

## Inclusion as an essential aspect in organisations: religion and gender

## Inclusión como aspecto esencial en organizaciones: religión y género

---

FCO JAVIER SASTRE SEGOVIA

ESIC Business&Marketing School. Pozuelo de Alarcón. Madrid 28224

[franciscojavier.sastre@esic.edu](mailto:franciscojavier.sastre@esic.edu)

ORCID:0000-0003-1751-9506

M<sup>a</sup> ASUNCIÓN GALLEGO ALONSO

Equipo Orientación Educativa y Psicopedagógica Zamora 2. Zamora 49030

[masuncion.galalo@educa.jeyl.es](mailto:masuncion.galalo@educa.jeyl.es)

BELÉN GARCÍA HERNÁNDEZ

ESIC Business&Marketing School. Pozuelo de Alarcón. Madrid 28224

[mariabelen.garcia@esic.edu](mailto:mariabelen.garcia@esic.edu)

Recibido/Received: 15-05-2023. Aceptado/Accepted: 13-11-2023

Cómo citar: Sastre, J. Gallego, M.A. García, B. 2023. "Inclusion as an essential aspect in organisations: religion and gender", *Journal of the Sociology and Theory of Religion*, 16 (2024): 209-232. DOI: <https://doi.org/10.24197/jstr.1.2024.209-232>

Artículo de acceso abierto distribuido bajo una [Licencia Creative Commons Atribución 4.0 Internacional \(CC-BY 4.0\)](https://creativecommons.org/licenses/by/4.0/). / Open access article under a [Creative Commons Attribution 4.0 International License \(CC-BY 4.0\)](https://creativecommons.org/licenses/by/4.0/).

**Resumen:** El futuro de las relaciones laborales se perfila diverso e integrador. Uno de los principales elementos es el respeto de las opciones religiosas, pero no siempre es así, como analizamos en el artículo. Además, esta inclusión y no discriminación tiene obviamente en cuenta la igualdad entre hombres y mujeres. El artículo explora cómo ambos aspectos, según los países y las orientaciones religiosas (o la no secularización, si es el caso) repercuten en las organizaciones. Además de la perspectiva jurídica, se analiza cómo se traduce esto en el desarrollo de los países.

**Palabras clave:** Libertad religiosa; perspectiva de género; mundo de negocio; discriminación entre hombres y mujeres; ley; igualdad de género.

**Abstract:** The future of industrial and labour relations is shaping up to be diverse and inclusive. One of the main elements is respect for religious choices, but this is not always the case, as we discuss in the article. Moreover, this inclusion and non-discrimination is obviously one that takes into account equality between men and women. The article explores how both aspects, depending on countries and religious

orientations (or non-secularisation, if this is the case) impact on organisations. In addition to the legal perspective, we analyse how this translates into the development of countries.

**Keywords:** Religious freedom; gender perspective; business world; discrimination between men and women; law; gender equality.

---

*"Everyone 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 teaching, practice, worship and observance."*

*(Article 18 - Universal Declaration of Human Rights, 1945)*

## 1. RELIGIOUS FREEDOM IN TODAY'S WORLD

Religion, understood as systems of beliefs and practices that generate a spiritual communication with transcendence, is something that is maintained in our days, as shown by the data<sup>1</sup> referring to the three great monotheistic religions (Christianity, Islam and Judaism) as well as the Eastern religions (Buddhism and Hinduism).

Faced the question of what would be the role assigned by society to religion, we place ourselves in the perspective that the religious is part of the essential of the person, along the lines of Garriga (2014) who states that:

Religious feelings would form part of the subjective aspect of religious freedom in its internal dimension, since religious beliefs, as an integral element of the interiority and dignity of the person, generate in those subjects who profess a certain religion some feelings and emotions with respect to the beliefs, with which the person establishes a kind of communion that

---

<sup>1</sup> <https://www.datosmundial.com/religiones/index.php> Christianity 29.4%, Islam 24.1%, Judaism 0.2%, Hinduism 15.2% and Buddhism 4.9% or in other words, Christianity 2,321,990,000, Islam 1,901,550,000, Judaism 15,830,000, Hinduism 1,203,610,000 and Buddhism 391,410,000. More definitions and data of religion, see Sánchez-Bayón, 2007, 2008-13, 2012, 2015a-b & 2019a-b.

shapes his entire existence and determines his conception of being and of life. (pp. 102-103).

In relation to the data presented, it is surprising that, as the report on Religious Freedom in the World points out, religious freedom is violated in practically one third of the countries of the world (31.6%), in which two thirds of the world's population live. The number of people living in these countries where religious freedom is violated is extremely high. We are referring to China, India, Pakistan, Bangladesh and Nigeria.

If we look at the continents, Europe, America and Oceania are the ones that do not show evidence of religious persecution. This generally corresponds to the continents with the highest index of well-being.



Source: World Religious Freedom Report (2021).

Some of the conclusions reached by the study of **Religious Freedom in the world** are the following:

- Transnational jihadist networks spreading across the Equator aspire to become transcontinental "caliphates".
- A cyber-caliphate that is spreading worldwide is now a consolidated tool for recruitment and radicalization in Western networks.
- Religious minorities blamed for the pandemic COVID 19

- Authoritarian governments and fundamentalist groups have intensified religious persecution.
- Sexual violence used against religious minorities
- Repressive surveillance technologies are increasingly used against religious groups.
- More than 30 million Muslims in China and Myanmar face severe persecution.
- The West has discarded the tools that reduce radicalization.
- Educated persecution, forcing certain practices to marginal aspects of worship
- Interreligious dialogue: new impulse from the Vatican to deepen it.

## **2. HISTORICAL JOURNEY TOWARDS THE ATTAINMENT OF RELIGIOUS FREEDOM: EUROPE AND THE USA**

If religion is not something accessory but essential to the person, we could ask ourselves what is the best regime to safeguard religious freedom, so that non-discrimination between and towards religions is achieved. For this, it would be necessary to take a look at the history of Europe and the United States.

In the case of **Europe**, religious freedom is the result of a long journey that began with the Protestant Reformation, passing through the Enlightenment and ending with the separation of Church and State.

The Reformation broke the medieval unity between the secular power and the Christian religion. The Peace of Augsburg (1555), agreed between the states of the Empire and Emperor Charles V, allowed Protestants to be legally equal to Catholics, while other confessions were excluded. The freedom to choose one's faith was not something personal, but a decision made by the ruler of each state.

With the Peace of Westphalia, which ended the Thirty Years' War, the so-called *Instrumentum Pacis Osnabrugense* (1648) introduced a breakthrough that allowed Catholics, Lutherans and Reformed to practice their own religion, in order to achieve religious peace.

Religious freedom took a new direction in the Enlightenment (18th century). Man came to the forefront and religious freedom became an individual right before the State and the Church, which led to the

secularization of the State, since morals were taught by the confessions and the State demanded that individuals be good citizens, which led to tolerance and free religious practice. This led to the toleration of those confessions that respected the moral foundations of the State.

In France, the transition from the mere religious tolerance of the State to the guarantee of religious freedom occurred due to the French Revolution, after which certain advantages were maintained towards the Catholic Church, but it was not until 1905, when the separation of Church and State was promulgated, that we can speak of secularism, which starts from the dualism between Church and State, without ignoring the fact that the subjects subject to the sovereignty of the State have religious needs.

The case of the **United States** differs from Europe in the sense that there has always been a separation between religion and state, so that both powers can actively criticize and dialogue with each other. From the beginning of European colonization, religious freedom dominated, because although many colonizers had left their homeland precisely for religious reasons, they still supported the idea of unity between state and religion.

The first revolution meant a rupture in North America, which would later lead to religious freedom as a human right, abolishing the union between secular power and religion and guaranteeing the free exercise of religion. Consequently, no religion was legally privileged, not even the religion of the majority, as was the case in Europe. On the contrary, religion and its practice were removed from the affairs of government and left in the hands of the different social groups.

As González et al (2006), Sánchez-Bayón (2018a-b, 2019a-c) & Sánchez-Bayón et al (2022 & 2023) point out, for historical and cultural reasons, religious freedom in the United States of America it is considered a starting point, and not a conquest of rights after a long secularization as has occurred in Europe.

This historical development makes it clear that it is the secular state that is the true guarantor of the freedom and rights of all in a context of plurality of beliefs, without discrimination between and towards religions, which go beyond tolerance.

### **3. NO RELIGIOUS DISCRIMINATION AND NO DISCRIMINATION BETWEEN MEN AND WOMEN**

The next question we could answer is how should the relationship between the State and the Churches be constructed? For this we could speak of secularism and neutrality.

As we have seen, historically, religious freedoms have developed within the framework of the secular or lay state, however, we will focus on secularism, as a path towards religious non-discrimination as well as non-discrimination between men and women.

Blancarte (2008) considers that secularity implies public recognition of plurality, although it goes beyond tolerance and neutrality of the State in religious matters. From this perspective, the State is secular when it no longer requires religion as an element of social integration or as a cement for national unity.

Therefore, we can consider that it is the non-denominational state, which does not limit the practice of any religion and at the same time excludes other areas of repression of different practices. An example of this separation is the USA. As Sánchez-Bayón (2007, 2008-13, 2012, 2015a-b, 2019a-c) points out, in this country, religion, politics and law are separate spheres, not independent because their interactions are essential for the social model based on a complex system of accommodative and collaborative division.

In line with Starck (2011), the religious neutrality of the State means that it is the legal system that responds to situations that have given rise to conflict, such as the crucifix in public schools or the use of the hijab or burqa by Muslim women. In these situations, authors such as Weiler (2012) consider that religious symbols should be allowed as an expression of the freedom of what each one wants to express, advocating fairness and not prohibition.

Religious freedom and gender discrimination are two different realities. While the first refers to the ability and freedom to practice any religion in terms of religious beliefs, the second has to do with the discrimination that one of the sexes suffers in a certain area. In this case, we normally refer to women, since they are the main victims. There is, however, a certain relationship between the lack of religious freedom and

discrimination against women in those regions where women are relegated. An obvious case is Islam

As we can see in the map, where the situation is more serious, many of these countries show a religious intolerance that relegates women to second place. In some way, although there is no causal relationship, a link is established between these countries that violate religious freedom and discrimination, if not mistreatment of women.

As Stuart (2010) points out, this discrimination against women is based on the fact that women cannot even influence the structure or content of religious freedom. She argues that in order to achieve equality in religious freedom, the power of women must be similar to that of men and refers to an obligation that states have to ensure religious freedom has to do with favoring gender equality within religion.

It is curious that some of the conflicts that occur are associated with women's rights, as in the case of the use of the burqa or the hijab already mentioned, so that if human rights take precedence over religion and beliefs, it seems obvious that in the name of religion, women's rights cannot be limited, nor, of course, undermined.

There are confessional laws on the civil status of persons, applied that discriminate against women, as in the case of repudiation by the husband; and laws that promote gender equality, such as the prohibition of symbols that induce the inferiority of women, which restrict the religious freedom of women to express their identity as believers. In the face of this contradiction we could argue on the basis of the elimination of any form of discrimination against women

## **4. RELIGIOUS FREEDOM AND THE BUSINESS WORLD**

### **4.1. Impact of religious freedom on the corporate world**

Several studies have analyzed the impact of religious freedom on the business world. The analysis of country risk, which is so important for the economy, especially when it comes to globalization, was studied by Alon and Spitzer (2003). Their conclusions are along the lines that religious freedom affects the country risk perceived by companies, but not so much by banks. Lavoie and Chamlee-Wright (2000) placed religion in a broader

context and examined the relationship between culture and market incentives, as noted by Alon and Chase.

Fabro and Aixalá (2012) analyze the impact of economic freedom, civil liberty and human rights on growth. The results showed that the three dimensions of institutional quality were important for growth. This is closely linked to religious freedom, no doubt.

Of the same opinion is Kang (2019) in his study *The impact of Religious Freedom on Economic Growth*. Numerous studies abound in this perspective. Behera, Mishra and Dash (2023) in recent analyses, come to the same conclusion, stating that countries with religious freedom enjoy higher per capita growth via greater market openness.

In some cases we can observe, despite the numerous articles that maintain the relationship between religious freedom and growth, that some countries, such as China, grow despite not enjoying freedom in many fields. This is a fact that is difficult to refute, but it should be noted, however, that this growth does not come from innovation, technology or cutting-edge aspects. It is rather sustained by the workforce. The labor force is very large and makes it interesting for many countries to import products from these countries. An in-depth study, however, will show that much of this growth does not have an impact on the majority of the population, with the consequent multiplier effect on the domestic economy. Moreover, these are countries with low overall technological innovation, i.e., widely spread, which makes development, once certain quotas more in line with their size have been reached, more sustained.

## **4.2. Labor market and discrimination against women**

On the other hand, some of these countries that are experiencing high growth do so at the cost of gender discrimination, which is not acceptable, as indicated above, in view of the sustainable development objectives. This gender discrimination to the detriment of women is manifested, as Esteve Volart points out, through the exclusion of women from the labor market or from executive positions and has as a consequence a lower growth in the country's per capita income. Along the same lines, Cavalcanti and Tavares (2007) state that this is due to two reasons: first, less access to the labor market, with the consequent impact on production. Secondly, due to an increase in fertility, with the population increasing at a lower rate than



production. They argue that, in addition, the difference in wages between men and women explains the difference in productivity between some countries such as Arabia and the United States.

As Sullivan (1991) points out, many of the gender discriminations are based on cultural and religious practices and, in this sense, where there is more religious freedom, there is less discrimination, in general terms, against women.

### **4.3. Religious freedom and labor**

Religious freedom also has an area of analysis. This is of the workplace and the extent to which this freedom can be realized in the workplace. As Vickers (2015) points out, this involves two areas of analysis: one has to do with religious workers in secular agencies and to what extent workers can expect that organizations can accommodate their religious needs. The other has to do, according to the author with the interests of religious organizations and the extent to which they should be governed by equality laws. Some of the points raised have to do with aspects such as to what extent employees can have time off for their religious practices or whether certain religious organizations require a certain creed in order to collaborate with them. An interesting aspect here has to do with the handling of gender differences, since in some religions men and women are not considered equal and equal treatment can already be considered as contravening a belief, while in others, it manifests itself in the opposite way.

The more open to immigration a country is, the more potential conflicts may arise and the greater the focus and attention that needs to be paid to these issues, as the population is more diverse and, in many cases, practitioners of a greater number of religions.

Although, as Cash and Grey (2000) point out, the first focus on religious freedom had to do with the observance of these principles outside the workplace, technology and globalization, among other aspects, the value creation of workers, and their different faiths, have to be considered in the workplace itself. Along the same lines, Singh and Babbar (2021), who also refer to the relevant role that Human Resources Managers must play in this appropriate management of religious diversity.

The fact that gender equality is one of the goals (number 5) of sustainable development 2030 has two aspects. One of them is more social. The other, purely economic, stems from the fact that half of the population are women. And it is precisely women who do not enjoy the same rights and freedoms in many countries. This means that, in some territories, half of the population is being denied productive capacity, with the consequent impact on the country's development.

Some of the religious freedom considerations that will have to be carried out have to do with aspects such as the mode of dress or the use of a certain garment as may be indicated by the Sharia. This means that, if dressed in uniform (e.g., police forces) this could lead to a conflict in certain cases. Something less extreme but very topical has to do with the suggestion (if not obligation) to dress in a certain way that some companies ask their employees. If these are not in accordance with the employees' religious beliefs; should they wear them? If not, is this not implicit discrimination against those who do submit to dress in accordance with that standard? An increasing number of organizations have canteen facilities. If so, aspects such as what type of food to incorporate or, furthermore, whether the same containers can be used to prepare it, should be considered. Different religious orientations can affect these issues.

## **5. RELIGIOUS LIBERTY AND GENDER PERSPECTIVE: UNIVERSALITY AND LEGAL COMPLEXITY**

In addressing this issue, it is essential to refer first of all to the distinction between the right to religious freedom, as a fundamental human right that belongs to all persons by its very nature or dignity, and the principle of religious freedom, which refers to the criterion by which the State relates to the religious fact.

In the field of ecclesiastical law as well as in the philosophy of law or in the general theory of human rights, it is recognized that religious freedom as a fundamental right must be recognized by the State in its legal system, and it is also characterized by two fundamental issues: on the one hand, the religious act, that is, the relationship that the person establishes with God, and that is made visible through words, gestures, rites, gestures, etc., and on the other hand, the immunity of coercion that the State must not interfere in this relationship, and on the other hand the immunity from

coercion that the State owes him not to interfere in this relationship, so that the public power may not coerce anyone in the religious field or undermine their freedom to have or maintain a particular religion.

The instrument by which the State has to recognize the right to religious freedom in its legal system is what the doctrine refers to as the informing principles of ecclesiastical law, which are the following: the principle of secularism of the State, by which the State does not consider itself competent to judge religious truth and to adopt a position on religion; the principle of religious equality before the law, which states that the State and the public authorities must commit themselves to equal treatment of citizens and not establish any distinction on the grounds of race, birth, sex, political ideology or religion; the principle of cooperation between the confessions and the State, which alludes to the establishment of a bridge of communication between the public authorities and the various confessions with the aim of regulating both their external activity, as a social phenomenon, and their social activity of collaboration for the common good<sup>4</sup>; that of State confessionality, referring to the assumption of a given religion as the official religion of the State and, finally, that of religious freedom, which defines the identity of the State before the religious faith of the individual and of society.

On this point, it is worth recalling the provisions of Article 18 of the United Nations International Covenant on Civil and Political Rights:

*"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to have or to adopt a religion or belief of his choice, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*

*No one shall be subjected to coercive measures which may impair his freedom to have or to adopt the religion or belief of his choice.*

*3. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.*

*4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to*

*ensure the religious and moral education of their children in conformity with their own convictions."*

In addition to the above, it is essential to refer to the fact that, as noted by the Office of the United Nations High Commissioner in 2021, the right to freedom of religion or belief and the right to a life free of violence and discrimination based on sexual orientation or gender identity are based on a promise of human freedom, noting in this regard:

*"Religious authorities have a responsibility to ensure that religion and tradition are not used to promote discrimination against individuals on the basis of their sexual orientation and gender identity. [Religious institutions have the right to autonomy in the administration of their affairs and may hold diverse views on issues related to sexual orientation and gender identity, but in no case should their authorities incite violence or hatred. In this context, the right to freedom of religion or belief of some cannot be detrimental to the right of all human beings, regardless of their ethnicity, race, status, sexual orientation and gender identity, to lead a life free of violence and discrimination. Any action that infringes on the latter breaks the logic of indivisibility and interdependence that is the cornerstone of the international human rights framework and, in fact, undermines the fundamental principles of almost all religious traditions, which consider all human beings valuable and possessing equal dignity. The human rights system and religions are intrinsically linked by this central goal: "freedom, justice and peace in the world have as their foundation the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family."*

In other words, as indicated by the United Nations, this idea can also be extrapolated to the fact that the right to freedom of religion or belief and the right to live free from violence and discrimination based on sexual orientation and gender identity must also be guaranteed by States in all places where people are in the custody of the State, such as places of deprivation of liberty and places where the State maintains regulatory powers, such as educational and health environments.

To this end, a body of international and national laws in the area of freedom of religion or belief has been developing, cementing the right of people to practice their religion or belief, or even to change or renounce them, which plays a fundamental role in the way people create bonds with their communities and participate in social life. And it is precisely at this

point that there is a risk of creating an unrealistic notion about the existence of an inherent conflict between the right to religious freedom and the basic human rights of LGBT persons, arising as a result of linking certain untruthful claims and presenting them as facts supported by science, a contradiction that is sometimes used as an argument that perpetuates and aggravates their socio-cultural exclusion. In this regard, the United Nations High Commissioner pronounces: *"An inclusive faith perspective on sexuality and gender can create a deeply meaningful space of hospitality and acceptance, where people can thrive together, express themselves autonomously and feel closer to one another."*

Ultimately, the international human rights framework and the humanistic principles that underlie all religions have an interdependent role: to safeguard and promote the inherent and equal dignity of all human beings, to guide individuals and societies in their pursuit of happiness, and to build a world in which all people can live free and equal lives. It is therefore imperative to urge all people of faith and belief and those in religious leadership to embrace and adopt a public discourse that is respectful and compassionate.

Another no less delicate aspect in addressing this issue is the question of the Islamic veil in the context of the European Union, given that it is an element of particular significance since it is not only a garment that women can decide whether or not to wear, but also a symbol of political and religious character, impregnated with strong identity connotations. Several States have adopted what Professor Faggiani calls an *"assimilationist model"* in this regard, including France, where the 2003 *Stasi Report* adopted an evolving interpretation of the concept of secularism in line with the demands of France's pluralistic society, and which was followed by Law No. 228 of 2004, known as the *"veil law"*, which prohibited the wearing of this garment in educational establishments. In addition, the *Gerin-Raoult Report* served the French government to try to legitimize before the public opinion the prohibition of the use of the veil, showing how it fit within the constitutional principles. However, in the parliamentary *iter* and the public debate, it was the Council of State that refused to endorse the anti-burqa law, since it understood that the principle of secularity-neutrality of the State could not justify a generalized ban on the public manifestation of religious beliefs, nor a specific ban on the use of the full-face veil, since it could stigmatize people, as well as increase

hatred and tensions with the Muslim population. However, this was not enough to stop the French Constitutional Council, which quickly endorsed the process of LOI n° 2010-1192 of October 11, 2010 prohibiting the concealment of the face in public spaces, without assessing the fundamental rights likely to be affected by the law.

For its part, Belgium has closely followed the French legislative process and also ended up enacting a law prohibiting the use of the full-face veil in public spaces. Austria also joined the anti-Islamic wave by banning the veil in the *Anti-Face-Veiling Act*, included in the set of measures for the integration of immigrants, which created absurd situations, such as fining a young woman for covering her face with a scarf in the middle of October. In Denmark, on the other hand, the Penal Code was amended to prohibit the wearing of the full-face veil in public spaces in order to promote interpersonal relations and coexistence, as a way of integrating into Danish society without reproducing processes of anonymity.

However, there are also more tolerant systems within the European Union, as is the case of the jurisprudence and regulations of the German *Länder*, or of Italian and Spanish municipal ordinances. The German model is often described as "integrationist", as it is known for its "dialogic" and "collaborative" neutrality, although it has turned out to be only a weak model and incapable of withstanding the significant migratory flows of the last decade. This has derived in the rapid adoption of prohibitive veil regulations in the *Länder*, the growth of the anti-burka movement, the lack of pronouncement on the right to religious freedom in the *Ludin case* and the approval of the law partially banning the use of the full-face Islamic veil (2017). As far as the Italian and Spanish experiences are concerned they differ greatly from Germany, given that the Muslim presence in these countries is not so high and few women wear the full-face veil. In the Italian context, three movements can be distinguished: a first wave of anti-burqa ordinances of small municipalities in Northern Italy where we find the judgment of the Council of State, in which the Council of State made a weighing of interests between the right to religious and cultural freedom, and the right to public safety, and established limits to prohibit the use of the veil; in the second wave the *Corte Costituzionale* put an end to these ordinances for being responsible for creating a fractured panorama; and the third wave came in the wake of the Paris attacks of 2015, approving

ordinances in the relative to the access of museums with the face covered, considering the clothing in its objective aspect, without religious connotations. Finally, with the judgment of the *Corte di Cassazione* on the case of the wearing of the *kirpan*, a turning point was reached, given that there is a transition from an integrationist perspective to a progressive implementation of the "assimilationist model". In this regard the Court considered that foreigners should not contribute to the formation of cultural archipelagos, being obliged to conform to the values of the Western world and to respect a minimum code of coexistence.

It is worth noting at this point the approach to the jurisprudence that the European Court of Human Rights (ECtHR) has been developing on the controversy of the veil in public spaces by beginning by pointing out the importance of pluralism and tolerance for the respect of the right to religious freedom contemplated in art. 9 of the European Convention on Human Rights (ECHR), and noting that the limits indicated in art. 9.2 of the ECHR must respond to an "imperative social need". However, it was the *Lachiri case* that marked a turning point in the case law of the ECtHR, as it was the first time that it declared that the ban on the veil violated art. 9 ECHR. The *Lachiri case* shows us that States must adapt to the transformations of increasingly heterogeneous societies, welcoming the plurality of minority groups and adopting a more dialogic attitude that allows mediating solutions to be found so that minorities are not always the ones who suffer the consequences.

With regard to the treatment of the use of the veil in the field of private companies located in the context of the EU, Article 10 of the Charter of Fundamental Rights of the European Union, which regulates the right to freedom of thought, conscience and religion, includes a concept of "religion" that is broader in scope and content, partially coinciding with Article 9 of the ECHR. In fact, this right requires compliance by the European institutions and Member States, with the EU, and in particular the Court of Justice of the EU (CJEU), having to supervise compliance. However, in the same line as the Strasbourg Court, the CJEU did not wish to pronounce definitively on the use of the veil in private companies, in the *Achbita* and *Bougnaoui cases*, as it chose to indicate what should be the reasoning to be followed by national judges to assess whether the prohibition of the use of religious signs in companies could be compatible with EU law.

The CJEU's ruling was based on the concept of "direct discrimination", i.e. being treated less favorably on the basis of one's religion, and "indirect discrimination": an apparently neutral provision, criterion or practice, but potentially disadvantageous to the person practicing a religion. Furthermore, the CJEU relied on the case law of the ECtHR and, in particular, the *Eweida case*, making a distorted use of such precedent. In fact, after the weighing of interests, while the Strasbourg Court gave precedence to the right to freedom of religion, the Luxembourg Court considered that it should give precedence to the freedom to conduct a business, i.e., it gave the same importance to public safety and health as to the neutrality of the business, without explaining the reason for relegating religious freedom to second place.

Also related to the above, it is worth mentioning that the increasing presence of Muslim women in higher education centers in the European Union generated, before the pandemic, the debate on the possibility and feasibility of approving regulations or dress codes within the Public Universities in the case of Spain, which prevent and/or hinder the identification of university students in the classroom and, specifically, the identification of female students because they wear this type of clothing, from affecting the normal development of academic institutions. The current situation in many countries has reopened the debate, especially in view of the imposition of the burqa on women in public spaces in countries such as Afghanistan as a result of an excessively restrictive interpretation of religious and/or cultural traditions whose burden falls on women and, in particular, on women's bodies. For this reason, the debate emerges in the current European context on the need or opportunity to have regulations or dress codes in university environments that allow limiting access and/or use of university spaces to people who cannot be identified, an issue that has been analyzed by Professor Torres Diaz of the University of Alicante.

To this end, it is necessary to mention the significance of the following European regulations:

- *Treaty on the Functioning of the European Union*, OJEU C 83 of March 30, 2010, in which the following precepts are particularly relevant: Article 8 (recognition of equality of women and men as an objective of the European Union), Article 17 (recognition by the Union of churches and religious associations or communities recognized by the Member States).



Commitments to an open, transparent and regular dialogue between the Union and churches and organizations).

- *The Charter of Fundamental Rights of the European Union* (Nice Charter, 2000), where the precepts to be highlighted are the following: Article 1 (human dignity), Article 7 (respect for private and family life), Article 10 (freedom of thought, conscience and religion), Article 14 (right to education), Article 20 (equality before the law), Article 21 (non-discrimination), Article 22 (cultural, religious and linguistic diversity) and Article 23 (equality of women and men).

- *Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of women and men in matters of employment and occupation*. At a conceptual level, the definitions of "direct discrimination" and "indirect discrimination", among others, should be highlighted.

- *Women's Charter and Strategic Commitment for Gender Equality 2016-2019*, March 5, 2010.

- *European Strategy for Gender Equality 2020-2025* (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An Equality Union, COM/2020/152 of March 5, 2020). In general terms, the European Strategy focuses on putting an end to violence against women, eliminating gender stereotypes and roles, overcoming gender gaps in the workplace and, specifically, the gender pay gap and in the area of pensions, ensuring equal participation of women and men, revaluing care tasks and care responsibilities, etc., and all this from a dual approach: gender and intersectional perspective.

- *Resolution 1743 (2010) of the Parliamentary Assembly of the Council of Europe on Islam, Islamism and Islamophobia in Europe*. As mentioned above, the Council of Europe is reluctant to establish a general ban on the wearing of the headscarf. It means that the wearing of religious symbols is part of the exercise of a fundamental right, therefore, and within the framework of Article 9 of the European Convention on Human Rights (ECHR), restrictions should be those necessary for a democratic society. In this sense, in the case of restrictions, aspects related to security in the identification of persons and, on the other hand, state neutrality, in particular in relation to persons providing services in the public sphere,

must be observed. Without prejudice to the above, the Resolution also includes the need to value and take into account the voluntary nature of women and the need to integrate women and eliminate all forms of discrimination based on sex.

- *Recommendation 1927 (2010) of the Parliamentary Assembly of the Council of Europe.* This document invites States to guarantee women's freedom of expression and identity. It urges, on the one hand, to criminalize all forms of coercion, violence and/or discrimination against women in contexts where they are forced to wear the veil. On the other hand, it is urged to ensure social and economic conditions that enable women to make informed choices through the promotion of equality policies, including educational policies.

Finally, and in view of the above, the scenario of the complexity of labor relations in the face of *religious* freedom inevitably arises, and to this end we will refer to the analysis made by Professor Rafael Navarro Valls - Secretary General of the Royal Academy of Jurisprudence and Legislation and professor at the Complutense University of Madrid, on two sentences, one from the American Supreme Court and the other from the High Court of Justice of Andalusia. In both cases, a body of the Evangelical Lutheran Church in the USA and another of the Catholic Church in Spain rescinded (or did not renew) the contract of two professors, for contradicting with their private actions "the internal statutes" of both confessions.

Within a few days of each other, the U.S. Supreme Court (January 11, 2012) and the High Court of Justice of Andalusia (December 22, 2011) handed down two important rulings on similar cases, although with very different results. In both cases, a body of the Evangelical Lutheran Church in the USA and another of the Catholic Church in Spain rescinded (or did not renew) the contract of two teachers, for contradicting with their private actions what we could call "the internal statutes" of both denominations. The Andalusian Court protects the dismissed teacher, obliging the Bishopic of Almeria to reinstate her. The American Supreme Court, on the contrary, protects the Lutheran Church, understanding the dismissal as valid. This is definitely another example of the different view of the separation of Church and State in some European countries and the United States. In Spain, with some frequency, the courts conceptualize this separation as a unidirectional process that prohibits churches from

interfering in civil matters. In the United States, the interpretation is more accurate, as it recognizes that separation should be a bidirectional process, whereby the State should not interfere in religious matters.

As far as the U.S. Court is concerned, the key issue is whether the interests of the religious denomination or the interests of the individual engaged in ministerial or similar activities should prevail. That is, whether a religious organization's power of dismissal over its employees can be reinforced by the so-called "ministerial exception," i.e., the right of religious denominations to have a private sphere in which they are free to govern themselves according to their rules of operation.

It should be noted that the situations contemplated in the Spanish case and in the American case, although similar, are not strictly identical. In the case contemplated by the U.S. Court, the contractual relationship is direct between the Evangelical Lutheran Church and the teacher who fulfills a specific religious mission. In the Spanish case, the contractual relationship is between the educational administration and the teacher, not between the Catholic Church and the teacher. The relationship between the Bishopric and the teacher whose contract is not renewed, functions as an essential condition of the contract between the Administration and the teacher. However, the similarity between the two situations and the different outcomes in the two jurisdictions means that the position of Spanish jurisprudence seriously limits the scope of suitability as understood by the Church itself and, consequently, undermines the autonomy of the denominations, which is precisely what the American Court guarantees.

In this sense, it is explainable that the Bishopric of Almeria has expressed its willingness to go to the Court of Human Rights of Strasbourg (ECtHR), although the outcome is uncertain because this Court in two very similar cases - and with similarities also with the Spanish case - has decided in a contradictory manner, creating confusion about what is actually the doctrine of the ECtHR in this matter. These are the cases *Schüth v. Germany* and *Obst v. Germany*, both handed down on September 23, 2010, and before which this Court establishes this forceful doctrine: on the one hand it states that the autonomy of religious communities is an integral part of the right to religious freedom guaranteed by Article 9 of the European Convention on Human Rights, and on the other that the State is not competent to make judgments on the legitimacy of the religious (or

non-religious) beliefs of its citizens, as well as the means used to express these beliefs.

In addition, it should be noted that the European Court of Human Rights has repeatedly reinforced the internal autonomy of religious groups. In various judicial decisions (*Serif v. Greece*, 14 December 1999; *Hassan and Chaush v. Bulgaria*, 26 October 2000 and *Agga v. Greece*, 17 October 2002) it is stated that, except where there is an overriding social need, the State is not entitled to interfere in a purely religious matter that has been decided by a religious community, "even if that community is divided by opposing views on the subject and a certain social tension may arise as a result".

### BIBLIOGRAPHY .

- Aláez Corral, B., "Reflexiones jurídico-constitucionales sobre la prohibición del velo islámico integral en Europa", *Revista Teoría y Realidad Constitucional*, 28, 2011
- Alon, I., & Chase, G. (2005). Religious freedom and economic prosperity. *Cato J.*, 25, 399.
- Alon, I., & Spitzer, J. (2003). Does religious freedom affect country risk assessment?. *Journal of International and Area Studies*, 51-62.
- Behera, S. R., Mishra, T., & Dash, D. P. (2023). Do religious freedom vis-a-vis trade openness affect economic growth?: a cross-country empirical investigation. *Theoretical Economics Letters*, 13(1), 119-137.
- Blancarte Pimentel, R. (2008). Libertad religiosa, Estado Laico y no discriminación.
- Cash, K. C., & Gray, G. R. (2000). A framework for accommodating religion and spirituality in the workplace. *Academy of management perspectives*, 14(3), 124-133.
- Cavalcanti, T., & Tavares, J. (2007). The output cost of gender discrimination: a model-based macroeconomic estimate.
- Difusión de las religiones del mundo. Recuperado el 12 de abril de 2023 de <https://www.datosmundial.com/religiones/index.php>.

- Esteve-Volart, B. (2004). Gender discrimination and growth: Theory and evidence from India. *LSE STICERD Research Paper No. DEDPS42*.
- Esteve-Volart, B. (2000). Sex discrimination and growth.
- Fabro, G., & Aixalá, J. (2012). Direct and indirect effects of economic and political freedom on economic growth. *Journal of Economic Issues*, 46(4), 1059-1080.
- Faggiani, Valentina: *La controvertida cuestión del velo islámico. Una perspectiva de género desde el espacio europeo*, Tirant Lo Blanch, Valencia, 2020
- Fernández – Caba, Inés: *Revista de Derecho Comunitario Europeo*, 68, enero-abril (2021), pp. 427-444
- Garriga Domínguez, A. (2014). El conflicto entre la libertad de expresión y los sentimientos religiosos en las sociedades multiculturales. *Anuario de filosofía del derecho*, 97-115.
- González, M., Sánchez-Bayón, A. (2006). Libertades fundamentales en las Américas: Devenir de la libertad religiosa en América Latina, los Estados Unidos de América y el sistema interamericano. *Revista Jurídica Universidad Autónoma de Madrid*, 14: 107-125.
- Kang, S. M. (2012). The Impact of Religious Freedom on Economic Growth. *국제학논총*, 133-146.
- Lavoie, D., & Chamlee-Wright, E. (2000). *Culture and enterprise: The development, representation and morality of business* (Vol. 26). Psychology Press.
- Libertad religiosa en el mundo . Informe 2021. <https://acninternacional.org/religiousfreedomreport/es/home/>. Recuperado el 18 de marzo de 2023
- Martínez Blanco A. *Derecho eclesiástico del Estado*. Editorial Tecnos. Madrid, 1993 (Tomo II p. 83)
- Martínez Torrón, Javier y Santiago Cañamares Arribas (eds.), *Libertad religiosa, neutralidad del Estado y educación: una perspectiva europea y latinoamericana*. Pamplona, España, Aranzadi Thomson Reuters, 2019
- Naciones Unidas: *Declaración de Derechos Humanos* (1945) <https://www.un.org/es/about-us/universal-declaration-of-human-rights>

Naciones Unidas: *Pacto Internacional de Derechos Civiles y Políticos*  
<https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

Navarro Valls, Rafael: Publicado el 27 de enero de 2012 en la web del INAP – Instituto Nacional de Administración Pública  
<https://laadministracionaldia.inap.es/noticia.asp?id=1056159>, consultada el 24 de abril de 2023

Saldaña, Javier: *Derecho y principio de libertad religiosa. Un breve análisis de la actitud promotora del Estado ante el hecho religioso en Boletín Mexicano de Derecho Comparado* n° 95 (1999) – UNAM (Universidad Nacional Autónoma de México)

Sánchez-Bayón, A. (2008-13). *La Modernidad sin prejuicios: la religión en la vida pública estadounidense* (3 vols.). Madrid: Delta Publicaciones.

Sánchez-Bayón, A. (2012a). *Derecho Eclesiástico Global*. Madrid: Delta Publicaciones.

Sánchez-Bayón, A. (2012b). *Estado y religión de acuerdo con los Estados Unidos de América*. Saarbrücken: Editorial Académica Española.

Sánchez-Bayón, A. (2015b). Renovación de la Teología política y Sociología de la religión en la posglobalización. *Carthaginensia*, 35(68): 485-510.

Sánchez-Bayón, A. (2019a). *Una historia filosófica de la identidad estadounidense: de la religión tradicional, a la civil y política*. Tesis doctoral de Filosofía en UCM (URL: [Una historia filosófica de la identidad estadounidense: De la religión tradicional, a la civil y política - Dialnet \(unirioja.es\)](https://dialnet.unirioja.es/servlet/tesis?codigo=1056159)).

Sánchez-Bayón, A., Trincado, E., Valero-Matas, J.A. (2022). Religión y economía en la vertebración de EE.UU. *Anuario de Derecho Eclesiástico del Estado*, 38: 639-703.

Sánchez-Bayón, A., Trincado-Aznar, E. & Sastre, F.J. (2023). American utopías in the 19th century: Religious versus ideological farms in the west of the United States. *HTS Theologiese Studies/Theological Studies HTS*, 79(1), a7807: 1-9. DOI: <https://doi.org/10.4102/hts.v79i1.7807>

- Singh, R. K., & Babbar, M. (2021). Religious Diversity at Workplace: a Literature Review. *Humanistic Management Journal*, 6, 229-247.
- Starck, C. (2011). Jurisdicción constitucional y derechos fundamentales. Librería-Editorial Dykinson.
- Stuart, A. (2010). Freedom of religion and gender equality: inclusive or exclusive?. *Human Rights Law Review*, 10(3), 429-459.
- Sullivan, D. J. (1991). Gender Equality and Religious Freedom: Toward a Framework for Conflict Resolution. *NYUJ Int'l L. & Pol.*, 24, 795.
- Torres Díaz, María Concepción: “El Burka en las aulas universitarias. Cuestiones jurídicas conflictivas para un debate con perspectiva de género” en *Iqual. Revista de Género e Igualdad* nº 6 (2023)
- Vickers, L. (2015). Religion and the Workplace. *The Equal Rights Review*, 14(1).
- Viladrich P.J.: “Los principios informadores del derecho eclesiástico español” en *VVAA: Derecho eclesiástico del Estado español*, 2ª ed., EUNSA. Pamplona, 1983
- Weiler, J. H. (2012). El Crucifijo en las aulas: libertad de religión y libertad frente a la religión.