil and Political Rights, adopted 16 December 1966, 999 UNTS 171. Emphasis added.

²² American Convention on Human Rights, adopted 22 November 1969, 1144 UNTS 123.

²³ African Charter on Human and Peoples’ Rights, adopted 27 June 1981, 1520 UNTS 217.

²⁴ UN Human Rights Committee, General Comment No. 22 (1993), Article 18 (Freedom of Thought, Conscience or Religion), UN Doc. CCPR/C/21/Rev.1/Add.4 (30 July 1993), para. 4.

encompasses “institutional freedom”²⁵ the respect of which ‘falls within the broader framework of the protection afforded to religious communities under international human rights law and contributes to pluralism.’²⁶ She highlighted that “[f]reedom of religion or belief also protects the autonomy of religious communities and institutions in areas closely tied to their religious identity.”²⁷

Acting jointly in different international fora, States have also repeatedly underscored the importance of the principle of institutional autonomy for the protection of religious freedom, thereby reiterating their strong commitment to preserving the independence of churches and other entities whose ethos is based on religion. For instance, during the Vienna Meeting, the Member States of the Conference on Security and Co-operation in Europe (CSCE) unequivocally committed to respect the autonomy of churches and religious communities.²⁸ In that document, the States committed, *inter alia*, to respect the right of the “religious communities to “organize themselves according to their own hierarchical and institutional structure” or to “select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State”.²⁹

Finally, various soft law instruments address the specific question of the protection of religious autonomy in the context of activities that are manifestly contrary to the religious ethos of a particular institution, such as abortion or euthanasia. In this regard, it is necessary to mention, in particular, Resolution 1763 adopted in 2010 by the Parliamentary Assembly of the Council of Europe and entitled “The right to conscientious objection in lawful medical care”.³⁰ According to this Resolution, “[n]o institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which could cause the death of a human foetus or embryo, for any reason.”³¹ Such concrete commitments addressing specific aspects of the consequences of the principle of institutional autonomy reveal its increasing importance within the international order. The crucial role of the principle of religious autonomy

²⁵ External Contribution by Nazila Ghanea, United Nations Special Rapporteur on Freedom of Religion or Belief, to the French Constitutional Council, available at <https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/decisions/2026910dc/2026910dc_contrib.pdf>, accessed on 22.09.2026; paras 13-15.

²⁶ *Ibid*, para 15.

²⁷ *Ibid*, para 13.

²⁸ Conference on Security and Co-operation in Europe (CSCE), Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, Held on the Basis of the Provisions of the Final Act Relating to the Follow-Up to the Conference, Vienna, 19 January 1989, principle 16.

²⁹ *Ibid*, principle 16(4).

³⁰ Parliamentary Assembly of the Council of Europe, ‘The right to conscientious objection in lawful medical care’, Resolution 1763 (2010), 7 October 2010, available at <https://pace.coe.int/en/files/17909/html> accessed on 22.09.2026.

³¹ *Ibid*, para 1, see also para 4.

in maintaining democratic pluralism finds its expression in the case law of the highest European courts, which is analysed in detail in the following sections.

B. Religious Autonomy under the ECHR system

Religious Autonomy: Principle Grounded in Articles 9 and 11 of the ECHR

Within the ECHR system, the protection of religious autonomy stems from the rights to religious freedom and freedom of association. The principle of religious autonomy is grounded primarily in Article 9 of the Convention, which guarantees freedom of thought, conscience, and religion, including the right to manifest belief through worship, teaching, practice, and observance.³² Although the Convention does not expressly refer to religious autonomy, the ECtHR has derived that protection from Article 9 and has consistently emphasized that freedom of religion constitutes one of the foundations of a democratic society, closely linked to pluralism and tolerance.³³ The Court has recognized a collective dimension of religious freedom.³⁴ Religious communities are treated as holders of Convention rights, and their autonomous existence is understood as indispensable for the effective enjoyment of individual religious freedom.³⁵

The protection of institutional autonomy is also grounded in Article 11 of the Convention (freedom of association), which safeguards the freedom of religious communities to organize and govern themselves collectively.³⁶ The organizational autonomy of religious entities is an important aspect of their freedom of association.³⁷ According to well established case law, associations have the right to establish their own rules and to govern themselves.³⁸

In its case law, the Court has consistently interpreted Article 9 “in light of” Article 11 of the Convention, recognizing that freedom of religion includes the right of religious organizations to maintain their internal structure, determine their leadership, regulate membership, and pursue their

³² Guide on Article 9; See also *Cha'are Shalom Ve Tsedek v. France* [GC], No. 27417/95, June 27, 2000, ¶ 73; *Leela Förderkreis e.V. and Others v. Germany*, No. 58911/00, November 6, 2008, ¶ 80.

³³ *Kokkinakis v. Greece*, App. No. 14307/88, 17 Eur. Ct. H.R. (ser. A) ¶ 31 (1993).

³⁴ Guide on Article 9, supra note 3, (noting that religious communities are entitled to rely on Article 9 and that the autonomous existence of religious organizations is indispensable for pluralism in a democratic society); *Hasan & Chaush*, ¶ 62.

³⁵ *Metropolitan Church of Bessarabia*, ¶ 118.

³⁶ See e.g. *Hasan & Chaush*, ¶ 62; *Sindicatul “Păstorul cel Bun”*, ¶¶ 136, 159; *Fernández Martínez v. Spain*, ¶¶ 127–132.

³⁷ *Lovrić v. Croatia*, App. No. 20161/06, ¶ 71 (Eur. Ct. H.R. 2001). See also *Sindicatul “Păstorul cel Bun”* ¶¶ 136–38.

³⁸ See e.g. *Cheall v. United Kingdom*, App. No. 10550/83 (Eur. Com. H.R. 1985).

activities according to their own rules and beliefs.³⁹ Religious autonomy thus emerges as both a religious and associational guarantee within the Convention framework.

Application in the ECtHR's Case Law

The Court has repeatedly emphasized that the protection of organizational autonomy is not merely an institutional privilege but a condition for the effective exercise of individual religious freedom. As stated in the seminal case *Hasan and Chaush v. Bulgaria*, “were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable.”⁴⁰ Accordingly, the Court affords particularly strong protection in respect of matters falling within the internal organization of religious communities.⁴¹ The Court has also made it clear that public authorities must refrain from substituting their own assessment for that of religious communities in matters of internal organization.⁴² Judicial review in this domain is therefore limited to assessing whether the interference is justified under Article 9(2) of the Convention,⁴³ rather than reviewing the substance or correctness of the religious determination itself.⁴⁴

The Grand Chamber's judgment in *Fernández Martínez v. Spain* epitomizes the ECtHR's approach to the application of the principle of religious autonomy and its limitations.⁴⁵ In that ruling, the Court emphasized that the autonomy of religious communities constitutes an essential component of pluralism in a democratic society and that domestic authorities must accord significant weight to the institutional interest of religious organizations in preserving their credibility, coherence, and religious identity.⁴⁶ Although the case required the balancing of competing rights (in particular, the right to freedom of religion and the right to respect for private and family life), the Court confirmed that such balancing must be conducted in a manner consistent with the autonomy of

³⁹ See e.g. *Hasan & Chaush*, ¶ 62; *Sindicatul “Păstorul cel Bun”*, ¶¶ 136, 159; *Fernández Martínez v. Spain*, ¶¶ 127–132.

⁴⁰ *Hasan & Chaush* ¶ 62.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Art 9(2) of the Convention provides that “Freedom to manifest one’s religion or beliefs 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.”

⁴⁴ *Hasan & Chaush*, ¶ 78 (limiting the role of the State to ensuring absence of arbitrariness rather than resolving internal religious disputes); Guide on Article 9, supra note 3; See also *Eweida v. United Kingdom*, App. Nos. 48420/10 et al., ¶ 81 (Eur. Ct. H.R. 2013); *İzzettin Doğan v. Turkey*, App. No. 62649/10, ¶ 114 (Eur. Ct. H.R. 2016) (where the ECtHR has also consistently held that the State must not assess the legitimacy of religious beliefs or determine what constitutes “true” religion, thereby preserving the autonomy of religious communities in matters of doctrine and internal organization).

⁴⁵ *Fernández Martínez v. Spain*.

⁴⁶ *Id.* ¶¶ 127, 128, 131.

religious communities and the special role they occupy under Articles 9 and 11 of the Convention.⁴⁷

In its case law, the ECtHR systematically recalls that religious autonomy under the Convention does not operate without limits. Where the manifestation of religion affects public interests or the rights of others, its limitation may be justified.⁴⁸ The Court's assessment in such cases is informed by the principle of State neutrality, which requires public authorities to remain impartial in matters of religion and refrain from assessing the legitimacy or correctness of religious beliefs.⁴⁹ Neutrality does not preclude regulation; rather, it determines the conditions under which State intervention may occur.

The Court's approach is further shaped by the doctrine of margin of appreciation, which acknowledges the diversity of constitutional traditions and church–State relationships across Europe.⁵⁰ The doctrine allows the Court to grant to national authorities a certain degree of discretion in deciding how to implement and balance rights. The breadth of that discretion depends largely on the nature of the activity concerned. It is generally narrow where disputes concern the internal organization of religious communities, and broader where religious activity intersects with public policy, education, employment, healthcare, or other regulated fields.⁵¹ Religious autonomy under the Convention is therefore best understood as operating along a spectrum. The closer a matter lies to doctrine, leadership or governance, the stronger the protection afforded by the Court.⁵² As the effects of a decision extend beyond the internal sphere and engage the rights of others, the intensity of review and the degree of balancing increase accordingly.⁵³

C. Religious Autonomy under European Union Law

Specific Features of the Protection of Religious Autonomy under EU Law

Since, to date, the CJEU has only had a few opportunities to rule on disputes relating to faith-based organizations, it has not developed a comprehensive doctrine of religious autonomy equivalent to that developed the case law of the ECtHR.⁵⁴ A weaker visibility of the principle of religious

⁴⁷ *Id.* ¶¶ 123–32.

⁴⁸ European Convention on Human Rights, art. 9(2); *Eweida*, ¶¶ 80–84.

⁴⁹ *Leyla Şahin v. Turkey*, App. No. 44774/98, Eur. Ct. H.R. ¶ 109 (2005); See also Julie Ringelheim, *State Religious Neutrality as a Common European Standard?*, in *Oxford Journal of Law and Religion*, 2017.

⁵⁰ See e.g. *Leyla Şahin* ¶ 109.

⁵¹ *S.A.S. v. France* [GC], App. No. 43835/11, ¶ 127 (Eur. Ct. H.R. 2014) (where the Court has made clear that the State acts as a “neutral and impartial organizer of the exercise of various religions, faiths and beliefs,” with the aim of preserving public order, religious harmony, and tolerance in a democratic society).

⁵² *Hasan & Chaush*, ¶¶ 62, 78; *Sindicatul “Păstorul cel Bun”*, ¶ 159.

⁵³ *Hasan & Chaush* ¶ 62; Douglas-Scott, *supra* note 9 at 201–05; *Schüth*, ¶¶ 69–73; *Fernández Martínez*, ¶¶ 131–32.

⁵⁴ To date, the CJEU has delivered only three rulings which raised the question of the principle of autonomy: *Egenberger*; Case C-68/17, *IR v. JQ*, EU:C:2018:696 and Case C-258/24, *Katholische Schwangerschaftsberatung*,

autonomy in EU law compared with the ECHR system stems both from the substantive rules governing claims relating to religious freedom and the procedural framework through which disputes reach the CJEU.

It is worth recalling at the outset that under the Convention system, individuals may bring claims before the ECtHR after exhausting all domestic remedies, meaning that disputes concerning religious autonomy are typically reviewed following full litigation at the national level.⁵⁵ The jurisdiction of the CJEU, by contrast, depends in most cases on the triggering of the preliminary reference procedure under Article 267 of the Treaty on the Functioning of the European Union (“TFEU”), which allows national courts to refer questions to the CJEU concerning the interpretation of EU law. As a result, only a limited number of human rights-related disputes reach the CJEU.⁵⁶

This has direct implications for the development of case law on religious freedom and institutional autonomy. While the ECtHR has addressed a broad range of disputes concerning the internal organization and external activities of religious communities,⁵⁷ the CJEU’s case law concerning religious autonomy remains relatively limited.⁵⁸ In fact, in EU law, questions relating to institutional autonomy have so far arisen exclusively in the context of the application of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation (“Directive 2000/78”/ “Directive”). Accordingly, this directive currently provides for the principal doctrinal framework through which religious autonomy is assessed.⁵⁹

EU:C:2026:211 In addition, the principle was briefly mentioned in the case C-25/17 *Tietosuojavaltuutettu* EU:C:2018:551 (yet, in that ruling, there was no substantial discussion on its scope).

⁵⁵ See European Convention on Human Rights, art. 35(1) (providing that the Court may only deal with a matter “after all domestic remedies have been exhausted”).

⁵⁶ Consolidated Version of the Treaty on the Functioning of the European Union art. 267; See European Parliamentary Research Service, *The Preliminary Reference Procedure* (Art. 267 TFEU) (2017), at 1–2 (describing the preliminary reference mechanism as a form of judicial dialogue through which national courts request authoritative interpretations of EU law from the Court of Justice).

⁵⁷ Guide on Article 9, *supra* note 3 (overviewing the range of case law concerning religious belief, manifestation, and institutional autonomy); Effie Fokas, *Directions in Religious Pluralism in Europe: Mobilizations in the Shadow of ECtHR Jurisprudence*, 4 *Oxford J.L. & Religion* (2015).

⁵⁸ See Virginia Passalacqua & Francesco Costamagna, *The Law and Facts of the Preliminary Reference Procedure*, 2 *Eur. L. Open* 322, 323–25 (2023) (explaining that the preliminary reference procedure operates through cooperation with national courts and limits the Court of Justice to interpreting EU law rather than deciding the full dispute).

⁵⁹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, pp. 16–22 (‘Directive 2000/78’); *Egenberger*. See *infra* for more clarifications.

EU Primary Law

Despite the central role of the directive in determining the scope of the principle of religious autonomy,⁶⁰ it is necessary to briefly present at the outset several relevant provisions of EU primary law. In EU legal order, freedom of thought, conscience and religion is guaranteed in particular by Article 10 of the Charter of Fundamental Rights of the European Union (“the Charter”) that “corresponds” in substance to Article 9 of the Convention.⁶¹ Furthermore, Article 12 of the Charter guarantees freedom of assembly and of association. Regarding the “competing” fundamental rights (i.e., rights which are likely to operate as limitations to the principle of religious autonomy), the following rights deserve to be mentioned: fundamental right to equal treatment (Article 20 of the Charter), fundamental right to non-discrimination (Article 21 of the Charter) and fundamental right to an effective remedy and to a fair trial (Article 47 of the Charter).⁶² It is worth recalling that Charter provisions apply only to disputes which fall within the scope of EU law.⁶³

Additionally, Article 17 TFEU clearly states that “The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States”.⁶⁴ The provision reflects the limited role of the Union in matters of church–state relations and preserves Member State competence over the organization of religious communities.⁶⁵ It does not, however, exclude the application of EU law where a dispute falls within its scope.⁶⁶

EU Secondary Law: Directive 2000/78 and Case Law Developments

As underlined above, in practice, the assessment of religious autonomy in EU law has arisen predominantly through Directive 2000/78 which provides for ‘a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation’.⁶⁷ The directive acknowledges that not every difference in treatment in the employment context shall amount to unlawful discrimination. In particular, Article 4(2) of the directive lays down a special derogation from the principle of equal treatment for the benefit

⁶⁰ See the case law analysed below.

⁶¹ Charter of Fundamental Rights of the European Union art. 10; Explanations Relating to the Charter of Fundamental Rights, 2012 O.J. (C 326) 303, at 312 (stating that Article 10 corresponds to Article 9 of the ECHR and has the same meaning and scope) ; Guide on Article 9, *supra* note 3, at 11–12.

⁶² Within the EU legal order, these rights are also protected as general principles of EU law.

⁶³ Art. 51 of the Charter.

⁶⁴ Consolidated Version of the Treaty on the Functioning of the European Union art. 17, 2016 O.J. (C 202) 47.

⁶⁵ *Id.* (providing that the Union “respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States,” and that it “equally respects the status of philosophical and non-confessional organisations,” while maintaining “an open, transparent and regular dialogue” with them.); See also *Egenberger*, ¶¶ 55–58 (stating Article 17 TFEU does not have the effect of exempting churches and other religious organisations from compliance with EU law and that claims based on religious ethos remain subject to judicial review).

⁶⁶ Consolidated Version of the Treaty on the Functioning of the European Union art. 17; *Egenberger*, ¶¶ 55–56.

⁶⁷ Directive 2000/78, art 1.

of faith-based organizations. It indicates that “difference of treatment based on a person’s religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person’s religion or belief constitute a *genuine, legitimate and justified* occupational requirement, having regard to the organisation’s ethos.”⁶⁸ This provision defines the conditions under which reliance on religious ethos may justify differential treatment and forms the central mechanism through which religious autonomy is evaluated in EU law.

Importantly, the scope of this protection is not limited to traditional religious institutions such as churches or ecclesiastical bodies. Article 4(2) of the directive expressly extends to “churches and other organizations the ethos of which is based on religion or belief,” thereby recognizing that autonomy may be invoked by a broad range of entities operating on a religious or belief-based foundation.⁶⁹ In this respect, EU law adopts an expansive understanding of the beneficiaries of religious autonomy, even while subjecting the exercise of that autonomy to structured legal scrutiny. In its case law, the CJEU explicitly granted the status of faith-based organization to a Protestant organization engaged in advocacy before the United Nations for the elimination of racial discrimination,⁷⁰ a Catholic hospital⁷¹ and a Catholic association counselling on pregnancy.⁷²

The interpretation of Article 4(2) of Directive 2000/78 was clarified by the Grand Chamber of the CJEU in *Egenberger*, which remains the Court’s leading authority on the relationship between the principle of religious autonomy and the right to non-discrimination. In that judgment, the Court held that the criteria relating to “genuine, legitimate and justified” nature of the occupational requirement must be applied cumulatively and be subject to effective judicial review.⁷³ In particular, the Court of Justice explained that a requirement is “genuine” where it is necessary in light of the nature of the activity or the context in which it is carried out, and that such necessity must be demonstrated objectively.⁷⁴ A requirement is “legitimate” only where it is pursued for reasons connected to that ethos or the organization’s exercise of autonomy, rather than for unrelated objectives.⁷⁵ Finally, a requirement is “justified” only where the organization can show that the risk to its ethos is real, probable, and sufficiently serious to warrant the measure imposed.⁷⁶ These criteria are cumulative and are subject to review by national courts, which must assess

⁶⁸ Emphasis added.

⁶⁹ *Id.* art. 4(2); see also, *Egenberger*, ¶ 50 (referring to “churches and other public or private organisations whose ethos is based on religion or belief”).

⁷⁰ *Egenberger*.

⁷¹ Case C-68/17, *IR v. JQ*, EU:C:2018:696

⁷² Case C-258/24, *Katholische Schwangerschaftsberatung*, EU:C:2026:211.

⁷³ *Egenberger*, ¶¶ 59–63, 69.

⁷⁴ *Egenberger*, ¶ 65; *Katholische Schwangerschaftsberatung*, ¶ 52.

⁷⁵ *Egenberger*, ¶ 66; *Katholische Schwangerschaftsberatung*, ¶ 54.

⁷⁶ *Egenberger*, ¶ 67; *Katholische Schwangerschaftsberatung*, ¶ 55.

whether the requirement is supported by evidence and remains consistent with the principle of proportionality.⁷⁷ In this respect, even requirements of loyalty or adherence to institutional ethos must be applied in a manner that satisfies the directive as a whole and cannot be determined unilaterally by the organization.⁷⁸

Building on these findings, in *IR v. JQ*, the Court of Justice addressed the specific context of employment within religious organizations, holding that even where an employee's conduct conflicts with religious doctrine, dismissal must remain proportionate and justified by reference to the specific functions performed.⁷⁹ This analytical foundation has been further developed in the Court's broader case law concerning religion in employment and religious expression in the workplace,⁸⁰ and is also reflected in the more recent case of *Katholische Schwangerschaftsberatung*, which reiterates the structured approach to justification established in *Egenberger*.⁸¹

This line of authority demonstrates how religious autonomy is framed in EU law. Its invocation is limited to specific contexts (employment and occupation), defined in functional terms ("genuine" and "legitimate"), and subject to a structured assessment of justification based on the requirements of necessity and proportionality.⁸²

D. Convergence and Divergence in European Approaches to Religious Autonomy

Although the ECHR and EU frameworks share a common commitment to religious freedom, their respective approaches differ in structure, scope, and method.

The first distinction between the two systems lies in the scope of adjudication. To date, the ECtHR has addressed a wide range of disputes involving religious communities, including questions of internal governance, institutional structure, and public manifestation of religion. By contrast, the engagement of the Court of Justice remains more limited. As noted above, this reflects not only the sector-specific focus of Directive 2000/78, but also the procedural structure of the preliminary reference mechanism, under which only a narrow set of human rights-related disputes reaches the

⁷⁷ *Egenberger*, ¶ 68; *Katholische Schwangerschaftsberatung*, ¶ 56.

⁷⁸ *Katholische Schwangerschaftsberatung*, ¶¶ 57–58.

⁷⁹ *IR v. JQ*, ¶¶ 63–67.

⁸⁰ See Case C-157/15, *Achbita v. G4S Secure Solutions*, EU:C:2017:203; Case C-188/15, *Bougnaoui v. Micropole*, EU:C:2017:204; Joined Cases C-804/18 and C-341/19, *WABE and Müller*, EU:C:2021:594; Case C-344/20, *LF v. SCRL*, EU:C:2021:955; Case C-148/22, *OP v. Commune d'Ans*, EU:C:2023:924. Although these cases do not directly raise questions of religious autonomy, they provide for valuable insights on the CJEU's approach in the application of religious freedom, freedom to conduct a business and the implementation of policies of neutrality in the workplace.

⁸¹ *Katholische Schwangerschaftsberatung*, ¶¶ 54–58; *Egenberger*, ¶¶ 59–63.

⁸² *Egenberger*, ¶¶ 59–63; *Katholische Schwangerschaftsberatung*, ¶¶ 52–56 (requiring that differential treatment based on religion be objectively justified and proportionate in light of the specific activity concerned).

Union courts. As a result, the development of EU case law on religious autonomy is limited and provides us with less instructions, requiring doctrinal generalization from a relatively small number of decisions.

Secondly and more fundamentally, the two systems diverge in the way claims based on religious autonomy are framed. Under the Convention, such claims are assessed within the structure of Article 9, which distinguishes between protected internal autonomy and its external manifestations, and allows for limitations through proportionality and the margin of appreciation. In EU law, autonomy does not operate as a distinct sphere of protection, but arises as a justification within the framework of equality law.

Thirdly, the identified differences between the two systems affect the role of judicial review. Whereas the ECtHR recognizes the importance of religious autonomy while allowing States a degree of discretion by conducting a “thorough balancing exercise between the competing interests at stake”,⁸³ in EU law, greater emphasis is placed on verification, requiring that claims based on religious ethos be supported by objective evidence and subject to full review by national courts.

Cumulatively, these distinctions suggest that, while both systems accommodate religious autonomy within a broader framework of fundamental rights, they do so through different analytical lenses: one centered on the protection of an autonomous sphere subject to contextual limitations, the other on the structured justification of differential treatment within equality law. This contrast provides the basis for identifying the common analytical structure underlying both approaches, to which the following section now turns.

II. Analytical Framework

Perhaps obviously, European courts have not articulated a single, formalized test governing religious autonomy. Neither the ECtHR nor the CJEU proceeds through a rigid doctrinal formula. Nevertheless, when the case law is read systematically, it reveals a structured method of analysis. The framework reconstructed below represents a synthesis of the operational logic applied across decisions, particularly in cases where religious autonomy intersects with competing rights. The questions regarding the preliminary assessment of the claim, namely, the religious character of the claim (A), the nature of activity at stake (B) and the competing interests (C), the possible justification of the measure – including legitimate aim (D) and the proportionality test (E) –, and the scope of judicial review (F) are examined respectively.

⁸³ *Sindicatul "Păstorul Cel Bun"*, ¶ 159; *Schüth* ¶ 67; *Siebenhaar v. Germany*, App. No. 18136/02, ¶ 45 (3 Feb 2011).

A. Scope: Is there a protected religious claim?

The starting point in examining the possibility of relying on religious autonomy in a particular case is to answer the question of whether the situation falls within the scope of protected religious freedom. At this stage, European courts determine whether the claim at issue can properly be characterized as relating to religion or belief, thereby triggering the relevant legal protections.

In the jurisprudence of the ECtHR, this inquiry takes a relatively well-defined form. The Court requires that the belief or practice in question attain a sufficient degree of seriousness, coherence, and credibility in order to fall within the scope of Article 9 of the Convention.⁸⁴ It has emphasized that Article 9 protects not only the holding of belief, but also its manifestation in practice, while making clear that not all conduct motivated by subjective conviction falls within its scope.⁸⁵ This distinction is evident in cases such as *Eweida v. United Kingdom*, where the wearing of a cross in the workplace was accepted as a manifestation of religion, capable of attracting protection under Article 9 of the Convention.⁸⁶ The Court therefore treated the conduct as falling within the scope of religious freedom before proceeding to consider whether any restriction on that manifestation could be justified. At this stage, the principle of neutrality is decisive: courts do not assess the truth or legitimacy of a belief, but only whether the conduct in question can plausibly be characterized as religious in nature.⁸⁷

In EU law, the scope of protection is determined by the applicable legal framework, in particular by the aforementioned Directive 2000/78/EC. Once a situation falls within the material scope of the directive, the Charter provisions, especially Article 10 which safeguards religious freedom, are applicable, and the assessment proceeds within that combined framework.⁸⁸ The CJEU does not engage in an elaborate threshold analysis of whether something is "religious." If conduct is plausibly connected to religion or belief, the Court generally treats it as falling within the scope of protection and moves directly to the question of justification.

For instance, in the seminal case *Egenberger*, the Court accepted that a recruitment requirement linked to membership of a particular religious community engaged the protected ground of religion and proceeded directly to examine whether the requirement could be justified under Directive 2000/78.⁸⁹ Likewise, in *WABE and Müller*, the Court treated the wearing of a headscarf as falling within the scope of protection without undertaking a separate inquiry into the religious validity or

⁸⁴ See *Campbell and Cosans v. United Kingdom*, 48 Eur. Ct. H.R. (ser. A) ¶ 36 (1982); *Leela Förderkreis e.V.*, ¶ 80.

⁸⁵ *Jakóbski v. Poland*, App. No. 18429/06, ¶ 44 (Eur. Ct. H.R. 2010).

⁸⁶ *Eweida v. United Kingdom*, App. Nos. 48420/10 et al., (Eur. Ct. H.R. 2013).

⁸⁷ *Eweida*, ¶ 81.

⁸⁸ Charter of Fundamental Rights of the European Union art. 51(1) (providing that the provisions of the Charter are addressed to the Member States only when they are implementing Union law).

⁸⁹ *Egenberger*, ¶¶ 45–47, 50–52.

importance of the practice.⁹⁰ A similar approach appears in *LF*, concerning restrictions on religious dress in the workplace, where the Court focused its analysis on the compatibility of the restriction with equality law rather than on whether the conduct was genuinely religious.⁹¹ Across this relatively small body of case law, the CJEU has adopted a pragmatic approach in which conduct plausibly linked to religion is treated as falling within scope, shifting the analysis quickly to questions of justification and proportionality.

Further case law demonstrates that the concept of “religion or belief” is interpreted broadly, encompassing traditional forms of worship and doctrine, as well as ethical and moral positions that guide individual and institutional conduct.⁹² The CJEU’s case law suggests that the manifestation of religion may extend to professional and social activities shaped by such beliefs, including conduct motivated by religiously grounded moral convictions.⁹³ For example, in *Katholische Schwangerschaftsberatung*, the Grand Chamber treated a dispute concerning pregnancy counselling and adherence to the ethical teachings of the Catholic Church as falling within the scope of Directive 2000/78 and the Charter, thereby confirming that positions on morally sensitive issues, such as abortion, may constitute manifestations of religion or belief within the meaning of EU law.⁹⁴

Although the two systems approach the question differently, each identifies whether religion or belief is sufficiently implicated to engage the applicable legal framework. Neither court evaluates the substantive validity of religious beliefs. Once the relevant protection is engaged, the analysis turns to the classification of the activity and its relationship to the internal life of the religious community.

B. Classification: Is an activity in question “internal” or “external” to religious sphere?

Once the religious character of the claim has been established, courts turn to a question that is often decisive for the remainder of the analysis: whether the contested activity belongs to the internal life of the religious community or takes place in a sphere governed by broader legal obligations. This classification influences both the weight accorded to religious autonomy and the intensity of judicial review.

⁹⁰ *WABE eV and MH Müller Handels GmbH*, ¶¶ 47–50 (treating the wearing of a headscarf as falling within the protected ground of religion under Directive 2000/78).

⁹¹ Case C-344/20, *LF v. SCRL*, EU:C:2021:955, ¶¶ 30–33.

⁹² Guide on Article 9, *supra* note 3, at 8–9 (recognizing the broad scope of “religion or belief,” including deeply held moral and ethical convictions); *Bayatyan v. Armenia*, App. No. 23459/03, ¶ 110 (Eur. Ct. H.R. 2011).

⁹³ Guide on Article 9, *supra* note 3, at 11–12 (distinguishing between belief and its manifestation, including conduct in social and professional contexts); *Eweida*, ¶ 82.

⁹⁴ *Katholische Schwangerschaftsberatung*, ¶¶ 52–58.

Under the ECHR, matters relating to doctrine, leadership, membership, and internal governance occupy the core of protected institutional autonomy. The Court has repeatedly emphasized that religious communities must remain free to organize themselves according to their own beliefs and internal rules, and it exercises considerable restraint where disputes concern these matters.⁹⁵ By contrast, where a religious institution acts in settings such as employment, education, healthcare, or other public-facing activities, the dispute extends beyond the internal sphere and may engage the rights and interests of others.⁹⁶ The analysis then shifts from institutional self-determination alone to the relationship between autonomy and competing legal interests.

The CJEU approaches this issue through a different doctrinal framework. Rather than distinguishing expressly between internal and external spheres, it examines whether the contested measure falls within the scope of EU law and, in particular, whether it gives rise to differential treatment on one of the protected grounds.⁹⁷ In cases involving religious employers, the Court requires that reliance on religious ethos be connected to the functions performed and capable of objective justification.⁹⁸ Although framed differently, this inquiry serves a similar purpose: it determines the degree to which religious autonomy may influence the outcome of the dispute.⁹⁹

In both systems, classification performs a gatekeeping function. Activities that lie close to the institutional identity and governance of a religious community attract stronger protection, whereas activities that affect employees, students, patients, or members of the public are more likely to trigger closer judicial scrutiny and a more demanding process of justification. The significance of that classification becomes apparent in the subsequent stages of the analysis, where courts must determine how religious autonomy interacts with other protected interests.

C. Competing Rights: What other interests are affected?

Where a dispute extends beyond the core internal sphere of religious life, courts must determine whether the exercise of religious autonomy affects other protected rights or interests.

Under the ECHR, this interaction is structured through the balancing of rights protected by multiple provisions. In addition to Article 9 of the Convention, the Court frequently engages Articles 8, 10, 11, and 14, depending on the nature of the interference and the interests at stake. Thus, disputes involving employment and dismissal may implicate the right to respect for private life under Article 8 of the Convention, while organizational questions engage the freedom of

⁹⁵ *Sindicatul “Păstorul cel Bun”*, ¶ 159; *Hasan & Chaush*, ¶ 62.

⁹⁶ See *infra*.

⁹⁷ See *Achbita* ¶¶ 37–40 (assessing restrictions on religious expression within the framework of neutrality and equal treatment, without distinction between internal and external spheres).

⁹⁸ Directive 2000/78; Charter of Fundamental Rights of the European Union art. 21, 2012 O.J. (C 326) 391.

⁹⁹ See *Egenberger*, ¶¶ 59–63; *IR*, ¶¶ 63–67.

association under Article 11 of the Convention.¹⁰⁰ In other contexts, the Court has considered the relationship between religious autonomy and freedom of expression under Article 10, as well as the prohibition of discrimination under Article 14.¹⁰¹ Once such rights are engaged, the Court undertakes a balancing exercise in which the competing interests must be reconciled in a manner consistent with the Convention as a whole.¹⁰²

In EU law, the interaction with competing rights is structured primarily through equality law and the Charter. The protection of religion under Article 10 of the Charter must be read alongside the principles of equality and non-discrimination laid down in Articles 20 and 21 of the Charter, as well as the requirement of effective judicial protection under Article 47 of the Charter.¹⁰³ Other fundamental rights guaranteed by the Charter such as, right to respect for private and family life (Article 7), freedom of expression (Article 11) or freedom of association (Article 12) may also be engaged. Consequently, claims based on religious ethos are assessed not only in light of the autonomy interests of the institution, but also in light of the rights of employees, applicants, and other affected individuals.¹⁰⁴

Once a claim extends beyond the internal sphere, religious autonomy is subjected to a process of balancing in which competing rights, particularly the right to respect for private and family life, right to equality, expression, and association, play a decisive role. The resolution of such conflicts does not follow from the recognition of autonomy alone. Rather, the engagement of competing

¹⁰⁰ See *R.R. v. Poland*, App. No. 27617/04, ¶¶ 181–206 (Eur. Ct. H.R. 2011) (holding that access to information and medical services necessary to make autonomous decisions concerning pregnancy falls within the scope of Article 8 and emphasizing the State's obligation to organize healthcare systems so that lawful medical services remain practically and effectively accessible); *Schüth*, ¶¶ 69–73 (Eur. Ct. H.R. 2010) (finding a violation of Article 8 where insufficient weight was given to the applicant's private life following dismissal); *Sindicatul "Păstorul cel Bun"*, ¶¶ 136–145 (applying Articles 9 and 11 in relation to internal organization and association where the Court gave decisive weight to religious autonomy in refusing registration of a trade union); see also European Convention on Human Rights, arts. 8, 11.

¹⁰¹ See *Fernández Martínez*, ¶¶ 128–131 (upholding non-renewal of a teacher's contract in light of the autonomy of the religious organization and balancing religious autonomy with expression and private life interests); *Eweida*, ¶¶ 80–84 (applying Article 14 in conjunction with Article 9); see also European Convention on Human Rights, arts. 10, 14.

¹⁰² European Convention on Human Rights, arts. 8, 10, 11, 14; *Thlimmenos v. Greece*, App. No. 34369/97, ¶ 44 (Eur. Ct. H.R. 2000) (recognizing that Article 14 may require differential treatment where circumstances differ); Guide on Article 9, supra note 3, at 23–24 (noting overlap between Article 9 and Article 14 in discrimination cases); *Sindicatul "Păstorul Cel Bun"*, ¶ 159; *Schüth* ¶ 67; *Siebenhaar*, ¶ 45.

¹⁰³ See Charter of Fundamental Rights of the European Union arts. 10, 20–21, 47; *Egenberger*, ¶¶ 55–58 (requiring judicial review of claims based on religious ethos within the framework of equality law); *IR*, ¶¶ 63–67 (balancing religious requirements against the rights of employees in an employment context).

¹⁰⁴ See, *IR*, ¶¶ 63–67 (balancing the employer's reliance on religious ethos against the employee's rights under EU equality law, including the impact of dismissal on private and professional life); *WABE*, ¶¶ 62–66 (examining the tension between an employer's policy of neutrality and employees' freedom to manifest religion, in light of the prohibition of indirect discrimination); *LF*, ¶¶ 38–42 (assessing restrictions on religious dress through the interaction between freedom of religion and principles of equal treatment and non-discrimination).

rights and interests establishes the framework within which courts assess the legitimacy, necessity, and proportionality of the measure in question.

D. Legitimate Objective: What religious interest is the institution trying to protect?

At the next stage, courts assess whether the institution has identified a legitimate religious objective capable of justifying the measure in question. Across European law, there is a clear recognition that religious organizations have a legitimate interest in preserving their doctrinal integrity, maintaining institutional coherence, and protecting their identity and credibility within the communities they serve.¹⁰⁵ These interests form a part of the institutional dimension of religious freedom.

In the ECHR system, such interests are generally accepted as legitimate in principle, particularly where they relate to the internal functioning and self-understanding of religious communities. However, as stated above, once the focus moves beyond the core internal sphere and engages competing rights, the Court requires that the reliance on these interests be articulated with sufficient clarity and situational relevance. The legitimacy of the objective is assessed in relation to the specific dispute, including the activity concerned, the role performed, and the connection between the measure adopted and the religious interests invoked.¹⁰⁶ While the Court does not question the validity of religious doctrine, it does examine whether the invocation of autonomy is appropriately connected to the situation under review.

EU law expresses this requirement in a more explicit and structured manner. The legitimacy of religious requirements is expressly governed by Article 4(2) of Directive 2000/78, which permits differential treatment only where it constitutes a “genuine, legitimate and justified occupational requirement” in light of the organization’s ethos.¹⁰⁷ In *Egenberger*, the Court clarified that the requirement is “legitimate” only where it is pursued for reasons connected to that ethos or to the exercise of the organization’s autonomy, rather than for unrelated objectives.¹⁰⁸ The asserted aim must therefore reflect a real link between the religious identity of the organization and the specific requirement imposed.¹⁰⁹ This requires that the religious objective be articulated with sufficient specificity and connected directly to the nature of the activity concerned. General or abstract references to institutional identity are insufficient; rather, the organization must demonstrate why adherence to a particular belief, or compliance with a particular rule, is necessary in the circumstances of the case. The CJEU has interpreted Article 4(2) of the directive as requiring

¹⁰⁵ *Fernández Martínez*, ¶¶ 129–131; *Sindicatul “Păstorul cel Bun”*, ¶ 159; *Egenberger*, ¶¶ 62–63.

¹⁰⁶ See *Fernández Martínez*, ¶¶ 131–132; *Schüth*, ¶¶ 69–73; *Egenberger*, ¶¶ 62–63; *IR*, ¶¶ 63–67.

¹⁰⁷ Directive 2000/78, art. 4(2).

¹⁰⁸ *Egenberger*, ¶ 66.

¹⁰⁹ *Id.*

objective assessment by national courts, making clear that such determinations cannot be left solely to the institution's internal discretion.

Although the ECtHR and the CJEU articulate this requirement differently, both insist that reliance on religious autonomy be connected to an identifiable religious interest and explained in light of the circumstances of the dispute. The mere invocation of institutional identity is insufficient.

E. Proportionality: Was the measure necessary to protect that interest?

The core of the analysis lies in the proportionality test. Once a legitimate aim grounded in religious autonomy is established, courts turn to the question of whether the measure adopted is necessary and proportionate in relation to that aim.

Under the ECHR, this inquiry is structured through the requirement that limitations be “necessary in a democratic society.”¹¹⁰ State interference is only deemed “necessary in a democratic society” where it responds to a “pressing social need,” is proportional to the legitimate aim pursued, and is supported by “relevant and sufficient” reasons.¹¹¹

Under EU law, proportionality is assessed through a more formalized process of objective verification. Courts must assess whether the measure is appropriate to achieve the stated aim, whether it is necessary in the absence of a less restrictive alternative, and whether it imposes a disproportionate burden on the individual concerned.¹¹²

In both systems, proportionality operates as a balancing exercise, informed by a range of interrelated factors. These include the nature and importance of the role performed,¹¹³ the degree of connection between that role and the religious mission of the institution,¹¹⁴ the visibility of the individual within the organization,¹¹⁵ the severity of the measure imposed,¹¹⁶ and the impact of that measure on the individual’s private life or professional position.¹¹⁷ Rather than applying a fixed hierarchy of factors, courts weigh these considerations collectively in order to determine

¹¹⁰ European Convention on Human Rights, art. 9(2).

¹¹¹ *Gorzelik and Others v. Poland*, App. No. 44158/98, February 17, 2004; ¶ 95; *Fernández Martínez*, ¶¶ 124; *Kokkinakis*, ¶¶ 31–33, 49.

¹¹² See *Egenberger*, ¶¶ 61–69 (objective verification); *IR*, ¶¶ 63–67 (necessity and proportionality of the measure in relation to the role performed); *Katholische Schwangerschaftsberatung*, ¶¶ 52–57 (judicial review and justification of reliance on religious ethos).

¹¹³ See *Fernández Martínez*, ¶¶ 131 ; *Obst v. Germany*, App. No. 425/03 (Eur. Ct. H.R. 2010) ¶¶ 48–51 ; *Schüth* ¶ 69. See also *Egenberger*, ¶¶ 59–63 (requiring role-specific and proportionate justification subject to review).

¹¹⁴ *Fernández Martínez*, ¶ 136.

¹¹⁵ See in this sense, *Achbita*, ¶¶ 37–40.

¹¹⁶ *Jehovah’s Witnesses of Moscow v. Russia*, App. No. 302/02, ¶¶ 154–160 (Eur. Ct. H.R. 2010); *Fernández Martínez*, ¶¶ 144–146.

¹¹⁷ *Schüth*, ¶¶ 69–73 (assessing the impact of dismissal on private life and professional position); *Fernández Martínez* ¶¶ 110, 130–132, 143–145; *Travaš v. Croatia*, App. no. 75581/13, (Eur. Ct. H.R. 2016), ¶¶ 102–104.

whether the interference can be justified in the particular circumstances. Importantly, the case law indicates that the question of whether the organization concerned (the employer) operates for profit and/or receives State subsidies does not in any manner limit its right to religious freedom.¹¹⁸

F. Judicial Review: How closely should courts examine the justification?

The final stage of the assessment of practical effects of the arguments grounded on religious autonomy concerns the scope and intensity of judicial review. While proportionality determines whether an interference can be justified, this final stage determines how closely courts examine that justification. Here, the distinction between internal and external contexts becomes decisive.

In disputes that concern internal governance, doctrine, or leadership, the ECtHR has exercised a degree of restraint, emphasizing that such matters are, in principle, subject only to limited review.¹¹⁹ In this domain, the role of the Court is not to substitute its own judgment for that of the religious community, but rather to ensure that State interference does not undermine the essential autonomy of religious organizations.¹²⁰ This reflects the understanding that institutional self-determination is a necessary condition for the effective enjoyment of freedom of religion. The position changes where decisions adopted by religious organizations produce effects beyond the internal life of the religious community. In these circumstances, the ECtHR applies a more searching standard of review, examining closely whether the justification advanced is supported by the circumstances of the case.¹²¹

A similarly structured, but more explicitly articulated, approach is adopted under EU law. As stated previously in this paper, the CJEU does not recognize a sphere of institutional autonomy that is immune from judicial scrutiny. Instead, where disputes fall within the scope of EU law, courts are required to subject claims based on religious autonomy to full and independent judicial review, ensuring that any differential treatment is objectively justified and proportionate. This includes the requirement, grounded in Article 47 of the Charter, that national courts independently verify whether the conditions for invoking a religious justification are satisfied, rather than deferring to the internal assessment of the organization.¹²²

¹¹⁸ See in particular, *Kistannus Oy Vapaa Ajatellija AB and others v. Finland*, App. No. 20471/92, Eur. Comm'n H.R., Dec. of 15 April 1996. See also the cases *Fernández Martínez* and *Travaš*, which concerned applicants employed and remunerated by the State: for the Court, this factor had no bearing on the scope of protection of religious freedom of the employer. Similarly, in *IR v. JQ*, the CJEU observed that the employer was “primarily a non-profit organisation” (¶ 23) yet this fact did not affect the subsequent analysis; like purely non-profit organisations, IR could benefit from religious freedom and could qualify for exemption laid down in Art. 4(2) of Directive 2000/78.

¹¹⁹ *Sindicatul “Păstorul cel Bun”*, ¶ 159.

¹²⁰ *Gorzelik and Others v. Poland*, ¶ 96; *Hasan & Chaush*, ¶ 62.

¹²¹ *Schüth*, ¶¶ 69–73; *Fernández Martínez*, ¶¶ 131–32.

¹²² Charter of Fundamental Rights of the European Union art. 47; *Egenberger*, ¶¶ 69, 76.

Accordingly, while both systems recognize that the intensity of review varies depending on the situation, they differ in their doctrinal emphasis. The ECtHR maintains a clearer distinction between internal autonomy (where review is limited) and external contexts (where balancing is required), whereas the CJEU calls for objective justification from the start and subjects such claims to explicit judicial review.¹²³ Nevertheless, the practical differences between the two systems are often less pronounced than their doctrinal formulations suggest. In cases involving employment and other externally regulated activities, the ECtHR also undertakes a detailed examination of justification, proportionality, and the impact of the measure on affected individuals.

III. Religious Autonomy in Practice: Sector-Specific Application

The preceding sections identified the principal stages through which European courts assess claims of religious autonomy. The practical operation of that framework becomes clearer when examined in the contexts in which such disputes most frequently arise. Although the same analytical structure is visible across the case law, its application varies significantly depending on the nature of the activity concerned and the interests implicated.

The following sub-sections examine the principal sectors in which questions of religious autonomy arise. The analysis of the instances relating to the internal governance of religious communities, in which courts afford the greatest weight to institutional self-determination (A), is followed by an examination of the cases concerning employment relationships (B), educational settings (C) and healthcare services (D), in which competing rights and regulatory interests lead to more intensive scrutiny.

A. Internal Governance of Religious Communities

The strongest and most consistent protection of religious autonomy arises in relation to the internal organization of religious communities. At the threshold stage, such cases clearly fall within the scope of Article 9 of the Convention, engaging both the individual and collective dimensions of religious freedom. More importantly, they are classified as core internal matters, triggering the highest level of protection and the most limited form of judicial review.

¹²³ See *Hasan & Chaush*, ¶¶ 62, 78 (emphasizing that review in matters of internal religious organization is limited and does not extend to substituting the Court’s judgment for that of religious authorities); *Egenberger*, ¶¶ 58–63 (holding that religious requirements must be subject to “effective judicial review” and capable of objective verification); *IR*, ¶¶ 63–64 (requiring that differences in treatment be justified by reference to the nature of the activity and be proportionate); *Katholische Schwangerschaftsberatung*, ¶¶ 55–57 (confirming that national courts must verify whether the criteria of a “genuine, legitimate and justified occupational requirement” are satisfied and that such requirements are subject to review and cannot be determined unilaterally by the organization).

In its case law, the ECtHR holds firm that the right of a religious community to an autonomous existence lies “at the very heart” of the guarantees of Article 9 of the Convention, such that without protection of its organizational life, “all other aspects of the individual’s freedom of religion would become weakened.”¹²⁴ Questions concerning the religious affiliation and internal identity of a community are matters to be determined by its own spiritual authorities, not by the State. Accordingly, only the most serious and compelling reasons can justify State intervention in such matters.¹²⁵

Governance and Internal Organization of Religious Communities

This firm line against governmental involvement is obvious in cases concerning governance and internal organization. In the seminal case *Hasan and Chaush v. Bulgaria*, the dispute arose after Bulgarian authorities intervened in a leadership conflict with the Muslim community and recognized one rival leadership faction over another. The Grand Chamber held that the State must remain neutral in matters of religious leadership and that the “autonomous existence of religious communities” is indispensable for pluralism in a democratic society.¹²⁶ The Court insisted that State authorities may not determine who should lead a religious community or impose a preferred organizational structure, as doing so would constitute an impermissible interference with religious autonomy.¹²⁷ This principle was reaffirmed in *Sindicatul “Păstorul cel Bun” v. Romania*, which concerned an attempt by Orthodox priests to establish a trade union without the approval of the Romanian Orthodox Church.¹²⁸ The Court held that religious communities are entitled to structure themselves according to their own hierarchical rules, even where doing so limits the applicability of general legal norms, including labor protections. The Grand Chamber accepted that the refusal to register the union interfered with freedom of association under Article 11 of the Convention, but concluded that the interference was justified in light of the Church’s right to organize itself according to its own hierarchical and canonical rules. Requiring the Church to recognize an association operating contrary to those rules would have undermined its institutional autonomy.¹²⁹

At this stage, proportionality review is present only in a formal and highly constrained sense. Once a matter is characterized as internal, the Court’s role is limited to verifying whether State intervention is justified by a “pressing social need,” a threshold that is rarely satisfied in cases

¹²⁴ *İzzettin Doğan and Others v. Turkey*, App. No. 62649/10, ¶ 110 (Eur. Ct. H.R. 2016); *Hasan & Chaush*, ¶ 62; *Sindicatul “Păstorul cel Bun”*, ¶ 136; *Fernández Martínez*, ¶ 127.

¹²⁵ *The Moscow Branch of The Salvation Army v. Russia*, No. 72881/01, October 5, 2006; *İzzettin Doğan*, ¶ 110; *Miroļubovs and Others v. Latvia*, App. No. 798/05, ¶¶ 86, 90 (Eur. Ct. H.R. 2009).

¹²⁶ *Hasan & Chaush v. Bulgaria*.

¹²⁷ *Id.* ¶ 78.

¹²⁸ *Sindicatul “Păstorul cel Bun”*, ¶ 136.

¹²⁹ *Id.* ¶¶ 136-145.

involving internal religious governance.¹³⁰ The intensity of review is thus low, and religious autonomy operates as the decisive factor.

Recognition of Religious Communities

A similar pattern emerges in cases concerning the legal existence and recognition of religious communities. In *Metropolitan Church of Bessarabia v. Moldova*, the applicant Church sought legal recognition after separating from the Russian Orthodox Church and aligning itself with the Romanian Orthodox Church. Moldovan authorities repeatedly refused registration, preventing the Church from acquiring legal personality, owning property, employing clergy, and carrying out many activities necessary for collective religious life. The Court held that the refusal to grant legal recognition interfered with the applicant community's ability to function collectively, thereby engaging Article 9 of the Convention in its institutional dimension.¹³¹ Emphasizing the importance of religious pluralism in a democratic society, it concluded that the Government had failed to provide sufficiently weighty reasons to justify the interference.¹³² Likewise, in *Jehovah's Witnesses of Moscow v. Russia*, domestic courts ordered the dissolution of the Moscow community of Jehovah's Witnesses and prohibited its activities following allegations concerning, *inter alia*, family disruption, coercion, and the refusal of blood transfusions. The ECtHR found that the authorities had not demonstrated that the organization posed a genuine threat to public order or the rights of others and held that the dissolution of the community constituted a disproportionate interference with collective religious freedom.¹³³ In the absence of a sufficiently compelling justification, the Court cemented that restrictions must correspond to a "pressing social need" and be proportionate in a strict sense.¹³⁴

Doctrine, Membership and Internal Discipline

The same deference is evident in cases involving doctrine, membership, and internal discipline, where the Court has declined to intervene in matters of theological disputes or the correct interpretation of religious rules. In *Miroļubovs and Others v. Latvia*, the dispute arose from a schism within the Latvian Orthodox Church, with rival factions contesting authority over church governance and representation. The domestic authorities intervened in the conflict and effectively supported one faction over the other. The Court emphasized that, although States may take

¹³⁰ *Id.* ¶ 133; *Hasan & Chaush*, ¶ 67.

¹³¹ *Metropolitan Church of Bessarabia v. Moldova*, App. No. 45701/99, ¶¶ 105-06 (Eur. Ct. H.R. 2001).

¹³² *Id.* ¶¶ 118-123; See also, e.g., *Tóthpal and Szabó v. Romania*, App. Nos. 28617/13 and 50919/13, ¶¶ 97-104 (Eur. Ct. H.R. 2019) (reaffirming that State authorities must remain neutral in disputes concerning the organization and leadership of religious communities).

¹³³ *Jehovah's Witnesses of Moscow v. Russia*, ¶¶ 99-111, 158-160, especially ¶¶ 158-160 (finding that the dissolution of the religious organization and prohibition of its activities were not supported by relevant and sufficient reasons and violated Articles 9 and 11).

¹³⁴ *Id.* ¶¶ 100, 104-08, 121.

measures to preserve public order, they may not substitute their own assessment for that of religious authorities in matters concerning internal organization, leadership, or ecclesiastical legitimacy. It reiterated that the role of the State is not to resolve religious disputes but to ensure that competing groups can exercise their rights in a neutral framework.¹³⁵

Similarly, in *Sviato Mykhailivska Parafiya v. Ukraine*, the case concerned the transfer of a parish from one Orthodox jurisdiction to another following disagreements about religious affiliation and governance. The Court reaffirmed that religious communities must remain free to determine their own internal structure, membership, and organizational arrangements without State interference, emphasizing that pluralism requires respect for differing forms of religious organization.¹³⁶ The same principle appears in the Court's recent advisory opinion on the status of monastic premises, where it confirmed that civil courts may not resolve disputes that require the interpretation of internal religious rules or the reallocation of authority within a religious community. Its goals are limited to ensuring compliance with Convention guarantees and ensuring States do not overstep their roles, rather than reassessing the substance of religious decisions.¹³⁷

Internal governance represents the core of protected religious autonomy. Questions concerning leadership, doctrine, membership, discipline, and institutional existence receive the strongest protection in the Court's jurisprudence, and judicial review remains correspondingly limited.¹³⁸ In this sphere, the decisive consideration is the community's ability to govern itself according to its own religious rules and organizational structures.¹³⁹

B. Religious Autonomy in Employment Relationships

Employment relationships constitute the primary arena in which the limits of religious autonomy are tested in practice.¹⁴⁰ Unlike disputes concerning internal governance, these cases almost

¹³⁵ *Miroļubovs and Others v. Latvia*, App. No. 798/05, ¶¶ 80-90 (Eur. Ct. H.R. 2009).

¹³⁶ *Sviato Mykhailivska Parafiya v. Ukraine*, App. No. 77703/01, ¶¶ 145-152 (Eur. Ct. H.R. 2007).

¹³⁷ See Advisory Opinion on the Status of Monastic Premises and the Jurisdiction of the Courts to Examine a Dispute Concerning Them, Request No. P16-2025-001, (Eur. Ct. H.R. 2026) (reaffirming that disputes concerning internal organization of religious communities fall primarily within their autonomous sphere and civil courts may not determine issues requiring interpretation of internal religious rules or resolve disputes concerning ecclesiastical authority).

¹³⁸ See *Jehovah's Witnesses of Moscow v. Russia*, ¶¶ 107-108, 158-160 (reaffirming that States may verify whether religious organizations engage in activities harmful to public safety, health, or the rights of others, but emphasizing that restrictions on religious freedom and association must be supported by "convincing and compelling reasons," correspond to a "pressing social need," and remain proportionate to the legitimate aim pursued).

¹³⁹ *Hasan & Chaush*, ¶ 62; *Miroļubovs and Others v. Latvia*, App. No. 798/05, ¶ 80 (Eur. Ct. H.R. 2009) (recognizing that the autonomous existence of religious communities is indispensable and protected from State interference).

¹⁴⁰ See Catherine Barnard, *EU Employment Law* 571-75 (6th ed. 2012) (explaining how EU equality law structures the assessment of conflicts between employer interests and individual rights in employment contexts); see also Craig, Paul, and Gráinne de Búrca, *EU Law: Text, Cases, and Materials*, 8th edn, Text, Cases, and Materials (Oxford, 2024);

invariably fall outside the core institutional sphere and therefore invoke the full operation of the legal framework outlined above.

First, both Courts accept that individuals working within religious institutions may be subject to an enhanced duty of loyalty, especially where their role involves representation of the institution's values.¹⁴¹ Because such obligations frequently affect an individual's private life, employment disputes under the ECHR often engage Article 8 of the Convention and trigger a detailed examination of proportionality. Courts therefore assess whether the expectation was foreseeable, whether it was connected to the functions performed, and whether the resulting interference is justified in light of the employee's rights and the institution's religious mission.

ECHR system

In the ECtHR's jurisprudence, the outcome of employment disputes turns on a careful examination of the relationship between the individual's role and the religious mission of the institution. The foundations of this approach can be traced to the earlier decision of the European Commission of Human Rights (the body whose functions were subsequently transferred to the ECtHR) in *Rommelfanger v. Germany*.¹⁴² The applicant was a physician employed by a Catholic hospital who publicly advocated positions supporting abortion law reform that were incompatible with Catholic teaching. In assessing the resulting employment dispute, the Commission accepted that a religious institution may legitimately seek to preserve the credibility and integrity of its religious mission through expectations of loyalty imposed upon employees. It emphasized that individuals who voluntarily enter employment with a confessional institution may be required to accept obligations flowing from the institution's religious character.¹⁴³ The decision thus anticipated a principle that would later become central to the Court's jurisprudence: the autonomy of religious institutions includes the ability to protect their religious identity through employment relationships, particularly where the conduct of employees may affect the institution's public witness or credibility.

The ECtHR's approach to balancing religious autonomy and individual rights in employment relationship was consolidated in the landmark ruling in *Fernández Martínez v. Spain*. In that case the applicant was a Catholic religion teacher whose contract was not renewed after publicly

online edn, Oxford Law Pro, 1 Aug. 2024), <https://doi.org/10.1093/he/9780198915522.001.0001>, accessed 1 July 2026.

¹⁴¹ See *Fernández Martínez*, ¶¶ 130–131 (recognizing an enhanced duty of loyalty arising from the specific relationship between a religious institution and those who perform functions linked to its mission); *IR*, ¶¶ 51–52 (acknowledging that employees of religious organizations may be subject to particular loyalty obligations connected to the employer's ethos).

¹⁴² *Rommelfanger v. Fed. Republic of Germany*, App. No. 12242/86, Eur. Comm'n H.R., Dec. of 6 Sept. 1989.

¹⁴³ *Id.*; see also BVerfG, 2 BvR 661/12, ¶¶ 127, 133–34 (summarizing *Rommelfanger* as recognizing that church employees voluntarily accept certain loyalty obligations flowing from the religious character of the institution).

expressing views contrary to Church doctrine. The Grand Chamber began by recognizing that the case falls within both the applicant's private life under Article 8 of the Convention and the Church's interest in preserving its doctrinal integrity. It then examined the specific features of the applicant's role, emphasizing that he held a public-facing position directly linked to the Church's teaching function. On that basis, the Court concluded that the dismissal was proportionate, giving decisive weight to the need to protect the credibility of the institution.¹⁴⁴ The Grand Chamber thus accepted that a religious institution has a legitimate interest in maintaining its credibility and coherence, particularly where the employee plays a visible or representative role within the organization.¹⁴⁵ Where the employee's conduct risks undermining that institutional identity, greater weight is afforded to religious autonomy in the proportionality analysis.¹⁴⁶

Interestingly, in an earlier case, *Schüth v. Germany*, the Court reached the opposite conclusion in circumstances where the applicant, a church organist, was dismissed following the breakdown of his marital relationship. Although the employer relied on religious doctrine, the Court focused on the limited connection between the applicant's duties and the religious mission, noting that his role did not involve teaching or representing Church doctrine to the public.¹⁴⁷ It also noted the severe impact of dismissal on the applicant's private life and economic situation, ultimately finding the interference disproportionate.¹⁴⁸ Even within religious institutions, when the employee's role is more peripheral or technical, the Court is more willing to find that the interference with individual rights is disproportionate. The absence of a sufficiently close connection between an individual's duties and the religious mission reduces the weight afforded to its institutional autonomy.¹⁴⁹ Conversely, where the role is closely tied to the institution's identity and public expression, autonomy retains significant force.¹⁵⁰

Although not directly involving the principle of religious autonomy, *Eweida and Others v. United Kingdom* illustrates the broader balancing methodology applied by the Court in employment disputes concerning religion. In assessing restrictions on the manifestation of belief in the workplace, the Court emphasized that interferences must be justified by sufficiently weighty reasons and remain proportionate to the legitimate aims pursued. The case confirms that

¹⁴⁴ *Fernández Martínez*, ¶¶ 131–132.

¹⁴⁵ *Id.* ¶ 131.

¹⁴⁶ *Id.* ¶ 132.

¹⁴⁷ *Schüth*.

¹⁴⁸ *Id.* ¶¶ 72–73.

¹⁴⁹ *Id.* ¶ 69.

¹⁵⁰ *Fernández Martínez*, ¶ 132.

proportionality, rather than deference to either employer or employee interests, remains the central analytical tool in employment-related disputes involving religion.¹⁵¹

EU Law

A comparable dynamic is visible under EU law. As noted previously in this paper, the Court of Justice's jurisprudence in this area remains relatively limited, reflecting both the employment-focused scope of Directive 2000/78 and the procedural constraints through which such disputes reach the CJEU. The CJEU's approach towards religious autonomy has been largely structured around its landmark decisions in *Egenberger* and *IR v. JQ*. In *Egenberger*, an applicant was denied consideration for a position with a Protestant welfare organization because she did not belong to a specified Christian denomination. The Grand Chamber rejected the view that a religious organization could determine unilaterally whether such a requirement was necessary and held that reliance on religious ethos must be capable of objective judicial review.¹⁵² Religious employers must demonstrate that any such requirement constitutes a "genuine, legitimate and justified occupational requirement", meaning that it must be necessary in light of the nature of the activity, pursued for reasons connected to the organization's ethos, and supported by a sufficiently serious risk to that ethos.¹⁵³

This requirement was reiterated in *IR v. JQ*, which concerned the dismissal of the chief physician of a Catholic hospital after he entered into a second civil marriage following divorce, conduct regarded as incompatible with Catholic doctrine. Although the Court accepted that religious organizations may require loyalty to their ethos, it emphasized that any difference in treatment must be objectively justified and closely connected to the specific role performed.¹⁵⁴ National courts must therefore verify whether the requirement is necessary and proportionate in light of the employee's functions and the institution's religious mission.

Similarly, in the more recent decisions of *WABE and Müller* and *LF*, both of which concerned restrictions on the manifestation of religion through workplace dress policies, the Court reaffirmed that limitations on religious expression must be assessed through the framework of equality law and supported by objective justification. Although these cases did not involve claims of institutional autonomy by religious organizations, they confirm the CJEU's broader insistence that

¹⁵¹ *Eweida*, ¶¶ 83–95 (finding a violation of Article 9 in relation to a British Airways employee prohibited from wearing a visible cross and emphasizing the need to balance religious manifestation against employer interests).

¹⁵² *Egenberger*, ¶ 62.

¹⁵³ *Id.* ¶¶ 59–63, 69; see also *Katholische Schwangerschaftsberatung*, ¶¶ 52–56.

¹⁵⁴ *IR v. JQ*, ¶¶ 63–67.

restrictions connected to religion be justified by reference to legitimate aims and subjected to proportionality review rather than accepted at face value.¹⁵⁵

More recent developments also suggest that the Court of Justice is prepared to apply the same methodology in sectors characterized by strong ethical or religious commitments. In *Katholische Schwangerschaftsberatung*, discussed further below in the context of healthcare and social services, the Court again treated reliance on religious ethos as requiring objective and functionally specific justification rather than institutional assertion alone.¹⁵⁶

Under EU law and within the ECHR system, employment disputes turn primarily on the relationship between the employee's role and the institution's religious mission. The closer a position is to the representation, transmission, or protection of religious identity, the greater the weight afforded to institutional autonomy. Conversely, where duties are primarily technical or peripheral, individual rights assume greater significance and autonomy claims become more difficult to sustain.

C. Religious Autonomy in Educational Settings

Unlike the core internal life of religious communities, education frequently intersects with public functions, State regulation, and the rights of third parties, particularly students and parents. Religious institutions maintain an interest in transmitting beliefs, shaping educational environments, and preserving institutional ethos. Educational activity also serves broader societal functions that engage principles of pluralism, equality, and democratic participation.

Although not always directly involving the application of the principle of autonomy of religious institutions, the ECtHR's jurisprudence on public education provides the broader framework within which educational autonomy is assessed. In cases concerning religious instruction, symbols, and parental rights, the Court has emphasized principles of pluralism, neutrality, and respect for the convictions of students and parents, while also recognizing a margin of appreciation in the organization of national education systems.¹⁵⁷ These principles form the backdrop against which claims of educational autonomy are evaluated when brought by religious institutions themselves.

¹⁵⁵ See *WABE eV and MH Müller Handels GmbH*, ¶¶ 62–66; *LF v. SCRL*, ¶¶ 38–42.

¹⁵⁶ See *Katholische Schwangerschaftsberatung*. The case concerned a Catholic pregnancy-counselling organization whose activities were shaped by the ethical teachings of the Catholic Church. The Court examined whether requirements linked to the organization's religious ethos could be justified by reference to the functions performed and the institutional mission. Because the decision is discussed in greater detail in Section D, only its relevance to the broader requirement of objective justification is noted here.

¹⁵⁷ See *Folgerø v. Norway* [GC], App. No. 15472/02, ¶¶ 84–89, 102–03 (Eur. Ct. H.R. 2007); *Lautsi v. Italy* [GC], App. No. 30814/06, ¶¶ 60–70 (Eur. Ct. H.R. 2011).

In *Lombardi Vallauri v. Italy*, the applicant, a philosophy professor at the Catholic University of the Sacred Heart, was denied renewal of authorization to teach after ecclesiastical authorities concluded that certain aspects of his scholarship were incompatible with Catholic doctrine.¹⁵⁸ The Court accepted that a confessional university has a legitimate interest in preserving its religious identity and academic mission. However, it found a violation of Article 10 of the Convention because the applicant had not been informed of the specific reasons underlying the decision and was therefore unable to challenge them effectively.¹⁵⁹ The judgment again reiterates that religious educational institutions retain substantial autonomy, but that decisions affecting individual rights must be accompanied by adequate procedural safeguards and a sufficiently clear connection to the institution's religious mission.

A similar emphasis on institutional identity appears in *Siebenhaar v. Germany*. In that case, the applicant worked in a Protestant kindergarten operated by a church organization and was dismissed after becoming actively involved in another religious community. The Court held that the employer was entitled to protect its religious ethos and accepted that the applicant's role involved participation in a religious educational environment concerned with the transmission of institutional values.¹⁶⁰ Given the connection between the applicant's duties and the organization's mission, the Court concluded that the interference was proportionate. The case illustrates that educational institutions may require a degree of loyalty where employees participate directly in the realization of the institution's educational and religious objectives.¹⁶¹

Educational institutions occupy an intermediate position between internal governance and externally regulated activity. Courts recognize their interest in transmitting religious beliefs and preserving a confessional identity, but that autonomy is shaped by the educational function they perform and the interests of students and parents. The strength of an autonomy claim therefore depends largely on its connection to the institution's formative and educational mission.

D. Religious Autonomy in Healthcare and Public Services

Healthcare and social service provision represent a further step away from the core internal sphere of religious autonomy. Religious organizations operating in these sectors participate in heavily regulated systems designed to serve the public and provide essential services. Questions of access,

¹⁵⁸ *Lombardi Vallauri v. Italy*, App. No. 39128/05, ¶¶ 41–53 (Eur. Ct. H.R. 2009).

¹⁵⁹ *Id.* ¶¶ 51–53.

¹⁶⁰ *Siebenhaar v. Germany*.

¹⁶¹ *Id.*

equality, patient welfare, and professional obligations therefore assume greater significance than in other disputes.¹⁶²

EU Law

Arguably, the clearest European examples of healthcare-related institutional autonomy currently emerge from EU law. As discussed previously, *IR v. JQ* concerned the dismissal of the chief physician of a Catholic hospital following conduct considered incompatible with Catholic doctrine. Although the Court of Justice accepted that religious healthcare institutions may invoke their ethos as part of their organizational identity, it required that any difference in treatment be objectively justified and closely linked to the functions actually performed.¹⁶³

Similar approach was applied recently in *Katholische Schwangerschaftsberatung*.¹⁶⁴ The case concerned a Catholic pregnancy-counselling organization operating in accordance with the ethical teachings of the Catholic Church. The Court was called to assess whether reliance on that ethos could justify requirements imposed within the employment relationship. Reiterating the findings from *Egenberger* and *IR*, in its reasoning, the Court placed strong emphasis on the necessary presence of a concrete connection between the organization's religious ethos and the requirement imposed within the employment relationship. The institutional assertions alone are insufficient to benefit from the protection stemming from religious autonomy. Cumulatively, these decisions demonstrate that religious healthcare institutions retain the ability to preserve a distinct religious identity, but that any reliance on that identity must be capable of objective justification and judicial review.

ECHR System

With regard to the Convention system, in *Rommelfanger* (discussed above), the European Commission of Human Rights held that a Catholic hospital qualified as a religious organization and could thus benefit from institutional autonomy.¹⁶⁵ Admittedly, to date, the ECtHR has not developed an extensive body of case law concerning religious hospitals or healthcare institutions asserting a right to autonomy on the basis of their religious ethos. Nevertheless, its healthcare jurisprudence demonstrates the manner in which competing rights are reconciled once religious claims arise within a regulated healthcare environment. For instance, in *R.R. v. Poland*, the Court emphasized that States must organize healthcare systems in a manner that ensures practical and

¹⁶² *Schüth*; Charter of Fundamental Rights of the European Union arts. 20–21.

¹⁶³ *IR*, ¶¶ 63–67.

¹⁶⁴ For the analysis of the case, see e.g. Mark Bell, 'The Struggle to Uphold Religious Autonomy within EU Anti-Discrimination Law' (*European Law Blog*, 26 March 2026) <<https://www.europeanlawblog.eu/pub/gv58ocdl/release/1>> accessed on July 24, 2026.

¹⁶⁵ *Rommelfanger v. Germany*.

effective access to lawful medical services.¹⁶⁶ The case arose when medical professionals relied upon conscience-based objections that contributed to the applicant's inability to obtain timely prenatal diagnostic testing. Significantly, the Court did not question the legitimacy of freedom of conscience. Rather, it held that the existence of conscience-based objections does not relieve the State of its obligation to ensure that patients can effectively obtain services to which they are legally entitled. The judgment therefore illustrates an important feature of the Court's approach: competing rights are not weighed with one losing out over the other. The objective is not to eliminate freedom of conscience in order to secure access to healthcare, nor to permit conscience claims to render access illusory, but instead to structure the healthcare system so that both interests are respected.¹⁶⁷

The practical significance of this issue extends beyond employment. Religious hospitals, care facilities, and counselling organizations often operate according to ethical directives governing reproductive healthcare, end-of-life care, and other morally sensitive areas. Comparative experience from the United States illustrates the tensions that may arise when religious healthcare institutions seek to maintain such directives while providing services within broader healthcare systems. Catholic hospitals, for example, have relied upon religious ethical standards to restrict access to certain reproductive and end-of-life services, generating ongoing debates concerning institutional conscience, patient expectations, and access to care.¹⁶⁸ These disputes are particularly instructive because they place the institution itself, rather than an individual employee, at the centre of the autonomy claim. They also illustrate the types of questions European courts may

¹⁶⁶ *R.R. v. Poland*, App. No. 27617/04, ¶ 200-01 (Eur. Ct. H.R. 2011); and Compare with the CJEU's Case C-243/19, *A v. Veselības ministrija*, EU:C:2021:872, ¶¶ 70–84 (holding that healthcare systems are not required to accommodate every religious preference where effective treatment is otherwise available).

¹⁶⁷ See *R.R.*, ¶¶ 181–206 (holding that access to information and medical services relating to pregnancy falls within the scope of Article 8 and emphasizing that States must organize healthcare systems so that lawful medical services remain practically and effectively accessible notwithstanding conscience-based objections by healthcare professionals). See also in this sense Parliamentary Assembly of the Council of Europe, 'The right to conscientious objection in lawful medical care', Resolution 1763 (2010), discussed above. Along similar lines, in her recent Contribution to the French Constitutional Council (*supra*), the UN Special Rapporteur on Freedom of Religion or Belief, indicated that "Religiously affiliated hospitals, hospices, and nursing homes should not be compelled to permit or facilitate aid in dying on their premises if doing so would fundamentally contradict their religious ethics or prevent them from continuing their operations" (para 14, free translation). She further emphasized the necessity to strike an adequate balance between the rights of patients (such as access to aid in dying when it is authorized), "the protection of professionals' freedom of thought, conscience, religion, or belief while providing professional services" and "the integrity and independence of the medical profession" (para 17, free translation).

¹⁶⁸ See Advancing New Standards in Reproductive Health (ANSIRH), Denial of Care at Catholic Hospitals 1–2 (2020), https://www.ansirh.org/sites/default/files/publications/files/denial_of_care_at_catholic_hospitals.pdf (describing how Catholic hospitals in the United States rely on religious ethical directives to restrict access to reproductive and end-of-life services, including contraception, sterilization, abortion, and physician-assisted dying, and noting the resulting tensions between institutional religious commitments and patient access to healthcare); *Means v. United States Conference of Catholic Bishops*, 836 F.3d 643 (6th Cir. 2016) (arising from allegations that religious directives governing a Catholic hospital's treatment decisions affected the provision of reproductive healthcare).

increasingly be required to address: whether restrictions are clearly rooted in a genuine religious ethos, whether they are applied consistently across the institution, whether patients are adequately informed of limitations on services, and whether meaningful access to lawful healthcare remains available through alternative providers. These considerations closely mirror the factors already visible in the European case law and suggest how future disputes involving religious healthcare institutions may be evaluated.

Recent Developments in National Legal Orders

The tensions become particularly acute where the contested service is itself the subject of profound moral and religious disagreement, as is increasingly the case with euthanasia and assisted dying. Although neither the ECtHR nor the CJEU has yet directly addressed a claim brought by a religious hospital or care institution objecting to participation in such practices, national litigation demonstrates the issues likely to arise.¹⁶⁹ Religious hospitals, hospices, and care facilities have argued that participation in euthanasia or assisted suicide would conflict with their institutional mission and ethical commitments, particularly where that mission encompasses the protection of life until natural death.¹⁷⁰ At the same time, States have increasingly treated access to assisted dying as part of the healthcare services available to eligible patients. These disputes suggest that future courts will be required to reconcile institutional claims grounded in religious identity with demands for effective access to lawful healthcare services.

Healthcare and social services represent one of the most demanding contexts for claims of religious autonomy. Religious institutions remain entitled to preserve an ethos grounded in moral or religious convictions, but the strength of that protection depends heavily on the effect of the contested measure on patients, service users, and access to care. Unlike disputes concerning internal governance, the decisive consideration is often whether accommodation of the institution's position can be achieved without undermining the delivery of lawful healthcare services.

Across the case law, European courts consistently distinguish between activities that lie close to the core identity and governance of a religious community and those that operate within regulated environments involving employees, students, patients, or the broader public. As the effects of a

¹⁶⁹ See, e.g., Belgian Constitutional Court, Judgment No. 26/2022 (Feb. 17, 2022); Tribunal Federal (Switzerland), *Fondation Armée du Salut Suisse v. Canton de Neuchâtel*, 2C_66/2015 (Sept. 13, 2016); High Court of New Zealand, [2021] 3 NZLR 71; *O'Neill v. British Columbia* (Minister of Health), 2025 BCSC 601. These disputes concern attempts by religious or faith-based institutions to resist participation in assisted suicide or euthanasia on religious or ethical grounds while operating within publicly regulated healthcare systems.

¹⁷⁰ See Grégor Puppink, *La liberté des établissements confessionnels face à l'euthanasie et au suicide assisté* (Centre Européen pour le Droit et la Justice, 2026) (manuscript on file with author) (arguing that opposition to euthanasia by religious healthcare institutions reflects deeply held moral and religious convictions that may fall within the scope of protection under freedom of religion); see also Directive 2000/78, art. 4(2).

decision extend beyond the internal sphere, the intensity of judicial scrutiny increases, and the justification required becomes more demanding. These recurring features suggest a common analytical logic. The following section translates that logic into practical guidance for institutions seeking to assess claims of religious autonomy and structure their decision-making accordingly.

IV. Practical Guidance for Institutional Decision-Making

The preceding sections have demonstrated that religious autonomy in European law is not secured through general assertions of identity, but through how institutions structure, justify, and implement their decisions. For religious organizations, the central task is therefore to align internal governance and external activity with the legal framework within which autonomy is evaluated.

A. Institutional Ethos

A first priority is the clear articulation and external visibility of institutional ethos. Courts attach greater weight to autonomy where a decision can be directly linked to a coherent and identifiable religious mission. The case law suggests that institutions must ensure that their doctrinal commitments, ethical positions, and organizational purposes are not only internally understood but are also publicly documented, consistently applied, and reflected in their institutional structures.¹⁷¹ This includes formal statements of mission, codes of conduct, and role descriptions that explicitly connect institutional functions to religious objectives. Where such linkage is absent or unclear, courts are less inclined to regard the decision as an expression of protected autonomy and more likely to assess it through the lens of competing rights and interests.

B. Relationship Between Institutional Ethos and Professional Duties

Closely related to this is the need to tie employment and institutional decisions explicitly to that ethos. The case law makes clear that not all roles within a religious organization carry equal weight for the purposes of autonomy. Institutions should therefore distinguish clearly between positions that are central to the transmission or representation of religious identity and those that are primarily technical, administrative, or peripheral. For roles falling within the first category, expectations relating to belief, conduct, or adherence to doctrine should be clearly defined in advance and demonstrably connected to the function performed. For other roles, institutions should proceed with caution, recognizing that attempts to impose broad religious requirements are unlikely to withstand scrutiny.¹⁷²

¹⁷¹ See Egenberger, ¶¶ 61–63; *Katholische Schwangerschaftsberatung* ¶51; Fernández Martínez, ¶¶ 130–131.

¹⁷² See Schüth, ¶¶ 69–73; IR, ¶¶ 63–67; Egenberger, ¶¶ 62–63.

C. Transparency and Consistent Application of Decision-Making Processes

Decision-making processes should also be structured, reasoned, and documented. Courts do not accept abstract references to religious identity as sufficient justification. Instead, they examine whether a particular measure – such as dismissal, exclusion, or restriction – is specifically linked to a legitimate religious aim and supported by a coherent explanation. Institutions should therefore adopt internal procedures that require decision-makers to articulate the religious objective being pursued, explain the connection between that objective and the individual’s role, and consider whether the measure imposed is proportionate to the aim. Written reasoning, even where not legally required, can be critical in demonstrating that a decision reflects a structured exercise of autonomy rather than arbitrary action.¹⁷³

Religious autonomy is also strengthened where institutional rules are applied consistently and uniformly. Courts are attentive to whether similar situations are treated alike, and whether disciplinary or exclusionary measures reflect a stable and coherent practice rather than ad hoc decision-making. Inconsistent application of internal rules may undermine the credibility of the asserted religious justification, suggesting that the measure is not genuinely required by the institution’s ethos. By contrast, where expectations are enforced in a consistent and non-discriminatory manner, courts are more likely to accept that they reflect a legitimate expression of institutional autonomy rather than a selective or arbitrary restriction on individual rights.¹⁷⁴

D. Anticipating Proportionality Review

A further consideration is the anticipation of proportionality review. The analysis applied by both the ECtHR and the CJEU calls for measures to be necessary and appropriately tailored. Institutions should therefore assess, before acting, whether less restrictive alternatives are available and whether the chosen measure is likely to be viewed as excessive in light of its impact on the individual. This is particularly important in cases involving severe consequences, such as termination of employment or exclusion from participation in the institution. Where the same objective can be achieved through narrower or more flexible measures, courts are more likely to expect that such alternatives be considered.¹⁷⁵

Additional caution is required where institutions operate in regulated or public-facing settings, including education and healthcare. In these environments, religious autonomy is balanced against obligations relating to equality, access, and neutrality. Institutions should therefore ensure that their practices do not undermine access to services or impose disproportionate burdens on

¹⁷³ See *Lombardi Vallauri*, ¶¶ 46–53, 67–72; *Egenberger*, ¶¶ 58–63; *IR*, ¶¶ 63–67.

¹⁷⁴ See *WABE eV and MH Müller Handels GmbH*, ¶¶ 67–72; *Achbita v. G4S Secure Solutions*, ¶¶ 38–42.

¹⁷⁵ See *Schüth*, ¶¶ 69–73; *Fernández Martínez*, ¶¶ 131–132; *IR*, ¶¶ 63–67; *LF v. SCRL*, ¶¶ 38–42.

individuals, particularly where they serve diverse populations or receive public funding. Decisions taken in these environments should be justified by reference to institutional ethos and by demonstrating compatibility with the broader legal framework governing the activity.¹⁷⁶

Finally, institutions should recognize that autonomy in European law is proactive rather than reactive. It is not simply a defense raised in litigation, but a principle that must be embedded in institutional design. Organizations that clearly define their identity, align their practices with that identity, and anticipate how their decisions will be evaluated are significantly better positioned to preserve their autonomy in practice.¹⁷⁷

V. Conclusion

Religious autonomy remains a foundational guarantee within European law. As demonstrated, the ECtHR has consistently affirmed that the autonomous existence of religious communities lies at the heart of Article 9 of the Convention and that, without protection of their internal life, the freedom of religion itself would be weakened. EU law reflects the same underlying concern through its recognition of the institutional dimension of religious freedom and its protection of religious ethos within the framework of equality law. Across both systems, there is a clear understanding that religious institutions must be able to determine their beliefs, their structure, and their leadership without external interference.

The conditions in which that autonomy is exercised have nevertheless become more demanding. Religious organizations now operate in spaces that are shared, regulated, and often contested. Employment decisions affect individual rights. Schools shape future citizens. Healthcare delivers essential services. In these contexts, autonomy is not denied, but it is examined alongside other legal and social interests. The challenge facing religious institutions is how to navigate within these increasingly interconnected environments.

This does not place religious institutions in an impossible position, but it does require a different kind of attention. The law no longer shields decisions simply because they are religious in origin. It depends on how clearly an institution can connect its decisions to its mission, how carefully it distinguishes between central and peripheral roles, and how consistently its commitments are applied in practice. The case law requires that religious autonomy be exercised with coherence and precision, and capable of justification where the rights of others are affected.

¹⁷⁶ See *Lombardi Vallauri*, ¶¶ 67–72; *Siebenhaar*, ¶¶ 40–46; *IR*, ¶¶ 63–67; *Katholische Schwangerschaftsberatung* ¶¶ 51–52; *R.R.* ¶¶ 206–214.

¹⁷⁷ See *Hasan & Chaush*, ¶ 62; *Metropolitan Church of Bessarabia*, ¶¶ 118–123; *Egenberger*, ¶¶ 61–63; *IR v. JQ*, ¶¶ 63–67; *Jehovah's Witnesses of Moscow v. Russia*, ¶¶ 107–108, 158–160.

This is the purpose of the framework set out in this paper. It is meant to assist religious organizations in navigating a legal environment that still recognizes the importance of their mission, while expecting clarity in how that mission is carried out. Institutions that define their ethos carefully, structure their roles deliberately, and approach decisions with an awareness of their broader legal effects remain firmly within the protection of European law. The analysis reconstructed in this paper provides not a constraint on religious life, but a guide for navigating it. Properly understood and applied, it enables institutions to make decisions that remain faithful to their identity while capable of withstanding the scrutiny of the contemporary, ever developing, legal landscape.

Ultimately, the European jurisprudence on religious autonomy reflects a continuing effort to reconcile two commitments that are both fundamental to a democratic society: the freedom of religious communities to remain genuinely religious and the protection of those individuals whose rights are affected by the exercise of that autonomy. The challenge for religious institutions is not to choose between those commitments, but to navigate the relationship between them.