This book examines the interpretation and application of the right to freedom of religion and belief of new minorities formed by recent migration by the European Court of Human Rights (ECtHR) and the United Nations Human Rights Committee (HRC).

New minorities are increasingly confronted with restrictions of their religious practices and have addressed their rights claims both to the ECtHR and the HRC through their individual complaint procedures, which resulted in several contradicting decisions. Based on a quantitative and qualitative empirical analysis of the relevant case law, focusing in particular on the reasoning adopted by the two bodies, this book finds that the HRC in its practice offers a significantly higher level of protection to new minorities than the ECtHR. Such divergence may be explained by various institutional and conceptual differences, of which the concept of the margin of appreciation is the most influential. It is contended that the extensive use of the concept of the margin of appreciation by the ECtHR in the case law regarding new minorities’ right to freedom of religion and belief, and the absence of such concept in the HRC’s case law, could be explained by different understandings of the role of an international human rights body in conflicts between the majority and minorities. This book argues that such divergence could be mitigated with various tools, such as the inclusion of cross-references to the case law of other relevant bodies as well as to instruments specifically established for the protection of minorities.

The book will be of interest to academics, researchers and practitioners in the area of international human rights law, international public law in general and law and religion.

Dr Fabienne Bretscher obtained her PhD from the University of Zurich, where she was a research fellow and teaching assistant at the Institute for International Law and Comparative Constitutional Law. Moreover, she was awarded a scholarship from the Swiss National Science Foundation allowing her to conduct research at the Department of International and European Law of the Erasmus University Rotterdam and the Eurac Institute for Minority Rights in Bolzano.
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Protecting the Religious Freedom of New Minorities in International Law

Fabienne Bretscher
To those who build bridges, not walls.
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I. Cases of the ECtHR and the EComHR

Ahmet Arslan and Others v Turkey App no 41135/98, 23 February 2010 (ECtHR)
Aktaş v France (dec) App no 43563/08, 30 June 2009 (ECtHR)
Angeleni v Sweden (dec) App no 10491/83, Commission decision of 3 December 1986, Decisions and Reports 51, p 41 (EComHR)
Arrowsmith v the United Kingdom App no 7050/75, Commission decision of 12 October 1978, Decisions and Reports 31 (EComHR)
Bayatyan v Armenia [GC] App no 23459/03 ECHR 2011 (ECtHR)
Bayev and Others v Russia App nos 67667/09 and 2 others, ECHR 2017 (ECtHR)
Bayrak v France (dec) App no 14308/08, 30 June 2009 (ECtHR)
Belcacemi and Oussar v Belgium App no 37798/13, 11 July 2017 (ECtHR)
Biblical Centre of the Chuvash Republic v Russia App no 33203/08, 12 June 2014 (ECtHR)
Celniku v Greece App no 21449/04, 5 July 2007 (ECtHR)
Chapman v the United Kingdom [GC] App no 27238/95, ECHR 2001-I (ECtHR)
Chappell v the United Kingdom App no 12587/86 App no 10461/83, Commission decision of 30 March 1989, Decisions and Reports 53, p 241 (EComHR)
Choudhury v the United Kingdom (dec) App no 17439/90, Commission decision of 5 March 1991 (EComHR)
Christine Goodwin v the United Kingdom [GC] App no 28957/95, ECHR 2002-VI (ECtHR)
Connors v the United Kingdom App no 66746/01, 27 May 2004 (ECtHR)
Cossey v the United Kingdom App no 10843/84, 27 September 1990, Series A no 184 (ECtHR)
Dahlab v Switzerland (dec) ECHR 2001-V 447 (ECtHR)
Dakir v Belgium App no 4619/12, 11 July 2017 (ECtHR)
De Wilde, Ooms and Versyp v Belgium 18 June 1971, Series A no 12 (ECtHR)
Demir and Baykara v Turkey [GC] App no 34503/97, ECHR 2008 (ECtHR)
DH and Others v the Czech Republic [GC] App no 57325/00, ECHR 2007-IV (ECtHR)
Dogru v France App no 27058/05, 4 December 2008 (ECtHR)
Ebrahimian v France App no 64846/11, ECHR 2015 (ECtHR)
El Morsli v France (dec) App no 15585/06, 4 March 2008 (ECtHR)
Eweida and Others v the United Kingdom App nos 48420/10 and 3 others ECHR 2013 (extracts) (ECtHR)
Feldbrugge v the Netherlands 29 May 1986, Series A no 99 (ECtHR)
Folgerø and Others v Norway [GC] App no 15472/02, ECHR 2007-III (ECtHR)
Foti and Others v Italy 10 December 1982, Series A no 56 (ECtHR)
Francesco Sessa v Italy App no 28790/08, ECHR 2012 (extracts) (ECtHR)
Gamaleddyn v France (dec) App no 18527/08, 30 June 2009 (ECtHR)
Genov v Bulgaria App no 40524/08, 23 March 2017 (ECtHR)
Ghazal v France (dec) App no 29134/08, 30 June 2009 (ECtHR)
Golder v the United Kingdom 21 February 1975, Series A no 18 (ECtHR)
Gorzelik and Others v Poland [GC] ECHR 2004-I 219 (ECtHR)
Grandrath v Germany (dec) App no 2299/64, Commission decision of 12 December 1966, Decisions and Reports 31 (EComHR)
Handyside v the United Kingdom 7 December 1976, Series A no 24 (ECtHR)
Hasan and Chausb v Bulgaria [GC] App no 30985/96 ECHR 2000-XI (ECtHR)
Hasan and Eylem Zengin v Turkey App no 1448/04, 9 October 2007 (ECtHR)
Hatton and Others v the United Kingdom [GC] App no 36022/97, ECHR 2003-VIII 189 (ECtHR)
Ireland v the United Kingdom App no 5310/71, 18 January 1978, Series A no 25 (ECtHR)
ISKCON and 8 Others v the United Kingdom (dec) App no 20490/92, Commission decision of 8 March 1994 (EComHR)
Ivanova v Bulgaria App no 52435/99, 12 April 2007 (ECtHR)
İzzettin Doğan and Others v Turkey [GC] App no 62649/10, ECHR 2016 (ECtHR)
Jakóbski v Poland App no 18429/06, 7 December 2010 (ECtHR)
Jasvir Singh v France (dec) App no 25463/08, 30 June 2009 (ECtHR)
Karaahmed v Bulgaria App no 30587/13, 24 February 2015 (ECtHR)
Karaduman v Turkey App no 16278/90, Commission decision of 3 May 1993, Decisions and Reports 74, p 93 (EComHR)
Karakuzey v Germany (dec) App no 26568/95, Commission decision of 16 October 1996 (EComHR)
Karner v Austria App no 40016/98, ECHR 2003-IX (ECtHR)
Kervanci v France App no 31645/04, 4 December 2008 (ECtHR)
Khan v the United Kingdom (dec) App no 11579/85, Commission decision of 7 July 1986, Decisions and Reports 48, p 253 (EComHR)
Kokkinakis v Greece 25 May 1993, Series A no 260-A (ECtHR)
Kose and 93 Others v Turkey ECHR 2006-II 339 (ECtHR)
Kosteski v 'the Former Yugoslav Republic of Macedonia' App no 55170/00, 13 April 2006 (ECtHR)
Kovalkovs v Latvia (dec) App no 35021/05, 31 January 2012 (ECtHR)
Kruslin v France Series A no 176-A (ECtHR)
Lachiri v Belgium App no 3413/09, 18 September 2018 (ECtHR)
Larissis and Others v Greece 24 February 1998, Reports of Judgments and Decisions 1998-I (ECtHR)
Lautsi and Others v Italy [GC] App no 30814/06, ECHR 2011 (extracts) (ECtHR)
Lautsi v Italy App no 30814/06, 3 November 2009 (ECtHR)
Leyla Şabin v Turkey App no 44774/98, 29 June 2004 (ECtHR)
Leyla Şabin v Turkey [GC] App no 44774/98 ECHR 2005-XI (ECtHR)
Logan v the United Kingdom (dec) App no 24875/94, Commission decision of 6 September 1996 (EComHR)
Mann Singh v France (dec) App no 24479/07, 13 November 2008 (ECtHR)
Members of the Gldani Congregation of Jehovah's Witnesses and Others v Georgia App no 71156/01, 3 May 2007 (ECtHR)
Munoz Díaz v Spain App no 49151/07, ECHR 2009 (ECtHR)
Nachova and Others v Bulgaria [GC] App nos 43577/98 and 43579/98, ECHR 2005-VII (ECtHR)
Nolan and K v Russia App no 2512/04, 12 February 2009 (ECtHR)
Omkarvananda and the Divine Light Zentrum v Switzerland (dec) App no 8118/77, Commission decision of 19 March 1981, Decisions and Reports 25, p 105 (EComHR)
Osmanoğlu and Kocabas v Switzerland App no 29086/12, 10 January 2017 (ECtHR)
Otto-Preminger-Institut v Austria 20 September 1994, Series A no 295-A (ECtHR)
Paposhvili v Belgium [GC] App no 41738/10, ECHR 2016 (ECtHR)
Peraldi v France (dec) App no 2096/05, 7 April 2009 (ECtHR)
Phull v France (dec) App no 35753/03, ECHR 2005-I (ECtHR)
Pichon and Sajous v France (dec) App no 49853/99 ECHR 2001-X (ECtHR)
Ranjit Singh v France (dec) App no 27561/08, 30 June 2009 (ECtHR)
Refah Partisi (the Welfare Party) and Others v Turkey [GC] App nos 41340/98 and 3 others, ECHR 2003-II (ECtHR)
Reformed Church of X v the Netherlands (dec) App no 1497/62, Commission decision of 14 December 1962 (EComHR)
Religionsgemeinschaft der Zeugen Jehovas and Others v Austria App no 40825/98, 31 July 2008 (ECtHR)
SAS v France [GC] App no 43835/11 ECHR 2014 (extracts) (ECtHR)
Siebenhaar v Germany App no 18136/02, 3 February 2011 (ECtHR)
Siyato-Mykhaylivska Parafiya v Ukraine App no 77703/01, 14 June 2007 (ECtHR)
The Sunday Times v the United Kingdom (no 1) 26 April 1979, Series A no 30 (ECtHR)
Thlimmenos v Greece [GC] ECHR 2000-IV 263 (EChR)
Thlimmenos v Greece App no 34369/97, Commission decision of 4 December 1998 (EComHR)
Tsirulis and Kouloumpas v Greece 29 May 1997, Reports of Judgments and Decisions 1997-III (EChR)
United Communist Party of Turkey and Others v Turkey 30 January 1998, Reports of Judgments and Decisions 1998-I (EChR)
Vartic v Romania (No 2) App no 14150/08, 17 December 2013 (EChR)
Wingrove v the United Kingdom 25 November 1996, ECHR 1996-V (EChR)
Winterstein and Others v France App no 27013/07, 17 October 2013 (EChR)
X and the Church of Scientology v Sweden (dec) App no 7805/77, Commission decision of 5 May 1979, Decisions and Reports 16, p 68 (EComHR)
X v Austria (dec) App no 1753/63, Commission decision of 15 February 1965 (EComHR)
X v the Netherlands (dec) App no 2065/63, Commission decision of 14 December 1965, Decisions and Reports 18, p 40 (EComHR)
X v the United Kingdom (dec) App no 5442/72, Commission decision of 20 December 1974, Decisions and Reports 1, p 41 (EComHR)
X v the United Kingdom (dec) App no 5947/72, Commission decision of 5 March 1976, Decisions and Reports 5, p 8 (EComHR)
X v the United Kingdom (dec) App no 6886/75, Commission decision of 18 May 1976, Decisions and Reports 5, p 100 (EComHR)
X v the United Kingdom (dec) App no 7291/75, Commission decision of 4 October 1977, Decisions and Reports 11, p 55 (EComHR)
X v the United Kingdom (dec) App no 7992/77, Commission decision of 12 July 1978, Decisions and Reports 14, p 234 (EComHR)
X v the United Kingdom (dec) App no 8160/78, Commission decision of 12 March 1981, Decisions and Reports 22, p 27 (EComHR)
X v the United Kingdom (dec) App no 8231/78, Commission decision of 6 March 1982, Decisions and Reports 28, p 5 (EComHR)
X v the United Kingdom (dec) App no 8231/78, Commission decision of 6 March 1983, Decisions and Reports 28, p 5 (EComHR)

II. Cases of the HRC

Arens and Röder v Germany UN Doc CCPR/C/80/D/1138/2002, 29 April 2004
Bikramjit Singh v France UN Doc CCPR/C/106/1852/2008, 1 November 2012
Coeriel and Aurik v the Netherlands UN Doc CCPR/C/52/D/453/1991, 9 December 1994
Dawood Khan v Canada UN Doc CCPR/C/87/D/1302/2004, 10 August 2006
FA v France UN Doc CCPR/C/123/D/2662/2015, 16 July 2018
**Fatima Andersen v Denmark** UN Doc CCPR/C/99/D/1868/2009, 26 July 2010

**Hertzberg and Others v Finland** UN Doc CCPR/C/OP/1 at 124, 2 April 1982

**Hudoybergenova v Uzbekistan** UN Doc CCPR/C/82/D/931/2000, 5 November 2004

**JP v Canada** UN Doc A/47/40, 7 November 1991

**Karnel Singh Bhinder v Canada** UN Doc CCPR/C/37/D/208/1986, 28 November 1989

**Länsman v Finland** UN Doc CCPR/C/52/D/511/1992, 26 October 1994

**Leirvåg et al v Norway** UN Doc CCPR/C/82/D/1155/2003, 23 November 2004

**MA v Italy** UN Doc Supp No 40 (A/39/40) at 190, 10 April 1984

**Mahuika and Others v New Zealand** UN Doc CCPR/C/70/D/547/1993, 27 October 2000

**Malcolm Ross v Canada** UN Doc CCPR/C/70/D/736/1997, 26 October 2000

**María Cruz Achabal Puertas v Spain** UN Doc CCPR/C/107/D/1945/2010, 18 June 2013

**Miriana Hebbadj v France** UN Doc CCPR/C/123/D/2807/2016, 17 July 2018

**Mubonen v Finland** UN Doc A/40/40, 8 April 1985

**Prince v South Africa** UN Doc CCPR/C/91/D/1474/2006, 31 October 2007

**Ranjit Singh v France** UN Doc CCPR/C/102/D/1876/2009, 27 September 2011

**Shingara Mann Singh v France** UN Doc CCPR/C/108/D/1928/2010, 19 July 2013


**Sonia Yaker v France** UN Doc CCPR/C/123/D/2747/2016, 17 July 2018

**SWM Brooks v The Netherlands** UN Doc CCPR/C/29/D/172/1984, 9 April 1987

**Toonen v Australia** UN Doc CCPR/C/50/D/488/1992, 31 March 1994

**Zohra Madoni v Algeria** UN Doc CCPR/C/94/D/1495/2006, 1 December 2008

### III. Other cases

France, *Conseil d’État*, Avis ‘Port du foulard islamique’ (no 346893, 27 November 1989) (Headscarf)

--., Avis 4 / 6 SSR (no 217017, 3 May 2000)

--., (no 289946, 15 December 2006)
ICJ, Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) Merits, Judgment, ICJ Reports 2010, 639
PCIJ, Advisory Opinion regarding Greco-Bulgarian ‘Communities’ PCIJ Reports, Series B No 17, 1930
Other documents and materials

ACFC, First Opinion on Denmark (ACFC/INF/OP/I(2001)005, 2000) (First Opinion on Denmark)
– –, First Opinion on Switzerland (ACFC/INF/OP/I(2003)007, 2003) (First Opinion on Switzerland)
– –, Third Opinion on Switzerland (ACFC/OP/III(2013)001, 2013) (Third Opinion on Switzerland)
– –, Fourth Opinion on Denmark (ACFC/OP/IV(2014)001, 2015) (Fourth Opinion on Denmark)


– -, *Preparatory Work on Article 9 of the European Convention on Human Rights* (DH(56)14, 1956) (*Travaux préparatoires* Art 9 ECHR)


Conseil d’État (France), Plenary General Assembly, *Study of Possible Legal Grounds for Banning the Full Veil* (2010)


ECtHR Public Relations Unit, *50 Years of Activity: The European Court of Human Rights: Some Facts and Figures* (April 2010) (Facts and Figures)


– –, *General Comment 22, Article 18* (UN Doc CCPR/C/21/Rev1/Add4, 1993) (GC 22)

– –, *General Comment 23, Article 27* (UN Doc CCPR/C/21/Rev1/Add5, 1994) (GC 23)

– –, *General Comment 31* (UN Doc CCPR/C/21/Rev1/Add 1326, 2004) (GC 31)

– –, *General Comment 33: The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights* (UN Doc CCPR/C/GC/33, 5 November 2008) (GC 33)


– –, *Summary Record of the 116th Meeting* (UN Doc CCPR/C/SR1166, 9 October 1992) (Record 116th Meeting)

Other documents and materials


Law no 2004–228 of 15 March 2004 regulating, in accordance with the principle of secularism, the wearing of signs or dress manifesting a religious affiliation in State schools


—, *Islam, Islamism and Islamophobia in Europe* (Resolution 1743 (2010))


—, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (UN Doc A/RES/47/135, 18 December 1992) (UN Minority Rights Declaration)


UN Secretary-General, *Annotations on the Text of the Draft of the International Covenants on Human Rights* (UN Doc A/2929, 1955) (UN Doc A/2929)


Abbreviations

1981 Declaration  Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by General Assembly Resolution 36/55 of 25 November 1981
ACFC  Advisory Committee on the Framework Convention for the Protection of National Minorities
App no(s)  Application number(s)
Art(s)  Article(s)
BJPolS  British Journal of Political Science
CHRY  Canadian Human Rights Yearbook
CJEL  Columbia Journal of European Law
CoE  Council of Europe
CUP  Cambridge University Press
Dec  Decision
EComHR or the Commission  European Commission of Human Rights
ECTHR or the Court  European Court of Human Rights
Ed(s)  Editor(s)
Edn  Edition
Eg  For example
EJIL  European Journal of International Law
ELR  Erasmus Law Review
EU  European Union
EYMI  European Yearbook of Minority Issues
Abbreviations

F(f)  And following
GC  Grand Chamber
HHRJ  Harvard Human Rights Journal
HILJ  Harvard International Law Journal
HRC or the Committee  United Nations Human Rights Committee
HRLRev  Human Rights Law Review
HRLJ  Human Rights Law Journal
HRQ  Human Rights Quarterly
I•CON  International Journal of Constitutional Law
Ibid  Ibidem
ICCPR or the Covenant  International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171
ICJ  International Court of Justice
ICJ Statute  Statute of the International Court of Justice (adopted 24 October 1945)
ICL Journal  Vienna Journal on International Constitutional Law
ICLQ  International and Comparative Law Quarterly
ICLR  International Community Law Review
ie  Id est
IHLS  Journal of International Humanitarian Legal Studies
LJIL  Leiden Journal of International Law
MJ  Maastricht Journal of European and Comparative Law
MJIL  Michigan Journal of International Law
MLR  The Modern Law Review
NGO  Non-governmental organisation
NJHR  Nordic Journal of Human Rights
No(s)  Number(s)
NQHR  Netherlands Quarterly of Human Rights
NYIL  Netherlands Yearbook of International Law
öarr  Österreichisches Archiv für Recht & Religion
OHCHR  Office of the High Commissioner for Human Rights
xxiv  Abbreviations

OJLR  Oxford Journal of Law and Religion
Optional Protocol  Optional Protocol to the International Covenant on Civil
and Political Rights (adopted 16 December 1966, entered
into force 23 March 1976) 999 UNTS 171
OUP  Oxford University Press
P  Page
PACE  Parliamentary Assembly of the Council of Europe
Para(s)  Paragraph(s)
PCIJ  Permanent Court of International Justice
Res  Resolution
Rome Statute  Rome Statute to the International Criminal Court
(adopted 17 July 1998)
RTDH  Revue Trimestrielle des Droits de l’Homme
Siracusa Principles  Siracusa Principles on the Limitation and Derogation
Provisions in the International Covenant on Civil and
Political Rights (published by the American Association for
the International Commission of Jurists in April 1985)
SLR  Stanford Law Review
UDHR  Universal Declaration of Human Rights (proclaimed by the
United Nations General Assembly on 10 December 1948
in General Assembly Resolution 217 A)
UN  United Nations
UN Doc  United Nations Document
UN Migrant  International Convention on the Protection of the Rights
Workers  of All Migrant Workers and Members of their Families
Convention  (adopted 18 December 1990, entered into force 1
July 2003) 2220 UNTS 3
UN Minority  Declaration on the Rights of Persons Belonging to
Rights Declaration  National or Ethnic, Religious and Linguistic Minorities
(adopted by General Assembly Resolution 47/135 of
18 December 1992)
UNGA  United Nations General Assembly
UNTS  United Nations Treaty Series
UNYB  Max Planck Yearbook of United Nations Law
V  Versus
VCLT  Vienna Convention on the Law of Treaties (adopted 23
May 1969, entered into force 27 January 1980) 1155
UNTS 331
Venice Commission  European Commission for Democracy through Law
Vol  Volume
YLJ  Yale Law Journal
Figures

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Introduction

Migration is a global phenomenon that is continuously growing due to events related, among many, to war, religious intolerance, climate change and economic hardship. Immigrant-receiving countries are confronted with a more and more culturally, linguistically and religiously diverse society. This changing social environment has given rise to extensive political and academic debates on the impact of diversity on social cohesion. Today, growing social tensions between the so-called new minorities formed by these migration movements and the rest of the population residing in immigrant-receiving countries can be observed. In this context, religious differences seem to be a hot topic, as a statement of Hungary’s Prime Minister Viktor Orbán, who alleged that Muslim refugees represent a threat to Europe’s Christian identity, exemplifies. But also in Switzerland, a member of the Federal Assembly expressed the will to give preference to asylum requests of Christians.

This tension between the religious traditions of immigrant-receiving countries and new groups created by recent migration movements is also reflected in the legal sphere where restrictions to new minorities’ religious practices have become more common. Examples are the prohibition of the construction of minarets introduced to the Swiss constitution or the prohibition of the wearing of burqas.

5 See Art 72(3) of the Swiss Constitution, which was introduced by a popular initiative in 2009.
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as it was adopted for example in Belgium and France via infra-constitutional legislation. These measures seem to be aimed specifically at Muslims, who can be regarded as a new minority in these countries. While these are actions directly intended to restrict the religious practices of new minorities, there are also cases in which rules that do not appear to have a religious connotation come into conflict with the religious customs of respective groups. One can think of the requirement to wear safety headgear while riding a motorcycle or uniform policies, which may conflict with Muslim or Sikh religious practices to cover the head.7 Looking at these situations from a human rights perspective, the question arises whether international human rights law provides any guidelines and limits for such restrictions to religious practices of new minorities, who have emerged as a result of recent migration.

The right to freedom of religion, which is granted as a human right in various treaties on the international level, but also as a fundamental right in many constitutions, is of particular relevance in this regard. It guarantees everyone the right ‘to hold spiritual beliefs and to live by them, whether in private or in public, alone or in community with others’. This does not only include ceremonial acts, but also religious customs such as dietary or clothing practices. These external manifestations of belief are however not protected in an absolute manner. Rather, they are subject to limitations, according to generally established principles, and interferences can be justified under three conditions: The interference is prescribed by law (condition of legality), pursues a legitimate aim (condition of legitimacy) and is necessary for the fulfilment of that aim, thus not going ‘beyond what is required in order to effectively achieve that aim – or, at a minimum, that all the interests involved should be carefully balanced against one another (condition of proportionality)’.

As pointed out in relevant scholarship, in human rights law so-called multisourced equivalent norms, such as the right to freedom of religion, can be found,
which are enshrined in various treaties and thus subject to the interpretation and application by various bodies. The provisions in question, e.g., Article 9 ECHR and Article 18 ICCPR, are formulated in an open manner, as is commonly the case for human rights norms, and conflicting interpretations and applications can occur, when a body needs to decide whether specific factual circumstances amount to a violation of these norms. Adjudication of individual complaints can thus be seen as ‘the process by which a judge comes to understand and express the meaning of an authoritative legal text and the values embodied in that text’. In this process, human rights bodies are bound by certain guidelines given by legal sources, but generally, they seem to enjoy significant latitude in their interpretative exercise. Consequently, it does not come as a surprise that in human rights adjudication, different interpretations and applications of multi-source equivalent norms can be observed, thus making this area particularly interesting for further research.

Moreover, decisions and judgments adopted in the context of individual complaints procedures, as opposed to for example statements made in the context of state reporting procedures in the United Nations (UN) framework, represent an especially rich source for analysis. This holds particularly true given that the respective human rights bodies cannot choose which situations to address and whether to elaborate in a more extensive way on their interpretation of the provision(s) in question. Consequently, it is not just the outcome, namely the finding of a violation or no violation, that is decisive, but even more so the way in which a body arrives at such result, namely the reasoning of a judicial decision. Therefore, for the understanding of interpretations and applications of human rights provisions, it is crucial to analyse the reasoning supporting them.

In particular, this holds true in cases of conflicting interpretations and applications of human rights provisions, which can be observed with regard to sensitive issues, such as immigration and minorities. This is not surprising considering that the interpretation involves decisions on questions such as how ‘the goal of a cohesive society relates to allowing, protecting and/or even promoting separate

13 See Yuval Shany and Tomer Broude (eds), *Multi-Sourced Equivalent Norms in International Law* (Hart 2011).
15 Owen M Fiss, ‘Objectivity and Interpretation’ (1982) 34 SLR 739, 739.
16 Eg Art 38 ICJ Statute.
18 See also Andrea Bianchi, ‘International Adjudication, Rhetoric and Storytelling’ (2017) 0 *Journal of International Dispute Settlement* 1.
identities of distinctive population groups’. As an example, two complaints brought against French legislation, which prohibited the covering of the head on official photographs, can be mentioned. The first case regarded a Sikh, who had to appear bareheaded on his residency permit photo and was addressed to the United Nations Human Rights Committee (HRC). The Committee observed that France did not give reasons on how the requirement contributed to ensure public safety and facilitated the identification of the author of the communication. It thus found a violation of the right to manifest religious beliefs as guaranteed by Article 18(3) ICCPR. The European Court of Human Rights (ECtHR), however, declared a nearly identical complaint with regard to a driver’s licence photo manifestly ill-founded and thus inadmissible. The ECtHR’s interpretation of the condition of proportionality, which needs to be fulfilled in order for a limitation of the right to manifest religious beliefs to be regarded as justified, is thereby diametrically opposed to the HRC’s.

In order to identify the current state of and differences in human rights standards with regard to new minorities’ right to freedom of religion, going beyond specific sets of conflicting decisions, it is necessary to examine the current practice in detail. This has not yet been done in existing literature that rather focuses on criticising or comparing specific sets of contradicting decisions or decisions with regard to a specific religious practice. Yet, only when critically analysing the overall approaches expressed in the reasoning adopted by different human rights bodies in relation to new minorities’ religious freedom, can gaps or disparities in human rights standards be discovered and solutions be suggested.

Based on the above observation, this book limits its analysis to the interpretation and application of new minorities’ right to freedom of religion in the case law of the two specific human rights bodies, which are known to have adopted conflicting decisions in the area of new minorities’ religious freedom. This is on the one hand the HRC, responsible for supervising the implementation of the ICCPR and the issuing of ‘views’ on individual communications from 115 countries that ratified the Optional Protocol to the International Covenant on Civil

22 Mann Singh v France (dec) App no 24479/07, 13 November 2008 (ECtHR).
24 The decisions adopted by the HRC when examining individual complaints are entitled ‘views’ according to Art 5(4) of the Optional Protocol to the ICCPR.
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and Political Rights (Optional Protocol to the ICCPR). On the other hand, and in particular since several European countries hosting large groups of new minorities, such as Switzerland or the United Kingdom, have not accepted the individual complaint mechanism under the ICCPR, the practice of the ECtHR, which is responsible for the supervision of the ECHR, is included.

Different than other research in this area, this book is based on an empirical analysis of the individual complaints procedure of the ECtHR and the HRC. Thus, a quantitative and qualitative empirical research of the case law is used as a starting point for a comparative analysis of the practice of the HRC and the ECtHR regarding new minorities’ right to manifest their religious beliefs. The designed empirical research, which will be explained in detail below, serves as a tool to identify relevant decisions and judgments or views and potential elements of the adopted reasoning, which can explain the possibly divergent interpretation and application of new minorities’ religious freedom by the HRC and the ECtHR. Basing this book on empirical research of the relevant practice strives to ensure the inclusion of all relevant case law and allows for a holistic and comprehensive interpretation of the approaches taken by the HRC and the ECtHR.

The ECtHR and the HRC represent two different systems of human rights protection and are thus not obliged to adopt a coherent interpretation of the right to freedom of religion. Nevertheless, considering the basic principle of the universality of human rights established by the Universal Declaration of Human Rights (UDHR) and reaffirmed in the 1993 Vienna Declaration and Programme of Action, it appears appropriate to investigate the reasons for these different human rights interpretations. Moreover, it is of crucial importance to clarify the international standards in this regard giving states guidelines and limitations for dealing with constantly growing religious diversity. Such clarification is also key for the formulation of litigation strategies for applicants and other groups seeking to advance human rights protection of new minorities. This is in particular necessary given that new minorities, such as Muslims, are increasingly confronted with hostile attitudes towards their religious practices.

26 See below Chapter 1, section IV.
Bibliography


Bianchi Andrea, *International Law Theories: An Inquiry into Different Ways of Thinking* (OUP 2016) (Theories)
———, ‘International Adjudication, Rhetoric and Storytelling’ (2017) 0 *Journal of International Dispute Settlement* 1 (Adjudication)
——— (ed), *The Experiences of Face Veil Wearers in Europe and the Law* (CUP 2014) (Face Veil)
Bretscher Fabienne, ‘Diversity in Unity: Minority Protection and National Cohesion in Democracies’ in Marschner Laura and Zumsteg Patrice Martin (eds), *Risiko und Verantwortlichkeit: Analysen und Perspektiven von Assistierenden des RWI (APAR-IUZ)*, vol 17 (Dike 2016) (Diversity)
———, ‘Between Law and Politics: Muslim Religious Practices in Swiss Public Schools’ (2017) 20 *Studia z Prawa Wyznaniowego* 35 (Schools)
Buckley Carla M, Donald Alice and Leach Philip (eds), Towards Convergence in International Human Rights Law: Approaches of Regional and International Systems (Brill Nijhoff 2016)
Cane Peter and Kritzer Herbert M, ‘Introduction’ in Cane Peter and Kritzer Herbert M (eds), The Oxford Handbook of Empirical Legal Research (2nd edn, OUP 2012)
Cheeseman Chloe, ‘Harmonising the Jurisprudence of Regional and International Human Rights Bodies: A Literature Review’ in Buckley Carla M, Donald Alice and Leach Philip (eds), Towards Convergence in International Human Rights Law: Approaches of Regional and International Systems (Brill Nijhoff 2016)
Cheng Bin, General Principles of Law as Applied by International Courts and Tribunals (Stevens 1953)
Cirklová Jitka, ‘Buddhism as a Value Source in the Course of New Identity and Lifestyle Formation in the Czech Republic’ (2012) 13 Contemporary Buddhism 263
Conte Alex and Burchill Richard, ‘Introduction’ in Conte Alex and Burchill Richard (eds), Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee (2nd edn, Ashgate 2009)
Cox Laurence, ‘European Buddhist Traditions’ in Jerryson Michael (ed), The Oxford Handbook of Contemporary Buddhism (OUP 2017)
Cryer Robert and others, Research Methodologies in EU and International Law (Hart 2011)
Davies Margaret, ‘Legal Pluralism’ in Cane Peter and Kritzer Herbert M (eds), The Oxford Handbook of Empirical Legal Research (2nd edn, OUP 2012)


De Jong Dennis, ‘The Legal Obligations of State and Non-State Actors in Respect of the Protection of Freedom of Thought, Conscience and Religion or Belief’ (2008) 3 Religion and Human Rights

———, Les Forces Imaginantes du Droit (II): Le Pluralisme Ordonné (Seuil 2006) (Forces Imaginantes II)


Dinstein Yoram, ‘Freedom of Religion and the Protection of Religious Minorities’ in Dinstein Yoram and Tabory Mala (eds), The Protection of Minorities and Human Rights (Martinus Nijhoff 1992)

Dworkin Ronald, Taking Rights Seriously (Bloomsbury 2013)

Dzehtsiarou Kanstantsin, European Consensus and the Legitimacy of the European Court of Human Rights (CUP 2015)


Epstein Lee and Martin Andrew D, ‘Quantitative Approaches to Empirical Legal Research’ in Cane Peter and Kritzer Herbert M (eds), The Oxford Handbook of Empirical Legal Research (2nd edn, OUP 2012)


Evans Malcolm D, Religious Liberty and International Law in Europe (CUP 1997) (Religious Liberty)

Ferrari Alessandro and Pastorelli Sabrina (eds), The Burqa Affair Across Europe: Between Public and Private Space (Routledge 2016)


Forowicz Madgalena, The Reception of International Law in the European Court of Human Rights (OUP 2010)


———, ‘How to Improve the Necessity Test of the European Court of Human Rights’ (2013) 11 I•CON 466 (Necessity Test)


Gilbert Geoff, ‘The Legal Protection Accorded to Minority Groups in Europe’ (1992) XXIII NYIL 67 (Legal Protection)

Gilliat-Ray Sophie, ‘The United Kingdom’ in Cesari Jocelyne (ed), The Oxford Handbook of European Islam (OUP 2014)


Hannum Hurst, ‘The Concept and Definition of Minorities’ in Weller Marc (ed), Universal Minority Rights (OUP 2007)
Hanski Raija and Scheinin Martin, Leading Cases of the Human Rights Committee (Åbo Akademi University 2003)
———, ‘Ever-Increasing Synergy Towards a Stronger Level of Minority Protection Between Minority-Specific and Non-Minority-Specific Instruments’ (2003/4) 3 EYMI 15 (Synergy)
———, ‘A Patchwork of “Successful” and “Missed” Synergies in the Jurisprudence of the ECHR’ in Henrard Kristin and Dunbar Robert (eds), Synergies in Minority Protection: European and International Law Perspectives (CUP 2008) (Synergies)
———, The Ambiguous Relationship Between Religious Minorities and Fundamental (Minority) Rights ( Eleven 2011) (Ambiguous Relationship)
———, ‘Tracing Visions on Integration and/or Minorities: An Analysis of the Supervisory Practice of the FCNM’ (2011) 13 ICLR 333 (Visions of Integration)
———, ‘Minorities’ in Carty Anthony (ed), Oxford Bibliographies in International Law (OUP 2012) (Minorities)
———, ‘The Intractable Relationship Between the Concepts “Integration” and “Multiculturalism”: About Conceptual Fluidity, (Substantive) Context Specificness and Fundamental Rights Perspectives’ in Podunavac Milan (ed), The Challenges of Multiculturalism: The South-Eastern European Perspectives in the European Discourse (Heinrich Böll Foundation 2013) (Multiculturalism)


Itzcovich Giulio, ‘One, None and One Hundred Thousand Margins of Appreciations: The Lautsi Case’ (2013) 13 HRLRev 287

Jakubowski Andrzej and Wierczyńska Karolina (eds), Fragmentation vs the Constitutionalisation of International Law: A Practical Inquiry (Routledge 2016)


Kelsen Hans, General Theory of Law and State (Harvard UP 1945)

Kiss Alexandre, ‘Commentary by the Rapporteur on the Limitation Provisions’ (1985) 7 Human Rights Quarterly 15

Knights Samantha, Freedom of Religion, Minorities, and the Law (OUP 2007)


Kratochvíl Jan, ‘The Inflation of the Margin of Appreciation by the European Court of Human Rights’ (2011) 29 NQHR 324


Kymlicka Will, Multicultural Citizenship (OUP 1995)

Landman Todd, ‘Social Science Methods and Human Rights’ in Coomans Fons, Grünfeld Fred and Kamminga Menno T (eds), Methods of Human Rights Research (Intersentia 2009)


Legg Andrew, The Margin of Appreciation in International Human Rights Law: Definition and Proportionality (OUP 2012)


———, Religion, Beliefs, and International Human Rights (Orbis Books 2000) (Religion)

Letsas George, A Theory of Interpretation of the European Convention on Human Rights (OUP 2007)


Lupu Yonatan and Voeten Erik, ‘Precedent in International Courts: A Network Analysis of Case Citations by the European Court of Human Rights’ (2011) 42 BJPolS 413


Mahoney Paul, ‘Judicial Activism and Self-Restraint in the European Court of Human Rights: Two Sides of the Same Coin’ (1990) 11 HRLJ 57


McCrea Ronan, ‘Secularism Before the Strasbourg Court: Abstract Constitutional Principles as a Basis for Limiting Rights’ (2016) 79 MLR 678

McGoldrick Dominic, ‘Religion in the European Public Square and in European Public Life: Crucifixes in the Classroom?’ (2011) 11 HRL Rev 451 (Religion)
———, ‘A Defence of the Margin of Appreciation and an Argument for Its Application by the Human Rights Committee’ (2016) 65 ICLQ 21 (Margin of Appreciation)

McLachlan Campbell, ‘The Principle of Systemic Integration and Article 31(3)(C) of the Vienna Convention’ (2005) 54 ICLQ 279

Medda-Windischer Roberta, Old and New Minorities – Reconciling Diversity and Cohesion: A Human Rights Model for Minority Integration (Nomos 2009)


Meijknecht Anna, ‘Minority Protection System Between World War I and World War II’ in Wolfrum Rüdiger (ed), Max Planck Encyclopedia of Public International Law (OUP 2010)

Merrills John Graham, The Development of International Law by the European Court of Human Rights (Manchester UP 1988)


Moliner Christine, ‘“Did You Get Papers?” Sikh Migrants in France’ in Jacobsen Knut A and Myrvold Kristina (eds), Sikhs in Europe: Migration, Identities and Representation (Ashgate 2011)


Myrvold Kristina, ‘Sikhs in Mainland European Countries’ in Singh Pashaura and Fenech Louis E (eds), The Oxford Handbook of Sikh Studies (OUP 2014)

Nesbitt Eleanor, ‘Sikh Diversity in the UK: Contexts and Evolution’ in Jacobsen Knut A and Myrvold Kristina (eds), Sikhs in Europe: Migration, Identities and Representation (Ashgate 2011)


Nowak Manfred, UNO-Pakt über bürgerliche und politische Rechte und Fakultativprotokoll: CCPR-Kommentar (Engel 1989) (CCPR-Kommentar)
———, ‘The Evolution of Minority Rights in International Law, Comments’ in Bröllmann Catherine, Lefèber René and Zieck Marjoleine (eds), Peoples and Minorities in International Law (Martinus Nijhoff 1993) (Minority Rights)


———, ‘Confronting the Contemporary Challenges of Europe’s Minorities’ (2005) 16 *Helsinki Monitor* 227 (Contemporary Challenges)

Pappa Christoph, *Das Individualbeschwerdev erfahren des Fakultativprotokolls zum Internationalen Pakt über bürgerliche und politische Rechte* (Stämpfli+Cie 1996)

Payandeh Mehrdad, ‘Fragmentation Within International Human Rights Law’ in Adenas Mads and Bjorge Eirik (eds), *A Farewell to Fragmentation: Reassertion and Convergence in International Law* (CUP 2015)


———, *Minority Groups and Judicial Discourse in International Law: A Comparative Perspective* (Martinus Nijhoff 2009) (Judicial Discourse)


Peters Anne, ‘Fragmentation and Constitutionalization’ in Orford Anne, Hoffmann Florian and Clark Martin (eds), *The Oxford Handbook of the Theory of International Law* (OUP 2016)


———, ‘Relativity of the Minority Concept’ (1992) 14 HRQ 104 (Relativity)
Raz Joseph, Practical Reason and Norms (OUP 1999)
Reich Johannes, ‘Switzerland: Freedom of Creed and Conscience, Immigration, and Public Schools in the Postsecular State – Compulsory Coeducational Swimming Instruction Revisited’ (2009) 7 I•CON 754
Ringelheim Julie, Diversité Culturelle et Droits de l’Homme: La Protection des Minorités par la Convention Européenne des Droits de l’Homme (Bruylant 2006) (Diversité Culturelle)
———, ‘Rights, Religion and the Public Sphere: The European Court of Human Rights in Search of a Theory?’ in Zucca Lorenzo and Ungureanu Camil (eds), Law, State and Religion in the New Europe: Debates and Dilemmas (CUP 2012) (Public Sphere)
Schauer Frederick, ‘Giving Reasons’ (1995) 47 SLR 633
Schlütter Birgit, ‘Aspects of Human Rights Interpretation by the UN Treaty Bodies’ in Keller Helen and Ulfstein Geir (eds), UN Human Rights Treaty Bodies: Law and Legitimacy (CUP 2012)
Shany Yuval and Broude Tomer (eds), Multi-Sourced Equivalent Norms in International Law (Hart 2011)
Shaw Malcolm N, ‘The Definition of Minorities in International Law’ in Dinstein Yoram and Tabory Mala (eds), The Protection of Minorities and Human Rights (Martinus Nijhoff 1992) (Minorities)
———, ‘Freedom of Thought, Conscience and Religion’ in Macdonald Ronald, Matscher Franz and Petzold Herbert (eds), The European System for the Protection of Human Rights (Martinus Nijhoff 1993) (Freedom)
———, ‘A Global Community of Courts’ (2003) 44 HILJ 191 (Global Community)
———, A New World Order (Princeton UP 2004) (World Order)
Smits Jan M, The Mind and Method of the Legal Academic (Edwar Elgar 2012)
Spielhaus Riem, ‘Germany’ in Cesari Jocelyne (ed), The Oxford Handbook of European Islam (OUP 2014)
Stender Heike, Überschneidungen im internationalen Menschenrechtsschutz: Zum Problem des overlapping von materiellen Garantien und Kontrollmechanismen (Berliner Wissenschafts-Verlag 2004)
Tahzib Bahiyyih G, Freedom of Religion or Belief: Ensuring Effective International Legal Protection (Martinus Nijhoff 1996)
Takemura Hitomi, International Human Right to Conscientious Objection to Military Service and Individual Duties to Disobey Manifestly Illegal Orders (Springer 2009)


Tulkens Françoise and Van Drooghenbroeck Sébastien, ‘The Domestic Courts’ Response to Divergent Views Among International Human Rights Bodies: Thoughts Prompted by the Singh v. France Cases’ in Alen André and others (eds), *Liberae Cognitiones: Liber amicorum Marc Bossuyt* (Intersentia 2013)


Wildhaber Luzius, ‘Precedent in the European Court of Human Rights’ in Mahoney Paul and others (eds), Protection des Droits de l’Homme: La Perspective Européenne/Protecting Human Rights: The European Perspective: Mélanges à la Mémoire de/Studies in Memory of Rolf Ryssdal (Heymann 2000) (Precedent)
Wolfrum Rüdiger, ‘The Emergence of “New Minorities” as a Result of Migration’ in Bröllmann Catherine, Lefèbre René and Zieck Marjoleine (eds), Peoples and Minorities in International Law (Martinus Nijhoff 1993)
Xenos Dimitris, The Positive Obligations of the State under the European Convention of Human Rights (Routledge 2012)
Young Iris Marion, Justice and the Politics of Difference (Princeton UP 1990)