

Accommodating religious minorities before the EU Court of Justice

Any standing for non-governmental organizations and legal entities?

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Abstract

This article examines the case law of the EU Court of Justice (CJEU) on religious minorities to determine whether NGOs and legal entities contribute to the strengthening of minority rights under EU law. Through an analysis of the case law on the wearing of the Islamic headscarf, it criticizes the poor relevance of outside parties. It advocates for the revision of the Court of Justice's practice to widen the chances for intermediate actors' access to justice, and it calls for revision of the jurisprudence that includes and protects the principle of equality as diversity.

Keywords

Religious minorities, minority rights, EU Court of Justice, NGOs, locus standi, access to justice.

1. Introduction: Religious discrimination and minority rights (*rectius* cultural diversity) in the EU

Discussing the role of intermediate actors *vis-à-vis* religious minorities in the context of the case law of the Court of Justice of the European Union (CJEU) on discrimination in the workplace requires considering two preliminary aspects, which set the perimeter of the following analysis. The first aspect deals with the safeguards provided under European Union law regarding the principle of equality and non-discrimination based on religious grounds and the protection of cultural diversity, including its collective manifestations, if any. The second covers the procedural rules concerning the standing of intermediate actors – NGOs and legal entities – in the judicial proceedings before the CJEU.

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Concerning equality and non-discrimination on religious grounds, primary EU law includes the principle of equality among the founding values of the European Union. It features an explicit reference to the intention of EU institutions to “combat discrimination based on sex, racial or ethnic origin, **religion or belief**, disability, age or sexual orientation” (emphasis added). The Treaty on the Functioning of the European Union (TFEU) further reinforces the commitment of EU institutions to equality and non-discrimination, especially under Articles 9 and 10.

The EU Charter of Fundamental Rights further strengthened the principles of equality and non-discrimination under Articles 20, 21, and 22, thereby offering a multilayered and multidimensional protection to equality and non-discrimination.

Articles 20 and 21 safeguard the individual dimension of equality, or the right of the individual to be treated equally under the law and in a non-discriminatory manner, including religion or belief and, more significantly, inclusion of national minorities among the factors of discrimination. Meanwhile, Article 22 welcomes a broader and new concept of the principle of equality. The legal provision emphasizes that equality encompasses the protection of diversity and, in particular, cultural, religious and linguistic diversity, and it embraces a collective dimension of equality more explicitly aimed at safeguarding minority groups and not just individuals.

By recognizing that cultural, religious, and linguistic diversity should likewise be protected under EU law, the Charter, although formally, seems to suggest that even social groups may benefit from the same safeguards as individuals do under Articles 20 and 21.

With regard to minority rights, the Charter of Fundamental Rights is not the only document that suggests that minorities, including religious minorities (Ghana 2012), deserve protection under EU law. The Treaty of Lisbon provides an embryonic degree of protection under Article 2, which states that the EU “is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the **rights of persons belonging to minorities**” (emphasis added).

Although notions such as “minorities” and “membership” in minority communities, including **national** minorities, do recur under primary EU law, suggesting that there might be some space for recognizing minority rights under EU law, the EU does not envision any specific competence, either at EU institutions or at the Member State level, aimed at building a robust and concrete safeguard of minority rights. This gap is frequently justified by pointing to the EU’s lack of competence in minority rights, coupled with a preference for extensive deference to the Member States.

Despite the wording of EU treaties and the Charter, there is a growing consensus in the literature about the weak and unsatisfactory protection afforded

by EU law to minorities, especially when compared with the choices made by other concurrent international organizations, such as the Council of Europe and the United Nations.

In short, primary EU law features a cryptic or mere formal approach to minority rights. On one hand, it firmly affirms that protecting persons belonging to minority communities constitutes a core value of the European Union. On the other hand, however, it does not go far in recognizing and protecting minority rights formally. References to equality, non-discrimination, and even to the safeguarding of cultural, linguistic, and religious diversity cannot be said to reflect a substantial recognition of minority rights under EU law.

EU secondary law reflects the same approach, and references to minority protection are scarce.

Conversely, the EU's commitment to equality and non-discrimination based on religious grounds has been subsequently reinforced under Directive 2000/78/EC, "Establishing a General Framework for Equal Treatment in Employment and Occupation", which complements Directive 2000/43/EC, "Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin", so-called Race Directive, and expands the scope of the principles of equality and non-discrimination to factors of discrimination other than those contemplated by the Race Directive. Despite its being limited in scope to employment and occupation, Directive 2000/78/EC nonetheless accorded religion and belief a distinct and enforceable status within EU anti-discrimination law.

Although it is significant in recognizing for the first time that discrimination on religious grounds should be outlawed and prosecuted under primary and secondary EU law, Directive 2000/78, like Directive 2000/43 before it, does not extend its coverage to religious minorities as well.

In this sense, the lack of protection for all minoritarian communities in the EU likewise encompasses religious minorities. Moreover, notwithstanding the welcome strengthening of the safeguard of equality and non-discrimination on religious grounds, EU secondary law continues to ignore the collective dimension of the same principles (Nardocci 2018). With regard to this last point, a more explicit effort toward the safeguarding of religious minorities, though lacking prescriptive effects, emerges in the context of the prosecution of religious communities, placed at the center of the 2002 *Resolution on the persecution of minorities on the grounds of belief or religion*.

It could be argued that EU law offers half-protection to religious minorities, covering the individual but not the collective dimension. In that case, the analysis of the role of nongovernmental organizations (NGOs) and legal entities in supporting religious minorities before the CJEU, which is the primary aim of

this article, must also consider the rules governing access to justice in the EU judicial system.

The following paragraphs will, therefore, first examine whether and to what extent EU law grants proper *locus standi* to NGOs and legal entities. The analysis will then proceed with a review of the existing case law of the CJEU concerning religious minorities as developed following Directive 2000/78.

Ultimately, this article evaluates whether, in light of the jurisprudence of the CJEU, NGOs and other legal entities have operated as auxiliary actors in influencing and mitigating the normative and institutional deficiencies in the EU's framework for the protection of religious minorities. It further argues that the limited role of NGOs and legal entities in promoting minority rights under EU law can be explained by their lack of or extremely narrow right to access to justice. The article also suggests that EU law regarding access to justice should be reconceived to enable intermediate actors to join proceedings before the CJEU and to align with the anti-discrimination Directives of 2000, which provide NGOs with the right to act domestically on behalf of the victims.

1.1. Litigating fundamental rights before the Court of Justice: Legal entities and NGOs

The participatory dimension of the European Union judicial system, understood as its willingness to ensure access to outside parties, is in tension (Alemanno 2025). Despite EU treaties emphasizing the crucial role of participation, depicted as a core value of the European Union, the reality tells a different story.

The marginal role of citizens' participation in the democratic life of the European Union becomes particularly salient when examined in light of the rules governing access to judicial proceedings before the CJEU. According to EU primary law, access to the CJEU is exclusively granted to privileged actors, thereby precluding individuals, legal persons, and NGOs from initiating proceedings before the Court directly.

While the literature has extensively addressed the feasibility of granting individuals direct access to the Court – thereby overcoming the structural limitations of the indirect access mechanism established under Article 267 TFEU (Treaty on the Functioning of the European Union) – considerably less attention has been devoted to the *locus standi* of NGOs and legal entities in advancing human rights claims, particularly when acting on behalf of vulnerable individuals and marginalized social groups.

In this regard, several considerations related to the EU legal framework are necessary to clarify and contextualize the rules regulating the *locus standi* of legal entities and NGOs in bringing cases before the CJEU.

As is widely known, primary EU law restricts access to the CJEU to a narrow circle of potential claimants, so-called privileged actors. These include EU institutions and the Member States. Whereas individuals may succeed in bringing cases before the CJEU, although indirectly and by way of the mechanism provided under Article 267, the doors are tighter for NGOs and legal entities.

Concerning NGOs and legal entities, Article 263(4) TFEU states, “Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.” For non-privileged actors, such as NGOs and legal entities, access to the CJEU requires that the regulatory act at issue be directed toward them, represent a concern to them, and not entail any implementing measures.

As for the concept of “directness,” the CJEU has further interpreted the criteria mentioned above, suggesting a strictly literal reading of the legal provision. In *Plaumann*, the CJEU clarified and significantly narrowed the meaning of the concepts “another person” and “individual concern.” On that occasion, the CJEU stated, “Persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them because of certain attributes which are peculiar to them or because of circumstances in which they are differentiated from all other persons, and by these factors distinguishes them individually just as in the case of the person addressed.”

This “*Plaumann* test” has been extensively criticized for establishing criteria NGOs can hardly, if ever, meet. Since NGOs act on behalf of “others,” either individuals or social groups, they will rarely fulfill the “individual concern” requirement.

The CJEU adopted a similar rationale about the meaning of the notion of “implementing measures” in the well-known *Inuit* case. In *Inuit*, the CJEU affirmed, “In the absence of implementing measures, natural or legal persons, although directly concerned by the act in question, would be able to obtain a judicial review of that act only after having infringed its provisions, by pleading that those provisions are unlawful in proceedings initiated against them before the national courts.” Put differently, the CJEU would admit the standing of an NGO only after the perpetration of the violation of one or more legal provisions by the claimant itself. This is another criterion that appears hard to satisfy.

Given the described scenario, NGOs may then opt for a third-party intervention to circumvent the restrictive interpretation of the mentioned criteria.

However, the submission of a third-party intervention does not confer upon NGOs any formal status as parties in the judicial proceeding, which means that the European system does not grant any direct access to its Court to NGOs, leaving open only the possibility for experts and NGOs to join proceedings under the guise of third-party interveners.

A different option from acting as a third-party intervener for outside parties, so as to join and potentially contribute to the outcome of the CJEU's judgments, would be to submit an *amicus curiae* brief, either in direct action or in indirect action under Article 267 TFEU. The second route, involving actions pursued in the context of preliminary references, could be particularly relevant for the present analysis, as NGOs usually file briefs in support of victims, strengthening their arguments before the Court.

However, on one hand, primary EU law does not explicitly regulate the standing of the *amicus curiae*, favoring the development of a praxis of informal shadow *amicus* briefs; on the other hand, concerning third-party interventions, submissions are negatively influenced by the rules set forth under Article 40 of the Statute of the Court. According to Article 40, "An application to intervene shall be limited to supporting the form of order sought by one of the parties." Given the lack of opposing parties inherent in the preliminary reference mechanism, NGOs will be precluded from submitting as third-party interveners unless they are already parties to the domestic proceeding.

In light of the above, it appears that the chances for NGOs to act on behalf (direct access) or in support (indirect access) of victims are very narrow, if not almost entirely nonexistent under EU law.

Notwithstanding the restrictive rules and the Court of Justice's reluctance to open its doors to outside parties, legal entities and NGOs have sometimes managed to gain access to the Court, such as in cases about climate change and migration. Besides some exceptional cases, the present analysis intends to verify whether and to what extent the European Union Court of Justice has favored and taken into consideration the arguments submitted by NGOs and legal entities on behalf and in the interest of religious minorities (Krommendijk and van der Pas 2022).

2. Preliminary insights: The Court of Justice on religious discrimination and religious minorities

Despite the human rights-based approach inaugurated by the Treaty of Lisbon and the Charter of Fundamental Rights, further strengthened by the 2000 EU Equality Directives, the Court of Justice maintains a cautious approach in dealing with purely human rights cases (Carrera et al. 2012). It should thus be no surprise that up to now,

the CJEU's case law about discrimination based on religious grounds and religious minorities remains scarce (Ferri 2021).

Up to 2025, the Court of Justice has been invoked in few cases, predominantly in an indirect manner by Member States' courts, in the context of preliminary rulings under Article 267 TFEU.

Beyond some notable cases about religious prosecution (such as *IR v. JQ*, discussed below), the preliminary questions covered the interpretation of some provisions of the EU Employment Equality Directive, and the majority of them dealt with the notions of direct and indirect discrimination, along with the exception provided under Article 4(2) of Directive 2000/78 about occupational requirements (Pin and Witte 2020).

None of the judgments targeted religious minorities or minority rights *per se*. Nevertheless, the decisions about the wearing of the Islamic veil touched on one of the core issues of the majority-minority relationship, that is, the extent to which religious and cultural diversity should be recognized, tolerated, and protected by the state *vis-à-vis* the dominant group.

These judgments, which the following analysis will concentrate on, concerned the display of religious clothing in the workplace by women belonging to the Muslim minority, who in various ways, and for different reasons, have been prevented from wearing the Islamic headscarf at work. Reference should be made to the landmark cases released in 2017, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV*, and *Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v. Micropole SA*, which opened the doors to a collection of case law that now counts six judgments. Following *Achbita* and *Bougnaoui*, the Court of Justice has been asked again to have a say regarding policies banning the wearing of the Islamic headscarf in the workplace in *IX v. WABE eV and MH Müller Handels GmbH v. MJ, LF v. SCRL*, and *OP v. Commune d'Ans*.

Notwithstanding the differences in the factual circumstances, the content and the rationale of each referral, all six judgments challenged the compliance with the Employment Equality Directive of political, philosophical, and religious neutrality policies, put in place by companies or by private employers, preventing their current or prospective employees from wearing the veil.

Setting aside, for the moment, the outcomes of these judgments – the only ones that impact the collective dimension of discrimination and minority rights – it is worth emphasizing that the question of whether prohibitions on wearing the Islamic headscarf in the workplace comply with primary and secondary EU law represents only one of several contested issues that the Court of Justice has been called upon to address since 2000.

Vera Egenberger v. Evangelisches Werk für Diakonie und Entwicklung e.V. and *IR v. JQ* offered the first examples, focusing, instead, on the ambit of application and scope of the exception set forth under Article 4(2) of Directive 2000/78/EC.

Egenberger concerned allegations of religious discrimination perpetrated by a church-based employer to the detriment of a prospective employee who did not belong to any religious denomination. In *IR v. JQ*, an employee complained about having his contract terminated, once again by a church-based employer, following his divorce and remarriage without the previous annulment of his religious marriage. In both cases, the issue was whether the employee's religious affiliation (or lack of it) constituted a "genuine, legitimate and justified occupational requirement" within the meaning of Article 4(2) or, conversely, an unjustified difference in treatment based on religious ground.

In the Court's view, every decision made by church-based employers must be subjected to judicial review in compliance with Articles 9 and 10 of the Equal Employment Directive and Article 47 of the EU Charter of Fundamental Rights, and the content of the requirement limiting access to the employment at stake should be proportionate, resulting from a fair balance among the competing interests at stake.

The CJEU has also tackled salary discrimination issues. In *Cresco Investigation GmbH v. Markus Achatzi*, the CJEU ruled that granting extra payments to employees affiliated with a particular specified Christian denomination, while denying the same payment to other employees was contrary to Article 2(1) of the Equal Employment Directive, in that it constitutes a direct discrimination on grounds of religion, and also to Article 21 of the EU Charter of Fundamental Rights.

The remaining judgments have addressed a range of topics: the compliance with EU law of Islamic ritual slaughtering practices, in *Liga van Moskeen en Islamitische Organisaties Provincie Antwerpen VZW* and *Euvre d'assistance aux bêtes d'abattoirs (OABA) v. Ministre de l'Agriculture et de l'Alimentation and Others*; the enforceability of a religious divorce stipulated under Sharia law, in *Soha Sayouni v. Raja Mamisch*; and church privileges, as in *Congregación de Escuelas Pías Provincia Betania v. Ayuntamiento de Getafe*, where the CJEU denied that churches should be entitled to tax exemption under Article 107(1) TFEU in cases of economic activities lacking religious relevance.

Regardless of the broader issues addressed by the CJEU in the field of religion-related rights, the following analysis will take into consideration the judgments that most directly concern religious minorities, namely those related to the wearing of the Islamic headscarf in the workplace. The aim is to evaluate the role and, if applicable, the influence of actions undertaken by NGOs and/or legal

entities in supporting the victims' claims against prohibitions that restrict the exercise of their right to freedom of religion in its *forum externum* dimension.

3. Making space for legal entities and NGOs in the Court of Justice's case law on religious discrimination

In contrast to the restrictive rules about access to the EU judicial system by outside parties, the Equal Employment Directive does not diminish the role of NGOs. At least, it does not do so at the domestic level.

Article 14 of the Equal Employment Directive, titled Dialogue with NGOs, in fact makes a pretty strong statement about the role of NGOs in the fight against discrimination. In light of Article 14, it should be within the Member States' obligations under Directive 2000/78 to "encourage dialogue with appropriate non-governmental organizations which have, following their national law and practice, a legitimate interest in contributing to the fight against discrimination on any of the grounds referred to in Article 1 to promote the principle of equal treatment."

However, the emphasis placed on the suggested interaction between the Member States and NGOs falls short when we turn to the EU institutional level. Emblematic is the approach of the CJEU, which, as mentioned, has expressed a high degree of skepticism toward engagement in any sort of dialogue with NGOs and other legal entities, denying their active participation in the judicial proceedings before it.

Interestingly, Article 14 of Directive 2000/78 seems, therefore, to suggest that the positive obligation provided therein should operate solely at the Member State level, but not at the EU level.

Jointly considered with the restrictions concerning the *locus standi* of NGOs and other legal entities before the CJEU, the legal provision depicts a status quo featuring a dichotomy between the domestic and the EU level. At the Member State level, secondary EU law encourages NGOs to join the judicial proceedings before domestic courts and grants them a "quasi-right" to have a say. In contrast, endorsing a literal interpretation, Article 14 does not apply at the EU level, where intermediate actors have very little agency and extremely narrow potential to act on behalf of, or in support of, the victims.

In this regard, the case law of the CJEU about the wearing of the Islamic veil in the workplace is particularly illustrative of this trend (Bell 2017). Not surprisingly, none of the six cases adjudicated by the CJEU since 2017 saw a third-party intervention by NGOs, equality bodies, or other legal entities in support of or on behalf of the victim's claims. Notably, judicial proceedings lacked multilayered and multifaceted participation by outside parties, limiting the ruling to the re-

ferral judge or Court, the Member State (though indirectly), the Court, and its advocate general.

The reasons for a narrower investigation of the role of intermediate actors in the judgments about the wearing of the Islamic veil in the workplace are twofold. First, these are the CJEU's cases that most directly tackle inter-communitarian tensions, juxtaposing the majoritarian versus the minoritarian community within the State, which matters from the perspective of a study of the accommodation of religious minorities. Furthermore, the case law on the wearing of the Islamic headscarf in the workplace is particularly significant, as it contributes to unpacking the marginalization experienced by minority women, who are subjected to intersectional forms of discrimination based on both religion and gender.

Second, regarding the role of outside parties, some judgments involved hearings before the CJEU where NGOs and other legal entities supported the victims' claim, but only those that were already parties to the domestic proceedings before the referral judge.

The scenario just described characterizes two of the six judgments: *Achbita* and *Bouagnaoui*, both delivered by the CJEU in 2017 (Schiek 2018). In *Achbita* and *Bouagnaoui*, the applicants were supported in their claims by two State-based associations – the Centrum voor gelijkheid van kansen en voor racismebestrijding and the Association de défense des droits de l'homme (ADDH), respectively – operating at the domestic level, therefore following Article 40 of the Equal Employment Directive.

Despite the similarities in the circumstances and facts, the two cases, originating from preliminary rulings, dealt with different provisions of Directive 2000/78. In *Achbita*, the core question revolved around the consistency with EU anti-discrimination law and, more specifically, with Article 2(2)(a), Directive 2000/78, of the applicant's dismissal due to her insistence on wearing an Islamic headscarf at work, contrary to the neutrality policies endorsed by the employer.

In *Bouagnaoui*, the preliminary question concerned the refusal to hire the victim, once again a Muslim woman, in light of her unwillingness to work without wearing the veil. The request for a preliminary ruling was, thus, about the interpretation of Article 4(1), Directive 2000/78, in that the state court sought to establish whether the prohibition against wearing an Islamic headscarf could be interpreted as constituting a genuine and determining occupational requirement.

The partial heterogeneity of the circumstances of the cases resulted in the alternative outcomes. In *Bouagnaoui*, the CJEU provided the Member State with a margin of discretion regarding the evaluation as to whether a difference in treatment based on religion may constitute a genuine and determining occupational requirement under the condition that “the objective is legitimate and the

requirement is proportionate,” therefore, excluding the recurrence of direct discrimination within the meaning of Article 4(1).

Conversely, in *Achbita*, the Court of Justice took the view that the dismissal, grounded exclusively on the employee’s refusal to comply with the recently introduced neutrality policy by continuing to wear the Islamic headscarf, constituted a form of indirect discrimination within the meaning of Article 2(2)(b) of the Equal Treatment in Employment and Occupation Directive.

Beyond the facts and the outcomes – negative in the former, positive in the latter – a few comments are warranted about the hidden or nonexistent role played by intermediate actors in the CJEU’s judgments.

First, the CJEU attributes no relevance whatsoever to the circumstance that at the domestic level the victims were supported by legal entities or NGOs in facilitating their appearance before Member State courts. This may suggest that the vulnerability of the victims was mitigated, at least domestically, by ensuring their access to justice through the intervention of intermediate actors.

On the contrary, the same cannot be said at the EU level. The CJEU formally mentions the associations as parties to the national proceedings, but the judgments feature nothing more than that. The CJEU does not address the relationships between the associations and the victims, particularly regarding the reasons for their participation in domestic proceedings. Similarly, the arguments presented by the associations in support of the victims’ claims are absent from the CJEU’s rulings. The role of the Centrum voor gelijkheid van kansen en voor racismebestrijding was, instead, recalled by the Opinion of the Advocate General, Kokott, who relied upon its arguments in favor of the presence of direct discrimination to the detriment of Ms. Achbita (See Opinion of Advocate General 31 May 2016, § 41). Conversely, the CJEU doesn’t say anything about the NGO. It fails to explain the actions of intermediate actors in the victims’ interest or why they acted on the victims’ behalf, implying that this information is irrelevant once the preliminary ruling has reached the European Union’s judicial system.

Alternatively, the CJEU could have chosen to include the elements mentioned above in the description of the circumstances of the facts, as the agency and standing of the associations before the referring courts no doubt represent an integral part of the history behind the question referred. Ultimately, the CJEU appears to disregard both the vulnerability and the marginalization of the victim, especially related to participation in a minority religious community, and the subsidiary role of NGOs in compensating for the likely violation of the right to access to justice.

Second, the consequences of such a poor and belittling interpretation of the role of intermediate actors should be taken into consideration. By neglecting the

role of intermediate actors in supporting the victims, the CJEU ends up similarly disguising and diminishing the status of vulnerability of the victims, who could probably have been prevented from bringing their cases to the CJEU if not for the participation of the intermediate actors. Put differently, the misinterpretation by EU law and the CJEU of the role of outside parties as mediators, allowing vulnerable victims and minority groups to litigate and vindicate their rights before the judiciary, seems to signal the EU's indifference toward marginalized communities, including religious minorities (Henrard 2021), and individuals. The argument relies on the CJEU's practice, as evidenced by legal texts – notably the TEU and the Charter of Fundamental Rights – which do consider vulnerabilities.

Yet the analysis presented here, about outside parties litigating fundamental rights before the CJEU in the interest of religious minorities, suggests quite the opposite. There is, therefore, a dichotomy between the declarations of principles set out under primary and secondary EU law and the rules applied by the CJEU, including its current practice, which would call for a progressive and consistent alignment of their rationale: the protection of the fundamental right of individuals and minority groups, on one hand, balanced with the CJEU's interest in reaching decisions efficiently without unnecessary burdens.

Furthermore, there is a third aspect to consider, which goes beyond the specifics of *Achbita* and *Bounoui*. The neglected role of outside parties within the judicial system of the EU leads, in fact, to chilling effects on the decisions of prospective third-party intervenors or *amici curiae*.

Given the restrictive rules set forth under EU treaties and the Statute of the CJEU, intermediate actors other than those primarily involved at the domestic level may be persuaded not to intervene, in light of the absence of any follow-up dialogue with the CJEU. This persuasive or discouraging effect (in that other intermediate actors may decide not to bring actions at least before the CJEU), could be considered as the first, and arguably most significant, negative result stemming from the interplay between the restrictive rules governing access to the EU judicial system and the current jurisprudential practice of the Court of Justice.

From this viewpoint, arguably, the absence of third-party interventions across all six cases about the wearing of the Islamic headscarf in the workplace may be considered clear evidence of the problem.

In addition, there is no record of NGOs intervening as *amici curiae* in any of the judgments considered in the analysis. The lack of a specific regulation on the standing of the *amici*, combined with the silence and lack of transparency that characterizes the CJEU's approach to the submitted briefs, despite Article 15(1) TFEU and Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and

Commission documents, weakens the alternative route (other than a third-party intervention) to allow outside parties to have a say in judgments of which they were not formally a part at the domestic level.

The jurisprudence of the CJEU does not offer cases of outside parties positively influencing the outcome of judgments involving religious minorities or individuals belonging to minority communities, as in the decisions about the Islamic headscarf. Moreover, the analysis proves that by substantially denying the role of NGOs in its jurisprudence, the CJEU impairs the chances of intermediate actors to support the applicants.

A viable solution that could also avoid the isolation of the CJEU, circumvented in favor of other international courts, should rest on two pillars. The first suggests the strengthening of the procedural rules governing access to the EU judicial system in a way that could bridge the gap between declarations of intent (the formal rules under primary and secondary EU law) and the substantial (non-) recognition of the standing of third-party NGOs and *amici curiae*. Moreover, the second pillar urges that EU law should promptly reinforce the principle of equality as diversity, which, again, is formally immanent in the texts but absent in the case law reviewed.

4. Unpacking and rethinking the role of intermediate actors in workplace religious accommodations

“[The European Parliament] stresses the need to protect the human rights defenders, lawyers, nongovernmental organizations and civil society activists who support and defend those who are persecuted on the grounds of belief or religion” (European Parliament 2022). These words emphasize not just the key role played by intermediate actors but, more importantly, the EU’s commitment to supporting and protecting those whose actions are directed towards the safeguarding of individuals and groups subjected to persecution and discrimination based on religion.

While the significance of the statement is clear, its concrete realization, especially when framed in the context of the CJEU’s practice, reveals several shortcomings that the present investigation has aimed to discuss and, to some extent, criticize.

The analysis of the CJEU’s case law on religious minorities contributes to gathering data and stimulating reflection on the proper role of intermediate actors in strengthening religious accommodation policies in the public sphere.

Concerning data, it is evident that intermediate actors, be they NGOs or other legal entities, have gained very little space in litigating religious minorities’ rights before the CJEU. Narrowing down the judgments about discrimination based on

religious grounds to those directly involving religious minorities, intermediate actors were present in only two (*Achbita* and *Bougnoui*) of the six decisions brought before the Court of Justice. These two associations were able to join the proceedings before the Court of Justice as a consequence of their status as formal parties in the domestic proceedings. In other words, the agency recognized by the associations in the judicial system of the Court of Justice was in no way correlated with the rules governing the access of outside parties to the supranational proceeding. Instead, the associations had their standing recognized because they complied with domestic laws and, before that, with EU secondary law, which, especially according to Directive 2000/78, allows outside actors to bring a claim in support of or on behalf of the victim before national courts.

In short, it is very likely that had it not been for their participation in the domestic proceedings, the two associations would not have been allowed to join the case before the Court of Justice. Under the present circumstances, intermediate actors can support victims in bringing their complaints before the judiciary, provided that they operate at the domestic level. In contrast, at the EU level their agency is restricted, merely ratified by the CJEU but not considered, nor enhanced.

The gap between the domestic and the EU levels in their opposite approaches to the standing of intermediate actors, in that the former encourages it and the latter diminishes its importance, constitutes one of the factors that negatively impacts the chances of intermediate actors to boost the protection of religious minorities in the EU.

An additional facet of the investigation, which correlates with the previous one, is the lack of any substantial contribution of intermediate actors in shaping the arguments discussed during proceedings before the CJEU. At least, this is what emerges from the judgments, which avoid adding details about the arguments presented by the associations in the domestic complaints or, in two cases, before the CJEU. In other words, by not conferring a proper relevance upon intermediate actors, the CJEU similarly refrains from describing their observations in point of law, obscuring their agency even if it has been formally acknowledged.

Besides *Achbita* and *Bougnoui*, no other judgment among those examined in the present investigation features traces of third-party interventions, and it is unknown whether outside parties submitted briefs as *amici curiae* to strengthen the applicants' complaints. The lack of openness of the CJEU towards third-party and *amici curiae* NGOs goes hand in hand with the absence of any disclosure of their requests for intervention (Alemanno and Stefan 2014).

Moreover, should intermediate actors succeed in overcoming the barriers laid down under EU law, the question left open is whether and (if so) how their

submissions will be available to all parties to the judgments and to the public. The answer at this stage presents an unsatisfying scenario, characterized by undisclosed submissions, the so-called shadow briefs, and a practice that not only fails to value the contributions of outside parties but also discourages them from attempting to have a say before the CJEU.

In this regard, the experience of the European Court of Human Rights could illustrate how the practice of a supranational court may evolve in the direction of a much more robust recognition of the standing of intermediate actors (Van den Eynde 2017).

The European Convention and the Rules of Procedure allow third-party interventions and *amici curiae* to litigate before the ECtHR. Admittedly, through its jurisprudence in recent years, intermediate actors, such as NGOs in particular, have seen their agency progressively strengthened. What matters the most from the perspective of the present analysis is the recognition in 2014 of NGOs as possible direct claimants acting on behalf of the victim.² In short, along with joining the proceedings before the ECtHR as a third-party or an *amicus curiae*, NGOs can act directly, even on behalf of the victim. The latter represents a significant step in the *locus standi* of NGOs before the ECtHR, as the Court agreed to revise its interpretation of Article 34 ECHR, opening the doors to submissions by indirect victims and by outside parties supporting the victim of the violation.

Examining every case in which the ECtHR has granted standing to NGOs acting on behalf of the victim would go beyond the scope of this investigation. However, two concluding observations are warranted, particularly in view of the CJEU's contrasting and more restrictive approach.

First, the CJEU could benefit from the strategies adopted by the ECtHR to widen its reading of the "individual concern" clause and of Article 40 of its Statute to ensure a larger participation in the proceedings before it and, at earlier stages in the process, more chances to safeguard victims' access to justice.

Second, although no case to date has involved NGOs representing religious minorities, the ECtHR's recognition of their right to litigate on behalf of the victim constitutes a significant precedent, positioning the ECtHR as a reference point

2 Reference is to ECtHR, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, when the ECtHR stated, for the first time, that "when considering whether an association should have standing as a de facto representative, the Court has taken into account the following 'exceptional circumstances': the vulnerability of the direct victim and his/her inability to complain while alive; the seriousness of the allegations brought before the Court; the lack of known heirs or legal representatives capable of lodging an application with the Court; the contacts between the association and the victim prior to the death and the intervention of the association at the domestic proceedings after the death and whether its formal standing had not been challenged by the domestic authorities." See also *L.R. v. North Macedonia*, 2020, §§ 46-54, where the ECtHR recognized the standing of the association with regard *inter alia* to the circumstances whereby the child had been abandoned at birth, his parents also suffered from a mental disability and his legal guardian had been accused of not protecting his interests.

for enhancing the role of intermediary actors in supranational adjudication (Cichowski 2013).

An exchange of practices between the two courts would, therefore, be desirable to place intermediate actors at the center of a shared and standard policy, ensuring that religious minorities benefit from the protection advanced by outside parties. Although the dialogue has predominantly, up to now, addressed the procedural aspects of the *locus standi* of outside parties, the time is ripe for further advancement and granting NGOs and other legal entities the right to act and have a say in support of religious minorities.

A swift evolution of the CJEU's case law, through the recognition of the standing of NGOs and other legal entities, would result in a more accommodation-oriented approach, moving beyond the one-way and Western interpretation of neutrality, which is so emblematically expressed in its jurisprudence on the Islamic headscarf, and becoming capable of tackling the most hidden and odious forms of discrimination (Hernard 2025).

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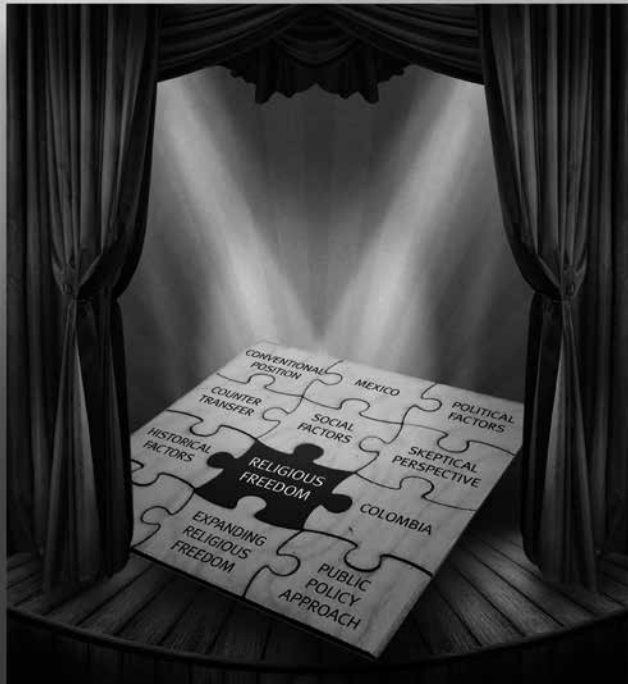
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VKW  Religious Freedom Series (IIRF) 9

Religious Freedom Series, Vol. 9.
Culture and Science Publishing (VKW): Bonn, 2025. ISBN 978-3-86269-301-6.

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