

MYKOLAS ROMERIS UNIVERSITY  
SCHOOL OF LAW  
INSTITUTE OF INTERNATIONAL AND EUROPEAN LAW

ROMANN SWIETLICKI  
(European Union Law and Governance)

INTERRELATION BETWEEN FREEDOM OF RELIGION AND FREEDOM TO  
CONDUCT A BUSINESS: BALANCING FAITH AND CORPORATIONS

Master thesis

Supervisor –  
Dr. Ieva Navickaitė-Sakalauskienė

Vilnius, 2024

## TABLE OF CONTENTS

<b>LIST OF ABBREVIATIONS .....</b>	<b>4</b>
<b>INTRODUCTION .....</b>	<b>5</b>
<b>1. FREEDOM OF RELIGION AND FREEDOM TO CONDUCT BUSINESS:</b>	
<b>CONCEPTS AND COHABITATION IN DIFFERENT LEGAL ORDERS .....</b>	<b>10</b>
1.1. The Council of Europe.....	10
1.2. The law of the EU .....	13
1.3. Internationally .....	16
<b>2. UNDERSTANDING BUSINESSES HAVING FAITH OR RELIGIOUS</b>	
<b>CONSIDERATION.....</b>	<b>19</b>
2.1. The lack of harmonized definition for business with faith consideration at the EU	
level .....	19
2.2. Problem of not defining businesses with faith consideration in the ECtHR and CJEU	
case-law .....	23
2.3. The faith-based approach on the American continent .....	27
<b>3. REGULATING IN ORDER TO FIND THE GOOD BALANCE: THE FREEDOM</b>	
<b>TO CHOOSE.....</b>	<b>32</b>
3.1. The importance of creating a specific legal framework at the EU level .....	32
3.2. Reaching tolerance through a change of the ‘neutrality’ concept: analysis of the	
CJEU case-law .....	41
3.3. Freedom of religion and freedom to conduct a business: an eternal correlation .....	50
<b>CONCLUSIONS .....</b>	<b>56</b>
<b>RECOMMENDATIONS .....</b>	<b>57</b>
<b>LIST OF BIBLIOGRAPHY .....</b>	<b>58</b>
<b>ABSTRACT .....</b>	<b>66</b>
<b>SUMMARY .....</b>	<b>67</b>
<b>ANNEX .....</b>	<b>68</b>
<b>HONESTY DECLARATION.....</b>	<b>69</b>

## **LIST OF ABBREVIATIONS**

CFREU – The Charter of Fundamental Rights of the European Union

CJEU – Court of Justice of the European Union

CoE – Council of Europe

ECHR – European Convention of Human Rights

ECtHR – European Court of Human Rights

ERDF – European Regional Development Fund

EU – European Union

FBO – Faith-Based Organization

NGO – Non-Governmental Organization

U.S. – United States of America

## INTRODUCTION

*Relevance of the final thesis. “Business is religion, and religion is business”.* Maltbie D. Babcock, a notable American writer during the XIX<sup>th</sup> century, was affirming that business and religion are indissociable. In fact, it is true that business and religion are both topics that have been undeniably connected to our society around the world, and this for centuries. On one hand, religion is seen by many studies as existing as early as 60.000 BCE<sup>1</sup>. However, while being an old and dominant topic, it always has been and is still considered an impressive source of contention. In fact, while it is commonly accepted that there are four large religions in the world<sup>2</sup>, it has been found that distinct religions are up to 10,000. Undoubtedly, the wide range of religions is one of the reasons why it historically led to discord and strife for decades. Still, religion remains without objection, a fundamental social institution, as argued by the French sociologist Émile Durkheim<sup>3</sup>.

On the other hand, economics and the idea of running a business also became inherent to our society. It is commonly accepted that the first trace of commercial activities can be found 3,000 years ago with early trade systems through exchanges<sup>4</sup>. However, while being more recent and commonly accepted as a less sensitive topic, conducting a business and, especially the way of running it, is still raising multiple controversies. For instance, while it is undeniable that the EU was created to stabilize the European continent and avoid any other war, the basis was an economic association for the business of Coal and Steel. In fact, founders believed that it is through business that peace and stability would be achieved. As a result, business as a fundamental freedom has been taken into consideration much more recently, but that does not mean that it is of lesser importance while dealing with fundamental rights.

In fact, in our days the ideal scenario is to strike the right balance between individuals' right to practice their religion and the right of businesses to operate without undue interference. Yet, conflicts still arise in different areas where these two freedoms interact. This master's thesis finds its relevance in identifying the answer to the question: how to balance both the freedom of religion and the freedom to conduct business, especially through the creation of “faith-based businesses” within the European continent?

---

<sup>1</sup> Roberts, Cheryl. April 11<sup>th</sup>, 2023. *History of Religion: Origin, Timeline & Creation*.

<sup>2</sup> Wasserman, Pam. January 12<sup>th</sup>, 2024. *World Population by Religion: A Global Tapestry of Faith*.

<sup>3</sup> Carls, Paul. n.d. *Émile Durkheim (1858-1917)*.

<sup>4</sup> Kluge, Adam. January 30<sup>th</sup>, 2024. *A Brief History of Business and Business Theory*.

This problematic is relevant today since these last decades, heated debates have been seen around Europe. Indeed, as explained by Jeff Diamant, “Europe experiences a surge in government restrictions on religious activity over the last decade”<sup>5</sup>, and a deep focus has been especially directed towards religious signs within the corporate world. It has led to various case law either from the CJEU or from the ECtHR that are far from all following the same legal path. The discrepancies regarding the different rulings, as well as the controversies within the public debate in most European countries make it relevant to address the question. Also, the current ECJ and ECtHR case-law illustrates that companies seem to have a right to impose a total ban or at least to limit the display of religious signs at the workplace. The practice has showed that some religions were to be affected more than others. Although employees are at the center of the debates nowadays, still, addressing how businesses would be able to display their own religion, faith or belief in the way the business is ran, has never been approached by the courts.

*Research problem.* This master’s thesis resides on the fact that these two fundamental freedoms are undoubtedly interconnected, but never fully balanced and seeks to answer the question: how the right balance between individuals' rights to practice their religion and the freedom to conduct business could be assured (increased) by regulating businesses ran with faith, belief or religious considerations.

*Scientific novelty and overview of the research on the selected topic.* The goal is to demonstrate that there is an obvious lack of legal framework for a category of business that tightly ties both fundamental rights together. Indeed, even though the freedom to conduct business and the freedom of religion are unequally enshrined in legal documents around Europe, the actual correlation between those rights has already been the topic of numerous public debates and research. For instance, the controversy of employees displaying and wearing religious signs at the workplace generated a flourishing case-law followed by vast European legislation. In fact, contrary to the matter of employees’ situation within corporations, very few European research has been conducted and directed towards the establishment of what could be called ‘faith-based businesses’. Matteo Corsalini approached the topic by dealing with the relation between

---

<sup>5</sup> Diamant, Jeff. 2019. “Europe experiences a surge in government restrictions on religious activity over the last decade”, *Pew Research Center*, July 29.

religion, business and law on the European continent in various articles<sup>6</sup>. Other authors such as Xavier Delgrange also deals with what he called “entreprise de tendance”<sup>7</sup> in French, but mainly deals with employees’ religious signs within companies and do not or barely address the topic of ‘faith-based businesses’. Therefore, the research will be deeply focused on how for-profits entities, ran with faith or religious considerations, are addressed in Europe, and how developing a clear and precise legal framework is to be more beneficial for our economies, society and the safeguard of fundamental rights. The research will only rely on the perspective of corporations, i.e. private entities, and will not address any aspects of the interrelation within the public sector in any way. The idea is not to address commercial activities of religious institutions such as churches, but instead to deal with businesses, corporations and companies which first goal is to achieve profits, but without hiding their faith, beliefs or religion. This research will also profoundly address the concern of possible discrimination towards customers and/or employees which should be avoided while conducting such business. Digging into the chosen research problem within Europe is interesting, since, while comprehensive research has been made on the American continent or in other parts of the world, the correlation between freedom of religion and freedom to conduct a business in Europe is to remain a dramatically sensitive topic. Also, after dealing with the concept of ‘faith-based businesses’ itself and its marginal application in the European case-law, the research will conduct a brief comparative study with the substantial American research. However, the concrete implementation of ‘faith-based businesses’ on the American continent cannot be entirely and directly applied to the European one because of Europe’s own particularity. Indeed, religion and business are topics widely particular to each continent which makes it hard to literally apply the same framework. As a result, the goal, after discussing the existing challenges, is to find out a legal way to enable a safer and non-discriminatory creation of ‘faith-based businesses’ on the European continent by taking into consideration Europe’s own uniqueness. Finally, the research will discuss the vision of secularism in Europe that is to be seen as dramatically detrimental to both fundamental freedoms.

---

<sup>6</sup> Corsalini, Matteo. 2022. Business, Religion, and the Law - A Primer. September 22; Corsalini, Matteo. 2020. “Religious Freedom, Inc: Business, Religion and the Law in the Secular Economy”. *Oxford Journal of Law and Religion*, 9 28-55.

<sup>7</sup> Delgrange, Xavier. 2019. «L’entreprise de tendance, c’est tendance !» *Revue Trimestrielle Des Droits de l’Homme, Éditions ANTHEMIS*, 655-686.

*The aim of the research* is to disclose how interconnected the freedom to conduct a business and the freedom of religion are through the example of faith-based businesses. The aim is also to explain how developing a new and clearer legal framework would allow one to conduct its business with a religious perspective, but without impinging on others' freedoms.

*The objectives of this research are the following:*

1. Identify how the freedom of religion and the freedom to conduct a business are addressed together within the European continent.
2. Analyze ECtHR and CJEU case-law, highlighting its inconsistency, assessing the need of businesses being run with a faith, belief or religious consideration concept around Europe.
3. To propose the establishment of new legal rules considering the diversity of Europe through businesses run with faith, beliefs or religious considerations.

*The statement(s) to be defended:* there is no common European approach to the way a business ran with faith, belief or religious consideration should be addressed, however dealing with such type of business will enable a fair and concrete safeguard of both the freedom to conduct a business and the freedom of religion.

*Significance of research.* The significance of this master's thesis resides in the critical legal analysis of the already existing and debated "policy of neutrality", showing the lack of framework towards "faith-based businesses". The research's significance relies on the fact that allowing faith or religion within businesses has always remained a colossal issue on the European continent, while it was developed smoothly in other parts of the world, especially in the United States of America. It will be shown that socially, but also economically, the benefits of developing such a new framework are of huge significance. Nevertheless, to reach that point, businesses still need to be established on clear and specific legal rules to avoid any drawback. This is, according to the author, the initial and necessary step to be addressed before even considering any debate towards employees' religious signs at the workplace. Moreover, following the European Faith and Freedom Summit III held on the 18<sup>th</sup> of April 2024 and titled "How faith-based organizations tackle the issues that are affecting citizens in Europe"<sup>8</sup>, the topic of faith-based businesses has reached an even more important level of significance.

---

<sup>8</sup> See information on the Summit on <https://hrwf.eu/eu-faith-and-freedom-summit-iii-making-of-this-one-a-better-world/>

Indeed, this Summit dealt with the social action of what the European Parliament called “Faith-Based Organizations (FBO)” within Europe. However, while addressing the FBOs, their impacts and challenges, this Summit is only scrutinizing faith-based NGOs despite the use of the terminology “faith-based organizations”. As a result, it is meaningful to deal with the perception of faith-based businesses, to understand why while being always very close, European decision-makers are always avoiding or instrumentalizing the terminology. It also depicts how necessary it is to make a clearer distinction between public and private entities when dealing with the topic.

*Research methodology.* The research is to be achieved by using systematic and comparative analysis methods. The first step is the identification, then appraisal and synthesis of the different information that is found in the field of the thesis. The next step relies on assessing the pre-existing legal rules regarding the “faith-based businesses”. By searching the current situation of legal acts, the goal is to interpret and analyze the data with a view to businesses being run with a religious, faith or belief consideration. Also, the finding of multiple and different legal systems and laws implied the use of comparative legal analysis. This analysis will be comparing the law, even in a different structure, for example the U.S. that relies on a federal system. Finally, by using logical-analytical and summation methods, the legal concepts will be gathered to see the commonalities and differences. The author will seek if proposing the establishment of new legal rules and framework can be the solution to safeguard fairly and equally both fundamental freedoms.

*The structure of the thesis.* The thesis is divided into three chapters. The first one will tackle the present situation of the correlation between the freedom to conduct a business and the freedom of religion in Europe. It will depict the lack of common approach and the hard cohabitation leading to inconsistencies within the continent. The second chapter is going to address the interrelation between both freedoms through businesses being run with a religious, faith or beliefs consideration. To do so, the chapter will identify these businesses, and deal with the relevant terminology, legislation and case-law around Europe. To conclude this chapter, a comparative study with the American continent which developed a considerable precedent on the topic will be conducted. The third chapter will be dedicated to the implementation of a new and necessary legal framework for such businesses. Such implementation being thoroughly discussed will depict the tremendous advantages of having such a framework in order to avoid any discriminatory practices.



# **1. FREEDOM OF RELIGION AND FREEDOM TO CONDUCT BUSINESS: CONCEPTS AND COHABITATION IN DIFFERENT LEGAL ORDERS**

The freedom of religion and the freedom to conduct business are both significant and substantial fundamental freedoms. Also, when came the idea of constructing fundamental legal documents around the world and in Europe, freedom of religion and freedom to conduct business were thoroughly discussed. The ECHR, as the first international instrument to give effect and binding force on certain human rights, is an important document to analyze when dealing with both freedoms (1.1.). While being more recent, the EU also decided to safeguard the most fundamental human rights. It is interesting to discuss the approach taken by the EU regarding both freedoms since the implementation of the CFREU (1.2.). Finally, a comparison to see how both fundamental rights are being enshrined around the world is of relevance, especially the U.S.' legal order (1.3.).

## **1.1. The Council of Europe**

The Council of Europe and ECHR have always had the goal to protect fundamental human rights. Indeed, the Convention was drafted right after the World War II and the demonstration of repeated breaches of the most basic human rights. The priority for the founders at that time was the creation of an international treaty that would be signed and enforced around Europe to avoid a repetition of the horrors witnessed during the war. The necessity was to enshrine the most fundamental human rights that the 46 states belonging to the Council of Europe would agree to. Therefore, it is not a surprise to see that in 1950, when the ECHR was adopted, freedom of thought, conscience and religion has been thoroughly enshrined in its Article 9, while the freedom to conduct a business was totally forgotten.

However, it is interesting to notice that religion has been way more controversial than business throughout the time. Indeed, as early as during the Roman Empire, following the Edict of Milan in 313 CE, Christianity was established as the official religion<sup>9</sup>, leading any other religion to be rejected. Later, religious wars were striking, and one answer was the establishment of the Peace of Augsburg<sup>10</sup> which main principle is *cuius regio, eius religio*,

---

<sup>9</sup> J.F. Matthews, Donald MacGillivray Nicol, "Edict of Milan. Roman History", Britannica.

<sup>10</sup> Holy Roman Empire Association. "The Peace of Augsburg - 1555".

meaning in Latin, “whose realm, whose religion”<sup>11</sup>. Concretely, it entails that the prince of each territory was allowed to choose which religion the inhabitants should follow. The inhabitants were allowed to leave if their convictions did not align with the one chosen. While increasing tolerance, this legal act resulted in the persecution of religious minorities. Later, the Enlightenment period found some philosophers such as Pierre Bayle who argued for religious toleration<sup>12</sup>. However, while the Peace of Westphalia ended the Thirty Years’ War<sup>13</sup>, it resulted in the same outcome: the enforcement of *cuius regio, eius religio* principle<sup>14</sup>. As a result, persecution based on religious diversity was thriving around Europe and tolerance was far from being achieved. During the World Wars, religious differences were also the basis of atrocities. That is the reason why the ECHR intervened to settle a clear protection of the freedom of thought, conscience and religion. Since then, Article 9 has been the basis of multiple disputes in front of the ECtHR and is considered an important fundamental freedom around Europe. In fact, even in its Guide, it is mentioned that freedom of thought, conscience and religions is “not only in the ECHR but also in a wide range of national, international and European texts”<sup>15</sup>.

On the other hand, the legal background of the freedom to conduct a business has overcome less pitfalls but tends to be more controversial as a fundamental freedom. Business has existed for centuries, from barter trade to the establishment of the first coins ever made of iron, silver and gold, to the introduction of real currency as we know it today. Also, historically, the freedom to conduct a business has not created as many debates as the freedom of religion. When the ECHR was created, the freedom to conduct business was not the priority, and the fact that it was not a disputed topic at that time might be the reason why the drafters did not give it further attention. However, as soon as 1952, the drafters realized that an important omission has been made. Disputes concerning business’ perspectives and its property arose and made necessary the enshrinement of such fundamental freedom. The development of Article 1 Protocol 1, which protects the right to property, was a step forward. Nevertheless, as correctly mentioned by G. Toggenburg, a scholar specialized in EU and Human Rights Law, the freedom to conduct business “is just a silent subform of the right to property”<sup>16</sup>. Indeed, when observing

---

<sup>11</sup> Ibid.

<sup>12</sup> Irwin, Kristen. “Pierre Bayle (1647-1706)”. Internet Encyclopedia of Philosophy.

<sup>13</sup> Matteucci, Aldo. Published on March 3<sup>rd</sup>, 2015. Updated on August 30<sup>th</sup>, 2024.

<sup>14</sup> Ibid.

<sup>15</sup> The Registry of the European Court of Human Rights. “Guide on Article 9 of the European Convention on Human Rights”.

<sup>16</sup> Toggenburg, Gabriel. 2021. *The 16th of all EU rights: the right to conduct a business and how the Charter contributes*. January 12.

the Guide on Article 1 of Protocol No. 1 to the ECHR<sup>17</sup>, which is supposed to give practical explanation and interpretation of the article, nothing can be found under the denomination of “freedom to conduct a business”. The Guide barely mentions the “business licenses”<sup>18</sup> and does not explicitly address the freedom to conduct business. The freedom to conduct business is being avoided.

The precedence of the freedom of religion can also be felt while analyzing the ECtHR case law. The Guide of Article 9 is much more detailed than the Guide of Article 1 of Protocol No. 1 and even offers a section called “the right to hold a belief and the right to manifest it”<sup>19</sup>. Moreover, concretely, in the case *Eweida v. the United Kingdom*<sup>20</sup>, an airline employee was suspended because she was wearing a Christian cross around her neck. Ms. Eweida thought that her right to manifest her religion was infringed. The ECtHR ruled in favor of Ms. Eweida stating that by finding the suspension valid, “the domestic authorities failed sufficiently to protect the applicant’s right to manifest her religion, in breach of the positive obligation under Article 9”<sup>21</sup>. Also, the focus is on the freedom of religion and even though the ECtHR is balancing also the interests of the private airline company, the Court is not mentioning expressly the freedom to conduct a business. On the contrary, the Court is much more focused on the impacts the display of such a sign could have on others, such as other employees or customers: “no evidence of any real encroachment on the interests of others”<sup>22</sup>.

Consequently, while the freedom to conduct business and the freedom of religion are both tremendously substantial freedoms that deserve a similar protection, the lack of protection of the freedom to conduct business is detrimental to strike a fair balance between both fundamental freedoms. While the ECHR failed to encompass both fundamental freedoms, the EU legally enshrined both.

## 1.2. The law of the EU

The history of the EU is particular. Indeed, no one can deny that the EU is a special entity like no others around the world. The basis of the EU relies on the establishment of the European

---

<sup>17</sup> <https://rm.coe.int/guide-art-1-protocol-1-eng/1680a20cdc>

<sup>18</sup> <https://rm.coe.int/guide-art-1-protocol-1-eng/1680a20cdc>

<sup>19</sup> [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_art\\_9\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_art_9_eng)

<sup>20</sup> ECtHR, nos. 48420/10, 59842/10, 51671/10 and 36516/10, *Eweida and Others v. The United Kingdom*, January 15<sup>th</sup>, 2013.

<sup>21</sup> *Ibid*, §95.

<sup>22</sup> *Ibid*.

Coal and Steel Community which primary goal was to pool coal and steel production of six countries. The underlying hope was that through shared economic interests, conflicts would be avoided, especially wars. Also, while the interests at stake were significant, it does not change that what would later become the EU, was initially created with an economic purpose.

This economic goal was and is still to be felt within the EU. In fact, the European Economic Community was created in 1957, and the EU appeared thanks to the Maastricht Treaty in 1993 which one of the primary goals, remained the enhancement of the economic integration: “DETERMINED to promote economic and social progress for their peoples (...)”<sup>23</sup>. Later, the Lisbon treaty is not an exception, in which “economic cohesion” is to be found in Article 2<sup>24</sup>, and “economic development” is in Article 10 A<sup>25</sup>. As a result, the economy, business and everything it encompasses is of considerable importance for the EU.

When came the idea to “bring together all the personal, civic, political, economic and social rights of its people in a single document”<sup>26</sup>, it was then obvious that the freedom to conduct a business should be a part of it. It has been decided to create the CFREU in which both the freedom of religion and the freedom to conduct business will be enshrined, respectively in Article 10 and Article 16. It is important to mention that the CFREU was not the result of only a diplomatic negotiation. In fact, a body had been composed of “representatives of the Heads of State and Government and of the President of the Commission as well as members of the European Parliament and national parliaments”<sup>27</sup>. Multiple experts were giving their opinions and representatives of the ECJ were also observers. Nevertheless, despite the freedom to conduct business being enshrined in the Charter after discussions by several actors including the member states, it is interesting to mention that not all EU members gave the same importance to both freedoms.

While countries such as Croatia or Lithuania enshrined both freedoms in their Constitution, countries like Germany or France are lacking the freedom to conduct business in theirs. Article 40 of the Croatia Constitution enshrined the freedom of religion, even explicitly

---

<sup>23</sup> Maastricht Treaty at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12002M/TXT>

<sup>24</sup> Lisbon Treaty at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT>

<sup>25</sup> Ibid.

<sup>26</sup> European Parliament, “European Charter of Fundamental Rights: five things you need to know”, December 1<sup>st</sup>, 2019. Accessed on December 12<sup>th</sup>, 2024. <https://www.europarl.europa.eu/topics/en/article/20191115STO66607/european-charter-of-fundamental-rights-five-things-you-need-to-know#:~:text=Why%20do%20Europeans%20need%20the,the%20Charter%20of%20Fundamental%20Rights>.

<sup>27</sup> Gerbet, Pierre. CVCE. “The Charter of Fundamental Rights of the European Union” July 8<sup>th</sup>, 2016. p. 2/4.

mentioning the “freedom to manifest religion”<sup>28</sup>. The freedom to conduct a business is found in Article 49 of the Constitution<sup>29</sup>. In a similar way, freedom of religion is found in Article 26 of the Lithuanian Constitution<sup>30</sup>, and Article 46 depicts the freedom to conduct a business<sup>31</sup>. On the other side, the French Constitution gives the freedom of religion a tremendous place, making it part of its First Article<sup>32</sup>. However, the freedom to conduct business is not found in the Constitution. In Germany, a similar outcome is observed. Article 4 of the German Constitution<sup>33</sup> gives a constitutional value to the freedom of religion while the freedom to conduct business is missing.

In that respect, one factor explains this legal situation. While the Croatian and Lithuanian Constitutions have been created rather recently, i.e. in the 90s, the French and German ones have been respectively created in 1958 and 1949. It shows that Constitutions which have been established after the creation of the EU have been more careful about taking into consideration the freedom to conduct a business than older Constitutions. The reason is that, as explained, at the very beginning, the freedom to conduct business was not seen as important as other freedoms, but with the emergence of the EU, the economic aspect quickly got magnified. Indeed, even before the creation of the CRFEU, the freedom to conduct business has been since 1974, a general principle of EU law. This unwritten principle got developed through the case law, especially with the Nold case<sup>34</sup>, and has since then become a significant basis for multiple ECJ’s rulings. Some authors such as Eline Couperus, even mentions that the Court is now adopting a “forceful stance, in which it prioritizes businesses freedom over individual social and civil rights”<sup>35</sup>.

Following this path, Constitutions like the Croatian and Lithuanian ones, that were created in the 90s, really took heed of the freedom to conduct business. It seems rather interesting that nowadays, no modifications have been made into the French or German constitutions, especially knowing that it is argued in both legal systems that the freedom to

---

<sup>28</sup> [https://www.constituteproject.org/constitution/Croatia\\_2013](https://www.constituteproject.org/constitution/Croatia_2013)

<sup>29</sup> [https://www.constituteproject.org/constitution/Croatia\\_2013](https://www.constituteproject.org/constitution/Croatia_2013)

<sup>30</sup> <https://e-seimas.lrs.lt/portal/legalActPrint/lt?jfwid=rivwzvvpvg&documentId=TAIS.211295&category=TAD>

<sup>31</sup> <https://e-seimas.lrs.lt/portal/legalActPrint/lt?jfwid=rivwzvvpvg&documentId=TAIS.211295&category=TAD>

<sup>32</sup> <https://www.conseil-constitutionnel.fr/e-bloc-de-constitutionnalite/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur>

<sup>33</sup> [https://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html](https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html)

<sup>34</sup> C-4/73, J. Nold, Kohlen- und Baustoffgroßhandlung v. Commission of the European Communities, May 14<sup>th</sup>, 1974.

<sup>35</sup> Couperus, Eline. October 30<sup>th</sup>, 2024. “Questioning the coherence of the freedom to conduct a business: Insights from the Court of Justice of the European Union”

conduct business is a constitutional principle erected through the case-law. For instance, The German Court specifies that this freedom is to be derived from the freedom to pursue a trade or profession<sup>36</sup> which is to be found in Article 12 of the Basic Law<sup>37</sup>. However, as explained by Niall O'Connor, the freedom to conduct business is “a newly ‘constitutionalized’ fundamental right”<sup>38</sup>, which entails that older Constitution are not dealing with this right in the same way as newer ones.

This lack of constitutional safeguards of the freedom to conduct business can lead to legal uncertainty. For instance, in France, the freedom to conduct business is not enshrined in the Constitution and the problem is that various terms are used to deal with the concept. In fact, as explained by Marie-Claire Ponthoreau, a Constitutional and Comparative Law professor, the same concept tends to be expressed by several notions “Freedom to conduct a business (...) In addition to entrepreneurial freedom, freedom of industry and commerce, property rights, freedom of contract can be stated.”<sup>39</sup> As a result, the gaps that can be observed within a country or between the different EU countries regarding the freedom to conduct business could explain the unfair balance between both freedoms around Europe.

Moreover, even though the EU enshrined equally both fundamental freedoms in its Charter, the CJEU rulings are still lacking a constructed and fair balance between both. In fact, inconsistencies are to be seen in some of the rulings, especially when the Court decides to follow “an expansive conception of the freedom to conduct a business”<sup>40</sup>. For instance, in the Wabe<sup>41</sup> case, MJ a Muslim sales assistant and cashier was dismissed because she refused to remove her headscarf following the company’s request. The company relied on a “policy of neutrality” to justify the initial request followed by the dismissal when the applicant refused to comply. The Court ruled that such a policy could be justified if applied consistently, i.e. if applied to all visible forms of expression of political, philosophical or religious beliefs. Once again, it shows that the Court is leaning towards a bigger protection of the freedom to conduct business than towards finding a good balance with the freedom of religion.

---

<sup>36</sup> Case 596/56, March 6<sup>th</sup>, 1958. BVerfG.

<sup>37</sup> [https://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html](https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html)

<sup>38</sup> O'Connor, Niall. 2024. “The Evolution of the Freedom to Conduct a Business as a Fundamental Right.” *Business Freedoms and Fundamental Rights in European Union Law*. Oxford University Press p. 91

<sup>39</sup> Translation by the author from French. Ponthoreau, Marie-Claire. Avril 2024. “La liberté d’entreprise, une perspective de droit compare. France.”, Service de recherche du Parlement européen.

<sup>40</sup> O'Connor, Niall. 2024. “The Jurisprudential Significance of the Freedom to Conduct a Business as a Fundamental Right” *Business Freedoms and Fundamental Rights in European Union Law*. Oxford University Press p.192.

<sup>41</sup> ECJ, GC, C-341/19, IX V. WABE eV and MH Muller Handels GmbH v. MJ, July 15<sup>th</sup>, 2021.

Following the analysis of the ECHR and EU legal orders, it appears that the ECHR and countries like France or Germany do not expressly enshrine the freedom to conduct a business while they make the freedom of religion tremendously important. On the other hand, other countries, which acceded to the EU more recently and which have a more recent Constitutions, consider both fundamental freedoms. More than that, these countries put both fundamental freedoms legally on equal footing. However, the challenge remains to fairly address both fundamental freedoms, especially while a very different legal approach to the same freedoms within Europe still exists. Internationally, similar issues are experienced.

### 1.3. Internationally

Around the world, both fundamental freedoms have also been discussed and are the source of multiple debates. Indeed, the freedom to conduct business is a huge source of discord and contention that led to the omission of that freedom from most of the international documents: “the freedom to conduct a business is alien to most international fundamental rights instruments”<sup>42</sup>.

For instance, international instruments such as the International Covenant on Civil and Political Rights enshrined the freedom of religion under its Article 18 but does not mention expressly the freedom to conduct business. In the same way, the Universal Declaration of Human Rights enshrined the freedom of religion in its Article 18 but does not mention the freedom to conduct business. Moreover, The American Convention on Human Rights which comprises twenty-five South American nations enshrined the freedom of conscience and religion in its Article 12, but only indirectly mentions the freedom to conduct business through its Article 16 and the freedom of association. Finally, even in the International Covenant on Social, Economic and Cultural Rights, where it could have been legitimately enshrined, the freedom to conduct business does not appear expressly. This freedom is only to be found implicitly, for example under Article 6 of the International Covenant on Economic, Social and Cultural Rights which mentions “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts (...)”<sup>43</sup>. As a result, even internationally, the freedom to conduct business is more controversial and tends not to appear, at least not directly.

---

<sup>42</sup> O’Connor, Niall. 2024. “The Evolution of the Freedom to Conduct a Business as a Fundamental Right.” *Business Freedoms and Fundamental Rights in European Union Law*. Oxford University Press p. 92.

<sup>43</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

However, it seems that multiple interpretations of the international instruments lead to the freedom to conduct business to be protected even though it is surprisingly not directly enshrined. This practice leads to legal uncertainty and is detrimental to the protection of fundamental freedoms.

In the United States, a similar comparison can be done, but with a slight important difference. The constitutional framework does not enshrine the freedom to conduct business, but the freedom of religion is constitutionally protected under the First Amendment of the Bill of Rights. However, what is interesting to mention with the U.S. experience is that the Federal Constitution declares that “certain unalienable rights, that among these are life, liberty and the pursuit of happiness”. As explained by Jason S. Zarin, this statement has been interpreted as “a founding statement of principles that include property rights and a right to individual economic freedom”<sup>44</sup>. The author even emphasizes that it is commonly accepted that “the pursuit of happiness” encompasses “individual’s right to pursue a trade”. Therefore, according to the U.S. Constitutional provisions, business is necessarily connected to anyone’s life. Moreover, the U.S. being a federal state, the States have been granted the possibility to enshrine such a right in their Constitutions. It is currently the case for twenty-five states such as the Oklahoma Constitution<sup>45</sup>.

Addressing the different perspectives such as the ECHR, the EU and internationally, proves that the freedom of religion tends to be more protected than the freedom to conduct business even though the latter is less controversial than the first one. It seems that the intentional omission of the freedom to conduct business resides in the point of keeping a certain margin of manoeuvre when addressing the freedom itself. Nowadays, while both freedoms are not always equally enshrined in constitutional frameworks, it is commonly accepted that both should be equally protected. Nevertheless, while both freedoms usually entail dealing with religious signs at the workplace, the ECHR and the EU never addressed the topic of faith, beliefs or religious signs being displayed by the business itself. Indeed, the freedom to conduct business being more recent, its collision with the freedom of religion is now raising new challenges and issues that need to be dealt with as soon as possible to address the reality of our society.

---

<sup>44</sup> Zarin, S. Jason. July 2024. Freedom to conduct a business, a comparative law perspective. United States of America. European Parliamentary Research Service.

<sup>45</sup> Oklahoma Constitution, 1907, art. II, sec. 2.



## 2. UNDERSTANDING BUSINESSES HAVING FAITH OR RELIGIOUS CONSIDERATION

Businesses being run with faith or religious consideration are usually left aside. Indeed, this type of business is never to be discussed or even avoided within the legal world while they are the most concrete example of the correlation between the freedom of religion and freedom to conduct business. Nor the EU nor the ECHR have defined this type of business in their legal texts or case-law. Moreover, at the national level, traces of these businesses tend to be found, but the concepts are still rather clumsy and sometimes encroached with religious institutions such as churches. As a result, discussing the terminology found within the European continent is of utmost importance (1.1.). The next step is undoubtedly to scrutinize how this concept has been approached by the most important European courts, i.e. the CJEU and the ECtHR (1.2.). Finally, this chapter will address how the U.S. managed to allow faith-based businesses by implementing a stable legal framework (1.3.).

### 2.1. The lack of harmonized definition for business with faith consideration at the EU level

In Europe, the concept of a profit organization integrating religious or faith beliefs is still rather uncertain. While many European countries do not define this type of business, some others enshrined very different and imprecise definitions. For instance, Germany has a specific term used in labor law: *Tendenzbetrieb*. This *ex-nihilo* German concept has been developed based on Article 9(3) of the Grundgesetz<sup>46</sup> which enshrined the freedom of association. *Tendenzbetrieb* was created to deal with organizations that have a “specific ideological or spiritual mission”<sup>47</sup>. However, Germany did not stop at building a specific concept. In fact, Germany constitutionally defined this type of business in Section 118 of the Works Constitution Act<sup>48</sup>. Moreover, one of the practical consequences deduced by the Federal Labor Court<sup>49</sup> from that concept was the application of a specific status enabling this type of

---

<sup>46</sup> Basic Law for the Federal Republic of Germany.

<sup>47</sup> Eulerpool Business Dictionary. n.d. "Tendenzbetrieb Definition." *Eulerpool*.

<sup>48</sup> Betriebsverfassungsgesetz – BetrVG, Federal Ministry of Justice. September 25<sup>th</sup>, 2001. "Works Constitution Act."

<sup>49</sup> In German, *Bundesarbeitsgericht*.

organizations to “dismiss or refuse the employment of individuals whose beliefs or actions contradict the establishment’s core mission”<sup>50</sup>.

In other European countries, such as France, the concept cannot be found in the legislation. However, in practice, the concept of *entreprise de tendance*, has been developed by the doctrine as early as 1950<sup>51</sup>. The concept is inspired by the German one<sup>52</sup>, and tends to be recognized by the French case-law even though the expression *entreprise de tendance* is never used as such<sup>53</sup>. However, the German and French concepts, when defined, both express the specificity of a company whose primary goal is not the quest for profits, but more the advocating or promotion of a political, religious, ideological, or philosophical conviction.

As a result, these concepts, as currently defined, do not encompass businesses that would primarily look to make profits, but would be conducted without hiding faith or religious considerations. This lack of definition makes it extremely problematic to discuss the topic itself and then, in the end, to deal with the employees’ situation within such corporations.

Also, the issue resides in the fact that, despite not having a clear and precise definition, these businesses are sometimes addressed with very different names and are then confused, for example with economic activities pursued by a religious entity. Indeed, the doctrine uses several terms to define these businesses. For instance, Matteo Corsalini mentions “religious or ethos-driven organizations”<sup>54</sup> while others, such as Ronald J. Colombo go through deep analysis of “religiously expressive business corporations”<sup>55</sup> or “faith-based businesses”. Also, at the international level, this type of business can be found described as “purpose businesses”. Indeed, during the United Nations Climate Change Conference COP27, it was argued that a business with a strong sense of purpose inspires more trust than other businesses, leading to better returns and profits<sup>56</sup>. In a similar way, the World Bank takes into consideration “faith-based and religious organizations”<sup>57</sup>. The concept at national and international level reveals a

---

<sup>50</sup> Eulerpool Business Dictionary. n.d. "Tendenzbetrieb Definition." *Eulerpool*.

<sup>51</sup> Carbonnier J. , obs. sous Trib. civ. Lille, 21 juin 1950 and Cass. civ., 5 juillet 1950, *JCP* 1951, II 6439.

<sup>52</sup> Rougeot-Delyfer, Anne-Marie. December 2022. "Libertés et discriminations: Entreprise de tendance." *DRDS IRERP*, p. 1.

<sup>53</sup> See for example CA Paris, 25 mai 1990, n° 89-36864, 21e ch., Bami c/ Arbib ; CA Toulouse, 4e ch. soc., 17 août 1995, Baracassa c/ Association Culturelle Israélite de Toulouse.

<sup>54</sup> Corsalini, Matteo. 2020. “Religious Freedom, Inc: Business, Religion and the Law in the Secular Economy.” *Oxford Journal of Law and Religion*, p.31.

<sup>55</sup> Colombo, Ronald J. 2023. “Religious Freedom and the Business Corporation.”, p. 210.

<sup>56</sup> John Mennel, John Peto, Shira Beery. November 1<sup>st</sup>, 2022. "Businesses with a clear purpose do better while also protecting people and planet. Here's how." *World Economic Forum*.

<sup>57</sup> World Bank. 2024. "Faith Based and Religious Organizations." *World Bank Group*.

lack of coherence and many terminologies that are detrimental to a clear approach of these businesses.

A similar problem can be raised at the EU level. Indeed, the EU is also using its own concept, mentioning “ethos-based organization” in Article 4.2 of Directive 2000/78/EC “ethos-based public and private organizations”<sup>58</sup>. The use of “ethos-business” is also mentioned in the case-law of the CJEU, such as in *IR v. JQ*<sup>59</sup> case. However, no definition is enshrined or settled at the European level. Moreover, Article 4.2 of Directive 2000/78/EC focuses on the difference of treatment that could exist within this business, mainly for employees, but does not give any detail regarding the organization itself. In the same way, the case law only deals with employees’ points of view. For instance, the case *IR v. JQ*<sup>60</sup> ruled by the CJEU focused on the dismissal of a doctor in a catholic hospital due to the reason of himself getting married for the second time while his first marriage was not yet annulled under canon law. In that latter, the Court took into consideration the nature of the business itself, stating that IR is a “private organization established under private law” even though the Court also established that IR is also “a non-profit organisation”<sup>61</sup>. Also, in paragraph 40 and 41<sup>62</sup>, the Court is trying to overcome the difficulty of a blurry and unprecise definition found in article 4.2 of Directive 2000/78/EC that mentions “public or private organisations”<sup>63</sup>. The Court is trying to find out whether an ethos-company can limit the right to equal treatment to respect the ethos. As a result, so far, the line of conduct followed by the Court is to say that companies can discriminate against if it constitutes a “genuine occupational requirement”<sup>64</sup> for the ethos of the company to respected by the employees. While the Court mentions that it is ultimately for the national court to decide whether it is a genuine occupational requirement<sup>65</sup>, it still gives its opinion that in that particular case, “it does not appear to be a genuine requirement of that occupation activity (...)”<sup>66</sup>.

---

<sup>58</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>59</sup> ECJ, C-68/17, *IR v. JQ*, September 11<sup>th</sup>, 2018.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*, §23

<sup>62</sup> *Ibid.*, §40-41

<sup>63</sup> Article 4(2), Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>64</sup> Recital 23 Directive 2000/78/EC, & found in case *IR v. JQ*, §43, 50, 56.

<sup>65</sup> ECJ, C-68/17, *IR v. JQ*, September 11<sup>th</sup>, 2018, §56.

<sup>66</sup> *Ibid.*, §58.

As a result, while experiencing cases where the organization's ethos is at stake, neither the EU, nor the CJEU choose to truly take the initiative to define clearly what an ethos-based organization encompasses and to really make the difference between churches, public and private organizations. Instead, the scope of that concept is left rather broad and completely nonsensical as churches, private and public companies are dealt together under the part of the same Article without further explanations.

It is obvious that dealing with different entities under a single and imprecise definition undoubtedly leads to profound legal uncertainty and incoherent rulings. Moreover, despite the lack of clear legal definition and nonsensical case-law, the Faith and Freedom Summit has been created to deal with freedom of religion in the EU. In it 'faith-based organizations' are being discussed, involving faith-based and non-faith-based actors. However, faith-based organizations' are understood mainly as faith-based NGOs and do not encompass private actors, which once again leads to preposterous outcomes. The use of identical terminology to describe actors that are intimately different, such as private and public faith-based actors, is leading to huge misunderstanding and raising legal disputes at various levels.

As a result, the wide variety of terms used makes it harder to contour these businesses and to address any issue that could be related. For the sake of the research, these businesses will always be referred below as 'faith-based businesses'.

Finally, despite the terminology itself, it is of importance to delve into the different types of businesses that are, according to the author, to be encompassed under the term 'faith-based businesses'. In fact, this term is to be qualified as broadly as possible since, as previously mentioned, there is a phenomenal number of religions around the world, which could imply that the number of businesses could be as profound. The primary and most common examples found in Europe are food/groceries-related businesses and mainly Kosher and Halal butchers. In fact, these slaughterhouses and/or butchers have been the key focus of some controversies in many European countries. For instance, a vibrant discussion was raised after Jewish and Muslim methods of ritual slaughter of animals have been banned in 2019 in a Northern region of Belgium<sup>67</sup>. Switzerland, Poland, Sweden, and Norway have also banned this type of slaughter based on religious consideration which arose, again a lack of harmonization around Europe. Then, less common but other developing types of organizations are social gathering places such as coffee shops and restaurants. In that regard, a very concrete example is the

---

<sup>67</sup> Feder, Shira. 2019. "All the European Countries Where Kosher and Halal Meat Production Are Now Forbidden." *Forward*. January 7.

Jewish Café *Beigeliu krautuvėlė* based in Vilnius, Lithuania. In it, bagels made of products respecting Kosher traditions are to be found as well as other Jewish delicacies. However, the entrance is not restricted to people of Jewish confession. Another category that could be found is the care-related businesses which purpose is to help others such as hospitals or kindergartens. This is for instance Catholic hospitals where , crosses are displayed such as in *Clinique Sainte-Marie* in Cambrai, France which is a private Catholic hospital with a chapel and where some nurses used to be nuns until a few years ago before getting retired<sup>68</sup>. Finally, the last category that could be envisaged would broadly be any purely economic activity that would be run with religious or faith consideration. It could go for example from a construction store to a clothes shop, or many more.

The manifestations within the business itself can also be of various forms. Indeed, it could include religious music played in the store, religious signs being displayed, certain religious products being sold, or even printing religious statements on sold products etc. This categorization is obviously not exhaustive, because as mentioned, the type of corporation as well as the form it is manifested into, can be as broad as the number of religions existing on earth. Also, the issue resides in the fact that the different kinds of businesses are to be dealt with under a unique definition, which leads to a lack of legal clarity, stability, and predictability, in particular for the safeguard of our fundamental freedoms.

Throughout the time, religion and business collided, which led the CJEU and the ECtHR to somehow approach the topic without, unfortunately, completely addressing it. The following part will deal with both perspectives trying to understand the way the highest European Courts are utilizing an unsettled concept to reach the desired outcome.

## 2.2. Problem of not defining businesses with faith consideration in the ECtHR and CJEU case-law

“The European Union is based on a free market economy, which implies that undertakings must have the freedom to conduct their business as they see fit.”<sup>69</sup> This statement is the first sentence of the Opinion of Advocate General Wahl in the *AGET Iraklis* case in 2016. This case had to deal with a Member State’s intervention related to the job security of workers, and even though the CJEU did not use the same expression to rule the case, the Court followed AG Wahl

---

<sup>68</sup> <https://www.saintemarie-cambrai.fr/clinique-sainte-marie.html>

<sup>69</sup> Opinion of AG Wahl, ECJ, 9th June 2016, C-201/15, *AGET Iraklis*, §1.

in its direction. But could the expression “*as they see fit*”<sup>70</sup> encompass conducting businesses with faith or religious considerations?

The scholar J.-P. Schouppe wrote an article in 2019 that takes into consideration ‘faith-based businesses’ or what he calls within its research “trend-setting companies”<sup>71</sup>. However, while the matter of faith and/or religion in business is not new, J-P. Schouppe emphasizes that the European concept of “trend-setting companies” cover “entities whose doctrine or ethics are based on a belief” and that can be “either public *or private*”<sup>72</sup>. This means that so far, European terminology considers entities like churches, but also private companies such as a kosher butcher under an identical and unique concept.

For both European courts, the relation between religion and business is not recent. For instance, cases where the CJEU had to rule economic questions where religion was involved are not new. This is because the internal market cannot exist without interfering in people’s lives, and in consequence, religion is to be part of it. For example, a few months after a major decision regarding the economic integration of the EU, i.e., the announcement by the European Council of the official implementation of an Economic and Monetary Union, the CJEU answered a question related to economic activities performed by members of a religious community<sup>73</sup>. Also, back in 1988, religion as a part of economic activities within the internal market was already discussed. In fact, commercial activities conducted by religious entities were the first to be addressed in the case-law of the CJEU. Later, the question shifted to the place of employees at the workplace, such as the substantial series of case-law about headscarf at work<sup>74</sup>. However, the question of dealing with the status of ‘faith-based businesses’ was never raised within the case-law. Indeed, while economic activities made by religious entities were discussed and addressed, economic activities ran by private companies that raised religious disputes were settled following the same reasoning while being deeply different.

As a result, another question emerged to know why the Courts avoided addressing the issue: is it possible to grant a corporation the freedom of religion knowing that it is not a natural

---

<sup>70</sup> Ibid, §1.

<sup>71</sup> Translation by the author. Originally in Spanish “*empresas de tendencia*”. Schouppe, Jean-Pierre. June 2019. “Towards a Legal Structure for Ethos-Based Organizations in European Case Law.” *Ius Canonicum* 59, no. 117 p.124.

<sup>72</sup> Ibid.

<sup>73</sup> ECJ, C-196/87, *Steymann / Staatssecretaris van Justitie*, October 5<sup>th</sup>, 1988.

<sup>74</sup> ECJ, GC, C-157/15, *Samira Achbita Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, March 14<sup>th</sup>, 2017; GC, C-188/15 *Asma Bougnaoui, Association de defense des droits de l’homme (ADDH) v. Micropole SA*, 14 March 14<sup>th</sup>, 2017; GC, C-804/18, *IX v. WABE eV and MH Muller Handels GmbH v MJ.*, July 15<sup>th</sup>, 2021; Second Chamber, C-344/20, *L.F. v S.C.R.L.*, October 13<sup>th</sup>, 2022.

person? This has been a long-standing debate that is still discussed within the doctrine. Indeed, some strongly argue against giving the possibility for legal entities to claim fundamental rights to not jeopardize the substance of fundamental rights themselves<sup>75</sup>. However, another part of the doctrine, which the author agrees with, relies on the statement that behind any corporation can always be found a one or several human beings who should be able to claim his/their own freedom of religion: “protecting the freedom of a corporate entity can be justified where this is necessary to protect the freedom of individual human beings”<sup>76</sup>. Indeed, while our society evolved very fast and human beings are sometimes replaced by new technologies, human beings are (and always will?) be required behind the creation of a business.

And while some others might argue that having multiple individuals running a company can be an impediment to the fact of protection freedom of human beings, it is evidence for me that it does not mean that fundamental rights should be crushed. In fact, as some authors correctly explained, most of the companies nowadays are having a board composed of diverse individuals, which means that “the corporation has a “collective consciousness” or “collective will” that results from discussion and compromise among the individual members”<sup>77</sup>. Also, this means that fundamental freedoms should still be safeguard no matter how many people are to be seen behind a company’s name. As a relevant comparison, on the American continent, corporation as a person, and the fundamental rights, attached to it, is way less controversial. In fact, the Supreme Court ruled that a corporation is to be seen as a person under the Fourteenth Amendment to the U.S. Constitution back in 1886<sup>78</sup>. Moreover, in *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward Cnty.*<sup>79</sup>, the Supreme Court recognized concretely the free exercise of religion by enterprises.

At the same time, on the other side of the Atlantic, the CJEU had followed the idea of fundamental rights for legal entities, which relies itself on the ECtHR point of view. In fact, knowing that Article 52(3) of the CFREU states that if the rights enshrined in the CFREU are identical to those in the ECHR, then these ones have the same meaning and scope as the

---

<sup>75</sup> Ciepley, David. 2013. "Neither Persons nor Associations: Against Constitutional Rights for Corporations." *Journal of Law and Courts, Volume 1, Issue 2*, 221-245.

<sup>76</sup> Gill-Pedro, Eduardo. 2022. "Whose Freedom is it Anyway? The Fundamental Rights of Companies in EU Law." *European Constitutional Law Review*, p. 188.

<sup>77</sup> Ripken, Susanna Kim. 2009. "Corporations are people too: A multi-dimensal approach to the corporate personhood puzzle." *Fordham Journal Of Corporate & Financial Law*, Vol. XV, p.114.

<sup>78</sup> *Santa Clara Cnty. V. S. Pac. R.R. Co.*, 118 U.S. 394, 396 (1886).

<sup>79</sup> *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward Cnty.*, 450 F.3d 1295, 1305 (11th Cir. 2006) (“[C]orporations possess Fourteenth Amendment rights of equal protection, due process, and, through the doctrine of incorporation, the free exercise of religion.”).

corresponding articles. Then, the CJEU relies on the ECtHR interpretation. In that regard, the ECHR indicates clearly that some of the rights should be applied to corporations. It is the case of Article 34 which mentions that applications can be made by “*any person, non-governmental organization or group of individuals*” or even Article 1 Protocol 1 which explicitly includes “*legal person*”. Also, for a long time, the ECtHR case-law has depicted that companies were entitled to claim fundamental rights<sup>80</sup>. In that regard, the ECtHR justified in various cases the freedom of legal entities based on the protection of the individual behind these ones, such as in *Radio France and Others v. France*, March 20<sup>th</sup>, 2004<sup>81</sup> or *Moscow Branch of the Salvation Army v. Russia*, October 5<sup>th</sup>, 2006<sup>82</sup>. As a result, following the ECtHR approach, it can be supported that corporations are able to claim their freedom of religion by being established as ‘faith-based businesses’.

Nevertheless, when scrutinizing the case-law of the ECtHR, the Court decided to create a “binary divide between the commercial and the religious”<sup>83</sup> to deal with what P. Edge calls “commercial religion”<sup>84</sup>. It means that the ECtHR treats either the activity as commercial or as religious. The issue raised by P. Edge is obviously that this approach does not address the diversity of all businesses, especially the faith-based ones, and then leads, once again, to a void of appropriate legislation. The reason behind this reasoning can nonetheless be explained by the legal protection of the freedom to conduct a business. Indeed, as explained earlier, while the CFREU enshrined it in its Article 16, this one is absent from the ECHR. However, D. Vasarienė and L. Jakulevičienė demonstrated that the ECtHR used Article 1 of Additional Protocol No. 1 to the ECRH “as a basis for inferring the principles protecting the right to economic initiative”<sup>85</sup>, which again makes one’s wonder what the ECtHR position on that matter is. Again, the lack of a precise definition, and the unwillingness to address ‘faith-based businesses’ directly, depicts the risks for this concept to be utilized by the Courts depending the case and religions or beliefs at stake. It shows the necessity to develop a clearer definition and a comprehensive framework to avoid any abuse.

---

<sup>80</sup> See for instance, ECtHR, no. 6538/74, *Sunday Times v. The United Kingdom*, April 26<sup>th</sup>, 1979.

<sup>81</sup> ECtHR, no. 53984/00, *Radio France and Others v. France*, March 30<sup>th</sup>, 2004.

<sup>82</sup> ECtHR, no. 72881/01, *The Moscow Branch of the Salvation Army v. Russia*, October 5<sup>th</sup>, 2006.

<sup>83</sup> Edge, Peter W. 2013. “Believer beware: The challenges of commercial religion.” *Legal Studies*, Vol. 33 No. 3, September 3, P. 382.

<sup>84</sup> Ibid.

<sup>85</sup> Dalia Vasarienė, Lyra Jakulevičienė. December 28<sup>th</sup>, 2021. “Freedom to Conduct Business During the Covid-19 Pandemic.” *Tilburg Law Review*, Vol. 26, Issue 1 16-29.



While the case-law on the European continent is still fragile and requires more clarity, it is of interest to scrutinize and compare it with the American experience. Indeed, while being fundamentally different, throughout time, both continents always learnt from each other. The American perspective towards faith-based businesses seems interesting to approach.

### 2.3. The faith-based approach on the American continent

The U.S. is recognized today as a country with a profound “religious tolerance”<sup>86</sup>, being even one of its main characteristics<sup>87</sup>. However, this religious liberty has not been easily achieved. In fact, “it was deemed taboo to express one’s faith on the plant floor or within the executive suite, but over the past two decades, the wall separating faith from business has crumbled”<sup>88</sup>. Examining the U.S. experience towards faith-based business is worthwhile since it became a land of religious plurality following and mainly due to multiple waves of migrations throughout the time. Indeed, it is considered that “more than 86 million people have legally immigrated to the United States between 1783 and 2019”<sup>89</sup>. Due to that, there has been a necessity to accommodate the peculiar diversity of the population and their distinct religions or beliefs. Historically, the U.S. went from tremendously religious businesses allowing only a predominant religion, to a strong secular period during the 1960s. Finally, the U.S. reached the ongoing period where people ran their businesses “as they wish”. Indeed, nowadays, the U.S. is experiencing a “faith-at-work movement”. This means that despite taking into consideration the needs of their employees, corporations are also “inculcating the faith-based beliefs of their owners into the operation of the business”<sup>90</sup>. R. Colombo even mentions “for-profit companies that embrace an articulated religious identity and strive to conform their operations to such identity”<sup>91</sup>.

---

<sup>86</sup> Morgan, James Frederick. 2015. "Faith (re)engages with business: cultural, legal and managerial dimensions." *International Journal of Law and Management Vol. 58 No. 4, 2016* (International Journal of Law and Management), p. 448.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid, p. 445.

<sup>89</sup> Andrew M. Baxter, Alex Nowrasteh. August 3<sup>rd</sup>, 2021. "A Brief History of U.S. Immigration Policy from the Colonial Period to the Present Day." *CATO INSTITUTE*.

<sup>90</sup> Morgan, James Frederick. 2015. "Faith (re)engages with business: cultural, legal and managerial dimensions.", *International Journal of Law and Management Vol. 58 No. 4, 2016* (International Journal of Law and Management), p. 462.

<sup>91</sup> Colombo, Ronald J. 2023. "Religious Freedom and the Business Corporation.", p. 210.

Following this, one could make a case for the expansion of this trend in Europe. Indeed, previously on the European continent, businesses tended to have a religious consideration, mainly based on the Christian religion that was dominant. Nowadays, secularism is at its paroxysm such as in the 60s in the U.S. Finally, Europe has also been, for several decades now, experiencing huge waves of migration. This is undoubtedly leading Europe to experience a broader diversity, and a growth of cultures and religious beliefs within the continent, as experienced in the U.S. However, on the opposite of the U.S., Europe (still?) did not reach a period of “faith-at work movement”, but it could be argued that Europe only did not reach it *yet* as the successive waves of migration are still rather recent. However, this cannot be considered without giving a deeper look at the U.S. situation. In fact, while the term “ethos” is clumsily used within the European continent, the U.S. uses the term “faith”. This concept, contrary to “ethos” is rarely used outside a belief or religious concept and refers directly to some sort of spiritual concept. In fact, the Cambridge dictionary refers to ethos as “the set of belief, ideas, etc. about the social behavior and relationships of a person or group”<sup>92</sup> while it describes faith directly as “a strong belief in God or a particular religion”<sup>93</sup>. In research throughout the American doctrine, lots of authors use the term of faith, on the contrary of the European research which is still extremely disparate. As a result, once again, implementing a clear and precise concept to address the situation seems to remain the very first starting point.

Then, it is important to mention that compared to Europe, “exist [in the U.S.] an adequate legal structure to serve the needs of religious workers and owners”<sup>94</sup>. In fact, the U.S. enshrined in its 1<sup>st</sup> Amendment two clauses in which religious freedom has been established, i.e. the freedom of establishment and the free exercise clause. Moreover, the Civil Rights Act of 1964, Public Law 88-352<sup>95</sup> contains a provision declaring illegal any religious discrimination in employment, but also a provision mandating employers to accommodate the religious needs of their employees. Also, the Religious Freedom Restoration Act of 1993, Public Law 103-141<sup>96</sup> prohibited substantial burdening of a person’s exercise of religion, legal act that could be envisaged for a person wishing to develop and run a ‘faith-based business’.

---

<sup>92</sup><https://dictionary.cambridge.org/us/dictionary/english/ethos#:~:text=ethos%20%7C%20Intermediate%20English&text=the%20set%20of%20moral%20beliefs,is%20part%20of%20their%20ethos.>

<sup>93</sup><https://dictionary.cambridge.org/us/dictionary/english/faith#:~:text=a%20high%20degree%20of%20trust,will%20do%20the%20right%20thing.>

<sup>94</sup> Morgan, James Frederick. 2015. "Faith (re)engages with business: cultural, legal and managerial dimensions." *International Journal of Law and Management Vol. 58 No. 4, 2016* (International Journal of Law and Management) p. 444.

<sup>95</sup> <https://www.govinfo.gov/content/pkg/STATUTE-78/pdf/STATUTE-78-Pg241.pdf>

<sup>96</sup> <https://www.congress.gov/103/statute/STATUTE-107/STATUTE-107-Pg1488.pdf>

These legal bases allowed the American legal justice system to deal with cases related to for-profit businesses that are run with a religious or belief consideration. The best example is the very debated case of *Burwell v. Hobby Lobby Stores, Inc.* held in 2014<sup>97</sup>. In it a for-profit business has been able to remain exempt from a regulation since the owner was fiercely against it due to his own religion. This Supreme Court ruling was at the center of lots of contestations and debates, and while I also disagree with the given ruling, it at least started a precedent on for-profit corporations being run with religious consideration. Therefore, the U.S. developed a strong legal framework that allowed to make an unambiguous distinction between churches, public and private organizations.

Due to these multiple components, ‘faith-based businesses’ are to be seen very frequently in everyday life. For instance, a very famous U.S. fast food chain, Chick-Fil-A, has been created on Biblical principles explaining the “closed on Sunday policy”<sup>98</sup> through its Christian roots. Moreover, another fast-food restaurant called “In-N-Out” puts bible references on its soda cups or burger wrappers<sup>99</sup>. Or, for instance, the clothes shop Altar’d State display some Bibles in its shops next to the clothes and put biblical verse at the end of its invoice when ordering online (see Annex No. 1).

Moreover, it has been argued by some American scholars that in the case of headscarves in the workplace, the outcome in Europe and in the U.S. would considerably be different. In fact, it seems that enabling the creation of faith-based businesses led in the end to a wider scope of tolerance *vis-à-vis* religious practices and signs displayed by employees at the workplace. For instance, Stephen Haas carried out a comparison between both continents using the famous *Achbita* case<sup>100</sup>. In his comparison, this latter shows that the ECJ ruled the Ms *Achbita*’s headscarf ban as an indirect discrimination that could however be legally justified under EU law because the company had a legitimate aim of ensuring a “policy of neutrality” and that this policy has been pursued in a consistent and systematic manner<sup>101</sup>. Then, S. Haas demonstrated how different the finding would have been if it was ruled by an American court. Indeed, relying on Title VII of the Civil Rights Act of 1964 mentioned previously, S. Haas explains that the

---

<sup>97</sup> *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

<sup>98</sup> <https://www.chick-fil-a.com/customer-support/who-we-are/our-culture-and-values/why-is-chick-fil-a-closed-on-sunday>

<sup>99</sup> <https://www.tasteofhome.com/article/in-n-out-packaging/?srsltid=AfmBOooScQL3ghHFhMC3dzszIds44y25Gq3JIFyFyLZGrIjyJoiMLrde>

<sup>100</sup> Haas, Stephen. n.d. "Headscarves in the Workplace: A Comparison Between the United States and Europe on Workplace Accommodations for Religious Practices." *National Paralegal College*.

<sup>101</sup> ECJ, GC, C-157/15, *Samira Achbita Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, March 14<sup>th</sup>, 2017.

Act prohibits employers to treat employees differently based on their religious beliefs and practices, but also exclude any denial of reasonable accommodation of an employee's sincerely held religious beliefs or practices, if the accommodation does not impose on the employer a too important burden. In that sense, he deduced that in Ms. Achbita case, the accommodation does not require an important cost from the employer since this one just has to allow her to wear a headscarf. Also, this can be compared to a recent case Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores<sup>102</sup> where a Muslim-American has been denied employment due to her wearing a headscarf during the job interview. After reaching the U.S. Supreme Court, the outcome was that the "mere fact that the headscarf was against the company's general dress code was insufficient to be considered an undue burden"<sup>103</sup>. Also, American law in that regard seems more protective of religious practices and signs and it seems that allowing faith-based businesses in the first place, allow more tolerant outcomes towards religious signs worn by employees themselves within businesses.

However, while the U.S. experience is interesting to study and to hypothetically get inspired from, the American approach should be taken with specific care. The particularity of the U.S. makes it difficult to directly apply it to the European continent. In fact, in 1835, A. de Tocqueville was already demonstrating that religion is stronger in America than in any other country<sup>104</sup> and numerous authors dealing with the faith-based business approach on both continents also mentioned that "the idea of for-profit companies reflecting religious scruples in business in a "church-like" fashion might sound a bit odd to European ears."<sup>105</sup>. Nevertheless, the European experience needs to be scrutinized. Indeed, in the last decades, the European continent has been challenged with multiple debates towards religious signs at the workplace without being able to find a fair and clear settlement, some religions being clearly more affected than others. The private sector and religious displays have both been considered by the case-law and within the public debate, raising lots and lots of discussions. In that matter, the U.S. experience shows how necessary it is to develop a broad and strong legal framework regarding "faith-based businesses", to avoid any future discrepancies or legal void within Europe.

---

<sup>102</sup> Equal Employment Opportunity Commission (EEOC) v. Abercrombie & Fitch Stores, Inc., 575 U.S. 768 (2015).

<sup>103</sup> Ibid.

<sup>104</sup> De Tocqueville, Alexis. 1835. *Democracy in America: The Complete and Unabridged Volumes I and II*. Bantam Classics.

<sup>105</sup> Corsalini, Matteo. *Business, Religion, and the Law - A Primer*. September 22, 2022.

### **3. REGULATING IN ORDER TO FIND THE GOOD BALANCE: THE FREEDOM TO CHOOSE**

Creating a specific European legal framework for faith-based businesses seems to be the only way to achieve more tolerance for both employers and employees (3.1.). However, while touching on such a hot topic, agreeing on defining certain terms can be a real hardship, especially if important terms such as “neutrality” are being instrumentalized (3.2.). Finally, remaining challenges are to be experienced by the implementation of such businesses and limitations, which should not be forgotten in order to avoid any discriminatory practices and enjoy the various advantages these businesses have to offer (3.3.).

#### **3.1. The importance of creating a specific legal framework at the EU level**

The European legal framework is lacking. One could argue that the Council Directive 2000/78/EC of November 2000<sup>106</sup> has been created and enforced. However, it only establishes a general framework for equal treatment in employment and occupation. As a result, the directive mainly focuses on employees’ rights and freedoms and the need to combat discrimination of any kind at the workplace while leaving a void regarding any “faith-based business”.

The creation of a framework is even more important since the issue at stake is not hypothetical. Indeed, as mentioned previously, there are already existing faith-based businesses in our society. It is, in fact, impossible to imagine our economic life without even a slight influence from our deepest convictions and that manifests itself concretely through religious slaughterhouses or butchers. In that regard, and because of the lack of a clear and broad recognition of the businesses’ rights, it has led authors to mention “the erosion of religious privilege by the CJEU”<sup>107</sup> leading to prioritizing states’ interests over our freedoms to conduct a business and religion. For example, in 2020, in the case of *Centraal Israëlitisch Consistorie van België v. Vlaamse Regering*<sup>108</sup>, the Court put aside Jewish/Muslim considerations by finding “legitimate”<sup>109</sup>, a Belgian law abolishing the religious exception given previously for

---

<sup>106</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>107</sup> European Centre for Law & Justice. 2023. “Religion: parti pris laïc de la CJUE.” *ECLJ*.

<sup>108</sup> ECJ, GC, C-336/19, *Centraal Israëlitisch Consistorie van België v. Vlaamse Regering*, December 17<sup>th</sup>, 2020.

<sup>109</sup> *Ibid*, §64.

the general requirement that animals are to be stunned before slaughter. Through this finding, the Court is putting animal welfare ahead of a freedom enshrined and protected by the CFREU, the freedom of religion. While animal welfare is also of tremendous importance, it should not be given priority over any fundamental human rights, but a fairer balance could have probably been achieved if conceptual definitions and concrete legal rules regarding ‘faith-based businesses’ were not lacking. The Court is increasingly becoming distant to the protection of religious expression, affecting some religions more than others.

Also, the ECJ is not the only court to have been torn between conflicting interests. The ECtHR had to deal with what it called “observance of dietary laws and ritual slaughter” for instance in *Cha’are Shalom Ve Tsedek v. France*<sup>110</sup> case. In that latter, a Jewish Association, asked to be given the approval to perform ritual slaughter to prepare kosher meat. The approval has been refused by the French minister on the ground that it was not an approved religious body. Even if the applicant is not a private company in that case, the Court emphasis the fact that even butcher’s shops would require this approval. Therefore, the Court did not find any violation of the freedom of religion, even though it is obvious that this particular law was massively affecting a certain category of people i.e. the Jewish community.

The ECtHR also dealt with the “wearing of religious clothing and symbols” as in *Eweida and Others v. the United Kingdom*<sup>111</sup>. However, in that latter, while addressing a dress code imposed by a private business, the Court never approaches the issue from a ‘faith-based business’ perspective. The ECtHR, while discussing Article 9 of the ECHR in its guide, is even precising a category called “professional activities” in which cases examine when a person’s religion or faith has been an obstacle to carry on its occupation. Nevertheless, while being extremely close, the ECtHR never approaches the faith-based business’ topic.

Therefore, analyzing CJEU and ECtHR case-law tackle the issue that, even when being closer to touch upon the issue of faith-based businesses through the wearing of religious signs or by addressing religious slaughter rituals, both Courts never really addressed the concern. Also, it seems apparent that the Courts are avoiding the issue entailed by the lack of an intelligible definition and framework. Courts are reluctant to raise or even mention the problem in fear of hurting States’ interests when dealing with a topic that is still to be considered extremely sensitive in Europe: religion.

---

<sup>110</sup> ECtHR, no. 27417/95, *Cha’are Shalom Ve Tsedek v. France*, June 27<sup>th</sup>, 2000.

<sup>111</sup> ECtHR, nos. 48420/10, 59842/10, 51671/10 and 36516/10, *Eweida and Others v. The United Kingdom*, January 15<sup>th</sup>, 2013.

Also, it is important to mention that previously when a question has been slightly touching upon ‘faith-based businesses’, European courts tended to rely on definitions used for institutions such as churches. However, extending these definitions is particularly odd and perilous. In fact, both entities are truly different while described in their own legal definitions. A religious corporation is usually defined as a “not for profit entity, association that engages in religious activity as corporation’s principal purposes”<sup>112</sup> while a business is defined as a “natural person or entity performing an activity or trade with the intention of making a profit.”<sup>113</sup> The difference between both is striking because a ‘faith-based business’ stays with the primary goal of making profit and just wishes to conduct its activities without hiding its faith or religion. However, in the past, controversies have been raised regarding economic activities performed by private corporations that were pursuing religious purposes and missing a clear distinction between both entities lead to an increasing bewilderment. For instance, in the case of the *Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*<sup>114</sup>, the applicant is “registered as a private unlimited company in the United Kingdom”<sup>115</sup>, but is also described by the ECtHR as a “religious organization”<sup>116</sup>. The reason for the dispute relies on the qualifications of the organization itself. Indeed, if the place is qualified as “premises used for charitable purposes”, it is entitled to charity business rates relief which makes retain only a liability of only 20% rates. However, if the place is qualified as a place of “public religious worship”, then the organization benefits from a statutory tax exemption. The organization refused the full exemption and argued that it was a violation of article 14 and 9 of the ECHR. The Court found out that there was no violation of the Convention since there was no establishment of a difference of treatment between religious groups in comparable situations.

Despite this ruling, the point here is to show that the dispute would not even have been raised if a delimited framework with a precise definition of faith-based businesses had been implemented in the first place. In fact, the mere essence of the dispute resides in a problem of qualification as the applicant is itself described in the judgment as “a religious organization registered as a private unlimited company”<sup>117</sup>. It is then of tremendous importance to set a clear difference between economic activities pursued by religious entities that do not seek profits but use the money to cover operational costs or to reinvest in the community, and for-profit entities

---

<sup>112</sup> <https://www.lawinsider.com/dictionary/religious-corporation>

<sup>113</sup> <https://www.law.cornell.edu/wex/business>

<sup>114</sup> ECtHR, no. 7552/09, *Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*, March 4<sup>th</sup>, 2014.

<sup>115</sup> Ibid, §1.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

that just wish to conduct their businesses without hiding their faith. However, what is striking is that these two concepts are usually associated or ruled in a similar way under a singular terminology while they both have extremely distinct essence and practical application in our society. Consequently, there is a need for the creation of a definition of "faith-based businesses" and the reason resides mainly in the idea of avoiding any issues caused by a lacking definition such as tax disputes or employment discriminations.

Going towards the establishment of a framework with precise definitions will take time and will need considerable focus. For instance, what should be discussed is if the term "ethos-based" organization that is already to be found in EU law should remain or should be replaced by a more accurate term such as "faith-based businesses" which will be completely dedicated to for-profit private entities ran with a religious or faith consideration. Having a clear and accurate definition will enable us to deal with this specific type of company and avoid any ambiguity or misunderstanding with activities achieved by public or church-like associations. A proper and particular definition will also allow to deal with the rights and duties of employers and as a result will help avoiding any discriminative policies towards employees and/or customers. In fact, as explained by Schouppe, "the concept is not immune to possible abuses and it is not exclusive that it can where appropriate, be used in conjunction with certain fundamental rights of employees"<sup>118</sup> (Schouppe June 2019), so it is of utmost importance to create a proper qualification for these already-existing businesses.

Once would have been reached a definition, the following step is to create a broad legal structure that would be dedicated to "faith-based businesses". The benefits of growing such a business are multiple, from social to economic aspects, the gains are tremendous. Broadening the legislation will then help to cover the reality of our lives where religion is prevalent and cannot be shadowed despite what one could argue. To believe or to decide not to believe is an inherent criterion to life and the fact that our legal system does not take into consideration the impact of that right on businesses is completely detrimental to our society and its future. Indeed, developing a new and broad framework allowing faith-based businesses will prohibit abuses and excesses that could have been seen within the private sector.

This framework should be developed in accordance with the cultural differences that can be seen around the European continent and should not be overly complex. The reason is that it should be made accessible to anyone that decides to create their own business. In fact,

---

<sup>118</sup> Translation from the author. Source originally in Spanish. Schouppe, Jean-Pierre. June 2019. "Towards a Legal Structure for Ethos-Based Organizations in European Case Law." *Ius Canonicum* 59, no. 117 121-158.



economic actors do not always have the chance to have important legal knowledge or the possibility to be assisted by legal professionals. Also, being as intelligible as possible is vital. On one hand, and in general, it has been proved that being quantitatively too important and too technical, legal rules are to be inefficient. Some authors even argue that the more complex legal rules tend to be, the more difficult it is for economic agents to implement which leads to economic inefficiency<sup>119</sup>. (Juan de Lucio, Juan S. Mora-Sanguinetti 2022) On the other hand, as proved for ‘faith-based businesses’, it has been shown that no definition at all also leads to detrimental effects. In our case, it leads to the manipulation of other already-existing concepts which create disputes being settled through controversial maneuvers that are extremely harmful to the safeguard of our fundamental rights. As a result, building a new accessible framework is of urgent importance. Covering reality will help avoid discrimination within the corporate world at its very own source, i.e. when the business is being created, but also later with the employees themselves. Indeed, the framework should enable people to run their business with the religion, faith or belief they wish too, but legal rules should emphasize that the conduct of this business should remain non-discriminatory. In fact, employees should not be discriminated against, and it should be made accessible to every customer that wishes to enjoy the business’ goods or services, even if their faith or belief is different.

Consequently, as in any other business, employees of ‘faith-based businesses’ should be hired in a non-discriminative way, and more importantly, any employee should be able to get a position within a ‘faith-based business’ even if he or she does not have the same religion, faith or belief. However, there are controversies regarding that topic. Indeed, one could argue that a fine line could be crossed and lead to actual discrimination during the hiring process. Indeed, some ‘faith-based businesses’ could see negative aspects accepting employees that do not share the same beliefs. For instance, in a Kosher butcher, customers knowing the meat is not handled by a Jewish employee could make them reluctant to buy the products. There will always be a social aspect to consider, but the real question is why would an Atheist not be allowed to serve Kosher meat at a butcher if he wishes to? Or why would a Christian not be able to be a waiter at a Muslim café? Again, the U.S. have been discussing the issue. In fact, with faith-based businesses being much more developed, several legal disputes arose. Also, the U.S. legal system had to deal with situation where businesses were discriminating based on religion. Therefore, Title VII of the Civil Rights Act of 1964 has been interpreted in a sense

---

<sup>119</sup> Juan de Lucio, Juan S. Mora-Sanguinetti. 2022. "Drafting "better regulation": The economic cost of regulatory complexity." *Journal of Policy Modeling* p. 163.

that it “allows religious groups, including schools, churches and other ministerial nonprofits, to discriminate on the basis of religion”<sup>120</sup>. Also, the U.S. made it clear, its framework states that for-profit private companies were not to be included in the entities that are able to discriminate based on the religion as they are not having public service goals and are then intimately different. For instance, the U.S. Supreme Court take into consideration different criteria to prove the principal religious aim of an organization while assessing, private schools, private hospitals for instance, but these ones as mentioned are, without doubt, tremendously different from private businesses that seek profits in the first place. Indeed, these places, even though being private, have specific purposes such as education, medical care etc., that are vital and specific areas of our everyday life. I believe that a similar way should be followed while developing such a framework in Europe. For example, remains in France a strong tradition of “the separation of function” leading to a distinct legal system for judicial and administrative disputes. Also, a faith-based business’ framework should be developed taking this idea into account. Public hospitals, public schools and other public services are inherently different from other types of businesses, in their goals and purposes. The distinction between those two should then not be forgotten and be precisely discussed and enshrined while creating the European framework.

Consequently, with the Employment Equality Directive<sup>121</sup>, the EU tried to combat discrimination based on several grounds including religion. However, in its Article 4(2), as mentioned previously, ethos-organizations are mentioned and described as “churches and other public or private organizations”<sup>122</sup>. Therefore, it seems from this definition that for-profit private businesses are to be included. However, this article gives, similarly as Title VIII of the Civil Rights Act of 1964 from the US, the possibility for these organizations based on religion or belief to consider that a difference of treatment based on a person’s religion or belief is not to be considered a discrimination. The Article set up criteria that the case-law also examines in multiple cases, but as mentioned previously, always from the employees’ point of view and without ever addressing the business aspects. Moreover, an important difference to mention regarding the comparison with the U.S. legal basis is that the wording of this latter does not include “private organizations” as such while the EU basis does. This raises, once again, the

---

<sup>120</sup> Mumphord H. Kendall, Sonnet M. Johnston. February 2023. "Navigating Employment Law for "Christian Owned and Operated Businesses." *American Journal of Industrial and Business Management*, Vol. 13, No. 2, p. 50.

<sup>121</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>122</sup> Article 4.2. Directive 2000/78/EC.

problem of delineation of this notion within the European continent and within the EU to address the concern. It is imperative to settle the line between those different entities while elaborating the new framework.

Also, an important remark regarding the wished-established framework within the European continent resides in the fact that a business, while being allowed to be conducted in such a way, must be transparent about the religious affiliations it holds to for its employees and for its customers. Mainly, as described before, these rules are already practically followed by ‘faith-based businesses’ around Europe such as Halal butchers or Jewish Coffee shops which are never hiding these convictions. Nevertheless, for the sake of a clearer and better framework, adding the idea is of relevance and could be formulated as allowing businesses to publicly profess that their business aligns with some faith or religious beliefs. Moreover, this framework is even more relevant knowing the experience of the U.S. which witnessed the growth of ‘faith-based businesses’ and had to deal with issues. Thanks to multiple disputes in courts, a clearer picture of the line to follow has been given. Jurisprudence was developed and legal texts have been adapted accordingly. Also, with the existence of ‘faith-based businesses’, creating a European framework would allow us to solve disputes in a sharper way and would permit us to avoid any discrepancies between the reality of the businesses and the lack of legislation.

Moreover, the outcome of this framework is to lead to a clearer outline of employer’s rights and duties in its relationship with its employees, enabling the safeguard of the most important European fundamental rights. To reach this goal, the idea of “reasonable accommodation” that is already to be found in the Employment Equality Directive<sup>123</sup> for employees with disabilities could be broadened to accommodate employees’ different beliefs and religion. That is what Title VII of the Civil Rights Act of 1964 requires while dealing with “disability and religious accommodations”<sup>124</sup>. This would concretely mean that the employer should be able to have, for example, a flexible schedule for religious practices. The Court of Justice already barely touched the topic in its case *Vivien Prais*<sup>125</sup>. Indeed, in that case, a Jewish candidate to an EU civil service position, which required tests to be taken as part of the application process, asked for a change of date because the tests were to be held on the first day of a Jewish holiday that does not allow to travel or to write. Even though the Court rejected the plaintiff’s claim, it did mention that it could be “desirable that an appointing authority

---

<sup>123</sup> Article 5, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>124</sup> Title VII of the Civil Rights Act of 1964.

<sup>125</sup> *Vivien Prais v. Council of the European Communities*, C-130/75, October 27<sup>th</sup>, 1976.

informs itself in a general way of dates which might be unsuitable for religious reasons and seeks to avoid fixing such dates for tests”<sup>126</sup>. Once again, it shows that the CJEU is always at the border of addressing religious-related issues but tends to avoid it. In that case, not accommodating the dates with the Jewish holiday constitutes an indirect discrimination since it implied that no Jewish people had been able to take the test.

Also, the author truly believes that setting criteria and legal rules for businesses, such as the concept of “religious accommodation”, will strengthen and brighten the inconsistent situation that is currently to be seen within European case-law. Moreover, the author recommends that a clear distinction should be made between public and private organizations being run with faith consideration, both not having the same objectives.

While both rights are already enshrined in the CFREU, it does not mean that it entails better protection of faith-based businesses. Also, an interesting point would be to get a clear and precise definition of a faith-based business. This one could be relying on the main component of the faith-based business, i.e. the ability to display faith or religious signs aligning with the owner’s beliefs or the ability to profess that the business is following a certain ethic relying on some religious or faith considerations. Religion, faith, beliefs should be described as broadly as possible in this definition since, as mentioned in the introduction, it has been found there are up to 10,000 distinct religions around the world. Also, to accommodate with the 27 Member States, and their own cultural and religious heritage, it is necessary to consider that religions have been evolving overtime due to multiple variables such as an important movement of different population. Also, it seems obvious that the starting point to a better protection of both fundamental freedoms is to be made by the political institutions through the establishment of a broad but precise definition followed by an intelligible framework. In fact, while not addressing faith-based businesses directly, a study observing the relationship between freedom of religion and other fundamental rights in the EU states that “the political institutions of the EU and the European Parliament (...) may be expected to start and shape a process of development and accommodation of a wider religious pluralism in a tolerant Europe”<sup>127</sup>. There is a need to recognize that our religious and faith traditions have moved these last few years and that relying on the dominant religion’s principles is not relevant anymore to address the diversity of the European population. Avoiding the topic is just threatening

---

<sup>126</sup> Ibid, para 18.

<sup>127</sup> Alejandro Saiz Arnaiz, Aida Torres Perez, Marisa Iglesias, Roberto Toniatti. February 2013. *Religious practice and observance in the EU Member States*. Study, Brussels: Directorate-General for Internal Policies. Policy Department C - Citizens' Rights and Constitutional Affairs, p. 39.

everyone's most fundamental freedoms. Nevertheless, while addressing the topic is of necessity, it goes without saying that establishing a broad definition of religion/faith practices should not be understood without any limit. In fact, in that case, and as the great philosopher John Stuart Mill stated, "the liberty of each individual must be limited by the equal liberty of every other"<sup>128</sup> (Mill 1859). This means that despite everyone having the right to exercise their own freedom, in our case, the right to conduct a faith-based business, it should be made in accordance with others' fundamental rights. Also, the limit here is that while the religious/faith definition should be as broad as possible, it should not lead to a point where it would infringe others' fundamental freedoms. Everything relies in finding a good balance between allowing 'faith-based businesses' but forbidding any discriminatory practices.

Also, considering the creation of a new EU framework also comes with the question of what kind of legal act should be implemented. Indeed, when dealing with such businesses that deal with such hot topics, it seems relevant to say that an EU Directive would be more suitable to the gradual creation of a faith-based business' framework, establishing a minimum standard. In fact, while a regulation would directly apply uniformly across all member states, the directive allows a smooth transition while still reaching the targeted goal. A directive has also for purpose to enable the member states to adapt the legislation regarding their national context, which is tremendously important in regard to the topic at stake. As mentioned, EU countries have all a very different religious history, practices, or even local practices that entails having a certain flexibility in the implementation. It will also allow a gradual change, and even though some could argue that it would lead to inconsistencies, the author believes that it is actually the opposite. In fact, tolerance can only be reached through diversity and this diversity needs to be considered when implementing the legal rules, especially when topics like business or religion are at stake. Later, once more discussions have been made on the topic of faith-based businesses, the EU directive can become the basis for a new EU regulation, especially if a better and more uniform application is needed. This procedure has been made for Data Protection going from Directive 95/46/EC to the EU regulation that is now known as General Data Protection Regulation (GDPR).

Nevertheless, a legal framework cannot be established without a solid basis; it means a clear understanding of the relevant terminology. In the case of faith-based businesses, the European debate towards secularism and neutrality is an obstacle. Indeed, "neutrality" has been used for decades by the European case-law and has been at the center of multiple controversies,

---

<sup>128</sup> Mill, John Stuart. 1859. *On Liberty*. London: Longman, Roberts, & Green Co.

but what if the goal of achieving a bigger tolerance in our society was residing in the establishment of a framework with a change of perspective towards the concept itself?

### 3.2. Reaching tolerance through a change of the ‘neutrality’ concept: analysis of the CJEU case-law

“The Court of Justice of the European Union (CJEU) is becoming a vehicle for secularism.”<sup>129</sup>, but how do the CJEU and the ECtHR understand the concept of secularism? The case-law around Europe has been relying on a “policy of neutrality” even though it remains impressively blurry. In fact, while relying on the imprecision of Article 4(2) of the Directive dealing with “churches and other public or private organisations”<sup>130</sup>, this policy is far from being settled with precise criteria and is still tremendously discussed by all involved actors. As explained correctly by M. Corsalini, “the CJEU extended conscience exemptions for churches to secular for-profit corporations, raising definitional issues related to the meaning of religion”<sup>131</sup>. The problem does not reside in the fact that for-profit corporations have been benefiting from conscience exemptions but the fact that there is no unambiguous definition of what faith-based businesses entail and how they should be handled. This misconception leads to clear-cut problems within the case-law, the Courts using the concept of “policy of neutrality” to overcome any substantial problems that are raising religious concerns.

For instance, in the *Achbita*<sup>132</sup> case held in 2017, Samira Achbita is a receptionist for a security and facility services company. After refusing to remove her headscarf, she was dismissed by the company. The facts here are rather interesting to discuss. Indeed, when she was first employed, Ms. Achbita was not wearing a headscarf. Later, she notified her managers that she will be, from now on, wearing an Islamic headscarf. Following that, she was notified that the security and facility services company has an unwritten internal rule prohibiting any employee from wearing signs of political, philosophical or religious beliefs. After a short period of absence due to sickness she still decided to come back to work wearing the Islamic

---

<sup>129</sup> European Centre for Law & Justice. (2023). *Religious Liberty: CJEU’s Secular Bias*. Retrieved October 30, 2024.

<sup>130</sup> Article 4(2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>131</sup> Corsalini, Matteo. 2020. “Religious Freedom, Inc: Business, Religion and the Law in the Secular Economy.” *Oxford Journal of Law and Religion*, 9, p. 44.

<sup>132</sup> ECJ, GC, C-157/15, *Samira Achbita Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, March 14<sup>th</sup>, 2017.

headscarf. However, a few days after she came back, the company's council decided to approve an amendment to the workplace regulations, putting down the previous "unwritten rule". The chronological facts appear as extremely relevant to rule the case. However, the ECJ ruled that the internal policy is to be called a "policy of neutrality"<sup>133</sup> that does not constitute a direct discrimination, but that could be an indirect discrimination if it is of more disadvantage for a certain group of people. The chronology of the facts is of no importance in the ECJ's ruling. Nevertheless, as explained the "unwritten rule" has been enshrined right after Ms. Achbita mentioned her wish to wear the Islamic headscarf at her workplace and nonetheless, the ECJ did not take the factual situation into further consideration. The Court just ruled that the "policy of neutrality"<sup>134</sup> was "legitimate"<sup>135</sup> and that it did "not constitute direct discrimination"<sup>136</sup>. Finally, the ECJ left the Belgian referring court to address if the internal rule is constituting indirect discrimination. The Belgian Supreme Court rejected Achbita's claim, but then a question remains; was the company's "policy of neutrality" really general and undifferentiated when it is factually proven that this latter was officially enshrined after the plaintiff raised her wish to wear such a religious sign at the workplace? The question would also be, does the unwritten rule would still have been enshrined if the religious sign at stake was a Christian cross instead of an Islamic veil? By not paying more attention to the facts and by not giving a clearer explanation, the ECJ left the possibility for national courts to manipulate the concept to its best interests, intrinsically leading to some minorities being more affected than others.

The question of the unsettled and extremely vague "policy of neutrality" is interesting since it shows that without, a settled legal terminology followed by a clear framework on how to run the business, the primary victims are our most fundamental human rights i.e. the freedom to conduct a business and the freedom of religion.

Moreover, going through the case-law, it is straightforward that the CJEU and the ECtHR have developed a perspective of secularism that has been affecting the freedom of religion. Indeed, "(...) the CJEU's jurisprudence presents reason to worry about the future of religious liberty on the continent"<sup>137</sup> or, according to Marek Piechowiak, the ECtHR has instrumentalized the concept of negative freedom of religion<sup>138</sup>. In fact, in the first place,

---

<sup>133</sup> Ibid, §40.

<sup>134</sup> Ibid, §40.

<sup>135</sup> Ibid, §37.

<sup>136</sup> Ibid, §44.

<sup>137</sup> Ibid.

<sup>138</sup> Piechowiak, Marek. 2011. "Negative Freedom of Religion and Secular Views in Light of the Case of *Lautsi vs. Italy*." *Warsaw School of Social Sciences and Humanities* 35-78.

negative freedom of religion meant the freedom not to adhere to any religion as enshrined by multiple ECHR documents<sup>139</sup> and the case-law of the ECtHR<sup>140</sup>. However, with further consideration, negative freedom of religion has been used to eliminate any religious signs to be displayed. These rulings almost reached the point that the only place people are allowed to wear or express their religious faith, or belief is their own house. However, as supported by R.J. Colombo, “religious freedom does not truly and fully exist if religious expression and practice is restricted to the private quarters of one’s home or temple”<sup>141</sup>. Then, the real question is why do we keep trying to separate the two most important pillars of everyone’s life? Despite showing the interconnection of religion and business life, the European case-law has been showing that neutrality is used for creating an environment free from religious or faith signs with an outcome obviously affecting some minorities more than others.

Concretely, and as mentioned previously, “policy of neutrality” are the terms used within the CJEU case-law. For instance, in many cases such as *OP v. Commune d’Ans*<sup>142</sup>, *L.F. v SCRL*<sup>143</sup>, *WABE*<sup>144</sup>, *Bougnaoui*<sup>145</sup>, or even *Achbita*<sup>146</sup> the Court gives its judgment using these terms. However, it is important to pay attention to the particular and repeated use of the terminology “neutrality” and the (deliberate?) omission of the term “secularism”.

On one hand, secularism refers to “the belief that religion should not be involved with the ordinary social and political activities of a country”<sup>147</sup>, and therefore is considered a philosophy in which religion should be separated from the states and their activities. On the other hand, neutrality is defined as “the condition of being neutral in a disagreement or war”<sup>148</sup> and is as a result, broader. Accordingly, when using the terminology “policy of neutrality”, the CJEU is extending the necessary secularism that was first entitled for states and their activities, to disagreements between private individuals in their everyday lives, including at the workplace. Also, as perfectly enshrined by the European Centre for Law & Justice, “while it

---

<sup>139</sup> See for example Guide on Article 9 of the European Convention on Human Rights.

<sup>140</sup> See ECtHR, no. 14307/88, *Kokkinakis v. Greece*, May 25<sup>th</sup>, 1993, §31; ECtHR, no. 24645/95, *Buscarini and others v. San Marino*, February 18<sup>th</sup>, 1999, §34.

<sup>141</sup> Colombo, Ronald J. 2013. “The Naked Private Square.” *Houston Law Review*, Vol. 51, p. 1.

<sup>142</sup> ECJ, GC, *OP v. Commune d’Ans*, C-148/22, §33.

<sup>143</sup> ECJ, C-344/20, *L.F. v S.C.R.L.*, §40 & 41.

<sup>144</sup> ECJ, GC, C-804/18, *IX V. WABE eV and MH Muller Handels GmbH v. MJ*, July 15<sup>th</sup>, 2021, §64 §68 §70-71 & §76-78.

<sup>145</sup> ECJ, GC, C-188/15, *Asma Bougnaoui and Association de defense des droits de l’homme (ADDH) v. Micropole SA*, §33.

<sup>146</sup> ECJ, GC, C-157/15, *Samira Achbita Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, March 14<sup>th</sup>, 2017, §40.

<sup>147</sup> <https://dictionary.cambridge.org/us/dictionary/english/secularism>

<sup>148</sup> <https://dictionary.cambridge.org/us/dictionary/english/neutrality>



may appear that the Court is trying to respect all religions, the neutrality principle stems from partiality towards secularism.”<sup>149</sup>. Undoubtedly, it means that by ruling and agreeing with a “policy of neutrality”, the CJEU case-law is unquestionably affecting some religions more than others. For instance, “it effectively discriminates against those who feel convicted to express their religion in all areas of their life.”<sup>150</sup>. In that sense, while the CJEU never dealt in its case-law about a person wishing to create or conduct a faith-based business, the outcome would, unfortunately and most probably, lead to preferential treatment for the creation of certain faith-based businesses. In fact, the question here is to know whether, for instance, a Christian business wishing “only” to display a cross in its shop would be more easily allowed than another faith-based business which religion would require to display more conspicuous religious or faith signs. Moreover, this is also to be seen at the ECHR level. As correctly defined by M. Corsalini, neutrality remains a “definitional puzzle”<sup>151</sup> and the ECtHR remains “famously known for routinely deferring the interpretation of the meaning and scope of neutrality to CoE states”<sup>152</sup>. Also, by excluding itself from giving any meaning or interpretation of the neutrality concept, the ECtHR leaves the door open to heterogeneous interpretation around Europe.

Therefore, both European Courts are trying to enshrine a new meaning of the secularism principle by using a biased interpretation or by totally avoiding it. The goal, as explained, is to understand “secularism” as being “neutrality” which entails all faith or religious signs to be removed. However, it has been shown through practical examples and the case-law that reaching a world free from any religious or faith is impossible. Indeed, despite arguing for neutrality, some “less conspicuous” religious signs have still been allowed by the Courts. For instance, in the ECtHR judgment *Lautsi v. Italy*<sup>153</sup>, the ECtHR ruled for the possibility to keep crucifix within school classrooms in Italy. In that case, Ms. Lautsi had her two children in a public school in Italy. She was claiming that crucifixes being displayed in the classrooms were violating their right to freedom of religion and that the state should ensure neutrality within such a place. Finally, the Grand Chamber rules that Italy is in position to decide to display or

---

<sup>149</sup> European Centre for Law & Justice. (2023). *Religious Liberty: CJEU's Secular Bias*. Retrieved October 30, 2024.

<sup>150</sup> Ibid.

<sup>151</sup> Corsalini, Matteo 2024. "The European "Cycle" of Neutrality." *BYU LAW International Center for Law and Religion Studies*. April 26<sup>th</sup>, 2024.

<sup>152</sup> Ibid.

<sup>153</sup> ECtHR, GC, no. 30814/06, *Lautsi and Others v. Italy*, March 18<sup>th</sup>, 2011.

not the crucifixes in school's classrooms since this decision is "a matter falling within the margin of appreciation of the respondent State."<sup>154</sup>

Obviously in that particular case, there is a public organization at stake which might influence the outcome. However, while the ECtHR try to protect the freedom of religion, on the contrary, the ruling seems to depicts a preferential treatment towards a certain religion more than others. Indeed, one could wonder if the ECtHR would have ruled similarly if signs from the Muslim or Jewish religion were instead being displayed within the schools. In that respect, it shows how important the use of terminology is to justify (partial?) rulings. Many authors argue for a conceptual problem that urgently need to be settled if our first goal is still to safeguard our most fundamental rights: "lot of conceptual confusion about the relationship between neutrality and secularism"<sup>155</sup>. By using "neutrality" instead of "secularism", the Courts are bypassing the first meaning of secularism that normally only applies to states. More than that, it even seems that the ECtHR is utilizing the concept of "neutrality" instead of "secularism" to avoid applying the necessary objectivity of public institutions, especially in schools. While this case deals with schools, i.e. public institutions, the underlying idea here would be the same for businesses. In the author's sense, partiality in the rulings could be avoided if the actual sense of "secularism" was to be respected. In the case of faith-based businesses, this means allowing any private company to display the signs it wishes to while running the business without discrimination against anyone. Indeed, the idea of allowing the display of any sign rather than forbidding all signs seems more appropriate and more respectful of our values and fundamental freedoms. In fact, everyone has their own bias, no matter how neutral one tries to be. Also, hiding your faith or beliefs is much more difficult than enabling religious or faith signs to be displayed. This would open the door to more tolerance and accordingly, to a lower rate of disputes that would tend to be settled by a partial ruling.

Therefore, allowing individuals to display religious or faith signs as they wish to, in a private work setting would tremendously profit tolerance in our society. In that regard, M. Piechowiak explains how forbidding religion, or faith signs leads to the enhancement of conflicts by highlighting any small difference. Tolerance, as described, "reduces the tensions and social fears resulting from ignorance and not knowing who the other members of the society are."<sup>156</sup>. Indeed, for some people, neutrality allows tolerance but isn't in diversity that

---

<sup>154</sup> Ibid, §70.

<sup>155</sup> Strasbourg Observers. 2011. *Lautsi v. Italy: The Argument From Neutrality*. March 22.

<sup>156</sup> Piechowiak, Marek. 2011. "Negative Freedom of Religion and Secular Views in Light of the Case of Lautsi vs. Italy." *Warsaw School of Social Sciences and Humanities*, p. 63.

people are proven to be more lenient about differences. This shows, once again, that restraining the creation, or the conduct of ‘faith-based businesses’ is of more disadvantages for individuals and our society than allowing it. It depicts also how the ECtHR and the CJEU have been fumbling with the concepts even though the Courts have been using tolerance in their rulings. For example, in *Föderation der Aleviten Gemeinden in Österreich v. Austria*<sup>157</sup> ruled March 2024, the ECtHR reiterated that “The Court has frequently emphasized the State’s role as the neutral and impartial organizer of the exercise of various religions, faiths and beliefs, and has stated that this role is conducive to public order, religious harmony and tolerance in a democratic society (see *S.A.S. v. France* [GC], no. 43835/11, §127)”<sup>158</sup>. Moreover, the CJEU is not ignorant of the use of the tolerance term too since when searching the term tolerance in the Curia database, 371 cases are appearing<sup>159</sup>.

Therefore, religious neutrality is not an easy concept to address. In fact, it has been a bewildering concept throughout time, scholars even describing it as a “highly versatile and multifaceted concept”<sup>160</sup> (Corsalini, *The European "Cycle" of Neutrality* 2024). This status urges for extensive and unambiguous clarification, especially for the private sector. First, the term “neutrality” has been widely used by the European case-law. However, while dramatically employed, this one seems to be taking various, and even conflicting senses depending on the context of each case. Indeed, as defended by Stijn Smet, the concept has two sides: neutrality as the guard of freedom of religion and belief, and neutrality as the perfect tool to set religious claims aside.<sup>161</sup> Also, the problem resides in a terminological gap that allowed the creation of an immense and heated neutrality policy debate. But the question is, how one single term can have such diametrically opposed definitions?

The problem resides in the fact that the sense given to the term is changing depending on the issue that needs to be resolved and the particular traditions of each member state of the EU. For instance, following the *Achbita* and *Bougnaoui* cases held by the CJEU on 14<sup>th</sup> March

<sup>157</sup> ECtHR, *Föderation der Aleviten Gemeinden in Österreich v. Austria*, no. 64220/19, 5<sup>th</sup> March 2024.

<sup>158</sup> Ibid, §50.

<sup>159</sup><https://curia.europa.eu/juris/liste.jsf?nat=or&mat=or&pcs=Oor&jur=C%2CT%2CF&for=&jge=&dates=&language=en&pro=&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&oqp=&td=%3BALL&avg=&lgreg=en&text=tolerance&lg=&page=1&cid=1564975>

<sup>160</sup> Corsalini, Matteo. April 26<sup>th</sup>, 2024. "The European "Cycle" of Neutrality." *BYU LAW International Center for Law and Religion Studies*.

<sup>161</sup> Smet, Stijn. 20 October 2022. "The Impossibility of Neutrality? How Courts Engage with the Neutrality Argument." *Oxford Journal of Law and Religion*, Vol. 11, Issue 1, 47-73.

2017<sup>162</sup>, many scholars deducted that the freedom to conduct a business enshrined into Article 16 of the CFREU “may take precedence over religion”<sup>163</sup>. In that regard, one could legitimately argue that it is tremendously harmful to give priority to one fundamental right over another. In fact, while it could be demonstrated that giving advantage to businesses’ freedom seems legitimate for the CJEU, thinking of the reason why the EU was first created, another point should be considered. Indeed, giving priority to the freedom to conduct a business sounds rather surprising knowing that this freedom, as exposed earlier, is not as fundamentally enshrined in all legal documents around Europe. Also, both rights, i.e. the freedom to conduct a business and the freedom of religion are equally enshrined in the CFREU. Does that mean that there are, in the Charter, fundamental rights more important than others? This statement could be the basis of impressive excesses and manipulations of fundamental rights depending on the interests at stake. Moreover, the approach of “corporate neutrality” is rather new since, as explained by Eoin Daly, neutrality or for instance, the term *laïcité* used in French is legally to be used as a principle of state neutrality and is normally not to be applied in the private sector.<sup>164</sup> However, the CJEU has been using this term to set aside any religious freedom, to avoid any bigger social and/or political debate. Daly mentions the willingness to “legally extend” the concept of *laïcité* “to the private sphere”<sup>165</sup>. By doing so, the Court is going down a slippery path that, once again, seems to give priority to one fundamental right over the other.

On the other hand, the ECtHR followed another path. For instance, in the *Eweida* case<sup>166</sup>, the Court ruled that Ms. Eweida’s freedom of thought, belief and religion has been infringed because she has been unallowed by her company to wear a Christian cross. The use by the Court of discretion criteria is also interesting here. It seems that precedence here is given to the freedom of religion, understandable knowing that the freedom to conduct a business is not to be directly found in the ECHR. However, what is important to discuss is that the Court ruled that “Ms. Eweida’s cross was discreet”<sup>167</sup>, but would the ruling be different if Ms. Eweida

---

<sup>162</sup> ECJ, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV.*, 14 March 2017, C-157/15 and ECJ, *Asma Bougnaoui and Association de défense des droits de l’homme (ADDH) v Micropole SA.*, 14 March 2017, C-188/15.

<sup>163</sup> Giles, Jessica. 11 June 2018. “Neutrality in the Business Sphere - An Encroachment on Rights Protection and State Sovereignty? .” *Oxford Journal of Law and Religion* p.339.

<sup>164</sup> Daly, Eoin. 11 May 2016. “Laïcité in the Private Sphere? French Religious Liberty After the Baby-Loup Affair.” *Oxford Journal of Law and Religion* 211-229.

<sup>165</sup> Ibid.

<sup>166</sup> ECtHR, nos. 48420/10, 59842/10, 51671/10 and 36516/10, *Eweida and others. vs United Kingdom*, January 15<sup>th</sup>, 2013

<sup>167</sup> Ibid, §94.

wanted to wear a bigger cross or a sign from another religion? It is straightforward that, following this “policy of neutrality”, some religions are more affected than others, some requiring more conspicuous religious signs to be displayed. In fact, the justification of “discreet” is a rather clumsy ruling which undoubtedly leads to wondering what signs are to be considered “discreet”. It demonstrates once again a failure to balance both fundamental rights and more importantly, it depicts that the precedence of one fundamental right is chosen depending on the religion or interests at stake.

From wanting a religious neutrality for everyone, it has led to, as perfectly described by M. Hunter-Henin, “non-neutral positions by the courts”<sup>168</sup>. The point here is to wonder if religious neutrality is achievable and thus, to question the relevance of continuing the “policy of neutrality”. Also, what if by trying to achieve equality through exclusive neutrality, the European courts completely restricted the freedom of religion? Therefore, the manipulation of the unsettled concept is tremendously harmful to the protection of the substance of the fundamental rights themselves, even leading to indirect discriminations towards certain growing minorities around Europe. Also, creating a legal framework that would first settle the necessary concepts and allowing businesses to publicly profess that it aligns with some faith or religious beliefs would be of more benefit to the safeguard of both fundamental freedoms. It is of importance to mention that so far, the “policy of neutrality” is only taking into consideration one fundamental right while as argued rightly by the CJEU itself, “freedom to conduct a business is not an absolute right but must be considered in relation to its social function”<sup>169</sup>. Consequently, a new framework with clear and settled concepts is needed to consider the undoubtable interrelation of both freedoms. As a result, putting aside the “policy of neutrality” and instead following a guideline which goal is to safeguard and balance both rights fairly, would resolve enormous bias and settle many disputes that have been experienced so far.

Thus, changing concepts or the way concepts are currently conceived by the European Courts would help to follow a new and different perspective. On the opposite of the idea that all signs should be banned, any employer should be allowed to expose its own religious beliefs while running the business. A particular caution should however be made to avoid any discrimination against employees and customers. The point is to argue for an inclusive vision that supports freely expressed businesses, but where showing your own religion is not

---

<sup>168</sup> Hunter-Henin, Myriam. 8th November 2022. "Religious Neutrality at Europe's Highest Courts: Shifting Strategies." *Oxford Journal of Law and Religion*, p.24.

<sup>169</sup> ECJ, C-544/10, *Deutsches Weintor eG v. Land Rheinland-Pfalz*, September 6<sup>th</sup>, 2012, §54.

curtailing others' beliefs. Indeed, as already argued in the 18<sup>th</sup> century by the third U.S. president, Thomas Jefferson, being able to express your own belief does not change other's people life: "it does me no injury for my neighbor to say there are twenty gods, or no God. It neither picks my pocket nor breaks my leg"<sup>170</sup>. What if, instead of seeing secularism as the need for everyone to internalize their own faith or belief, it was seen as the ability for everyone to wear or display what they wish to without, evidently, reaching proselytism. That is what some authors support when mentioning "open neutrality"<sup>171</sup> for the display of religious signs. But, despite the idea of "open neutrality"<sup>172</sup> which benefits the freedom of religion AND the freedom to conduct a business, the creation of a particular framework can come with challenging drawbacks. In fact, remaining issues need to be addressed to prevent certain rights from being protected at the expense of others.

### 3.3. Freedom of religion and freedom to conduct a business: an eternal correlation

While being both distinct fundamental rights, freedom of religion and freedom to conduct a business cannot be separated. Indeed, despite ups and downs, they always have been related to each other. In fact, no one can consider working without faith, at least deeply within itself. Even for an atheist, both rights apply since the person can choose to run his business without faith, i.e. choosing not to believe is also using the freedom of religion. Indeed, Article 9 of the ECHR is protecting negative aspects of the freedom of religion. The Court ruled that this freedom implies the possibility not to belong to a religion and not to practice it. In fact, the Court considers that the freedom of thought, conscience and religion is "one of the most vital elements that go to make up the identity of believers (...), but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned"<sup>173</sup>.

Also, as explained by the Praesidium of the Convention which drafted the CFREU, Article 10 of the Charter "corresponds to the right guaranteed in Article 9 of the ECHR and, in

---

<sup>170</sup> Jefferson, Thomas. 1784. "The Founders' Constitution." *Amendment I (Religion)*, Volume 5, Document 40.

<sup>171</sup> Strasbourg Observers. 22<sup>nd</sup> March 2011. *Lautsi v. Italy: The Argument From Neutrality*.

<sup>172</sup> Ibid.

<sup>173</sup> See ECtHR, no. 14307/88, *Kokkinakis v. Greece*, May 25<sup>th</sup>, 1993, §31 or see ECtHR, no. 24645/94, *Buscarini and others v. San Marino*, February 18<sup>th</sup>, 1999, §34.

accordance with Article 52(3) of the Charter, has the same meaning and scope.”<sup>174</sup>. As a result, this means that the freedom of thought, conscience and religion found at the EU level is to be understood as also implying the capacity not to belong to a specific religion and the ability not to practice any. Therefore, it is possible to say that even in the case of a person deciding to conduct a business without faith or religion, freedom of thought, conscience and religion will always be related to the freedom to conduct a business.

Having that in mind, some very successful business models went further, enabling the display of the freedom of religion within their freedom to conduct a business. For instance, in the U.S., the fast-food chain Chick-Fil-A has been run based on Christian principles since its very beginning. Indeed, since 1967, the fast-food chain has never opened on a Sunday, even though it has been quantified in the U.S. as a loss of 20 percent of revenue.<sup>175</sup> Chick-fil-a’s creator explains that the business is attracting “the kind of people who appreciate a Sunday off”<sup>176</sup>, allowing people to spend time with family and enjoy home life to then be more productive at work. One could state that this is leading to discrimination in hiring, but Chick-fil-A follows an equal hiring process relying on diversity and inclusion. Indeed, employees do not have to be Christians to work there, allowing them to freely believe and think.<sup>177</sup>

In a similar way, the author was able to freely enjoy a bagel made of Kosher meat at ‘*Beigelių krautuvėlė*’ located in Vilnius, as any other customer, while not being a Jewish customer. Or even ordered clothes from Christian-run clothes shop online where a Bible verse is written down the invoice (see Annex 1). However, while these faith-based businesses decided to conduct the business this way, some authors argued that one drawback is that it is leading to the requirement of employees sharing the same company’s convictions. In fact, it can be imagined that a Kosher butcher would require its employees to be Jews to align with the convictions’ business. J.-P. Schouppe even suggests that even if the faith-based business does not require employees to share the same conviction, it would be better they actually do: “since the hiring of employees who belong to a religious denomination different from the trend of the company is often at the origin of tensions, (...) it seems desirable that all the personnel

---

<sup>174</sup> Draft Charter of Fundamental Rights of the European Union- Text of the explanations relating to the complete text of the Charter as set out in CHARTE 4487/00 CONVENT 50, CHARTE 4473/00 – CONVENT 49. Brussels: Praesidium of the Convention responsible for drafting the Charter of fundamental rights, 18<sup>th</sup> October 2000, p. 7.

<sup>175</sup> Lucas, Miles K. Davis and Leyland M. 2007. "Principles before Profits: An interview with S. Truett Cathy." *New England Journal of Entrepreneurship*, Vol. 10, No. 1, Article 5, p. 27.

<sup>176</sup> Ibid.

<sup>177</sup> See <https://www.chick-fil-a.com/dei> and <https://www.forbes.com/forbes/2007/0723/080.html>

share in principle the religion or the trend of the company.”<sup>178</sup> This argument could only be refuted by making sure, through unambiguous and specific legal rules, that faith-based businesses are conducted without discriminative guidelines.

Consequently, while the downside of having a faith-based business is undoubtedly the fear of discrimination of employees and/or customers based on faith or religion, there is, without doubt, a myriad of pros for a concrete and regulated implementation of faith-based businesses in Europe. From heightening economic experience to social and psychological gains, faith-based businesses are not to be set aside. It has been demonstrated that faith and business will always be interlinked. Also, analyzing such a relationship depicts the utter importance of permitting faith-based businesses.

Implementing new rules for “faith-based businesses” will help maximize profits and not only economic ones. Also, despite steps taken by the EU, a first step also needs to be taken at the ECHR level to observe a consistent protection of both fundamental freedoms around Europe. The clear add-on of the freedom to conduct a business within the Convention would be a solution. In fact, so far, the ECtHR has been dealing with the freedom to conduct a business, which is undeniably inseparable from our everyday lives, using only the freedom of property that can be found in the first Protocol. This has led to prioritizing the freedom of religion and to incoherent rulings.

Finding a good balance between both fundamental rights is of tremendous importance, especially knowing the numerous benefits that will derive from the evolution of a more complete framework at all levels around Europe.

Indeed, economic, social or even ecological advantages are to be brought by the creation of a newer and complete regulatory framework in Europe. For instance, Laura L. Nash notices the importance of what she calls “spirituality in business”<sup>179</sup>. Indeed, according to her, “spirituality’s little successes – such as improved stamina, creativity, or ability to cooperate – can be seen without much effort to be factors of performance”<sup>180</sup>. An exacerbated performance is even recognized at the international level. In fact, at the United Nations Climate Change Conference COP27, it has been argued that a business with a strong sense of purpose inspires

---

<sup>178</sup> Translation by the author from Spanish. Schouppe, Jean-Pierre. June 2019. “Towards a Legal Structure for Ethos-Based Organizations in European Case Law.” *Ius Canonicum* 59, no. 117, p. 128.

<sup>179</sup> .L., Nash. 2003. “A spiritual audit of business: from tipping point to tripping point.” *Business, Religion and Spirituality* p. 57.

<sup>180</sup> Ibid.



more trust than any other business, leading to better returns and profits<sup>181</sup>. In other part of the World, it has been recognized by various studies that following religious ethics or values is economically helping businesses to maximize their profits. For instance, Nicaraguan coffee actors benefited from the insertion of religion within the coffee business. In that sector, “local religious networks both created and facilitated the strategies of these actors”<sup>182</sup> In a similar context, but on another continent, a study titled “Does religion enhance firm performance? Evidence from private firms in China”<sup>183</sup> depicts how businesses are benefiting from “higher accounting performance”<sup>184</sup> and that these ones “are more likely to obtain bank credit if entrepreneurs have religious beliefs”<sup>185</sup> However, the study carefully mentions that Buddhism is the major religion in China, and thus it can be deduced that doctrines and their implementation within private companies might differ if they were to be followed on the European continent. Nevertheless, seeing these various examples of successful faith-based schemes followed around the world by private entities shows that with specific legal bases, faith-based businesses are more profitable when being allowed. These studies all show that including religion is of interest for the companies from a lot of perspectives, and that applied to the European continent, where a similar result is most likely to be achieved.

Moreover, despite the economic returns, it has been shown that faith-based businesses are sociologically and ecologically more advantageous for entrepreneurs, and society. In fact, it seems obvious that people would be more inclined to start their own business if they could run it without the fear of having to hide their religion or faith. Sociologically, it has also been argued that “economic actors are best viewed as embedded in larger networks rather than as independent actors”<sup>186</sup>. As a result, conducting a faith-based business gives the opportunity of being included within a network which ensures a feeling of fulfillment. It also allows us to build a community, since having values and goals coming from similar religious ethics makes businesses, but also actors and consumers in similar sectors relatively closer. That is exactly what happened for the Coffee market in Latin America, enabling the community to follow a

---

<sup>181</sup> John Mennel, John Peto, Shira Beery. November 1<sup>st</sup>, 2022. "Businesses with a clear purpose do better while also protecting people and planet. Here's how." *World Economic Forum*.

<sup>182</sup> Reynolds, Amy. 2013. "Networks, Ethics, and Economic Values: Faith-Based Business and the Coffee Trade in Central America." *Latin American Research Review* p. 113.

<sup>183</sup> Liping Lu, Yiping Wu. August 2020. "Does religion enhance firm performance? Evidence from private firms in China." *China Economic Review*, Vol. 62.

<sup>184</sup> Ibid.

<sup>185</sup> Ibid.

<sup>186</sup> Reynolds, Amy. 2013. "Networks, Ethics, and Economic Values: Faith-Based Business and the Coffee Trade in Central America." *Latin American Research Review* p. 116.

“ecumenical and community development”<sup>187</sup> lead to the creation of “new capabilities among farmers”<sup>188</sup>.

Additionally, having a religious or faith purpose is also to contribute to higher returns in our society. Indeed, faith-based businesses usually rely on higher ethical values that people like to follow while buying products or services sold by the faith-based businesses. Also, this means that creating a specific legal framework will also give the ability for individuals to consume without infringing on their habits and/or beliefs and is, in the end, benefiting the whole society.

Another very fascinating research paper conducted by E. Boasson and al. in New York, examines interesting faith-based funds making ethical investments based on biblical principles. The study tries to answer the question of whether this type of fund is making sufficient and satisfying financial returns. The answer is, according to the authors, straightforward. Indeed, by analyzing the Aquinas Wealth Company fund which based its investments on “the legacy of Saint Thomas Aquinas”<sup>189</sup> and Christianity, the authors have been able to deduce that “even faith-based funds that refrain from investing in the more profitable lines of business on the grounds of moral/ethical reasons can perform as well as funds that do not have such restriction.”<sup>190</sup>. It means that not allowing faith-based businesses using the argument of economic loss is completely misleading. In Europe, similar businesses can be observed, even though there are no legal rules supervising it. A practical example is Altum Faithful Investing<sup>191</sup> which is a Spanish-based Christian investment fund. Indeed, this investment fund is registered in Madrid and financed by the European Regional Development Fund. The ERDF was created to correct “imbalances between regions enabling investments in a smarter, greener, more connected and more social Europe that is closer to its citizens”<sup>192</sup>. Consequently, this means that by integrating Altum Faithful Investing within the Fund, the European Commission considered that this latter is helping the EU to be more competitive, greener, more social and closer to its citizens<sup>193</sup>. In fact, even though, the eligibility of each company to the ERDF depends on the selection criteria and investment priorities of each European regional

---

<sup>187</sup> Ibid, p. 113.

<sup>188</sup> Ibid.

<sup>189</sup> See <https://aquinaswealth.com/about-aquinas-wealth-advisors/>

<sup>190</sup> Emil Boasson, Vigdis Boasson, Joseph Cheng. 2006. "Investment principles and strategies of faith-based funds." *Managerial Finance*, Vol. 32, No. 10, p.844.

<sup>191</sup> <https://altumfi.com>

<sup>192</sup> European Commission, 2024, European Regional Development Fund, at [https://ec.europa.eu/regional\\_policy/funding/erdf\\_en](https://ec.europa.eu/regional_policy/funding/erdf_en)

<sup>193</sup> Goals as defined by the ERDF.

programs<sup>194</sup>, eligible companies are to be considered only if they bring innovation, connectivity, are more social, greener and closer to EU citizens. Therefore, it can be deduced that Altum Faithful Investing was a newer initiative that would be truly and hugely beneficial for the future of Europe during this period of 2021-2027. It can also be inferred that by financing this type of business that then will be growing, it only amplifies the necessity to create a legal framework that would enable the control and set limits of ‘faith-based businesses’.

As a result, multiple well implemented faith-based businesses illustrate how helpful it is to enable businesses to follow the faith-based approach, if they wish to. It truly maximizes their profits without shelving their inherent and personal values. Permitting businesses to follow this approach is also beneficial to various actors who benefited from the implementation of such analogous values, i.e. not only the people establishing the business are gaining from this implementation, but also the public that can more easily find a good or service that reflects their own values. Also, it shows that improving lacking definition, being more tolerant over religious/faith signs in the business life helps society and, in the end, isn’t the essence of creating laws? Indeed, following certain religious/faith/beliefs morals enables the business sector to be more ethical, to have social and economic gains that in the end re-benefit society. Also, the remaining question is what are we waiting to start addressing the interrelation between two extremely fundamental human rights?

---

<sup>194</sup> See Accessing the funds, section *Is my project eligible?* at [https://ec.europa.eu/regional\\_policy/funding/accessing-funds\\_en](https://ec.europa.eu/regional_policy/funding/accessing-funds_en)

## CONCLUSIONS

1. Striking the right balance between the freedom to conduct a business and the freedom of religion remains a hardship. While both rights are interrelated and should always be treated together to be entirely safeguarded, these rights remain the epicenter of tremendous controversies.
2. The lack of consistency led the CJEU and the ECtHR to partiality in their rulings impacting certain minorities more than others. The use of the “policy of neutrality” as a justification created a heated debate around Europe and depicted the importance of clarifying the most basic concepts and unfortunately leaving the task to balance between the interests of employers and employees to the shoulders of national courts.
3. Faith-based businesses are the perfect example of the interrelation between the freedom of religion and the freedom to conduct a business. Still, forgetting to address faith-based businesses has led the Courts to confuse the distinction between church, public and private organizations. This resulted in dealing with faith-based business under the same legal rules as for-profit activities achieved by church-like organizations.
4. The erection of a comprehensive and harmonized European framework could help identify and take heed of such businesses. Establishing a specific EU legal framework would avoid situations and rulings leading to the precedence of one fundamental freedom over the other.
5. When setting new definitions and new legal rules regarding faith-based businesses, limitations should be enshrined to avoid faith-based business being run with discrimination towards employees and/or customers. Getting inspired from other experiences around the world could be a guideline to achieve a framework that would be more representative of our society than it is today.

## RECOMMENDATIONS

1. Freedom to conduct a business is still not to be found in the ECHR or is only to be seen through the right of property in Protocol 1. Recognizing the freedom to conduct a business as a fundamental right of its own within the ECHR would enable fairer and clearer rulings.
2. While the “policy of neutrality” keeps being used as the justification for partial rulings, establishing a clearer definition of the “neutrality” and “secularism” concepts together with setting clear criteria, which must be proven, would be of crucial importance.
3. The erection of a new EU regulation is necessary in order to ensure the right balance between individuals' rights to practice their religion and the freedom to conduct business. This regulation should: i) be established in the secondary law of the European Union; ii) distinguish between church-like, public organizations and private corporations that wish to make profits without hiding their faith or religious considerations; iii) religion, faith, and beliefs give a broad definition, considering the 27 members' cultural heritage and history; iv) emphasize that any business should be allowed to publicly profess that it is aligning with some faith or religious beliefs; v) avoid any discriminatory practices within the business and consider the employees' situation as well as the need to avoid any customers' discrimination.

## LIST OF BIBLIOGRAPHY

### Treaties:

1. American Convention on Human Rights.
2. Charter of Fundamental Rights of the European Union  
[http://data.europa.eu/eli/treaty/char\\_2012/oj/eng](http://data.europa.eu/eli/treaty/char_2012/oj/eng)
3. European Convention on Human Rights  
[https://www.echr.coe.int/documents/d/echr/Convention\\_ENG](https://www.echr.coe.int/documents/d/echr/Convention_ENG)
4. Lisbon Treaty.
5. Maastricht Treaty.
6. International Covenant on Economic, Social and Cultural Rights.
7. Protocol No. 1 to the European Convention on Human Rights.

### Legislation:

8. Betriebsverfassungsgesetz, Works Constitution Act (Federal Republic of Germany).
9. Civil Rights Act of 1964, Public Law 88-352 (United States)  
<https://www.govinfo.gov/content/pkg/STATUTE-78/pdf/STATUTE-78-Pg241.pdf>
10. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
11. Croatian Constitution.
12. French Constitution.
13. Grundgesetz, Basic Law for the Federal Republic of Germany.
14. Lithuanian Constitution.
15. Oklahoma Constitution.
16. Religious Freedom Restoration Act of 1993, Public Law 103-14  
<https://www.congress.gov/103/statute/STATUTE-107/STATUTE-107-Pg1488.pdf>

### Case-law :

17. CA Toulouse, 4e ch. soc., 17 août 1995, *Baracassa c/ Association Culturelle Israélite de Toulouse*.
18. CA Paris, n° 89-36864, 25 mai 1990, 21e ch., *Brami c/ Arbib*.

19. Case 596/56, March 6<sup>th</sup>, 1958. BVerfG.
20. ECJ, C-4/73, *J. Nold, Kohlen- und Baustoffgroßhandlung v. Commission of the European Communities*, May 14<sup>th</sup>, 1974.
21. ECJ, GC, C-188/15 *Asma Bougnaoui, Association de defense des droits de l'homme (ADDH) v. Micropole SA*, 14 March 14<sup>th</sup>, 2017.
22. ECJ, GC, C-336/19, *Centraal Israëlitisch Consistorie van België v. Vlaamse Regering*, December 17<sup>th</sup>, 2020.
23. ECJ, GC, c-148/22, *OP v. Commune d'Ans*, November 28<sup>th</sup> 2023.
24. ECJ, C-544/10, *Deutsches Weintor eG v. Land Rheinland-Pfalz*, September 6<sup>th</sup>, 2012.
25. ECJ, C-68/17, *IR v. JQ*, September 11<sup>th</sup>, 2018.
26. ECJ, GC, C-804/18, *IX v. WABE eV and MH Muller Handels GmbH v MJ.*, July 15<sup>th</sup>, 2021.
27. ECJ, Second Chamber, C-344/20, *L.F. v S.C.R.L.*, October 13<sup>th</sup>, 2022.
28. ECJ, *Lidl GmbH & Co. KG v Freistaat Sachsen*, June 30<sup>th</sup>, 2016.
29. ECJ, GC, C-157/15, *Samira Achbita Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, March 14<sup>th</sup>, 2017.
30. ECJ, C-230/78, *SpA Eridania and others*, September 27<sup>th</sup>, 1979.
31. ECJ, C-196/87, *Steymann / Staatssecretaris van Justitie*, October 5<sup>th</sup>, 1988.
32. ECtHR, no. 24645/95, *Buscarini and others v. San Marino*, February 18<sup>th</sup>, 1999.
33. ECtHR, no. 27417/95, *Cha'are Shalom Ve Tsedek v. France*, June 27<sup>th</sup>, 2000.
34. ECtHR, no. 7552/09, *Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*, March 4<sup>th</sup>, 2014.
35. ECtHR, nos. 48420/10, 59842/10, 51671/10 and 36516/10, *Eweida and Others v. The United Kingdom*, January 15<sup>th</sup>, 2013.
36. ECtHR, *Föderation der Aleviten Gemeinden in Österreich v. Austria*, no. 64220/19, 5<sup>th</sup> March 2024.
37. ECtHR, no. 14967/89, *Guerra & Others v. Italy*, March 1<sup>st</sup>, 2005.
38. ECtHR, no. 14307/88, *Kokkinakis v. Greece*, May 25<sup>th</sup>, 1993.
39. ECtHR, GC, no. 30814/06, *Lautsi and Others v. Italy*, March 18<sup>th</sup>, 2011.
40. ECtHR, no. 53984/00, *Radio France and Others v. France*, March 30<sup>th</sup>, 2004.
41. ECtHR, no. 6538/74, *Sunday Times v. The United Kingdom*, April 26<sup>th</sup>, 1979.
42. ECtHR, no. 72881/01, *The Moscow Branch of the Salvation Army v. Russia*, October 5<sup>th</sup>, 2006.
43. ECtHR, no. 1387/04, *Yershova v. Russia*, April 8, 2010.
44. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).
45. *Equal Employment Opportunity Commission (EEOC) v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015).
46. *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward Cnty.*, 450 F.3d 1295, 1305 (11th Cir. 2006).
47. *Santa Clara Cnty. V. S. Pac. R.R. Co.*, 118 U.S. 394, 396 (1886).

## Studies and articles:

48. Alejandro Saiz Arnaiz, Aida Torres Perez, Marisa Iglesias, Roberto Toniatti. February 2013. *Religious practice and observance in the EU Member States*. Study, Brussels: Directorate-General for Internal Policies. Policy Department C - Citizens' Rights and Constitutional Affairs.
49. n.d. *Altar'd State*. Accessed July 16, 2024. [https://www.altardstate.com/?gad\\_source=1&gbraid=0AAAAACqIYeh8spwWGEcszw9IJD6-AKY4H&gclid=CjwKCAjwNi0BhA1EiwAWZaANIWPcBOJ2S9RAYEtEamaDTKqBYZ23Fj7Waw6qqM90s1-rtseBls1dBoCzssQAvD\\_BwE](https://www.altardstate.com/?gad_source=1&gbraid=0AAAAACqIYeh8spwWGEcszw9IJD6-AKY4H&gclid=CjwKCAjwNi0BhA1EiwAWZaANIWPcBOJ2S9RAYEtEamaDTKqBYZ23Fj7Waw6qqM90s1-rtseBls1dBoCzssQAvD_BwE).
50. Andrew M. Baxter, Alex Nowrasteh. 2021. "A Brief History of U.S. Immigration Policy from the Colonial Period to the Present Day." *CATO INSTITUTE*. August 3. Accessed July 31, 2024. <https://www.cato.org/policy-analysis/brief-history-us-immigration-policy-colonial-period-present-day>.
51. Applebaum, Herbert. 1992. *The Concept of Work. Ancient, Medieval, and Modern*. New York: State University of New York Press.
52. Blissenbach, Michael. 2016. "Don't Take Religious Freedom Purely Personally: The Constitutional Case for Corporate Religious Free Exercise Rights." *University of St. Thomas Law Journal* 12, no. 3, 529-539.
53. C., Kirchmeyer. 1995. "Managing the work-nonwork boundary: an assessment of organizational responses." *Human Relations*, vol. 48, n°5 515-536.
54. Carls, Paul. n.d. *Émile Durkheim (1858-1917)*. Accessed July 17, 2024. <https://iep.utm.edu/emile-durkheim/#:~:text=Durkheim%20also%20argues%20that%20religion,history%2C%20being%20born%20from%20it>.
55. Chick-fil-a. n.d. *Our Culture and Values*. Accessed July 16, 2024. <https://www.chick-fil-a.com/careers/culture#:~:text=Our%20Purpose,guided%20all%20that%20we%20do>.
56. Ciepley, David. 2013. "Neither Persons nor Associations: Against Constitutional Rights for Corporations." *Journal of Law and Courts*, Volume 1, Issue 2, 221-245.
57. Colombo, Ronald J. 2023. "Religious Freedom and the Business Corporation." 210-234.
58. Colombo, Ronald J. 2013. "The Naked Private Square." *Houston Law Review*, Vol. 51 1-88.
59. Corsalini, Matteo. 2022. *Business, Religion, and the Law - A Primer*. September 22. Accessed November 28, 2024. <https://talkabout.iclrs.org/2022/09/22/business-religion-and-the-law/>.



60. Corsalini, Matteo. 2020. "Religious Freedom, Inc: Business, Religion and the Law in the Secular Economy." *Oxford Journal of Law and Religion*, 9 28-55.
61. Couperus, Eline. October 30<sup>th</sup>, 2024. "Questioning the coherence of the freedom to conduct a business: Insights from the Court of Justice of the European Union"
62. 2024. "The European "Cycle" of Neutrality." *BYU LAW International Center for Law and Religion Studies*. April 26. Accessed September 17, 2024. <https://talkabout.iclrs.org/2024/04/26/the-european-cycle-of-neutrality/#:~:text=Deemed%20necessary%20to%20maximize%20customer,to%20convey%20to%20the%20public.>
63. Dalia Vasarienė, Lyra Jakulevičiene. December 28, 2021. "Freedom to Conduct Business During the Covid-19 Pandemic." *Tilburg Law Review*, Vol. 26, Issue 1 16-29.
64. Daly, Eoin. 11 May 2016. "Laïcité in the Private Sphere? French Religious Liberty After the Baby-Loup Affair." *Oxford Journal of Law and Religion* 211-229.
65. Delgrange, Xavier. 2019. «L'entreprise de tendance, c'est tendance !» *Revue Trimestrielle Des Droits de l'Homme*, Éditions ANTHEMIS, 655-686.
66. Diamant, Jeff. 2019. "Europe experiences a surge in government restrictions on religious activity over the last decade", *Pew Research Center*, July 29. Accessed on December 11<sup>th</sup>, 2024 at <https://www.pewresearch.org/staff/jeff-diamant/>
67. Edge, Peter W. 2013. "Believer beware: The challenges of commercial religion." *Legal Studies*, Vol. 33 No. 3, September 3: 382-406.
68. Emil Boasson, Vigdis Boasson, Joseph Cheng. 2006. "Investment principles and strategies of faith-based funds." *Managerial Finance*, Vol. 32, No. 10 837-845.
69. Eulerpool Business Dictionary. n.d. "Tendenzbetrieb Definition." *Eulerpool*. Accessed August 5, 2024. <https://eulerpool.com/en/lexicon/T/Tendenzbetrieb.>
70. European Centre for Law & Justice. 2023. "Religion: parti pris laïc de la CJUE." *ECLJ*. Accessed October 30, 2024. [https://eclj.org/religious-freedom/eu/worrying-signs-reflections-on-the-cjeus-secular-bias-in-religious-liberty-jurisprudence#\\_ftn3.](https://eclj.org/religious-freedom/eu/worrying-signs-reflections-on-the-cjeus-secular-bias-in-religious-liberty-jurisprudence#_ftn3)
71. European Parliament, "European Charter of Fundamental Rights: five things you need to know", December 1<sup>st</sup>, 2019. Accessed on December 12<sup>th</sup>, 2024. <https://www.europarl.europa.eu/topics/en/article/20191115STO66607/european-charter-of-fundamental-rights-five-things-you-need-to-know#:~:text=Why%20do%20Europeans%20need%20the,the%20Charter%20of%20Fundamental%20Rights.>

72. Feder, Shira. 2019. "All the European Countries Where Kosher and Halal Meat Production Are Now Forbidden ." *Forward*. January 7. Accessed August 8, 2024. <https://forward.com/food/416983/all-the-european-countries-where-kosher-and-halal-meat-production-are-now/>.
73. Federal Ministry of Justice. 2001. "Works Constitution Act ." September 25. Accessed August 2024, 5. [https://www.gesetze-im-internet.de/englisch\\_betrvg/englisch\\_betrvg.html](https://www.gesetze-im-internet.de/englisch_betrvg/englisch_betrvg.html).
74. Gerbet, Pierre. CVCE. "The Charter of Fundamental Rights of the European Union" July 8<sup>th</sup>, 2016. p. 2/4.
75. Giles, Jessica. 11 June 2018. "Neutrality in the Business Sphere - An Encroachment on Rights Protection and State Sovereignty? ." *Oxford Journal of Law and Religion* 339-346.
76. Gill-Pedro, Eduardo. 2022. "Whose Freedom is it Anyway? The Fundamental Rights of Companies in EU Law." *European Constitutional Law Review*, 183-206.
77. 2022. "Whose Freedom is it Anyway? The Fundamental Rights of Companies in EU Law." *European Constitutional Law Review*, 195.
78. Haas, Stephen. n.d. "Headscarves in the Workplace: A Comparison Between the United States and Europe on Workplace Accommodations for Religious Practices." *National Paralegal College*. Accessed September 18, 2024. <https://www.nationalparalegal.edu/ViewNews.aspx?intTakeOnNewsID=103>.
79. Holy Roman Empire Association. "The Peace of Augsburg - 1555". Accessed on December 12<sup>th</sup>, 2024. <https://www.holyromanempireassociation.com/peace-of-augsburg.html>
80. Hunter-Henin, Myriam. 8th November 2022. "Religious Neutrality at Europe's Highest Courts: Shifting Strategies." *Oxford Journal of Law and Religion* 23-46.
81. Inter-American Specialized Conference on Human Rights. 1969. *American Convention on Human Rights* . November 22. Accessed July 2024, 18. <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.
82. Irwin, Kristen. "Pierre Bayle (1647-1706)". Internet Encyclopedia of Philosophy. Accessed on December 12<sup>th</sup> 2024. <https://iep.utm.edu/pierre-bayle/#:~:text=He%20is%20best%20known%20for%20his%20explicit%20defenses%20of%20religious,a%20basis%20for%20religious%20toleration>
83. Jefferson, Thomas. 1784. "The Founders' Constitution." *Amendment I (Religion)*, Volume 5, Document 40.

84. J.F. Matthews, Donald MacGillivray Nicol, "Edict of Milan. Roman History", Britannica. Accessed on December 12<sup>th</sup>, 2024. <https://www.britannica.com/topic/Edict-of-Milan>
85. John Mennel, John Peto, Shira Beery. 2022. "Businesses with a clear purpose do better while also protecting people and planet. Here's how." *World Economic Forum*. November 1. Accessed July 22, 2024. <https://www.weforum.org/agenda/2022/11/4-ways-purpose-into-profitability/>.
86. Juan de Lucio, Juan S. Mora-Sanguinetti. 2022. "Drafting "better regulation": The economic cost of regulatory complexity." *Journal of Policy Modeling* 163-183.
87. Justice, European Center for Law &. 2023. "Religious Liberty: CJEU's Secular Bias ." [https://eclj.org/religious-freedom/eu/worrying-signs-reflections-on-the-cjeus-secular-bias-in-religious-liberty-jurisprudence#\\_ftn3](https://eclj.org/religious-freedom/eu/worrying-signs-reflections-on-the-cjeus-secular-bias-in-religious-liberty-jurisprudence#_ftn3).
88. Kali Robinson, Diana Roy . 2024. "Europe's Migration Dilemma." *Council of Foreign Relations*. May 31. Accessed July 22, 2024. <https://www.cfr.org/article/europes-migration-dilemma>.
89. Kluge, Adam. 2024. *A Brief History of Business and Business Theory*. January 30. Accessed July 17, 2024. <https://www.oxfordscholastica.com/blog/a-brief-history-of-business-and-business-theory/>.
90. L.L., Nash. 2003. "A spiritual audit of business: from tipping point to tripping point." *Business, Religion and Spirituality* pp. 53-80.
91. Leijten, Ingrid. December 28, 2017. *Core Socio-Economic Rights and the European Court of Human Rights* . Cambridge University Press.
92. Liping Lu, Yiping Wu. 2020. "Does religion enhance firm performance? Evidence from private firms in China ." *China Economic Review*, Vol. 62. August. Accessed October 7, 2024. <https://www.sciencedirect.com/science/article/abs/pii/S1043951X20300778>.
93. Lucas, Miles K. Davis and Leyland M. 2007. "Principles before Profits: An interview with S. Truett Cathy." *New England Journal of Entrepreneurship*, Vol. 10, No. 1, Article 5 27-32.
94. Matteucci, Aldo. Published on March 3<sup>rd</sup>, 2015. Updated on August 30<sup>th</sup>, 2024. Accessed on December 12<sup>th</sup>, 2024. <https://www.diplomacy.edu/blog/whats-all-the-fuss-about-the-westphalia-settlement/#:~:text=On%20the%20substance%2C%20there%20is,Western%20Europe%20as%20a%20whole>.
95. McConnell, Michael W. February 2000. "Why is Religious Liberty the First Freedom." *Cardozo Law Review* 21, no.4 1243-1266.

96. Mill, John Stuart. 1859. *On Liberty*. London: Longman, Roberts, & Green Co.
97. Morgan, James Frederick. 2015. "Faith (re)engages with business: cultural, legal and managerial dimensions." *International Journal of Law and Management* Vol. 58 No. 4, 2016 (International Journal of Law and Management) pp. 444-467.
98. Mumphord H. Kendall, Sonnet M. Johnston. February 2023. "Navigating Employment Law for "Christian Owned and Operated" Businesses." *American Journal of Industrial and Business Management*, Vol. 13, No. 2 46-67.
99. Neroulis, Nicole. 2012. "Alaska Airlines ends decades-old prayer card tradition." *Reuters*. January 26. Accessed July 16, 2024.  
<https://www.reuters.com/article/idUSTRE80P03Z/>.
100. O'Connor, Niall. 2024. *Business Freedoms and Fundamental Rights in European Union Law*. Oxford University Press 91-134.
101. Piechowiak, Marek. 2011. "Negative Freedom of Religion and Secular Views in Light of the Case of Lautsi vs. Italy." *Warsaw School of Social Sciences and Humanities* 35-78.
102. Ponthoreau, Marie-Claire. Avril 2024. "La liberté d'entreprise, une perspective de droit compare. France.", Service de recherche du Parlement européen.
103. Reynolds, Amy. 2013. "Networks, Ethics, and Economic Values: Faith-Based Business and the Coffee Trade in Central America." *Latin American Research Review* p. 112-132.
104. Ripken, Susanna Kim. 2009. "Corporations are people too: A multi-dimensal approach to the corporate personhood puzzle." *Fordham Journal Of Corporate & Financial Law*, Vol. XV 98-126.
105. Roberts, Cheryl. 2023. *History of Religion: Origin, Timeline & Creation*. April 11. Accessed July 17, 2024. <https://study.com/academy/lesson/history-of-religion-overview-origin-timeline.html#:~:text=The%20history%20of%20religion%20may,as%20early%20as%2060%2C000%20BCE.>
106. Rougeot-Delyfer, Anne-Marie. 2022. "Libertés et discriminations: Entreprise de tendance." *DRDS IRE RP*. December. Accessed August 5, 2024. <https://drds-irerp.fr/entreprise-de-tendance/>.
107. Schouppe, Jean-Pierre. June 2019. "Towards a Legal Structure for Ethos-Based Organizations in European Case Law." *Ius Canonicum* 59, no. 117 121-158.
108. Smet, Stijn. 20 October 2022. "The Impossibility of Neutrality? How Courts Engage with the Neutrality Argument." *Oxford Journal of Law and Religion*, Vol. 11, Issue 1 47-73.

109. Strasbourg Observers. 2011. *Lautsi v. Italy: The Argument From Neutrality*. March 22. Accessed December 2, 2024. <https://strasbourgobservers.com/2011/03/22/lautsi-v-italy-the-argument-from-neutrality/>.
110. Tocqueville, Alexis de. 1835. *Democracy in America: The Complete and Unabridged Volumes I and II* . Bantam Classics.
111. Toggenburg, Gabriel. 2021. *The 16th of all EU rights: the right to conduct a business and how the Charter contributes*. January 12. Accessed November 29, 2024. <https://www.eurac.edu/en/blogs/eureka/the-16th-of-all-eu-r-rights-the-right-to-conduct-a-business-and-how-the-charter-c>.
112. United Nations, General Assembly 2200A (XXI). 1966. "International Covenant on Economic, Social and Cultural Rights ." *United Nations Human Rights Office of the High Commissioner*. December 16. Accessed July 23, 2024. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.
113. Warner, R. Stephen. 2005. *A Church of Our Own. Disestablishment and Diversity in American Religion*. Rutgers University Press.
114. Wasserman, Pam. 2024. *World Population by Religion: A Global Tapestry of Faith*. January 12. Accessed July 17, 2024. <https://populationeducation.org/world-population-by-religion-a-global-tapestry-of-faith/>.
115. World Bank. 2024. "Faith Based and Religious Organizations." *World Bank Group*. Accessed August 8, 2024. [https://www.worldbank.org/en/about/partners/brief/faith-based-organizations#:~:text=Faith%2Dbased%20organizations%20\(FBOs\),world's%20population%20claims%20religious%20affiliation](https://www.worldbank.org/en/about/partners/brief/faith-based-organizations#:~:text=Faith%2Dbased%20organizations%20(FBOs),world's%20population%20claims%20religious%20affiliation).
116. Zarin, S. Jason. July 2024. Freedom to conduct a business, a comparative law perspective. United States of America. European Parliamentary Research Service.
117. n.d. *Faith Based and Religious Organizations*. Accessed July 22, 2024. <https://www.worldbank.org/en/about/partners/brief/faith-based-organizations>.

## ABSTRACT

The scientific study dives into the analysis of the interrelation between the freedom to conduct a business and the freedom of religion. The thesis discusses both fundamental freedoms and describes how fundamental a fairer balance between both is necessary within the European continent. The research underlines the misconception towards important concepts such as secularism and neutrality through the concrete example of faith-based businesses.

The primary objective is to discuss how the improvement of legal definitions and concepts as well as the creation of a European framework will help achieve a fairer balance between both fundamental freedoms. Another objective is to show that the guidelines followed by the legal texts and case-law are tremendously detrimental to the safeguard of both rights and usually lead to the precedence of one fundamental right over the other. The conducted assessment is focused on faith-based businesses, i.e. private companies whose first goal is to seek profits but without hiding their faith, beliefs or religion. The thesis highlights the difference between economic activities pursued by church-like entities or public organizations and faith-based businesses.

The key findings of the thesis are the uncertainty created by an obvious lack of consistency regarding several key concepts; the lack of understanding of Europe's changing diversity and the necessity to address it; the necessity for a legal framework so as to achieve a better safeguard of both fundamental freedoms and an increasing tolerance.

*Key words:* EU law, interrelation, freedom to conduct a business, freedom of religion, faith-based business

## **SUMMARY**

### **INTERRELATION BETWEEN FREEDOM OF RELIGION AND FREEDOM TO CONDUCT A BUSINESS: BALANCING FAITH AND CORPORATIONS**

The thesis aims to understand and scrutinize the correlation between the freedom of religion and the freedom to conduct a business. The focus is put on the difficult coexistence of both freedoms within the European continent. It is particularly depicted in the lacking legal rules and framework towards businesses being run with a religious or faith consideration.

To achieve the aim of the thesis, the following objectives are set out to be accomplished:

1. Identify how the freedom of religion and the freedom to conduct a business are being addressed together within the European continent.
2. Understanding and assessing businesses being run with a faith, belief or religious consideration around Europe.
3. To propose the establishment of new legal rules considering the diversity of Europe through businesses run with faith, beliefs or religious considerations.

The thesis encompasses three chapters. The first one will tackle the present situation of the correlation between the freedom to conduct a business and the freedom of religion in Europe. It will depict the lack of common approach and the hard cohabitation leading to inconsistencies within the continent.

The second chapter is going to address the interrelation between both freedoms through businesses being run with a religious, faith or beliefs consideration. To do so, the chapter will identify these businesses, and deal with the relevant terminology, legislation and case-law around Europe. To conclude this chapter, a comparative study with the American continent which developed a considerable precedent on the topic will be conducted.

The third chapter will be dedicated to the implementation of a new and necessary legal framework for such businesses. Such implementation being thoroughly discussed will depict the tremendous advantages of having such a framework to avoid any discriminatory practices.