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“Libertà e identità religiosa nei rapporti di lavoro. Diritto interno e giurisprudenza della Corte di Strasburgo”

“Religious freedom and identity in labour relations. National law and Strasbourg Court Jurisprudence”

ABSTRACT

The globalization process (in the socio-economic and ethical-cultural perspective), medical scientific progress (redefining the contents of the right to live and die) and the emergence and spread of the new social needs (e.g. the legal recognition of same-sex union and family formation) are socio-cultural phenomena which require a new consideration under the traditional legal systems based on the peculiar national values and identity.

The crisis of the traditional legal systems also affects the traditional religious confessions. Indeed, the branch of law concerning the religious phenomenon is characterized both by a possible contrast between conducts required by religious and legal systems and by the absence of an appropriate government regulation.

Consequently, the emergence of a soft law - based on an interfaith and multicultural dialogue at level of European Union - is of the primary importance and the role of the judge in interpreting the fundamental principles of the European and national legal systems is necessary to legal protection.

In a democratic and intercultural cooperation, the labour matters are characterized by peculiar aspects: both the economic crisis and, therefore, the difficulty of finding (and keeping) a job and the spread of a sense of mistrust are counterbalanced by the enforcement of the individual identity, in terms of cultural membership and religious identity.

The first issue analyzed in the thesis is the religious freedom and the individual identity of employees, without religious affiliation with employers, from the point of view of the national and European Courts.

In absence of specific guarantees for religious freedom and the rights related to the personality of the employee, national jurisprudence and decisions of the European Court of Human Rights deal with the potential conflict between two fundamental rights: the freedom to conduct a business while guaranteeing compliance with substantial contractual obligations, and the right to be different and having an individual identity. In details, the thesis focuses on the issues of major interest about the prohibition of employment discrimination, the ban of religious harassment, religious holidays and weekly rest, food, religious symbols and dress: “*Religious dimension it is one of the most vital elements that go to make up the identity of believers and their conception of life*” (ECHR, Case of Eweida and others v. The United Kingdom-15 January 2013). The decisions of national and European Courts about religious symbols and dress have been examined (*ex multis*, Corte d’Appello di Milano, sentenza n.579/2016- ECHR, Case of Eweida and others v. The United Kingdom- application nos. 48420/10, 59842/10, 51671/10 and 36516/10- judgment 15 January 2013, Case of S.A.S. v. France – application nos. 4383/11- judgment 1 July 2014, Case Ebrahimian v. France - application nos.64846/11, 26 November 2015).

States are allowed to have a *margin of appreciation* and the different models of secularism of the national jurisdictions decline in different national legislations related to the constraints imposed on a person’s choice of attire. A problematic issue is actually the acceptance of the religious minority’s symbols by the majority, that can cause restrictions on religious freedom.

Moreover, the thesis addresses the issue of religious freedom and individual identity of employees with respect to religious employers, related to the dialectic between parishioners and religious groups, and deals with the guarantees for religious freedom of religious organization and the rights related to the personality of the employee. In particular, it examines the *judgments* of the European Court of Human Rights about the violation of articles 6 (*right to a fair trial*) § 1 (*right to a fair hearing*), 8 (*right to respect for private and family life*), 9 (*freedom of thought, conscience and religion*), 10 (*freedom of expression*), 11 (*freedom of association*), 14 (*freedom of assembly and association*) - (*ex multis*, ECHR, Case of Lombardi Vallauri v.

Italy - application no. 39128/05- 20 October 2009, Case of Obst v. Germany - application no. 425/03 - 23 September 2010, Case of caso Schüth v. Germany - application no. 1620/03, 23 September 2010, Case of Siébenhaar v. Germany -application no. 18136/02, 3 February 2011, Case of Fernández Martínez v. Spain - application no. 56030/07, Grand Chamber 12 June 2014, Case of Sindicatul Păstorul cel Bun v. Romania - application no. 2330/09, Grand Chamber 9 July 2013).

European Court examined the conflicts between religious autonomy of the Church and other fundamental rights of person and requires to balance *case by case* both rights. It seems to have a propensity for the interests of the church (credibility and freedom of religion) and to refer to the Jurisprudence of the United States: “*[t]he interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way*” (Supreme Court of the United States Hosanna - Tabor Evangelical Lutheran Church And School V. Equal Employment Opportunity Commission Et Al., January 11, 2012).

The question of protection of the rights related to the personality of the employee remains: the social group is protected if it contributes to the full development of the personality of individual.

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