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Religious freedom in light of the jurisprudence of the European Court of Human Rights - the interdependence of individual law and public interest

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Abstract. The article analyzes in a holistic way the jurisprudence in the field of fundamental freedoms, especially the way in which the European Court of Human Rights interprets and applies Article 9 of the European Convention on Human Rights on freedom of religion. The main typologies of cases are highlighted: public manifestation of religion, religious discrimination, conscientious objection, expression of religious opinions and freedom of religious association. The interaction of this right with other fundamental freedoms, the application of the principle of proportionality and the margin of appreciation of states are also discussed. The paper emphasizes the role of the Court in guaranteeing religious pluralism and state neutrality in democratic societies, without diminishing individual capacity but also the need to recognize faith in all aspects recognized by law. For the analysis of the study, we had as a working basis the ECHR jurisprudence at the intersection of the notions that determine the de facto analysis of religious belief, as a vector of the formation of personal and social identity, within the public interest protected by the fundamental law. The analysis constitutes a true basis for studies for generations of students in the field of law, especially regarding the recognition of rights protected by the Convention regarding religious freedom.
Keywords: *individual rights, public interest, religious freedom, state neutrality.*

Introduction

The priority object of Education, as a vector of the formation of personal and social identity, is not an ideologically neutral process. Article 2 of Protocol No. 1 to the ECHR provides that the state must respect the right of parents to ensure the education of their children in accordance with their own religious and philosophical convictions. This provision requires a delicate balance between the interests of the state and the fundamental rights of the individual, especially in the context of religious and ideological diversity in contemporary democratic societies. Freedom of religion is one of the fundamental rights recognised in all international human rights systems. Article 9 of the European Convention on Human Rights (ECHR) guarantees not only the freedom to have a religion, but also the

freedom to change it and to manifest it, individually or in community with others, in public or private. In the case-law of the European Court of Human Rights (the Court or ECHR), freedom of religion has been analysed in multiple contexts, reflecting the complexity of the relationship between personal beliefs, the public interest and the protection of other rights.

1.1. Analyses regarding the normative and conceptual framework

The provisions of Article 6 of the Habitats Directive establish a rigorous legal framework for the protection of special areas of conservation, based on the precautionary principle and on the scientific assessment of the impact of development projects. These provisions constitute a European standard that obliges Member States, including Romania, to combine biodiversity protection with territorial planning and sustainable development.

According to the case law, the ECtHR has interpreted the term "belief" in a deeper sense than a mere opinion or idea. In Campbell and Cosans v. United Kingdom (1982), the Court established that "philosophical convictions" must attain a certain level of force, seriousness, coherence and importance. This definition brings the notion of "belief" closer to the term "convictions" in Article 9 (freedom of religion and belief), rather than to Article 10 (freedom of expression), where opinions and ideas predominate. The ECtHR has consistently emphasised that religion and belief are deeply personal and subjective in nature. In Folgerø and Others v. Norway (2007), the Court found that religious education in Norwegian public schools did not sufficiently respect the beliefs of parents. Also, in the case of Zengin v. Turkey (2007), it was reaffirmed that religious and philosophical pluralism must be reflected in public education, without the state favoring a particular religion or vision.

Freedom of religion is one of the fundamental rights recognized in all international human rights systems. Article 9 of the European Convention on Human Rights (ECHR) guarantees not only the freedom to have a religion, but also the freedom to change it and to manifest it, individually or in community with others, in public or private. In the case law of the European Court of Human Rights (the Court or ECHR), freedom of religion has been analyzed in multiple contexts, reflecting the complexity of the relationship between personal beliefs, the public interest and the protection of other rights.

1.2. Normative and conceptual framework

Please The right to religious freedom is a fundamental element of a democratic society, enshrined in both national constitutions and international human rights treaties. However, within organized religion – especially in states that officially recognize certain faiths – tensions frequently arise between the individual's freedom of conscience and the disciplinary authority exercised by the religious institution. A recent case from Romania eloquently illustrates these tensions. A Lutheran pastor, together with a group of believers from his parish, founded a new religious association, distinct from the officially recognized cult. This act generated disciplinary measures from the mother church, but also criminal prosecution, with those involved being convicted of illegally exercising the priestly profession. The case raises essential questions regarding the limits of religious freedom, the institutional autonomy of cults and the extent to which the state can intervene in the regulation of religious life.

Article 17 ECHR – Prohibition of abuse of rights

Relevant to this debate is Article 17 of the European Convention on Human Rights, which provides:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the Convention."

This fundamental provision, inspired by Article 30 of the Universal Declaration of Human Rights (1948), has counterparts in other international instruments in the following international norms:

International Covenant on Civil and Political Rights (1966) – art. 5 para. (1);

American Convention on Human Rights (1969) – art. 13 para. (2);

Charter of Fundamental Rights of the European Union (2000) – art. 54.

Article 17 serves as a safeguard against the abuse of the rights recognised by the Convention by individuals or groups who in reality seek to undermine the democratic order or the rights of others. As stated in a 1957 decision of the European Commission of Human Rights, this provision is specifically intended to prevent totalitarian movements which might take advantage of the protection of the Convention to undermine democratic principles.
The use of sections to divide the text of the paper is optional and left as a decision for the author. Where the author wishes to divide the paper into sections, the formatting shown in table 1 should be used.

Table 1. The evolution of religious cults in Romania.

Unit/Country	Religious associations	Places of worship	Religious affiliation	Population for 2018, million
Romania	50	27,384	99.8%	7024216

Source: State Secretariat for Religionshttp://culte.gov.ro/

According to Table 2, taking into account the role of an evolution of religious cults in Romania which demonstrates not only the respect for religious rights according to treaties and conventions but also an increase in the values of religion in the creed and mission of faith, as well as the approach to religion in general.

Table 2. The evolution of religious cults in Romania

United	**Name of cults**		
1.	Romanian Orthodox Church	11.	Baptist Christian Cult - Union of Baptist Christian Churches in Romania
2.	Serbian Orthodox Diocese of Timişoara	12.	The Christian Church According to the Gospel in Romania
3.	Roman Catholic Church	13.	Romanian Evangelical Church
4.	Romanian Church United with Rome, Greek Catholic	14.	Pentecostal Christian Worship – Apostolic Church of God in Romania
5.	Archdiocese of the Armenian Church	15.	Seventh-day Adventist Church in Romania
6.	Old Rite Orthodox Church of Romania	16.	Federation of Jewish Communities in Romania - Mosaic Cult
7.	Reformed Church in Romania	17.	Muslim Cult
8.	Evangelical Church CA of Romania	18.	Religious Organization "Jehovah's Witnesses"
9.	Evangelical Lutheran Church in Romania	19.	Assemblies of God in Romania
10.	Hungarian Unitarian Church		

Europe's historical experience demonstrates that such scenarios are not hypothetical: authoritarian groups have managed to gain power through democratic means, only to later abolish the very democracy that allowed them to exist[^3].
The case of Tóthpál and Szabó against Romania: context and implications
The present analysis starts from a concrete case: the combined applications of Tóthpál and Szabó v. Romania, filed before the European Court of Human Rights. The applicants – a pastor and a parishioner – were criminally convicted for exercising the priestly profession without the right, after leaving the Evangelical Lutheran Church and founding a new, unaffiliated religious community. The issue raised before the Court concerns the following legal issues: Can a legally recognized religious denomination have the exclusive right to exercise clerical function? To what extent can the state criminally sanction religious activities carried out outside these structures? Does such a conviction constitute a violation of Article 9 of the ECHR, which guarantees freedom of religion and belief? Could Article 17 be invoked in cases where it is alleged that religious freedom is being exercised abusively, with the aim of disrupting public order or religious pluralism, the question arises. The Court is often called upon to decide whether the application of criminal law is proportionate, justified and compatible with European standards of

protection of religious freedom. Unlike cases involving hate speech or extremist actions, this concerns the carrying out of peaceful religious activity outside the structures of a recognised church.

2. Data and Methodology

A variety of approaches are used in this strategy, which include the collection and analysis of administrative data in addition to the assessment of the specialized literature. The indicator refers to the consent of a state to be bound by the 18 human rights treaties under international law. Also, the methodology of the present study had the following components: - the choice of the topic to be studied, as the first stage of the scientific investigation, since it conditions the success of the research work more than any other stage of the research. In the present case, a topical topic was preferred, based on the theoretical contemporaneity and practical importance of studying the prevalence of fundamental rights protected by the convention; and the manifestation of theological faith in general. Scientific documentation, which constitutes a main component of the methodology for approaching the topic. Due to the topicality of the topic, the use of informational connections and interconnections in ECHR cases with the same object was taken into account; sorting activity, including the processing of approaches from other religions for an edifying approach to the essence of the research. The results show that the methods and guidance available to countries for compiling data at the national level: Office of the United Nations High Commissioner for Human Rights (OHCHR),

3. 1. Discussions and results

A variety of approaches are used in this strategy, which includes collecting and analyzing administrative data in addition to evaluating the literature.

The indicator refers to a State's consent to be bound by the 18 human rights treaties under international law.According to Article 9(1) of the Convention: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in worship, teaching, practice and observance."

This provision is followed by paragraph (2), which allows for the restriction of the manifestation of religion under certain conditions. For these reasons, the Court declares the complaint under Article 9 of the Convention admissible. To that end, the Member States must repeal the national provision incompatible with Union law and, in the meantime, declare the provision in question inapplicable. That obligation is incumbent on all national authorities, including local or regional authorities, and on national judges. According to Figure 1 the projection of the main religion falls within the scope of application of the Treaties, and without prejudice to any specific provisions contained therein, any discrimination on grounds of nationality is strictly prohibited. This principle reflects a foundational norm of European Union law, aimed at ensuring equal treatment and access to rights and freedoms across Member States.

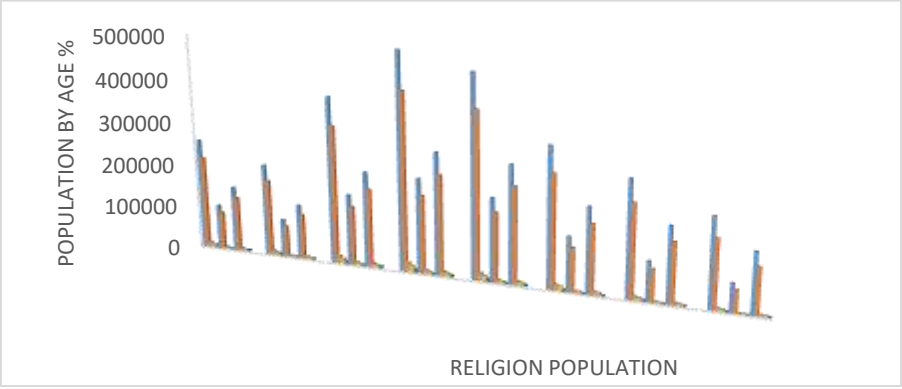

Figure 1. Projection of the main religious indicators
Sources: Owner research from extracted Eurostat data

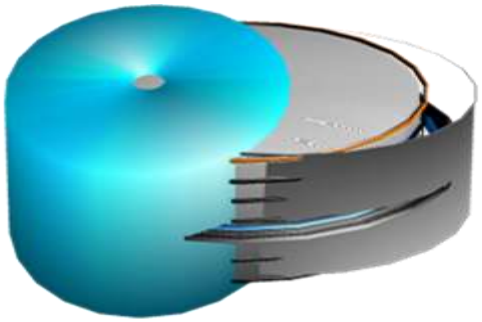

Figure 2. Ecosystem categories between 2015 – 2025, Net change,
Source: Owner recherche

Given the role and purpose of knowledge of international jurisprudence constantly in clarifying the legislation in support of citizens and in accordance with the Treaties and Conventions, every natural or legal person has the right to the peaceful enjoyment of his possessions. No one may be deprived of his property except for reasons of public utility and under the conditions provided for by law and by the general principles of international law. With reference to art. 6 § 1 Fair Trial, the research aims to clarify complex cases and formulate regulatory intentions in the light of the principles of the ECHR in relation to the legal text in force, in order to ensure a correct application of the law.

According to the Court's interpretation, religious freedom includes two essential dimensions:

- freedom of the forum internum, which protects the right to have or not to have a religion and to form religious or philosophical beliefs, without any coercion from the state;
- freedom of the forum externum, which refers to the right to manifest religion or belief actively, through worship, practices, rituals and religious education.

This freedom is not absolute. The manifestation of religion may be subject to limitations, provided that these are provided for by law, pursue a legitimate aim and are necessary in a democratic society.
Brief considerations on the ECHR jurisprudence regarding the typologies of cases - public manifestation of religion
The Court has examined the prohibition of wearing religious symbols in numerous cases. In Leyla Şahin v. Turkey (2005), the prohibition of wearing the Islamic headscarf in a public university was found to be compatible with the Convention, the Court recognising the wide margin of appreciation of the Turkish State in promoting secularism2.
In contrast, in Lautsi v. Italy (2011), the Court ruled that the display of crucifixes in public schools did not constitute a violation of the rights of parents or students, underlining the cultural character of the symbol in the Italian context3.
The ECHR has been called upon to rule on the legality of restrictive measures on religious symbols in public spaces. In Leyla Şahin v. Turkey (2005), the Court upheld a ban on the wearing of the Islamic veil in public universities, underlining the importance of secularism in the Turkish constitutional system. In contrast, in Lautsi v. Italy (2011), the Court ruled that the display of crucifixes in Italian public schools did not violate the Convention, giving the state a wide margin of appreciation in the field of education and cultural symbols.

3.2. Religious discrimination

In Eweida and Others v. United Kingdom (2013), the Court addressed four cases concerning employees who claimed to have been discriminated against on religious grounds. In the case of Ms Eweida, a British Airways employee who wore a visible cross around her neck, the Court found a violation of Article 9, considering that the employer's interests did not justify the restriction4.

Cases of religious discrimination are frequently examined under Article 14 (prohibition of discrimination), in conjunction with other rights. In Eweida and Others v. United Kingdom (2013), the Court found a violation of an employee's right to wear a cross at work, concluding that the state had failed to strike a fair balance between the employee's rights and the employer's interests.

3.3. Conscientious objection

In Bayatyan v. Armenia (2011), a young Jehovah's Witness was convicted of a criminal offence for refusing to perform military service. The Court ruled that this conviction violated Article 9, clearly recognising for the first time the right to conscientious objection in a military context.5

The Court has clearly affirmed the protection of conscientious objection. In Bayatyan v. Armenia (2011), the conviction of a young Jehovah's Witness for refusing to perform compulsory military service was found to be contrary to Article 9. Similarly, in Papavasilakis v. Greece (2016), the Court found that the national authorities had failed to adequately examine the application for recognition of the status of conscientious objector.

The case of ES v. Austria (2018) raised the issue of expressing opinions considered offensive to the Prophet Muhammad. The Court found that the sanctions imposed were not disproportionate and aimed at protecting religious peace and the rights of others7.

The ECtHR has also examined the limits of freedom of expression of religious opinions. In several cases, the Court's case law has recognised that a criminal conviction for criticism of Islam may constitute a justified restriction to protect the "religious feelings" of others. In ES v. Austria (2018), it concluded that criminalising defamatory statements about the Prophet Muhammad did not violate the Convention, as they exceeded the limits of acceptable criticism in a democratic society.

In Metropolitan Church of Bessarabia v. Moldova (2001), the authorities' refusal to recognise an alternative Orthodox church was held to be a violation of Articles 9 and 11. The Court stated that freedom of religion also includes the right of religious communities to organise themselves independently. The ECHR also protects the collective freedom of religious communities. In Metropolitan Church of Bessarabia v. Moldova (2001), the Court considered that the State's refusal to recognise an autonomous Orthodox church constituted a violation of the right to freedom of religion and association. In Jehovah's Witnesses of Moscow v. Russia (2010), the dissolution of the religious organisation was held to be unjustified, as the State had not demonstrated a real and proportionate need for the measure.

The proportionality criterion and the margin of appreciationIn assessing the legality of a restriction on religious freedom, the Court applies the proportionality test. It examines whether the measure:

- is provided for by law;
- pursues a legitimate aim (protection of public order, public health, rights of others, etc.);
- is necessary in a democratic society.

At the same time, the Court recognizes a wider margin of appreciation for states in areas such as education, secularism and religious symbols, provided that the principle of religious pluralism is respected.

The right to have no religion is frequently mentioned in jurisprudence The ECHR has consistently reaffirmed that Article 9 protects not only believers, but also atheists, agnostics, skeptics and anyone who chooses not to practice a religion.[^9] Freedom of religion also implies the right to change one's religion without coercion.

4. Conclusions

The Court has repeatedly stated that the State cannot decide what constitutes a religion or legitimate belief (Metropolitan Church of Bessarabia v. Moldova, 2001). Consequently, the protection afforded by the Convention applies not only to religious believers, but also to atheists, agnostics, sceptics and those who are religiously neutral.

The case law of the ECHR reflects a complex and dynamic vision of the right to education and the State's obligation to respect the beliefs of parents. The notion of "belief" has been developed in a way that emphasizes its seriousness, coherence and personal significance, thus protecting not only religious pluralism, but also philosophical and ethical pluralism. This approach reinforces the idea of State neutrality and promotes an inclusive educational model compatible with the values of liberal democracy. Furthermore, in the case of Leela Förderkreis eV and Others v. Germany (2008), the ECHR recognized the religious or philosophical status of emerging movements, such as Scientology, stating that the belief does not necessarily have to be anchored in a traditional or institutionalized religion.

At the same time, the case Tóthpál and Szabó v. Romania, reflects a recurring tension in the European space: the individual's right to manifest his or her faith, including through the formation of new religious communities, conflicts with the institutional monopoly claimed by traditional cults on religious service. Also, the involvement of the state in supporting this exclusivity through criminal sanctions raises serious issues of neutrality and religious pluralism, fundamental values in a democratic society.

A variety of approaches are used in this strategy, which includes collecting and analyzing administrative data in addition to evaluating the literature. The indicator refers to a State's consent to be bound by the 18 human rights treaties under international law.

When a State ratifies one of the international human rights treaties, it assumes a legal obligation to implement the rights recognized in that treaty. Through ratification, States undertake to put in place domestically

Religious freedom, as interpreted by the ECHR, reflects a balance between individual rights, social cohesion and democratic pluralism. The Court has consistently stated that religious freedom should not be understood solely in a traditional or theological sense, but as a component of the moral autonomy of the individual. In a Europe characterised by religious and ideological diversity, the Court's case-law contributes to consolidating a framework in which State neutrality coexists with the profound protection of personal convictions. The ECHR interprets freedom of religion in a way that reflects the complexity and diversity of contemporary beliefs. The protection is not limited to traditional forms of religion, but also includes unconventional beliefs, as well as the right not to have a religion. Through its case-law, the Court contributes to the consolidation of a European framework in which religious freedom is compatible with other fundamental rights and with the ideals of pluralism, tolerance and state neutrality.

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