WHAT NOT TO WEAR: RELIGIOUS DRESS AND WORKPLACE POLICIES IN EUROPE

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I. INTRODUCTION

Why are religious freedoms important? Do they deserve the same degree of protection and deference as other fundamental rights, such as freedom of speech, freedom of association, and freedom of assembly? One cannot doubt the impact of religion on society, law and customs, and its influence on theories of morality and government. Historically, religious beliefs have shaped the human experience. Additionally, many psychologists recognize that human beings’ desire “to create a positive social identity for themselves, either as individuals or members of a group.” One way people have filled this desire is by forming groups based on shared collective religious identities. Today, religious pluralism dominates the international community, as each religion brings its own teachings, traditions, and influences. Rapid globalization and migration patterns have accelerated the growth of religious pluralism. As a consequence, the coexistence of faith communities is a phenomenon in almost every part of the world. According to law and religion scholar John Witte Jr., “[r]eligion is an ineradicable condition of human lives and communities,” because it provides individuals and communities with a system of values upon which to govern themselves.

When practicing one’s religion, religious dress often carries significance. Members of religious groups may use dress as an outward expression of their inward beliefs. Dress is one way to signify a person’s membership to a particular group and reveals much about his or her identity. In Europe, however, the right to wear religious dress varies significantly and continues to remain a controversial issue. Indeed, the religious jurisprudence of the European Court of Human Rights (“ECtHR”) is muddled at best, calling attention to this recent phenomenon.

2 Id.
4 Chioco, supra note 1.
6 Id.
7 Id.
9 Cumper & Lewis, supra note 3 (noting that dress may reveal much about a person’s identity, particularly a person’s “gender, class, sexual orientation, and religious beliefs”).
10 Id. at 600.
phenomenon may be an outgrowth of the “spiritual disease” rampant in Europe, a phrase he uses to describe the spread of negative attitudes and intolerance toward traditional monotheistic religious expressions.\textsuperscript{12} Some European politicians, activists and secular fundamentalists are targeting Islamic, Jewish and Christian influences in the public sphere in hopes of limiting or prohibiting religious expression, including the wearing of visible religious symbols.\textsuperscript{13}

Moreover, several European countries have imposed clear restrictions on religious dress.\textsuperscript{14} France, for example, was the first European country in 2011 to ban the wearing of religious scarves and garments in public due to their allegedly oppressive stigma.\textsuperscript{15} Specifically, this ban prohibits women from wearing the Islamic burqa, a veil that fully covers one’s face, in public places.\textsuperscript{16} Despite France’s interests in reaffirming its commitment to laïcité – the principle that religion is fundamentally incompatible with the secular French Republic and public manifestations of religious beliefs should be confined to the private sphere – these intentions are not always well received.\textsuperscript{17} On the other hand, the European Court allows Italy to hang crucifixes in government-run schools and requires that the United Kingdom allow flight attendants to wear Christian necklaces to work.\textsuperscript{18} As legal scholar Ronan McCrea noted, these restrictions on religious freedom, especially towards Muslims, reflect concerns surrounding terrorism and immigration, and have given new political importance to the relationship between religion, the law, and the state.\textsuperscript{19} European states have reacted to threats of terrorism, the rapid influx of foreigners, and increased globalization by promoting secularism and

\textsuperscript{13} \textit{Id.} at 72.
\textsuperscript{14} \textit{Id.}
\textsuperscript{15} \textit{The Islamic Veil Across Europe}, BBC News (May 31, 2018), http://www.bbc.com/news/world-europe-13038095. Under this ban, any woman, French or foreign, may be subject to a fine if she leaves her home wearing a burka.
\textsuperscript{16} \textit{Id.}.
non-discrimination in public life, especially in the workplace.\textsuperscript{20} In a similar vein, the ECtHR has afforded states a “wide margin of appreciation” to reconcile freedom of conscience and freedom from discrimination.\textsuperscript{21} In other words, the ECtHR grants states great latitude to enforce policies, rules, and laws that limit religious freedom, so long as those limitations are necessary and proportionate to the state’s legitimate aim.\textsuperscript{22}

The Court of Justice of the European Union (CJEU) is another European Court that has followed the ECtHR’s footsteps regarding religious freedom jurisprudence. The CJEU adjudicates requests for preliminary rulings from national courts, as well as actions for annulments and appeals to ensure that European Union (EU) law is interpreted and applied uniformly in each EU country.\textsuperscript{23} While national courts of EU countries are required to ensure that EU law is properly applied, those courts may reach different interpretations of the law.\textsuperscript{24} If a national court doubts the interpretation or validity of an EU law, it can request clarification from the CJEU.\textsuperscript{25} This mechanism allows EU countries to determine whether a national law or practice is compatible with EU law.\textsuperscript{26}

In March 2017, the CJEU grappled with the role of religion in the workplace. The CJEU upheld an employer’s internal rule that prohibited all outward expressions of religious, political, and philosophical association or belief, including the wearing of garments.\textsuperscript{27} This judgment was in response to questions posed by the Court of Cassation, a national court in Belgium that had adjudicated the dispute between the parties. The national court sought a preliminary ruling to clarify the interpretation of a Council Directive concerning equal treatment in the workplace.\textsuperscript{28} Critics have characterized the CJEU’s judgment as “a direct attack on women wearing hijabs at work” and “a thinly veiled measure targeting Muslims.”\textsuperscript{29}

\begin{itemize}
\item \textsuperscript{20} \textit{Id.}
\item \textsuperscript{21} Cumper & Lewis, \textit{supra} note 3, at 605.
\item \textsuperscript{22} \textit{Id.}
\item \textsuperscript{24} \textit{Id.}
\item \textsuperscript{25} \textit{Id.}
\item \textsuperscript{26} \textit{Id.}
\item \textsuperscript{29} \textit{Employers Allowed to Ban the Hijab: EU Court, supra} note 27.
\end{itemize}
This Note seeks to examine the impact of the recent CJEU decision on the boundaries of law and religion in the context of workplace discrimination and accommodation. First, this Note will highlight relevant international law doctrines that govern religious freedom and expression, specifically Article 9 of the European Convention on Human Rights. Second, this Note will analyze the European Court’s decision in more detail by describing the factual scenario giving rise to the claims and by assessing the Court’s rationale. Third, this Note will compare this decision with a factually similar United States Supreme Court case, *Abercrombie & Fitch v. EEOC*. Lastly, this Note will argue that this CJEU decision is contrary to the spirit and purpose of the European Convention on Human Rights because it unduly restricts one’s freedom of conscience, thought, and religious expression.

II. PRINCIPLES OF AUTONOMY IN THE ECHR

A proper evaluation of the parameters of Article 9 of the ECHR requires a foundational understanding of the Convention’s purpose and founding principles. This evaluation also necessitates defining the relationship between human rights and religious freedoms in the context of adjudication. Some scholars have argued that the principles of human rights law are inherently secular in nature, and thus automatically conflict with notions of religious freedom.30 As historian Yehoshua Ariell observed, “[T]he development of the doctrine of human rights is [inseverable to] the process of secularization of Western society.”31 Secularism has been defined as a philosophy that obliges the state to refrain from endorsing or imposing any established beliefs.32 The ECtHR has likewise adopted a complementary view that states serve “neutral and impartial” roles and cannot assess the legitimacy of religious beliefs or the way those beliefs are expressed.33

In Europe, there are three courts that adjudicate religious freedom claims: the International Court of Justice (ICJ), the Court of Justice of the European Union (CJEU), and the European Court of Human Rights (ECtHR), also known as the European Court.34 The ICJ is the principal judicial organ of the United Nations.35 Because only states may bring an action in this court, the ICJ provides limited relief for individuals seeking to protect religious freedoms.36 The CJEU, located in Luxembourg, serves as the principal judicial organ of the European Community and governs rights contained in the

32 Cumper & Lewis, *supra* note 3, at 613.
33 *Id.*
35 *Id.* at 9 n.35.
36 *Id.*
European Union Charter on Fundamental Rights. Article 10 of the Charter contains a provision that concerns freedom of thought, conscience, and religion. Despite these provisional protections, the CJEU rarely delivers a judgment on the topic of freedom of religion. Lastly, the ECtHR is a supra-national body that adjudicates claims arising under the European Convention on Human Rights and Fundamental Freedoms (ECHR) brought by individuals or member-states. The ECHR is an international treaty under which the member-states of the Council of Europe promise to secure fundamental civil and political rights of their own citizens and persons within their jurisdiction. Of these tribunals, individuals with religion-based claims generally file petitions with the ECtHR and allege Article 9 violations of the ECHR, which guarantees freedom of thought, conscience and religion.

Admittedly, the European Court adjudicates relatively few religion cases compared to its vast caseload. From 1959 to 2009, the European Court found a total of thirty religion violations whereas it found approximately 4008 violations concerning the fairness and length of proceedings. Nevertheless, whenever the Court finds a violation of the ECHR, it delivers a binding judgment that grants the individual relief and obliges the states who were involved to execute the judgment. In order to enforce the judgment, the Court transmits the file to the Committee of Ministers of the Council of Europe to supervise its execution, which is often a time-consuming and cumbersome process. The effects of this enforcement process frequently result in member-states ignoring the Court’s judgment, making compliance a delicate act of diplomacy. Despite these structural challenges, successful enforcement of these judgments may result in the state amending its legislation to comply with the Convention’s protections.

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37 Id. at 9 n.36.
38 Id. See also Charter of Fundamental Rights of the European Union, art. 10, 2000 O.J. (C. 364) 1.
39 Kolenc, supra note 11, at 9 n.36.
42 Kolenc, supra note 11, at 9.
43 Id. at 10 n.38.
44 Id.
45 Id. at 11-12.
46 Id. at 12.
47 Id. at 13.
Because the European Court is a supra-national body governed by the principle of “subsidiarity,” it affords great deference to sovereign states who have ratified the ECHR.49 This subsidiarity principal reflects the idea that “the Court’s jurisdiction is strictly confined to supervising States’ conduct” and restricts the Court’s “powers of intervention” to cases where domestic institutions fail to properly protect the Convention’s guaranteed rights.50 The Court can and should only intervene where domestic authorities fail to safeguard human rights. National authorities bear the primary responsibility for implementing and protecting the rights and freedoms of the Convention, so “the machinery of [the] complaint to the Court is [thus] subsidiary to national systems safeguarding human rights.”51 In other words, the member-states, as sovereign governmental entities, possess the initial authority and duty to address human rights issues that arise within their own territories. In theory, these domestic authorities are better suited to assess the multitude of factors surrounding each case.52 The Court, on the other hand, should carefully scrutinize alleged human rights violations and weed out unnecessary cases.53

To assess these claims, the European Court employs the doctrines of “admissibility” and “margin of appreciation.”54 These doctrines often preclude petitioners who seek review of their religion claims. The doctrine of admissibility requires petitioners to meet threshold criteria in order for their claims to pass muster.55 First, a case may only be brought after all domestic remedies have been exhausted. This gives the state an opportunity to provide redress for the allegations at a national level.56 Next, the case may only allege violations of rights defined in the Convention. In addition, the petition must be filed within six months following the last judicial decision in that case, and the applicant must plead a particularized, concrete injury or show that he or she has suffered a significant disadvantage.57 Finally, petitions must be lodged against one or more member-state to the Convention.58 In essence, the European Court’s admissibility doctrine ensures that the judges do not substantially interfere with the judicial authority of member-states.59

49 Kolenc, supra note 11, at 13-14 (noting that the principle of subsidiarity is comparable to the U.S. doctrine of federalism which gives sovereign states the power to act within their own “spheres of authority”).
50 European Court of Human Rights, Interlaken Follow-Up, Principle of Subsidiary, at ¶ 3 (Aug. 7, 2010).
51 Id. at ¶ 6.
52 Kolenc, supra note 11, at 14.
53 Id.
54 Kolenc, supra note 11, at 15.
55 Id. (drawing a valid comparison between the doctrine of admissibility to the U.S. Supreme Court’s prudential justiciability doctrines of standing, ripeness, and mootness.)
56 Id.
57 Id. at 14-15.
58 Id.
59 Id. at 17.
The second doctrine, known as the margin of appreciation, also echoes this principal of deference to European national courts and governments.\textsuperscript{60} By respecting the pluralism of member-states’ legislation, this margin of appreciation affords European nations “adequate space” to legislate according to “different legal traditions, social circumstances, and cultural specificities.”\textsuperscript{61} In essence, this doctrine prevents the Court from imposing its own views to the detriment of member-state autonomy.\textsuperscript{62} The rationale underlying this doctrine presupposes that national judges are better suited to address culturally sensitive questions that arise when adjudicating human rights violations.\textsuperscript{63} Nevertheless, concerns arise when this deference becomes too extreme, thereby creating a jurisprudential gap that leaves fundamental rights under-protected and national interests over-accommodated.

This jurisprudential trend is especially true in the context of religion where the Court has “liberally applied the ‘margin of appreciation’ to a wide variety of practices.”\textsuperscript{64} For example, in 	extit{Cha’are Shalom Ve Tsedek v. France}, an ultra-orthodox Jewish organization sought permission to slaughter meat according to its’ rigid “glatt” religious rituals.\textsuperscript{65} The French government denied the group’s license on the grounds that the practice was contrary to the state’s animal cruelty laws, and reasoned that another Jewish organization that had been granted the license could provide the meat.\textsuperscript{66} In a display of great deference to the French government, the European Court rejected the group’s challenge and found that there had been no interference with the applicants’ religious beliefs because they could obtain the desired meat from other sources, such as imports from Belgium.\textsuperscript{67} In other words, French laws regarding animal cruelty fell within the wide margin of appreciation afforded by the Court to member-states and took priority over the group’s religious convictions.\textsuperscript{68}

Nearly thirteen years later, the Court continued to implement this doctrine of deference. In 	extit{Ewedia v. United Kingdom}, two of the petitioners were Christian employees who opposed same-sex relationships on religious grounds and refused to perform certain job duties that furthered same-sex relationships.\textsuperscript{69}

\textsuperscript{60} Id.
\textsuperscript{61} Id.
\textsuperscript{62} Id.
\textsuperscript{63} Id. at 17-18 (noting that “[t]his principle of deference ‘recognizes that national judges are often better placed than international judges to assess these culturally sensitive questions’ regarding human rights within the context of a particular nation’s situation.”).
\textsuperscript{64} Id. at 18. See also 	extit{Cha’are Shalom Ve Tsedek v. France}, 2000-VII231 Eur. Ct. H.R. (2000).
\textsuperscript{65} Cha’are Shalom Ve Tsedek v. France, 2000-VII231 Eur. Ct. H.R. at ¶ 2, ¶ 58.
\textsuperscript{66} Id. at ¶ 2.
\textsuperscript{67} Id. at ¶¶ 80-85.
\textsuperscript{68} Id. at ¶¶ 87-88.
As a result, their employment was terminated.\textsuperscript{70} Noting the lack of consensus in Europe regarding the proper balance between conscience and accommodation on this issue, the European Court upheld the employees’ dismissals.\textsuperscript{71} Perhaps the strongest example of this deference is found in \textit{S.A.S. v. France}, where the Court upheld France’s neutral ban on wearing any items that covered one’s face while in public.\textsuperscript{72} The ban was upheld even though the Court recognized it would primarily affect Muslim women from publically wearing religious garb, such as the burqa.\textsuperscript{73} The Court rejected some of France’s justifications for this regulation, such as national security and respect for gender equality, but it accepted France’s legitimate interest in protecting “the rights and freedoms of others.”\textsuperscript{74} Accordingly, France argued that this neutral ban, which would ensure that persons interacting in public could see each other’s faces, was necessary in a democratic society.\textsuperscript{75} As these cases and others exemplify, by liberally applying the margin of appreciation doctrine, the European Court has left religious freedom squarely in the hands of member-state courts. States such as France that emphasize nationalist attitudes and prize secular values have leveraged this deference to unduly impede minority religious practices.\textsuperscript{76}

Article 9 of the ECHR provides explicit statutory guideposts for the European Court to follow when adjudicating religious freedom cases.\textsuperscript{77} Article 9 states:


each person has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observance.

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,

\begin{footnotes}
\item[71] \textit{Id.}
\item[73] \textit{Id.} at \textit{g} 3, 76.
\item[74] \textit{Id.} at \textit{g} 118-122 (explaining that “the Court finds, by contrast, that under certain conditions the ‘respect for the minimum requirements in society’ referred to by the Government…can be linked to the legitimate aim of the ‘protection of the rights and freedoms of others’”)
\item[75] \textit{Id.} at \textit{g} 122, \textit{g}g 126-127.
\item[77] Kolone, \textit{supra} note 11, at 20.
\end{footnotes}
for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.\textsuperscript{78}

Unlike the First Amendment of the United States Constitution, Article 9 expressly includes rights of conscience and thought under its umbrella of protections. This first provision provides a detailed description of the substantive right, which includes exercising religion in private and public spheres, as well as through individual and community expressions.\textsuperscript{79} The second provision provides a balancing test to guide the court as it weighs the means available to the member-states to achieve their desired ends.\textsuperscript{80} Under this balancing test, the Court assesses whether “a member-state has interfered with a religious right, and whether a legal basis existed for that interference.”\textsuperscript{81} This “ends-means” analysis is arguably comparable to the rational basis test used by the U.S. Supreme Court when examining free-exercise cases.\textsuperscript{82} As described previously in \textit{S.A.S. v. France}, the European Court accepted France’s aim to enhance societal interactions as a legitimate interest, and thus held the ban was rationally related to that end.\textsuperscript{83} However, it could be argued that the ban in \textit{S.A.S.} discriminated against religious observers by targeting Islamic dress.\textsuperscript{84}

\section*{III. Religious Dress and a Policy of Neutrality}

Ms. Samira Achbita joined G4S Secure Solutions (‘G4S’) as a receptionist on February 12, 2003.\textsuperscript{85} As provided under her employment contract, the position was indefinite in duration.\textsuperscript{86} The company had an unwritten policy that prohibited its employees from wearing any religious, political, or philosophical symbols while on duty.\textsuperscript{87} Ms. Achbita, who was a practicing Muslim, wore her headscarf outside of work hours.\textsuperscript{88} Ms. Achbita announced to her employer in April 2006 that she intended to wear her headscarf during work hours for religious reasons.\textsuperscript{89} In response, company management told Ms. Achbita that this practice was not advisable because it directly contradicted

\begin{itemize}
\item\textsuperscript{79} Kolenc, \textit{supra} note 11, at 20.
\item\textsuperscript{80} \textit{Id.}
\item\textsuperscript{81} \textit{Id.} at 21.
\item\textsuperscript{82} \textit{Id.}
\item\textsuperscript{84} Kolenc, \textit{supra} note 11, at 22.
\item\textsuperscript{86} \textit{Id.} at ¶ 11.
\item\textsuperscript{87} \textit{Id.}
\item\textsuperscript{88} \textit{Id.}
\item\textsuperscript{89} \textit{Id.} at ¶ 12.
\end{itemize}
G4S’s neutral dress policy. On May 12, 2006, Ms. Achbita notified the company that she would be wearing her headscarf during work hours regardless. On May 29, 2006, the company authorized an amendment to the workplace regulation that stated: “[E]mployees are prohibited, in the workplace, from wearing any visible signs of their political, philosophical or religious beliefs and/or from engaging in any observance of such beliefs.” On June 12, 2006, the company dismissed Ms. Achbita for her “continuing insistence to wear the Islamic headscarf at work.”

On April 26, 2007, Ms. Achbita filed an action for damages for wrongful dismissal against G4S in the Belgium Labour Court, or, in the alternative, for damages for infringement of the Belgian law to combat discrimination. The Belgium Centre for Equal Opportunities and Combating Racism (“CEOOR”) joined the proceeding as an intervener in support of Ms. Achbita’s case. The Belgian Labour Court dismissed the action, finding no direct or indirect discrimination was present. Her case was also dismissed on appeal. Finally, the Belgian Hof van Cassatie (Court of Cassation), the referring court, stayed the proceeding and referred the following question to the Court of Justice of the European Union:

Should Article 2(2)(a) of Council Directive 2000/78/EC be interpreted as meaning that the prohibition of wearing, as a female Muslim, a headscarf in the workplace does not constitute direct discrimination where the employer’s rule prohibits all employees from wearing outward signs of political, philosophical, and religious beliefs at the workplace?

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90 Id. at ¶ 13. See generally What We Do: Our Services, G4S, http://www.g4s.com/en/what-we-do/services (last visited Feb. 21, 2019). G4S is one of the world’s largest private employers with approximately 570,000 employees. Since its inception in 1901, G4S has been the world’s leading global, integrated security company, and provides an array of services worldwide, including security and risk management related services.

91 Id. at ¶ 14. See also Press Release 30/17, supra note 28.

92 Id. at ¶ 15.

93 Id. at ¶ 16.

94 Id. at ¶ 17-20.

95 Id.

96 Id. at ¶ 17.

97 Id. at ¶ 18. The Higher Labour Court found the workplace ban did not give rise to direct discrimination because “it was common ground that Ms. Achbita was dismissed not because of her Muslim faith but because she persisted in wishing to manifest that faith, visibly, during work hours, by wearing an Islamic headscarf.”

98 Id. at ¶ 21.
The Council Directive in question established a general framework for equal treatment in employment and occupation across the European Union.\textsuperscript{99} To begin its analysis, the Court found this case fit the scope of the Directive, because it fell within the purview of Article (3)(1)(c), which applies to employment and work conditions, including dismissals and pay.\textsuperscript{100} Specifically, the Court reasoned that since G4S’s ban on wearing Islamic headscarves in the workplace, as part of a general ban on visible religious symbols, was a condition of Ms. Achbita’s dismissal within the meaning of Article (3)(1)(c), the Directive applied.\textsuperscript{101}

Furthermore, the Directive combats both direct and indirect discrimination based on religion or religious belief in the employment context.\textsuperscript{102} Direct discrimination occurs when “one person is treated less favorably than another is, has been or would be treated in a comparable situation” based on grounds of religion or belief.\textsuperscript{103} In contrast, indirect discrimination occurs where “an apparently neutral provision, criterion or practice would put persons having a particular religion or belief... at a particular disadvantage compared with other persons...”\textsuperscript{104} Despite these bans, there are two recognized exceptions to the prohibition against indirect discrimination. Article 2(b)(i) concedes that courts may uphold practices that are “objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”\textsuperscript{105} Thus, “the distinction between direct and indirect discrimination is legally significant” because there are far fewer possible justifications for direct discrimination.\textsuperscript{106}

Next, the Court found that G4S’s ban at issue could not be properly classified as constituting direct discrimination. There was no evidence that Ms. Achbita was “treated less favorably” than other employees, because the policy of neutrality had been uniformly enforced throughout the entire company.\textsuperscript{107}


\textsuperscript{104} Id. at art. 2, ¶ 2(b).

\textsuperscript{105} Id. at art. 2, ¶ 2(b)(i).


\textsuperscript{107} Id. at ¶ 48.
Muslims, in the eyes of the Court, were not treated less favorably than other religious groups, nor were they treated less favorably than non-religious individuals or professed atheists.\textsuperscript{108} Because this ban excluded the wearing of all religious symbols without distinction, there was no discrimination between religions.\textsuperscript{109} Likewise, the Court found that the policy in question was not one directed specifically against employees who practice Islam, nor against female employees of that religion.\textsuperscript{110} Instead, the rule treated all employees the same by requiring them to dress neutrally.\textsuperscript{111} There was no evidence that Ms. Achbita was treated differently as compared to other G4S employees.\textsuperscript{112}

However, the Court conceded that G4S’ neutral dress policy could \textit{in practice} indirectly discriminate against individuals who follow certain religious beliefs (specifically female employees who practice Islam), and place those religious adherents at a disadvantage.\textsuperscript{113} In other words, a referring national court could conceivably find that “the internal rule introduces a difference of treatment indirectly based on religion or belief, should it be established that the apparently neutral obligation it encompasses results . . . in persons adhering to a particular religion or belief being put at a particular disadvantage.”\textsuperscript{114} Yet this difference in treatment would not amount to indirect discrimination if such treatment was supported “by a legitimate aim and if the means of achieving that aim were necessary and appropriate.”\textsuperscript{115} Simply put, a restriction on the religious practice must be legitimate and proportionate to the state’s aim.\textsuperscript{116} Whether the restriction meets those requirements, however, falls within the sole discretion of the referring national court, leaving the Court to provide guidance on the matter.\textsuperscript{117} Nonetheless, the Court’s judgment suggests that an employer’s desire to project an “image of neutrality towards its public and private sector customers is legitimate, notably where the only workers involved are those” who interact with customers.\textsuperscript{118} Ultimately, the Court’s holding signifies that employers may enforce policies and procedures that dilute religious practices in the workplace, provided that those policies are applied in a consistent, non-discriminatory manner.

\textsuperscript{108} \textit{Id.}
\textsuperscript{109} \textit{Id.} at \par 49.
\textsuperscript{110} \textit{Id.}
\textsuperscript{111} \textit{Id.}
\textsuperscript{112} Press Release No. 30/17, \textit{supra} note 28.
\textsuperscript{113} \textit{Id.}
\textsuperscript{114} \textit{Id.}

\textsuperscript{115} \textit{Id. See also} Cumper & Lewis, \textit{supra} note 3, at 604 (explaining that European states, under Article 9(2) of the European Convention on Human Rights, may restrict public manifestations of religion or beliefs that are: 1) prescribed by law and 2) in pursuance of a legitimate aim (i.e. public safety, public order, health, morals, and protection of the rights and freedom of others) and 3) are necessary in a democratic society).
\textsuperscript{116} \textit{Id.}
\textsuperscript{117} \textit{Id.}
\textsuperscript{118} \textit{Id.}
G4S Secure Solutions illustrates a continuation of the significant deference that European courts, both the European Court of Human Rights and the Court of Justice of the European Union, have granted to states in matters of religion.\textsuperscript{119} For the past two decades, European courts have often justified state actions in the realm of religious freedom and cast doubt on the value of religious manifestations in liberal democratic societies.\textsuperscript{120} Furthermore, European courts have failed to sufficiently scrutinize state actions on religious matters.\textsuperscript{121} As an unintended consequence, religious groups who place symbolic value on their ability to wear garments and symbols are greatly disadvantaged.\textsuperscript{122} Tension between these competing interests calls for a reevaluation of the European Convention on Human Rights, and whether these limitations on religious symbols and related garments are compatible with Article 9.\textsuperscript{123}

IV. RELIGIOUS DISCRIMINATION IN EEOC V. ABERCROMBIE & FITCH STORES, INC.

By way of comparison, the United States Supreme Court reviewed a similar question regarding religious freedom and dress in the workplace, yet it reached a contrary conclusion. In 2015, the Supreme Court reaffirmed that religious freedom and expression take priority in the workplace.\textsuperscript{124} Moreover, the Court held that employers may not terminate employees on religious grounds, even if the employees do not expressly request any special accommodations.\textsuperscript{125} In EEOC v. Abercrombie & Fitch Stores, Inc., plaintiff Samantha Elauf, a Muslim woman, applied to work at the commercial retail store Abercrombie & Fitch as a sales clerk.\textsuperscript{126} Abercrombie had a corporate “look policy” that required its employees to adhere to certain dress standards (specifically, one standard excluded employees from wearing caps) that was in keeping with the company’s promotion of its “all-American clothing” image.\textsuperscript{127} Ms. Elauf wore a hijab, or headscarf, to her job interview.\textsuperscript{128} Although the assistant manager, Heather Cooke, did not mention the garment during the

\textsuperscript{119} Cumper & Lewis, supra note 3, at 600.
\textsuperscript{120} Id. at 613 - 614.
\textsuperscript{121} Id. at 601.
\textsuperscript{122} Id.
\textsuperscript{123} Id. at 600. \textit{See also}, European Convention on Human Rights and Fundamental Freedoms art. 9, cl. 1-2 (Nov. 4, 1950), 213 U.N.T.S. 222.
\textsuperscript{124} Paul Patten, \textit{Supreme Court Refines Religious Discrimination Requirements under Title VII to Focus on Employer Motive}, JACKSON LEWIS (June 1, 2015), https://www.jacksonlewis.com/resources-publication/supreme-court-refines-religious-discrimination-requirements-under-title-vii-focus-employer-motive.
\textsuperscript{125} Id. \textit{See also} Equal Emp’l Opportunity Comm’n v. Abercrombie & Fitch Stores Inc., 135 S. Ct. 2028 (2015).
\textsuperscript{126} Id.
\textsuperscript{127} Id. at 2031.
\textsuperscript{128} Id.
interview nor ask the applicant if she would need any accommodations, Ms. Cooke made note of Ms. Elauf’s appearance in the interview assessment.\textsuperscript{129} Ms. Cooke later informed the district manager, Randall Johnson, of the potential conflict with the company’s “look policy,” as she suspected that Ms. Elauf wore a headscarf in exercise of her religious practice.\textsuperscript{130} Nonetheless, Ms. Elauf’s positive performance at her job interview made her a qualified candidate for the position. Despite this approval, the district manager told Ms. Cooke that Ms. Elauf’s headscarf would violate the “look policy,” as would all other headwear, religious or otherwise.\textsuperscript{131} Thus, Mr. Johnson directed Ms. Cooke not to hire Ms. Elauf based on this assessment that was separate and apart from the hiring criteria.\textsuperscript{132}

As a result of Abercrombie’s refusal to hire, Ms. Elauf filed a claim under Title VII of the Civil Rights Act of 1964 with the Equal Employment Opportunity Commission (hereinafter EEOC). This federal law prohibits a prospective employer from refusing to hire an applicant because of the applicant’s religious practices when the practices could be reasonably accommodated without undue hardship.\textsuperscript{133} The District Court granted the EEOC summary judgment on the issue of liability, and the Tenth Circuit reversed and awarded Abercrombie summary judgment.\textsuperscript{134}

This Supreme Court decision has been applauded as a landmark case for workplace discrimination and religious freedom.\textsuperscript{135} Justice Scalia’s opinion expanded religious expression by affirming that a victim of discrimination need not show actual knowledge of the need for a religious accommodation.\textsuperscript{136} An applicant must only show that his or her need for accommodation was a “motivating factor” in the employer’s decision not to hire the prospective employee.\textsuperscript{137} This decision does not require the employer to have actual

\textsuperscript{129} \textit{Id.}
\textsuperscript{130} \textit{Id.}
\textsuperscript{131} \textit{Id.}
\textsuperscript{132} \textit{Id.}
\textsuperscript{133} Patten, \textit{supra} note 124.
\textsuperscript{134} \textit{Id.}
\textsuperscript{137} \textit{Id.}
knowledge of the candidate’s need for an accommodation. 138 Employers shall accommodate all religions under Title VII of the Civil Rights Act of 1964. 139

This decision reflects the broadly defined notion of religious freedom in American jurisprudence. 140 Theorists suggest that religious freedom is a “cluster of ideas meant to encompass a variety of beliefs and actions – personal and social – that respond to the experiences of birth, learning, failure, love and death, and the awe of being small in a grand universe.” 141 As the religious composition of America grows increasingly diverse, it impacts how our constitutional guarantees extend to our places of work. 142 Members of minority faith communities who wish to adhere to their faith while at work by wearing symbolic articles may subject themselves to marginalization and discrimination, given the many loopholes in current workplace discrimination policies. 143 Yet this decision demonstrates the Supreme Court’s willingness to expand religious expression and serves as an opportunity to improve existing legislation on workplace discrimination and religious freedom. 144 As Ms. Elauf eloquently stated after oral argument, “[o]bservance of my faith should not prevent me from getting a job.” 145

V. CONCLUSION

In conclusion, these two judgments – one from the CJEU and the other from the U.S. Supreme Court – contemplate the boundaries of religious freedom and expression in pluralistic, democratic societies. The CJEU affords great deference to the states’ interests in restricting the exercise of religious expression and the wearing of articles of faith. Whereas, the U.S. Supreme Court has expanded the freedom of religious expression in the workplace. The implications of these two divergent decisions, albeit in different legal systems with distinct sociopolitical climates, have yet to be fully realized. Nonetheless, without vigorous legal protections for religious expression, especially for those of minority faiths and communities, individuals will be forced to choose between their work and their faith.

138 Id.
139 Id.
141 Id.
142 Id., supra note 135.
143 Id.
144 Id.
145 Id.