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# The Right to Dress in International Law as a Right in itself and as a Parameter on the Ridge between Freedom of Expression and Prohibition of Discrimination

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*The right to clothing is part of the panoply of human rights recognised by international law and is part of the broader right to an adequate standard of living guaranteed by the 1948 Universal Declaration of Human Rights. However, in the transition from abstract normative predictions to the identification of the concrete content of this guarantee placed to protect the human person (both in its function of mere protection of the body from the elements, but also, and perhaps above all, to communicate and obtain information on their social position), it is as if its exact substance dissipates. This article proposes, first of all, a diachronic reconstruction of the right to clothing in international instruments and in the practice of the bodies in charge of monitoring them. Secondly, it focuses on how this right is closely connected to freedom of expression in relation to the prohibition of discrimination on the basis of the clothing worn - especially if indicative of belonging to a group,* inter alia *ethnic, religious, or social. It concludes with brief critical notes and reconstructive insights into these two delineations of the right to clothing.*

**Keywords:** *Right to Clothing; Freedom of Expression; Discrimination*

## Introduction

The right to clothing is part of the panoply of human rights recognised by international law and is part of the broader right to an adequate standard of living guaranteed by the 1948 Universal Declaration of Human Rights which, in Article 25, states: 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, *clothing*, housing and medical care and necessary social services [...]'.[1]

Furthermore, the connection between dignity and clothing is rooted as far back as the Bible: The shame for their own nakedness felt by Adam and Eve, and

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[1]*Italics added by the authoress*.

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the gift of clothes given to them by God[2] may be recalled by way of example in Exodus[3], and Proverbs[4].

Indeed, if the lemma 'clothing' is always present in the doctrinal studies on the international instruments that contemplate this guarantee in the framework of a dignified standard of living, it is as if the right to adequate clothing dissipates in the analytical exegesis of the provisions in question[5]. Actually, though, almost all of the scientific literature concentrates its studies on other profiles of the 'sufficient standard of living' such as, in particular, the right to food, housing and health. This oblivion to clothing is disconcerting, given the obvious importance that clothing has for human well-being. In its triple declination, attire is a necessary element, firstly, for the protection *tout court* of each individual (*i.e.* for its protective function against climatic and environmental conditions)[6], secondly to the social sphere (precisely because what one wears is one of the most obvious markers of extreme poverty and hence of the lack of a dignified life)[7], and finally, for specific guarantees depending on the context (think, most recently, of individual protection devices in the pandemic scenario)[8].

In this paper, the right to dress will be examined from a legal perspective both as a right in itself in the international legal order, and as a right closely connected to freedom of expression in relation to the prohibition of discrimination based on attire – especially if indicative of belonging to an ethnic, religious, social, etc. group. In the conclusions, brief critical notes and reconstructive insights into these two strands of the right to clothing will be drawn.

## The (Neglected) Right to Clothing in International Law

As already mentioned, the right to clothing has been present in the catalogue of human rights since the Universal Declaration of 1948, a real starting point in the history of human rights in the context of the international legal system which, from that moment, began precisely to recognise, promote and protect human persons beyond their connection or otherwise to a State entity. In the supra-State scenario, the right to clothing is also recognised by Art. 11.1 of the 1966 International Covenant on Economic, Social and Cultural Rights, according to which: "The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, *clothing* and housing, and to the continuous improvement of living conditions

[2]"For the man and his wife the Lord God made leather garments, with which he clothed them" – Genesis 3:21.
[3]"And make holy robes for Aaron your brother, so that he may be clothed with glory and dignity" - Exodus 28:2; " And for Aaron's sons you are to make coats, and bands, and head-dresses, so that they may be clothed with glory and dignity" - Exodus 28:40.
[4]"She is clothed with strength and dignity" - Proverbs 31:25.
[5]James (2008).
[6]Hartmann (1949).
[7]Kaiser (1990).
[8]Graham (2022).

[...]".[9] Indeed, during the formative debates influencing the drafting of this International Covenant, "clothing was considered imperative"[10].

Thus, Article 25 of the Universal Declaration and Article 11 of the Covenant of '66, one soft, the other hard law, trace what can be considered the genetic code of the welfare state and of the entire human rights political agenda aimed at ensuring an adequate standard of living for each human person.

This approach has been consistently taken in subsequent instruments concerning the rights to be guaranteed to particularly vulnerable categories of individuals. Suffice it to recall Article 27.3 of the 1989 United Nations Convention on the Rights of the Child, which maintains: "States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, *clothing* and housing".[11] Or even Article 28.1 of the Convention on the Rights of Persons with Disabilities of 2006 according to which: "States Parties recognise the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, *clothing* and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realisation of this right without discrimination on the basis of disability"[12]. Again, the International Labour Organisation's Social Policy (Objectives and Basic Standards) Convention C117 of 1962 provides in Article 5.2 that "In ascertaining the minimum standards of living, account shall be taken of such essential family needs of the workers as food and its nutritive value, housing, *clothing*, medical care and education"[13].

As can be seen from this rapid overview, the right to clothing in international law is framed in the broader sphere of the adequate standard of living whose individual elements, although presented one after the other as the links of a chain, should rather be understood as spokes of a wheel converging towards the centre, with equal dignity and importance. However, the right to clothing is instead almost completely ignored: The few authors who have dealt with the issue, all of them just really fleetingly, limit themselves to stigmatising how an analysis of the practice of the Reports of the Committee on Economic, Social and Cultural Rights (hereinafter CESCR) reveals "[t]he impression [...] that clothing is not a matter in which the State may exercise a great deal of control, nor one that the Committee feels is of great importance"[14], or anchor the right to clothing to the peculiar conditions of certain categories of individuals. Relevant in this regard are refugees, for whom "appropriate clothing" translates to clothes suitable for the climate and the work they do in the host State, as long as such clothes do not stigmatise them as foreigners, as this could encourage discrimination[15], in order to reduce their

[9] *Italics added by the authoress.*
[10] Saul, Kinley & Mowbray (2014).
[11] *Italics added by the authoress.*
[12] *Italics added by the authoress.*
[13] *Italics added by the authoress.*
[14] Craven (1995).
[15] Hathaway (2005).

"occupational accidents"[16] or otherwise to ensure them "a decent living for themselves and their families"[17]. Regarding the disabled, clothing is viewed as such that they can "function fully and effectively in society"[18]. The elderly must be guaranteed "the access to adequate and appropriate clothing."[19] As for minors, the Committee on the Rights of the Child emphasises in its responses to the Reports of States Parties, such as Tanzania, Haiti, Mozambique, Uganda, that rights must "provide adequate clothing to homeless children and to orphans living in government institutions"[20].

However, it is not made clear what specific obligations fall upon the State party to the Conventions that include the right to dress, nor how the right to adequate clothing is to be articulated, *i.e.* whether it should be concretely translated in terms of norms, policies and actions. Put another way: beyond the emphasis sometimes used to underline the importance of the right to clothing within the framework of human rights basics, this guarantee seems to consist of a mere rhetorical exercise, although it is evident that it is not enough to enunciate it in order for it to take on urgency and be immediately applicable.

Thus, some authors, with concern for the practice of the CESCR, state that in fact, clothing was only brought up in the early sessions "as if the committee was itself trying to work out what the content and meaning of the right might be in practice"[21]. Consequently, the supposedly equal place of the right to clothing "within the context of securing an adequate standard of living under Article 11 is somewhat belied by the practice towards the right to clothing"[22].

Nor does the explanation put forward by the *Icelandic Human Rights Centre* seem convincing. According to this, "because of the variations in cultural clothing needs and wants, the right to adequate clothing is probably the least elaborated of all the components of an adequate standard of living"[23]. In the writer's opinion, this interpretation cannot be shared because even housing, health or food are also differently defined on the basis of cultural, economic, or environmental variables. Nevertheless, this has not prevented their detailed and analytical elaboration in international law.

The legal parameter that could be used to give concreteness to a vapid right is that of necessity in the real and determined situation. Undoubtedly, clothing is closely connected to the physical and psychological well-being of the individual, since clothes unsuitable for the climatic and environmental conditions could even lead to exacerbating consequences. Therefore, the matter of the right to adequate clothing will have to be assessed on a case-by-case basis. More simply stated: it will not be one-size-fits-all, but will have to be tailor-made, *i.e.* calibrated to each individual and actual peculiar situation.

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[16]CESCR (2000).
[17]CESCR (2016).
[18]CESCR (1994).
[19]CESCR (1995).
[20]*see* https://www.ohchr.org
[21]Saul, Kinley & Mowbray (2014) at 925.
[22]Saul, Kinley & Mowbray (2014) at 924.
[23]Icelandic Human Rights Centre (2008).

An example may help to clarify the legal answer proposed here to the question "what clothing is appropriate and thus in line with the dictates of international instruments?". One paper refers to the pandemic of podoconiosis, or endemic elephantiasis, *i.e.* the chronic debilitating swelling of the foot and lower leg caused by long-term exposure to irritating volcanic clay soils in the highland regions of Africa, Central America and India[24]. Those affected by podoconiosis "experience disablement, stigma and discrimination, and mental distress, contributing to greater impoverishment and a reduced quality of life"[25]. The paper considers the human rights violations that cause, and are caused by, elephantiasis in Ethiopia, precisely because of the lack of primary goods such as, precisely, appropriate footwear. It postulates that "while identifying rights violations is key to characterising the scale and nature of the problem, identifying duties is critical to eliminating podoconiosis"[26]. To this end, the authors reconstruct "the duties of the Ethiopian government, the international community, and those sourcing Ethiopian agricultural products in relation to promoting shoe-wearing, providing adequate health care, and improving health literacy"[27]. This case is therefore paradigmatic of the thesis argued here: The right to clothing is not to be assessed through abstract hypotheses but, on the contrary, through the subsumption of concrete cases into general theoretical forecasts so that current and concrete risks caused by its inadequacy can be effectively and efficiently averted.

In even more recent times, the CoViD-19 pandemic has emphasised the lack of Personal Protective Equipment (hereinafter PPE): bottlenecks and failures in the distribution of such devices have been addressed in practice and doctrine from the perspective of 'other' rights, ignoring what PPE essentially are, *i.e.* (part of) clothing. Thus for example, the High Court judgement in Lesotho "found the government's failure to provide PPE to doctors to be unconstitutional and in violation of the right to life and ordered that it remedy this dereliction by providing the necessary safety equipment"[28]. For its part, the International Commission of Jurists encapsulates PPE as a matter of the right to health and observes that "failure to provide PPE is a clear violation of the rights to health and conditions of work of health workers themselves and also may constitute a broader threat to the rights to health of all people" [29]. It is undeniable that the lack of PPE is a piece of the larger puzzle that facilitated the exacerbation of Sars-CoV-2. It is also undeniable that it can be linked, as Amnesty International does[30], to the right to health. Given both the nature of the context as well as the robustness of the legal and enforcement apparatus of the right to health both in domestic and international legal systems, it is nevertheless true that this contributes to marginalising the right to clothing, depriving it even more of a preceptive scope. In other words: A sort of paradoxical and circular mechanism is set in motion whereby little (if any) attention is paid to the right to dress because it has a vague and ill-defined normative content.

[24]Shahvisi, Meskele & Davey (2018).
[25]Ibid.
[26]Ibid.
[27]Ibid.
[28]Lesotho Medical Association and another v. Minister of Health and other (2020).
[29]International Commission of Jurists (2020) at 93.
[30]Amnesty International (2020).

However, if a circumstance arises requiring its application, far from 'taking advantage' of it to give colour, meaning and poignancy to its content, they look for links with other guarantees with clearer and more identifiable contours, thus removing from the centrality of the stage of individual rights this guarantee relegated more and more to the role of accidental and superfluous.

It is also undeniable that the right to clothing presents interconnections with other fundamental guarantees of the human person: In addition to the right to health, the right to clothing has been linked, for example, to the right to housing, since having "largely failed to maintain an independent status, being either overlooked or effectively subsumed within the right to shelter generally and the right to housing specifically"[31].

Moreover, especially from an ancillary perspective, the denial of the full enjoyment of the right to clothing can be an instrumental prerequisite for the violation of other fundamental rights. One need only think, for example, of the right not to be subjected to cruel, inhuman or degrading treatment, as well as the right not to be a victim of torture, rights that have risen to the rank of *ius cogens* norms: If an individual is denied access to adequate clothing (think of particularly essential clothing, such as underwear), he or she may be rendered particularly vulnerable and humiliated in his or her human dignity, especially in situations of diminished personal freedom, such as in detention contexts, in prisons, in health care facilities in the event of forced hospitalisation. The removal of clothing, therefore, constitutes an abuse that contributes exponentially to aggravating the state of mental suffering, including post-traumatic stress disorder. Such results are demonstrated in the forcing of prisoners to strip naked and parade in front of guards (even of a different gender) or to wear women's underwear in the case of male prisoners. Indeed, the functionality of the right to clothing can be argued in an inverted scheme, that is, downstream, as an element to be taken into account in the event that the enjoyment of other *(soi-disant* much more relevant) rights, such as the right to health, is compromised. Conversely, upstream, as a prodrome: e.g. with regard to clothing as an indispensable factor of social inclusion, not being able to make use of appropriate clothing can *de facto* inhibit the right to education (e.g. for lack of an appropriate school uniform), the right to work (for professions for which a strict dress code or uniform are enforced), the right to privacy (the inability to wear clean and decent clothes, for example, exposes one's social conditions).

This attitude, which constitutes a sort of paradoxical self-fulfilling prophecy, is short-sighted: It risks perpetuating the unpreparedness of the subjects on whom rests the obligation to provide. If the 'direct' normative content of the right to clothing continues to be unclear, it will be evoked tangentially and always ancillary to other much more structured guarantees of the human person. It holds the risk that, in the event that a violation, however functional, cannot be proven, any form of protection that ensures the right to clothing in itself will fail.

It would therefore be advisable, to strengthen this right, giving it the solidity it deserves, either through the appointment of a Special Rapporteur or an *ad hoc* General Comment by the CESCR, as a first step towards bridging the gap between

[31] Saul, Kinley & and Mowbray (2014) at 924.

the right to clothing and the other basic guarantees of the human person, rights that can also rely on specialised UN agencies (such as the Food and Agriculture Organisation and the World Health Organisation) for their effective implementation. In this way, the fundamental obligation of each State party to realise, "as a matter of priority"[32], the "minimum essential levels of each of the rights"[33] provided in the CESCR praxis could also be implemented regarding the right to clothing. Thus, even the right to clothing, having as its objective the provision of a minimum level of social protection for all[34] should be guaranteed to everyone at its core as an "non-derogable foundation"[35], *i.e.* as a kind of baseline below which the realisation of the rights of the International Covenant on Economic, Social and Cultural Rights must not fall[36]. Conversely, failure to meet the core obligation, understood as a minimum threshold, would constitute a *prima facie* breach of the State's obligations[37] as a violation of the "corresponding core rights"[38], unless the State demonstrates that it has made every effort to prioritise its resources in order to fulfil this obligation.[39]

## Clothing: Emblem of Freedom of Expression or Factor of Discrimination?

As mentioned in the previous paragraph, the precise legal content of the right to dress is somewhat vague both in international instruments, which merely proclaim it, and in the studies of the doctrine, which in turn makes little effort to find criteria and parameters to give a more concrete and objective meaning to this right. Accordingly, the approach is different when clothing is framed under the perspective lens of freedom of expression, since there is no doubt that freedom of dress is a characteristic, and indeed the most evident trait of personal identity: "among the rights that form the irretrievable heritage of the human person […] the Constitution also recognises and guarantees the right to personal identity. This is [...] the right to be oneself, understood as respect for the image of participating in associated life [....] with the ideological, religious, moral and social convictions that differentiate, and at the same time qualify, the individual. Personal identity therefore constitutes an asset in itself, regardless of a person's personal and social status, merits and flaws, so that everyone is recognised as having the right to have his or her individuality preserved"[40].

Borrowing the conclusions of Barthes' studies[41], it can therefore be stated that, in this perspective, clothing from 'attire' becomes 'costume': what one wears is therefore not exclusively the result of a choice based on personal taste or contingent

[32]CESCR, 1990.
[33]Robertson (1994) at 701.
[34]Bluemel (2004) at 976; Leijten (2015) at 36.
[35]Odello & Seatzu (2013) at 65.
[36]McGraw (2010) at 154.
[37]Bilchitz (2014) at 729.
[38]Müller (2009) at 581.
[39]Shields (2017).
[40]Italian Constitutional Court, 1994, §5.1, the authoress translation.
[41]Barthes (1957).

factors, but also represents a sort of implicit declaration of belonging to a group characterised by a common religious belief, political opinion, or cultural matrix[42]. Regarding clothes as a symbol of adherence to a cult, it is sufficient to reflect on the veil of Muslim women or Catholic nuns, the male headgear of the Taliban or Tuareg, the turban of Sikh Indians or the kippah of Jews. Again, with regard to clothing as an expression of political opinions, the stereotypes linking clothing to militancy are well known: in the 1960s, in Europe in general, and Italy in particular, the eskimo and jeans of the left, the leather jacket and sunglasses of the right, or, in the present day, the keffiyeh, symbol of the struggle of the Palestinian people, used as a scarf. Finally, under the third profile, the semantic power of fashion expresses the cultural reference: a Scotsman reveals his clan through the tartan, a French peasant girl indicates her village by her cap or bonnet, an individual wearing tribal clothes affirms his belonging to an indigenous group.

In this anthropopoietic dimension of clothing, its legal framework shifts: The protective and covering role of clothing gives way to its non-verbal communicative function. Thus, it becomes an instrument of identity subsumed under rights – often intertwined – such as the right to freely profess one's religious faith, political belief or thought tout court, belonging to an ethnic group, rights that are counterbalanced by the prohibition of discrimination.

In particular, in the international legal order, religious freedom is guaranteed by both soft and hard law norms, both universal and regional in character: *Inter alia*, among the most relevant instruments are, in chronological order, the Universal Declaration of Human Rights of 1948[43], the European Convention on Human Rights (ECHR) of 1950[44], the International Covenant of Economic, Social and Cultural Rights of 1966[45], the International Covenant on Civil and Political Rights of 1966[46], the American Convention on Human Rights of 1969[47], the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief of 1981, the African Charter on Human and Peoples' Rights of 1981[48], the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms of 1995[49], the Arab Charter on Human Rights of 2004[50], and the Association of South-East Asian Nations Declaration on Human Rights of 2012[51].

This complex legal apparatus absolutely protects both the inner and intimate dimension of this freedom, ostensibly *forum internum*, as well as its external dimension, *i.e*. the right to manifest one's beliefs, ostensibly *forum externum*. It contains the possible limitations that this right may suffer in the event that the 'manifestation' of one's beliefs or religion interferes with the rights of others or

[42]Ramachandran (2006).
[43]Article 18.
[44]Article 9.
[45]Article 18.
[46]Article 18.
[47]Article 2.
[48]Article 8.
[49]Article 10.
[50]Article 30.
[51]Article 22.

constitutes a threat to society. The right to choose clothing ascribable to a religious orientation is by definition part of the *forum externum* so that only if it violates rules of public order, morality or public security may it be restricted. For example, the full veil (burqa or niqab) worn in a public place may be prohibited because, by completely covering the face, it makes it impossible to identify the wearer.

It is obviously not possible, given the scope of this article, to carry out an exhaustive examination of the practice on the subject. It seems, however, appropriate to consider, by way of example, a number of rulings by the Strasbourg and Luxembourg Courts, operating respectively within the framework of the European Convention on Human Rights and the European Union legal system, rulings that are extremely emblematic. In fact, the European Court of Human Rights (ECtHR) has in several cases upheld the ban on wearing the Islamic headscarf imposed from time to time on university students because it would discriminate against colleagues who do not wear it[52]; on a teacher because the chador represents a powerful external symbol capable of influencing young pupils and is therefore detrimental to the principle of denominational neutrality of State schools[53]; on a social worker in a healthcare facility wherein there is a risk of influencing patients in a state of psychological fragility and dependence, while violating the principle of '*neutralité de la puissance publique*'[54].

Most recently, the Court of Justice of the European Union (CJEU) also had the opportunity to express its opinion with two identical judgments, both rendered on 14 March 2017, in response to references for a preliminary ruling raised by the Belgian and French Courts of Cassation, respectively, on the possibility of employers dismissing an employee as a result of her refusal not to wear an incomplete, abbreviated headscarf. The underlying issue is that of the compatibility of the actions of employers with the requirements of non-discrimination protected by European Union law and in particular with Directive 2000/78/EC[55] on equal treatment in the workplace, also with reference to cases of discrimination on religious grounds. In the first case, on 12 June 2006, G4S Secure Solutions NV (G4S), a private company based in Belgium, had dismissed Samira Achbita, a receptionist since February 2003, because she had informed the company of her intention to start wearing a headscarf at work. G4S employees were subject to an unwritten rule, from the day after Ms Achbita's declaration of intent, a written prohibition to display religious and philosophical symbols in the workplace. The Court denied that the dismissal constituted direct discrimination as the company's rule prohibited wearing visible signs of a political, philosophical or religious nature in the workplace tout court and not specifically those attributable to the Islamic faith[56].

The second case stems from the fact that on 22 June 2009, Micropole SA, a private company based in France, had dismissed Asma Bougnaoui, a design

[52]*Sahin* v. *Turkey* (2005).
[53]*Dahlab* v. *Switzerland* (2001).
[54]*Ebrahimian* v. *France* (2016).
[55]https://ec.europa.eu/social/main.jsp?catId=166&langId=en
[56]*Achbita and Centrum voor gelijkheid vankansen en voor racismebestrijding* v. *G4S Secure Solutions NV*.

engineer for the company since 15 July 2008, because she wanted to continue wearing a veil while providing services to customers. In its dismissal letter, Micropole SA had emphasised that employees had to respect a policy of 'neutrality' in the presence of customers. The Court made it clear that an undertaking's internal rule prohibiting the visible wearing of any political, philosophical or religious sign does not constitute direct discrimination. Nevertheless, in the absence of such a rule, an employer's willingness to allow for a client's wish that its services no longer be provided by an employee wearing an Islamic headscarf cannot constitute a requirement for the performance of work that would exclude the existence of discrimination[57]. Thus, from a legal point of view, the Court has stated that employers are not free to pander to their clients' prejudices. In fact, by ruling that company policies can prevent religious symbols on grounds of neutrality, it has provided them with an expedient that supports and precisely endorses these prejudices.

## Brief Critical Concluding Remarks

As illustrated, the right to clothing, within the framework of the international legal system, is relevant both as a right to clothing in itself, and as a right to express one's convictions, especially those related to the professed cult, through the choice of the clothes one wears.

Firstly, the critical points we have noted concern the exact content of such a right. In other words, while there is no one who denies the indispensable nature of adequate clothing in order for a dignified standard of living to be attained, there are no studies that translate and break down this right by identifying its individual elements. The idea put forward here is that the right to clothing may be considered as not infringed by the State on which it falls burdened to the extent that the latter has ensured those on its territory (thus not exclusively its own citizens, but also other categories of individuals, such as refugees); clothing that is not *a priori* determined, *i.e.* the same outfit for all, but which is calibrated according to the needs determined on the basis of three parameters, closely interconnected *ratione materiae*: through the search for high-performance clothing solutions, suitable for protection from the weather or other external dangers, *ratione loci*: on the basis of the objective conditions of the territory, *ratione personarum*: *i.e.* in the light of the personal qualities of each individual, among which are, *inter alia*, age, sex, religious beliefs, health conditions, etc.

Secondly, we have noted how clothing can represent a way of professing one's faith and how, in this perspective, clothing forms the subject of a right attributable to religious freedom. Of this freedom, safeguarded in various supranational sources, the right to clothing shares the same limits, as it is subject to the same restrictions as freedom of worship, constituting an expression in the assumed *forum externum*, with particular regard to safety reasons[58]. Among the arguments put forward by the Institutions concerned with verifying the compatibility

[57] *Bougnaoui and Association de defence des dtoits de l'homme (ASSH)* v. *Micropole SA.*
[58] *Ex plurimis, Phull v. France*; *El Morsli v. France*; *Belacaemi and Oussar* v. *Belgium*.

of self-determination in the choice of clothing, along with the rights of others who may be offended by these choices, are those that hinge on the need to protect the right to non-discrimination. Alas, such a right not to be discriminated against in the practice of the ECtHR indicates an unacceptable inversion of perspective examined from the point of view not of those wearing such clothing but of those who may complain about it, about coming into contact with it. In other words, in the balancing act between individual and collective needs, the consideration of the impact on the conscience of others of the expressive potential of the religious symbol – *a priori* and apodictically considered in a negative sense – still prevails. In this way, a substantial caution emerges in recognising the legitimacy of individuals to manifest their religious beliefs in public. Apparently, especially in relation to the growing pluralism of societies, the ostensible externalisation of one's religious affiliation collides with the peculiar characteristics of systems that make secularity and neutrality of vivre ensemble the cornerstone of supreme State values. Denying the possibility of sporting patently religious garments in the name of a neutrality prevailing in a hypothetical paradigm of values as hierarchically superordinate to self-determination seems to only place an *erga omnes* prohibition. In reality, it translates into a limitation proper to and almost exclusive of identifiable religions (especially and prevalently Islam). Of such, the rule may be formally the same for everyone, but in practice it will only place a ban on certain workers. In other words, the pattern that Jean-Étienne-Marie Portalis denounced two centuries ago is perpetuated, whereby everyone is free to sleep under the bridges of the Seine, but in reality, only the vagabonds of Paris do so. Put differently, the ECtHR seems to have failed the so-called proportionality test on the basis of which, firstly, the impact of the provision on the right in question must be assessed by asking whether, in light of proportionality *stricto sensu*, the State could have intervened in a less restrictive measure of the right in question. Secondly, the reasons for the interference must be justified by an imperative social need. Finally, it must be assessed whether or not the compression of the right was proportional to the value of the other protected interests (so-called balancing test).

Therefore, in the name of neutrality, the prohibition of wearing clothing that is strongly and unequivocally related to a specific cult should be limited to cases where the individual is a representative of the State, such as a military judge because it would undermine his/her position of equanimity; such as a teacher because it would compromise the secular nature of teaching; such as a medical or care professional insofar as choices related to the right to health could be in conflict with the dictates of the professed creed. In all other cases, it would be more correct and transparent to base the choice on establishing the balance between the freedom to display clothing blatantly marked by religious choices and its limitation in the name of the right not to be disturbed by the religious convictions of others, on the basis of a principle of reciprocity that takes into due consideration the principle of concrete offensiveness of the conduct. The right to identity *sub specie religionis* with particular regard to clothing should therefore be allowed in the case where the religious group to which one belongs accepts the atypical and contrary choices of others, while it could be denied where it manifests a fundamentalist and intolerant religious nature.

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