

EU LAW AND RELIGION

GENERAL INTRODUCTION EU LAW AND BEYOND

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OVERVIEW

EU LAW AND RELIGION

1. Non-discrimination
2. Case-law
3. A situation reflecting the motto 'united in diversity'

GUIDING QUESTIONS



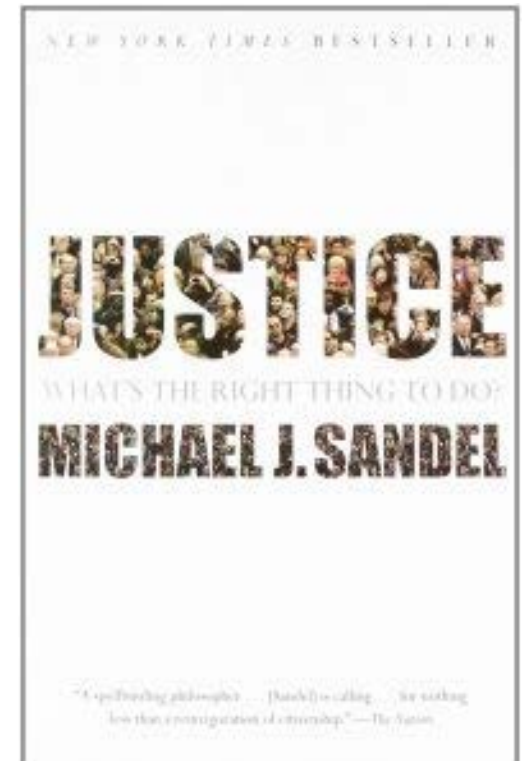
- ❑ What is the common ground of law, justice, values, morality, ethics and religion?
- ❑ What is the relationship between EU law and religion?
- ❑ What about discrimination based on religion?
- ❑ What does the principle of proportionality stand for?
- ❑ What is the common ground between EU law and public morality on the one hand, and EU law and religion on the other?
- ❑ How can the motto of the EU ('united in diversity') explain the EU's approach in this regard?

EU law and religion

Different concepts, but similar objectives

“These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, **justice**, solidarity and equality between women and men prevail.” (Article 2 para. 2 TEU)

Justice:
What’s the Right Thing to Do?
 (Sandel, 2010)



EU law and religion

Non-discrimination

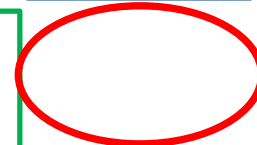
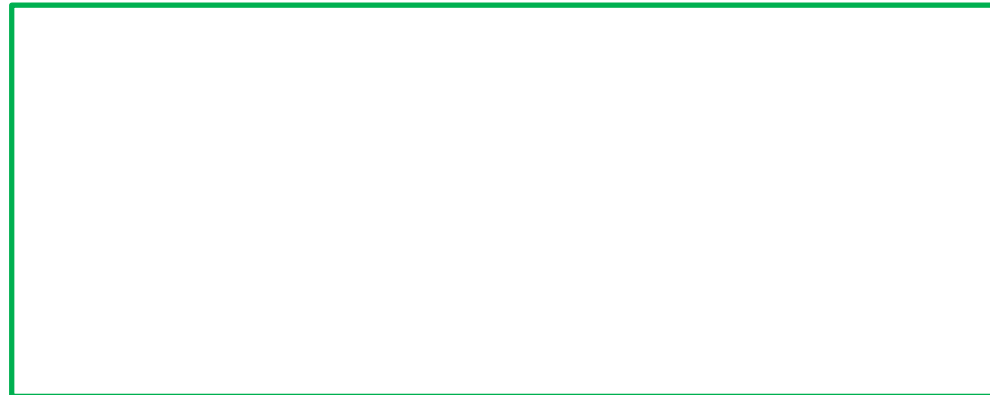
Directive 2010/41/EU of 7 July 2010 on the application of the principle of **equal treatment** between **men and women** engaged in an activity in a **self-employed** capacity



2000/43/EC

2000/78/EC

2006/54/EC



2004/113/EC

2006/54/EC

Source: SEC(2008) 2181 final 2.7.2008, p. 3

Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008) 426 final 2.7.2008

See also Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, OJ 2018 L 167/28

Case of Ms Achbita

- CJEU judgment of 14 March 2017, *G4S Secure Solutions*, C-157/15, EU:C:2017:203
 - Facts:
 - When Ms Achbita started to work for G4S (Feb. 2003), there was an **unwritten** rule that workers could not wear visible signs of their **political, philosophical or religious** beliefs in the workplace.
 - Three years later (i.e. in April 2006), Ms Achbita **informed** her line managers that she intended, in future, to wear an Islamic headscarf during working hours.
 - On 29 May 2006, the G4S **works council** approved an **amendment to the workplace regulations**, which came into force on 13 June 2006, according to which ‘employees are prohibited, in the workplace, from wearing any visible signs of their political, philosophical or religious beliefs and/or from engaging in any observance of such beliefs’.
 - On 12 June 2006: **dismissal** on account of her continuing insistence that she wished, as a Muslim, to wear the Islamic headscarf at work.

Case of Ms Achbita

- CJEU judgment of 14 March 2017, *G4S Secure Solutions*, C-157/15, EU:C:2017:203
 - Religion not defined in Directive 2000/78/EC (para. 25)
 - EU approach similar to European Convention on Human Rights (ECHR) of the Council of Europe: *forum internum* (fact of having a belief), as well as *forum externum* (manifestation of religious faith in public) (para. 28)
 - Applied without difference -> no open discrimination (para. 32)
 - In case of disguised discrimination (which is up to the national court to assess), then possibility of justification (paras. 34-5)
 - 1. “desire to display, in relations with both public and private sector customers, a policy of political, philosophical or **religious neutrality**” = **legitimate aim** (para. 37);
Art 16 CFR (**freedom to conduct a business**) – “notably“ in case of contact with the employer’s customers (para. 38); reference to ECtHR case-law (para. 39)
 - 2. **Appropriateness**: ok, “provided that that policy is genuinely pursued in a **consistent and systematic** manner” (para. 40) to be assessed by national court; “policy” -> can be unwritten or written
 - 3. **Necessity**: if in case of workers who interact with customers -> “**must be considered strictly necessary** for the purpose of achieving the aim pursued” (para. 42) -> “**back office**“ activity (no contact with customers) as **alternative** to dismissal (para. 43)

Excerpt other case-law

- **Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation**
 - CJEU 14.3.2017, C-188/15, *Bougnaoui & ADDH* (GC): **Islamic headscarf** | France
 - CJEU 14.3.2017, C-157/15, *G4S Secure Solutions* (GC): **Islamic headscarf** | Belgium
 - CJEU 17.4.2018, C-414/16, *Egenberger* (GC): **ethos & job application** | Protestant equivalent (Diakonie) | Germany
 - CJEU 11.9.2018, C-68/17, *IR* (GC): **ethos & dismissal of employee** | Catholic Caritas | Germany
 - CJEU 22.1.2019, C-193/17, *Cresco Investigation* (GC): **Protestant holiday on Good Friday** | Austria
- **Regulation (EC) 1099/2009 on the protection of animals at the time of killing**
 - CJEU 29.5.2018, C-426/16, *Liga van Moskeeën* (GC): Slaughter and animal welfare | Belgium
 - CJEU 26.2.2019, C-497/17, *Œuvre d'assistance aux bêtes d'abattoirs* (GC): Slaughter and animal welfare | France

EU law and religion

EU motto | united in diversity

Charter of Fundamental Rights of the EU (CFR)

“respecting the **diversity of the cultures and traditions** of the peoples of Europe as well as the **national identities** of the Member States and the organisation of their public authorities at national, regional and local levels” (preamble, 3rd recital)

Treaty on European Union (TEU)

“DESIRING to deepen the solidarity between their peoples while **respecting their history, their culture and their traditions**” (preamble, 6th recital)

“It shall **respect** its rich **cultural and linguistic diversity**, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.” (Article 3 para. 3 subpara. 4)

“The Union shall **respect** the equality of Member States before the Treaties as well as their **national identities**, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government.” (Article 4 para. 2)



The motto:
United in diversity

EU motto: cf. Treaty establishing a Constitution for Europe (not entered into force): preamble 4th recital; Article I-8 para. 3. See also the common declaration (No 52), annexed to the Lisbon Treaty (of 16 Member States), OJ 2007 C 306/267.

EU law and religion

EU motto | united in diversity

CFR

“peaceful future based on **common values**” (preamble, 1st recital)

“Conscious of its **spiritual and moral heritage**” | DE: “geistig-religiösen und sittlichen Erbes“
(preamble, 2nd recital)

TEU

“DRAWING INSPIRATION from the **cultural, religious and humanist inheritance** of Europe, **from which have developed** the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,”
(preamble, 2nd recital)

EU **values** (Art. 2); *see below*



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EU law and religion

EU motto | reference to god?

CFR (2000) | solemn proclamation in Nice

“Conscious of its **spiritual and moral heritage**” | DE: “geistig-religiösen und sittlichen Erbes“
(preamble, 2nd recital)

TEU (2007) | Lisbon Treaty

“DRAWING INSPIRATION from the **cultural, religious and humanist inheritance** of Europe, **from which have developed** the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,” (preamble, 2nd recital)

- “Subject of **highly emotional disputes** in the final phase of the Convention” (Meyer, 2019, p. 56; translation from DE)
- No confession for a **certain** religion, such as Christianity; also not for **several** religions, for instance under exclusion of Islam (Meyer, 2019, p. 57)
- Likewise **atheists or agnostics** should be taken into consideration. (Meyer, 2019, p. 57)



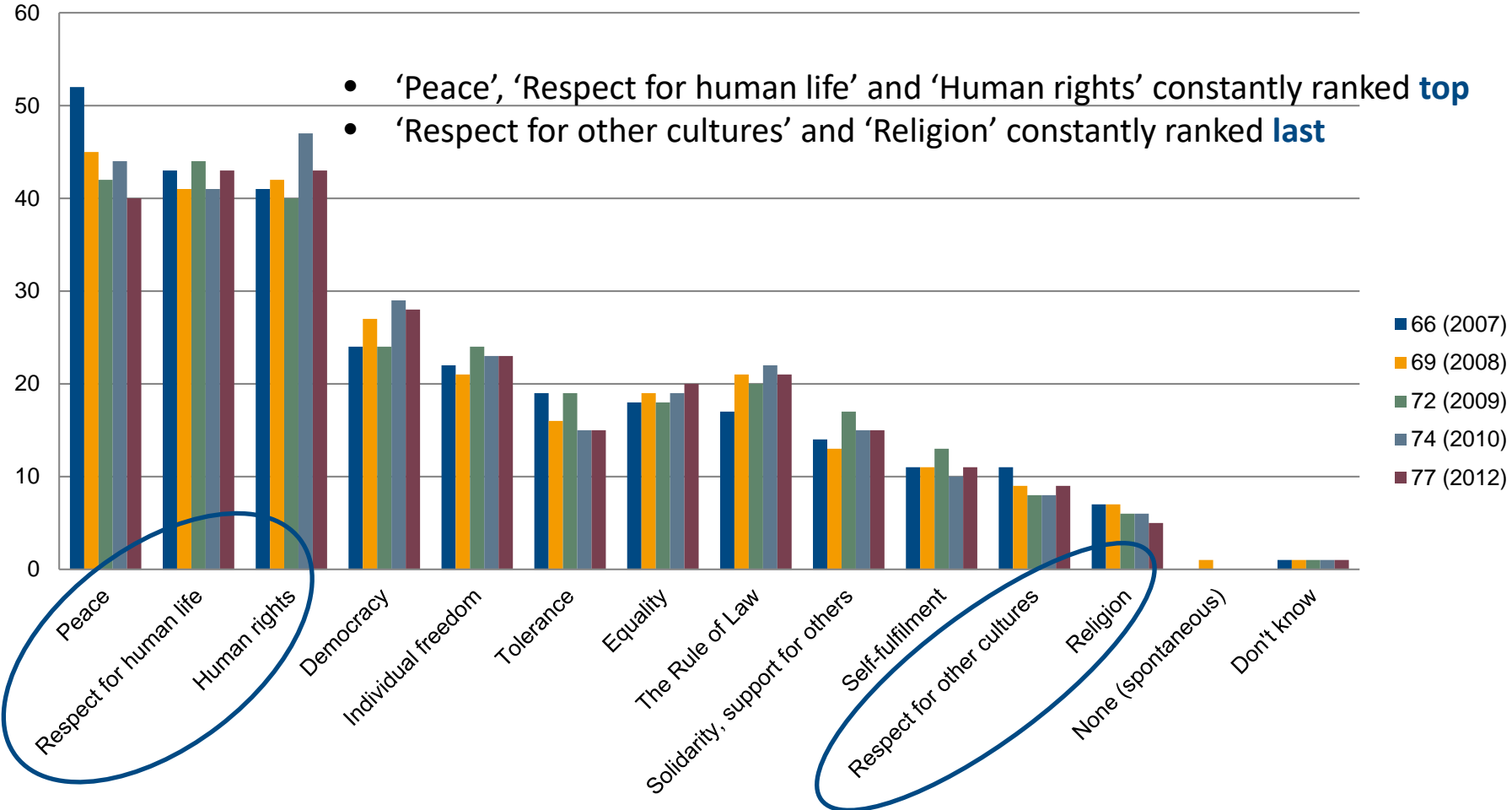
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EU law and religion

Values | Eurobarometer

Personal values of Europeans

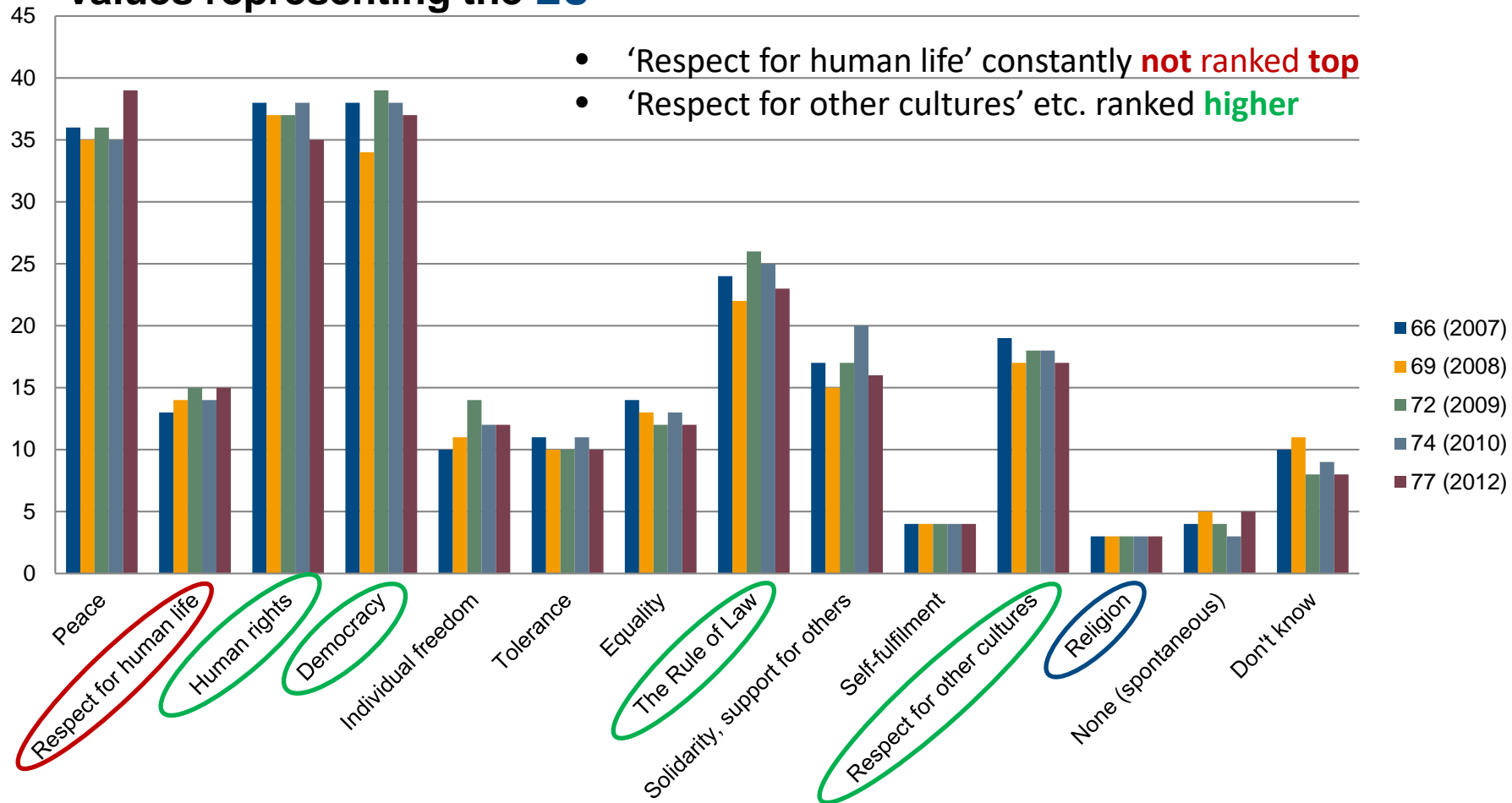


Sources: Eurobarometer 77 (2012), pp. 9 and 12; Eurobarometer 74 (2010), pp. 32 and 33; Eurobarometer 72 (2009), Vol. 2, pp. 148 and 152; Eurobarometer 69 (2008), 1. Values of Europeans, pp. 15 and 22; Eurobarometer 66 (2007), p. 28

EU law and religion

Values | Eurobarometer

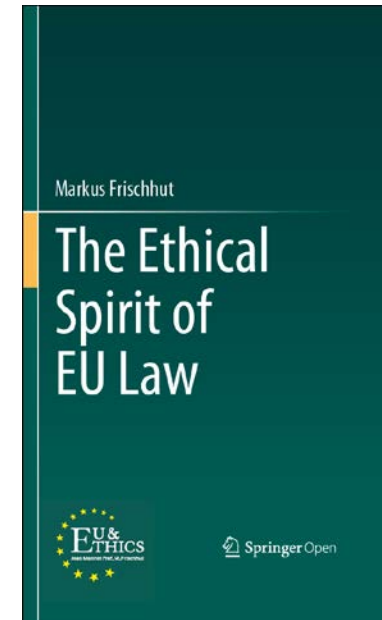
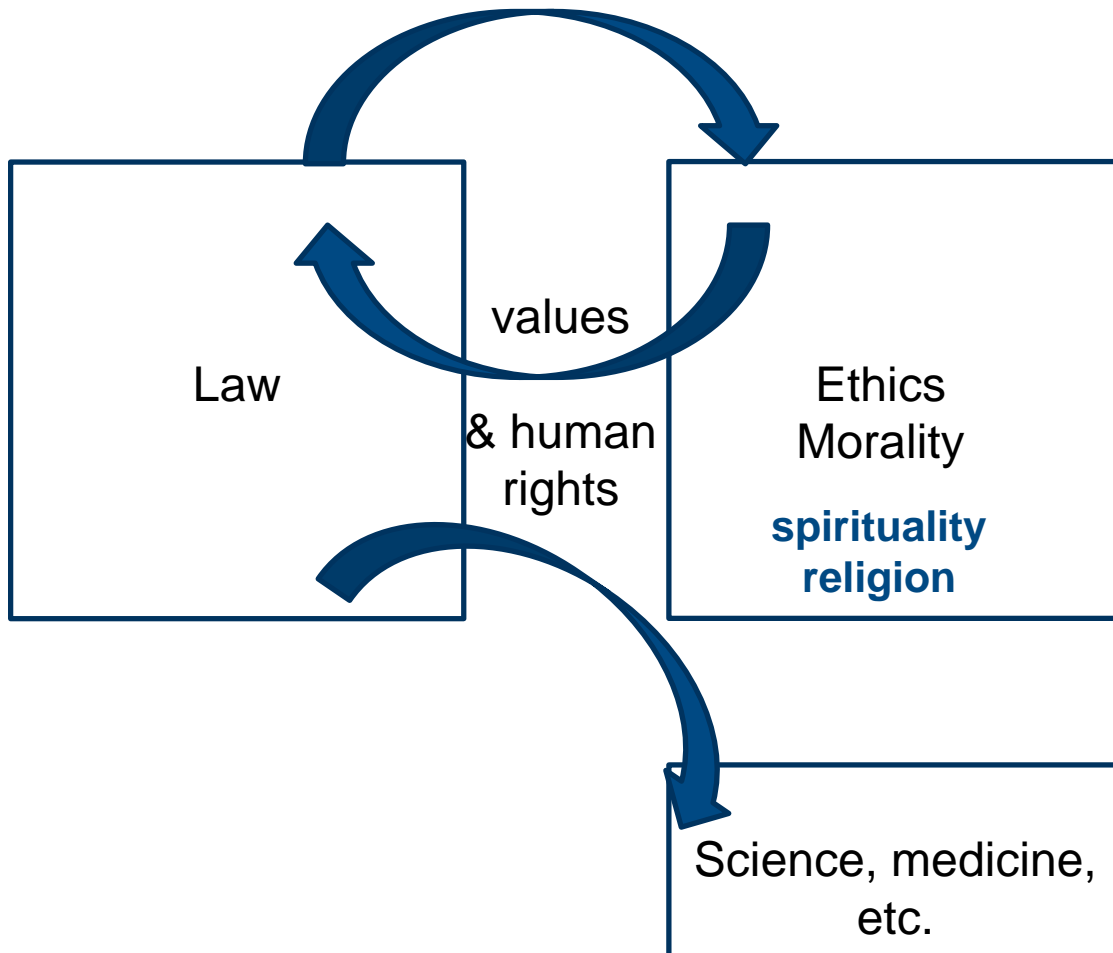
Values representing the EU



Sources: Eurobarometer 77 (2012), pp. 9 and 12; Eurobarometer 74 (2010), pp. 32 and 33; Eurobarometer 72 (2009), Vol. 2, pp. 148 and 152; Eurobarometer 69 (2008), 1. Values of Europeans, pp. 15 and 22; Eurobarometer 66 (2007), p. 28

EU law and religion

Relationship of EU law, ethics and values



Source: Frischhut, 2019

Literature mentioned on slides



- Frischhut, M. (2019). *The Ethical Spirit of EU Law*. Springer International Publishing.
- Meyer, J. (2019). Präambel. In J. Meyer & S. Hölscheidt (Eds.), *Charta der Grundrechte der Europäischen Union* (5th ed., pp. 29–79). Nomos; Stämpfli; Facultas.
- Sandel, M. J. (2010). *Justice: What's the right thing to do?* Farrar, Straus and Giroux.



- ❑ **What is the common ground of law, justice, values, morality, ethics and religion?**

 - ✓ In the end, they all try to provide an answer to the question ‘what is the right thing to do’.
- ❑ **What is the relationship between EU law and religion?**

 - ✓ No reference to ‘God’ or ‘religion’ in the CFR, later on reference to ‘religion’ in the TEU.
 - ✓ Religion constantly ranked very low, both as ‘personal value of Europeans’, as well as a ‘value representing the EU’.
 - ✓ According to Art. 17 para. 1 TFEU, the Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
 - ✓ Art. 17 TFEU expresses the neutrality of the European Union towards the organisation by the Member States of their relations with churches and religious associations and communities.
 - ✓ However, this does not mean that this field escapes from EU law.
- ❑ **What about discrimination based on religion?**

 - ✓ Directive 2000/78/EC prohibits discrimination based on religion.
 - ✓ This can be of relevance both in case of hiring (*Egenberger*) or firing (*IR*) an employer.
 - ✓ This also applies to sensitive topics, such as the Islamic veil (*G4S Secure Solutions, Bougnaoui and ADDH*).



- ❑ What does the principle of proportionality stand for?
 - ✓ Appropriateness: policy needs to be pursued in a consistent and systematic manner.
 - ✓ Necessity: must be considered strictly necessary for the purpose of achieving the aim pursued; e.g. back-office as less restrictive measure.
- ❑ What is the common ground between EU law and public morality on the one hand, and EU law and religion on the other?
 - ✓ EU law allows some leeway as long as certain limits are respected.
 - ✓ In case of morality: no double morality.
 - ✓ In case of religion: no unjustified discrimination.
- ❑ How can the motto of the EU ('united in diversity') explain the EU's approach in this regard?
 - ✓ Trying to find a balanced approach between uniform solutions and necessary diversity.