Chapter 13

Freedom of Thought, Conscience, and Religion under the ECHR, with Special Regard to Central Europe

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Abstract

The European Convention on Human Rights (ECHR) was drafted under the auspices of the Council of Europe (CoE) and specifies the fundamental substantive rights to be protected for citizens of CoE member states. This paper scrutinizes the ECHR provisions dealing with freedom of thought, conscience, and religion, and the relevant European Court of Human Rights (ECtHR) judgments concerning freedom of religion with a special emphasis on central European countries. The paper begins with a brief history of religious tolerance across the region of Central Europe. Considering the close relationship between the legal framework to protect religious freedom and the model of state-religion relations, the paper explores the system of cooperation between the state and religion, problems of concluding agreements between the state and religious groups, issues stemming from the multi-tiered registration systems, and conflicts between freedom of expression and freedom of religion. The analysed case law emphasises the importance of equal treatment of religious organisations, while the cooperation model of state-religion relations, which accommodates diverse religious needs, should be implemented in a manner that allows balancing between cooperation and discrimination concerns, as highlighted in the ECtHR rulings.

Keywords: Freedom of thought, conscience, and religion, State-religion relations, multi-tiered registration systems, Central Europe

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1. Introduction

Religion has always played a role in international relations. The freedom of religion stands as one of the oldest internationally protected rights, albeit with initial protections differing considerably in scope and regulatory mechanisms. Post-World War II, the freedom of thought, conscience, and religion was protected as a fundamental human right. Basic human rights instruments encompass norms safeguarding religious freedom, including regional human rights regimes. In the same period, various multinational organisations that focus on human rights issues were established. From a human rights perspective, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950, is the most effective of the regional instruments.

Central Europe boasts a longstanding tradition of religious tolerance. Since 1990, all states within the region are members of the Council of Europe and helped ratify the ECHR. In the early 21st century, the first complaints regarding alleged violations of religious freedom in these countries were brought before the European Court of Human Rights (ECtHR). This paper analyses the ECHR provisions safeguarding religious freedom, the challenges arising from their implementation in central European countries, and the relevant ECtHR jurisprudence in the field of religious freedom protection.

Consequently, the paper commences with a concise history of religious freedom protection in Central European countries (2.1). Recognising the vastness of the historical legal regulations concerning religious tolerance and freedom across the region, this paper focuses on crucial legal sources and historical developments impacting religious freedom at regional and universal levels. The subsequent section presents an analysis of the relevant ECHR provisions (2.2). Given the close relationship between the legal framework to protect religious freedom and the model of state-religion relations, one section of this paper is dedicated to exploring the system of cooperation between the state and religion, which is characteristic of all Central European countries (3). Following this, the paper scrutinizes one of many important aspects of religious freedom protection in Central Europe: the multi-tiered registration systems (4). The last two sections address agreements (concordats) between states and religious organisations within the same region (5) and the issues arising from the conflict between freedom of religion and freedom of expression (6). Finally, the conclusion synthesises the findings derived from the analysis.

2. International protection of religious freedom

2.1. Brief historic overview

Religions played a specific role in ancient and medieval societies, as well as in the relations between different states and their rulers. Historical analysis of religious freedom evolution typically includes the treaties of Augsburg (1555) and Westphalia (1648) that allowed Lutherans and Calvinists to freely practice their religion with certain limitations.[1] This perspective on the influence of religion on European public order should be supplemented by documents from the Central European region. Among these, the Edict of Torda should be mentioned as one of the earliest European documents to promote the *idem quam vellet* principle.[2]

The freedom of communities to freely choose and maintain their religious affiliations was protected by the following statement: "preachers should voice the Gospel everywhere, each as he understands it, and if the community wants to receive it, then, it is fine, but if not: no one should force them if their soul is unhappy; the community shall be able to belong to the preacher whose teaching she (the community) likes. For this, no one from the superintendents or others shall be able to offend the preachers; no one shall be mocked on religious grounds, according to the previous constitutions. No one is allowed to threaten someone with prison or with deprivation of his place, for his teachings; because faith is God's gift, it comes from hearing, and hearing comes from the Word of God."[3] It is evident that this regulation enshrined the collective aspect of religious freedom, granting religious communities the right to choose their pastors and confessions. However, the rights of Jews, Muslims, and Orthodox Christians, who constituted the majority, were not safeguarded by this edict.[4] Even though the Edict of Torda did not protect individual freedom of religion or conscience – and left outside of the scope of protection the adherents of three traditional Transylvanian religious communities – at the time it represented a unique regulation of religious matters in the multi-religious principality of Transylvania.

Despite the Empire's legal system being based on Islamic law, various religious groups in the Ottoman Empire, primarily Christians and Jews, enjoyed special autonomy through the millet system.[5] By virtue of the capitulations and peace treaties between the Ottoman Empire and Christian European states, various privileges were established for Christian merchants, pilgrims, and even holy places. Notably, not only did the treaties of the 18th and 19th centuries affirm the provisions of the capitulations and previous peace agreements, but they also granted Christian emperors

1 Evans, 2004, pp. 4–5.
2 Rotaru, 2013, p. 18.
3 *Monumenta Comitialia Regni Transsylvaniae. Erdélyi Országgyűlesi Emlékek*, p. 78.
4 Peicu, 2018, p. 360.
5 Emon, 2012, p. 44; Braude, 2014, p. 65.

the authority to intercede for Catholics (such as the Austrian emperor) and Orthodox Christians (like the Russian tsar) residing within the Ottoman Empire.[6] Some religious freedom issues were strategically leveraged in international politics to advance diplomatic and political objectives. Nevertheless, religious freedom emerged as an important issue of European public order and was regulated by international peace treaties.

Following the First World War, the development of international religious freedom was closely tied to the Central European region. The formal recognition of Poland was coupled with the establishment of a minority treaty that safeguarded the religious rights of minority groups in Poland, with a particular focus on the Jewish community. This system of minority protection was subsequently expanded to other Central European states, including Czechoslovakia, the Serb-Croat-Slovene State, Greece, and Romania. A key provision of the treaties that safeguarded religious freedom stipulated that "All inhabitants shall be entitled to the free exercise, whether public or private, of any creed, religion, or belief, whose practices are not inconsistent with public order or public morals."[7] While efforts were made to extend the scope of minority protection to all members of the League of Nations, they did not ultimately achieved the desired results.[8]

In the aftermath of the Second World War, freedom of religion or belief was protected as a fundamental human right. During the Cold War era, Central Europe witnessed the systematic violation of fundamental human rights, with religious freedom being suppressed on ideological grounds. Furthermore, religious freedom assumed a pivotal role in delineating what is often referred to as the 'spiritual' or 'moral' Cold War frontlines. A significant incident in Central Europe, occurring shortly after the adoption of the Universal Declaration of Human Rights (UDHR), had a profound influence on the future safeguarding of religious freedom. The imprisonment of Hungarian Cardinal József Mindszenty in December 1948 – on fabricated charges of treason – triggered an international outcry. The Mindszenty affair initiated the adoption of one of the UN's earliest country-specific resolutions on human rights. The resolution, passed by the UN General Assembly in April 1949, condemned the "suppression of human rights and fundamental freedoms" in Hungary and Bulgaria. It underlined the obligations of these states, as stipulated in the Peace Treaties of 1947, to uphold, *inter alia*, religious freedom. This episode underscored the vital importance of religious freedom in the broader mid-20th century discourse on human rights.[9]

The shift from the protection of group and minority rights to individual rights and freedoms was articulated in what is commonly referred to as the International Bill of Rights. This framework consists of the UDHR (1948), the International Covenant

6 Evans, 1997, pp. 59–63.
7 Durham, Scharffs, 2019, p. 81.
8 Evans, 1997, p. 142.
9 Lindkvist, 2017, pp. 2–3.

on Economic, Social and Cultural Rights (ICESCR, adopted in 1966 and in force from 1976), and the International Covenant on Civil and Political Rights (ICCPR, adopted in 1966 and in force from 1976). These pivotal human rights instruments enshrine the freedom of religion alongside the freedom of conscience. During the drafting of the UDHR, P.C. Chang – the Human Rights Committee delegate from China – proposed the inclusion of the Chinese word 'ren' as a guiding principle in the preamble. Ren is a fundamental concept in Confucianism emphasising the responsibilities and duties of superiors toward their subordinates. The literal translation of this word is 'two-man mindedness', often interpreted in English as empathy or compassion.[10] This serves as just one example of the influence of religion on the formulation of human rights protection instruments. However, the term 'ren' was translated in the first article of the UDHR as conscience, while the freedom of thought and conscience was guaranteed in Article 18, along with the freedom of religion. Nonetheless, had 'ren' as a principle been adopted by the committee, it would have contributed to a balance between rights and responsibilities in the text of the UDHR.

Nevertheless, the protection of religious freedom as outlined in the UDHR impacted not only universal but also regional human rights protection instruments. Similarities in wording can be observed between the UDHR and human rights conventions in Africa, the Americas, and Europe. This paper will primarily concentrate on the European system of human rights protection, with a specific focus on the protection of religious freedom in Central European states.

2.2. The European Convention for the Protection of Human Rights and Fundamental Freedoms

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was opened for signature by the Council of Europe (CoE) on September 4 1950, and entered into force on September 3 1953. The Council of Europe, from a human rights perspective, stands as the most effective among regional organisations dedicated to human rights issues, and plays a pivotal role in the promotion of freedom of religion or belief. The ECHR delineated the fundamental substantive rights that require protection, and established mechanisms for enforcing these rights. Three key institutions were established for enforcement: the European Commission of Human Rights, the European Court of Human Rights (ECtHR, established in 1959), and the Committee of Ministers of the Council of Europe. While the ECtHR occasionally faces criticism for its "growing backlog of cases",[11] its extensive jurisdiction is particularly noteworthy given the substantial number of states that have consented to its jurisdiction.[12]

10 Durham, Scharffs, 2019, p. 83.
11 Helfer, 2008, p. 127.
12 Durham, Scharffs, 2019, p. 94.

Religious freedom is safeguarded under Article 9 of the ECHR, which states: "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. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."[13]

Furthermore, Article 14 ensures the enjoyment of all rights without discrimination on any grounds, including religion. Additionally, for the protection of religious freedom Article 2 of the First Protocol holds special significance. This provision had to be included in a separate protocol due to the inability to reach an agreement on its wording in time for the signing of the main instrument.[14] Article 2 of the First Protocol states: "No person shall be denied the right to an education. In the exercise of any functions which it assumes in relation to education and teaching, the State shall respect the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

There are textual and substantive similarities between Art. 9 and neighbouring guarantees in the ECHR. Art. 9 guarantees not only the internal aspect of freedom of thought, conscience, and religion, but also the external – i.e., the manifestation of internal beliefs. This connection, both in terms of the text's formulation and its substantive content, is notably apparent when considered in conjunction with the freedoms of expression and of assembly and association, as articulated in Articles 10 and 11. In fact, many cases alleging a violation of Art. 10 and 11 relate to the protection of religious freedom.[15] The use of the terms 'thought, conscience and religion' indicate a wide scope of protection provided by Art. 9. Nevertheless, the court has adopted a narrower approach in practice. Be that as it may, the protection provided by Art. 9 extends not only to religious beliefs but also to non-religious convictions.[16] It is important to note that the ECtHR has refrained from providing a definitive interpretation of what qualifies as 'religion'. The court has explicitly recognised that: "it is clearly not the Court's task to decide *in abstracto* whether or not a body of beliefs and related practices may be considered a religion."[17]

The first case delivered by the ECtHR under Article 9 was Kokkinakis v. Greece in 1993, nearly 35 years after the court's establishment.[18] The European Commission

13 *European Convention* [Online]. Available at: https://www.echr.coe.int/documents/d/echr/convention_ENG.

14 Durham, Scharffs, 2019, p. 102.

15 Murdoch, 2012, p. 12.

16 Murdoch, 2012, pp. 16–17.

17 ECtHR, Kimlya and others v. Russia, Application Nos. 14307/88, Judgment of 1 October 2009, para. 79.

18 ECtHR, Kokkinakis v. Greece, Application No. 76836/01 and 32782/03, Judgment of 25 May 1993.

of Human Rights functioned as a screening body for the court and was empowered to resolve numerous cases. During its early years the commission refused standing to religious organisations under Art. 9, acknowledging the right to religious freedom exclusively for individuals and not for religious communities.[19] Until its abolition in 1998, the commission had previously handled several Article 9 cases, while the European Court had addressed various cases involving religious matters but decided under alternative ECHR provisions. Since 1993, there has been a noticeable proliferation in the jurisprudence concerning Article 9.

The Kokkinakis case involved a Greek citizen who faced conviction for proselytism, an activity proscribed by Greek law. The court acknowledged the state's margin of appreciation "in assessing the existence and extent of the necessity of an interference", and underlined the state's obligation to neutrality and impartiality in religious matters. Employing the test of proportionality, the court concluded that the Greek government's actions had infringed upon the freedom to manifest one's religion.[20] The court adopted the dichotomy between proper and improper proselytism, which has been applied in other cases as well.[21] It is a noteworthy coincidence that the first case in the United States establishing the applicability of the Free Exercise Clause to the states – and the first Article 9 case in Europe – both involved evangelism.[22]

3. The model of cooperation in Central Europe

Even in the first case that was delivered by the ECtHR for an alleged violation of Art. 9, the court accorded a certain margin of appreciation to domestic authorities.[23] Neither the ECHR nor the court have specified which model of state-religion system should be considered as proper or aligned with the provisions of the ECHR. In Europe, it is possible to identify a wide range of different configurations of state-religion relationships. An extreme example is the states with positive identification of state and religion which maintain an established or official church. The most prominent example is the United Kingdom, in which the monarch is the head of the Church of England, bishops are members of the House of Lords, and the Anglican Church has the status of an established church. Conversely, just across the Channel, since the 18th century the rigid system of separation of religion and state has been implemented in France, known also as *laïcité*.

19 Evans, 1997, p. 286.
20 ECtHR, Kokkinakis v. Greece, Application No. 14307/88, Judgment of 25 May 1993, paras. 45–49.
21 Ahdar, Leigh, 2013, p. 464.
22 Supreme Court of the United States, Cantwell v. Connecticut, 310 U.S. 296 (1940).
23 Legg, 2012, p. 61.

Between those extreme models, there is a number of different configurations of state-religion relations. For example, the model of historically favoured and endorsed churches can be found in Roman-Catholic countries, in which the Roman Catholic Church acquires a special place in the country's history and traditions and sometimes enjoys special benefits and favoured status. The model of a preferred set of religions is interconnected with the multi-tier systems of registration of religious organisations, which have been operating in all Central European countries. A variation of this model is the system of traditional churches, in which several religious organisations are distinguished and enjoy a preferable status. Finally, the most prominent system in Europe is the model of cooperation between the state and religious organisations. The state and religion are formally separated, but they cooperate in a variety of ways. Religious instruction in public schools is usually subsidised by the state, while the maintenance of religious buildings and payments of religious servants are provided from public funds. The cooperation between the state and certain religious organisations is usually regulated in detail by special agreements.[24]

The selection of a model of state-religion relationship remains within the scope of domestic authorities' margin of appreciation.[25] The ECtHR has repeatedly stated that "states enjoy a wide margin of appreciation in the particularly delicate area of their relations with religious communities."[26] This does not mean, however, that a specific model can be used as a ground for discrimination against certain religious groups. Each of the mentioned models shall guarantee the neutrality of the state in religious affairs and equality of all religious organisations, despite all the differences in their legal status that each of the models implies.

Central European states have adopted the cooperation model of state-religion relations,[27] even though they tend to incline towards models with a stronger identification of the state and religion. This model comes with numerous variations and allows the state to tailor its support to the specific requirements of various religious organisations, enhancing their status to fulfil their unique social roles. Most of the countries of the region have selected this model because it was perceived as appropriate in order to revitalise religious communities after decades of persecution during communist rule.[28] For the purposes of this paper, a few key characteristics of this model in Central Europe will be scrutinised. These characteristics include the multi-tiered system for registering religious organisations and the implementation of special agreements between the state and specific religious organisations. These aspects are chosen because they have been assessed by the ECtHR and are regarded

24 More on the mentioned Durham, Scharffs, 2019, p.
25 Martínez-Torrón, 2019, p. 161.
26 ECtHR, Supreme Holy Council of the Muslim Community v. Bulgaria, Application No. 39023/97, Judgment of 16 December 2004, para. 96.
27 Sobczyk, 2021, p. 112; Đukić, 2021, p. 148; Vladar, 2021, p. 201; Staničić, 2021, p. 229; Savić, 2021, p. 25; Nemec, 2021, p. 67; Csink, 2021, p. 84.
28 Torron, Durham, 2015, p. 16.

as particularly challenging to align with international standards for the protection of religious freedom.

4. Multi-tiered systems of registration of religious organisations

The so-called multi-tiered systems of registration of religious communities are among the most controversial issues in the field of legal recognition of religious groups. As the Organization for Security and Co-operation in Europe has noticed, the obstacles to the acquisition of legal entity status can "negatively affect the rights of a wide range of religious or belief communities."[29] Those systems are intertwined with the already-mentioned model of cooperation between the state and religion. Even though cooperationist countries tend to cooperate with religions, they are not able to establish cooperation of exactly the same extent with all of them. There are various reasons that can justify this different treatment of diverse religious group - such as historical reasons, the importance of certain religions for national identity and statehood, social roles and activities of certain religions, etc. The ECtHR view is that "States must be left considerable liberty in choosing the forms of cooperation with the various religious communities, especially since the latter differ widely from each other in terms of their organisation, the size of their membership and the activities stemming from their respective teachings."[30] Furthermore, not all religious organisations want to have the same extent of cooperation with the state. For some of them, there are doctrinal obstacles that do not allow them to establish close relations with the state, or they do not possess the resources to operationalise the cooperation to a great extent. The multi-tiered systems of registration provide for both state and religious organisations the possibility to select an appropriate extent of cooperation and the legal status of a religion that can accommodate it.

Different tiers or categories of religious organisations should serve as a basis not for the separation between 'privileged' and 'unprivileged' religious groups, but as a tool for the state to "provide adequate answers to their needs, which can be different according to the size, history, and cultural roots of each group."[31] This holds exceptional significance, considering that the organisational autonomy of religious communities encompasses the freedom to structure themselves according to

29 *Guidelines on the Legal Personality of Religious or Belief Communities* [Online]. Available at: https://www.osce.org/files/f/documents/9/9/139046.pdf.

30 ECtHR, Magyar Keresztény Mennonita Egyház and Others v. Hungary, Applications Nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, Judgment of 8 April 2014, para. 108.

31 Durham, Scharffs, 2019, p. 489.

their own preferences.[32] Nevertheless, the varying legal statuses among different religious groups may suggest that these recognition systems discriminate against non-traditional religious groups.[33] Therefore, in this paper Durham and Scharffs' 'adequate needs argument' will be used to assess if it applies without problems in Central Europe.

To establish a similar extent of cooperation with religious communities that have similar needs, states can provide religious groups with different types of legal recognition. Those are so-called multi-tiered registration systems. They have the following structure: there is a top tier limited to a few religious organisations which enjoy numerous advantages such as tax exemptions, state funding, access to public institutions, etc. Then, there is usually an intermediate category that is less exclusive and does not provide many benefits. Finally there is the last tier, which is easily accessible and provides only a basic form of legal personality. The advantage of multi-tiered registration systems is that they secure the right of religious communities to obtain (at least basic) legal personality, without fulfilling burdensome requirements. The right of religious organisations to acquire legal personality is part and parcel of the protection of freedom of religion or belief.[34] Those systems - in many variations - are operating in almost all Central European countries.

When it comes to the Central European states, there is a problem not only of the multi-tiered registration systems and their alignment with the provisions of the ECHR, but also the problem of the deregistration and re-registration of religious communities. After the collapse of the Soviet regime, many of those countries introduced an extremely liberal system of religious organisation recognition. Therefore, in some of them, there was a notable increase in the number of officially recognised religious organisations, particularly after 1989. Nonetheless, at the beginning of the XXI century new pieces of legislation were enacted in most of those countries. More restrictive regulations were applied concerning the registration of religious groups, and many previously recognised religious groups lost their legal personality.

In 2011 Hungary adopted a new Church Act, which replaced the liberal 1990 Church Act that recognised as Churches all religious organisations whose membership exceeded one hundred persons. In January 2012 the multi-tier system of recognition came into force, according to which religious organisations could exist either as 'churches', which were the top tier, or 'associations carrying out religious activities', which were the lower level. The number of churches was reduced from 358 to 14, which were listed in the Appendix to the 2011 Church Act. This list was extended in 2012, raising the total number of recognised churches to 32. The Constitutional Court of Hungary stated in its verdict that the legislation provides incorporated churches with additional rights that place them in advantageous situations as compared to the religious associations. Therefore, in 2013 the Constitutional Court

32 Doné, 2016, p. 24.
33 McFaul, 2017, p. 27.
34 Bielefeld, Ghanea, Wiener, 2016, p. 217.

of Hungary annulled all the provisions that deprived religious organisations of their church status. For that reason the act was amended, but the distinction between churches and religious associations was kept. Incorporated churches in Hungary enjoy numerous benefits in the fields of taxation, education, media, cooperation with state institutions, etc.

Several religious organisations that had lost their status challenged the 2011 Church Act before the ECtHR.[35] The court noted that states have a 'positive obligation' to set up the system that provides for religious organisations the legal personality status underlining that their duty of neutrality and impartiality is incompatible with any assessment of the legitimacy of religious beliefs. According to the court's view, the convention (Art. 11 of the ECHR) does not imply that states must provide specific legal status to religious communities, but they must ensure that religious organisations are able to obtain "legal capacity as entities under the civil law". Furthermore, any distinctions in the legal status of religious communities must not negatively affect their reputation in public opinion, whereas this differentiation has an impact on their organisation and subsequently on their individual and collective practice of religion.[36] Furthermore, the court relates the multi-tiered systems with the 'historical-constitutional traditions' that were operating in European countries before the ratification of the convention. Even though this practice is aligned with the provision of the convention, the category of privileged religious communities must encompass recent historical developments. However, the court assessed that multi-tier registration systems do not violate the ECHR *per se,* and affirmed that states enjoy a wide margin of appreciation in the particularly delicate area of their relations with religious communities.[37]

In the concrete case, the court implemented the proportionality test, concluding that legitimate concerns of the government over the huge number of religious organisations in the country could have been resolved by less rigid solutions, such as judicial control of religious organisations that have abusive character. The ECtHR concluded that "the advantages obtained by incorporated Churches are 'substantial and facilitate their pursuance of religious aims on account of their special organisational form'." Therefore, the court found a violation of Art. 11 in light of Art. 9 of the ECHR. [38]

35 ECtHR, Magyar Keresztény Mennonita Egyház et al. v. Hungary, Applications Nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, Judgment of 8 April 2014.

36 ECtHR, Magyar Keresztény Mennonita Egyház and Others v. Hungary, Applications Nos. 70945/11, 3611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, Judgment of 8 April 2014, paras. 91–91.

37 Coleman, 2020, p. 128.

38 ECtHR, Magyar Keresztény Mennonita Egyház and Others v. Hungary, Applications Nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, Judgment of 8 April 2014, paras. 110–115.

It could be concluded that – according to the court's interpretation of the ECHR – multi-tiered systems should be structured in a non-discriminatory manner, whereas any differences in treatment and legal status must be based on objective and reasonable criteria.

5. Agreements between states and religious organisations

Another characteristic of the Central European countries is the system of agreements established between the state and various religious organisations. Virtually all countries in Central Europe have executed such agreements, governing the involvement of religious groups in public services, state subsidies, and more. Even states with non-Catholic majorities, like Serbia, have engaged in agreements with the Holy See to regulate cooperation in higher education.[39] These agreements are interlinked with the system of cooperation between the state and religious organisations, as well as with state neutrality and religious autonomy.[40] They serve to deepen cooperation between the state and religious organisations and to regulate in detail, on one hand, various privileges and benefits afforded to religious organisations and, on the other hand, their specific obligations *vis a vis* the state.

Similar to other aspects of cooperationist regimes, the primary issue with the system of agreements is that states typically do not engage in agreements with all religious organisations. These agreements could potentially be utilised to discriminate against one or more religious organisations or to disadvantage a particular religious community.[41] In certain jurisdictions, there exist stringent regulations outlining the requirements that a religious community must fulfil to enter into an agreement with the state. Those requirements could be the number of adherents, the period of existence within a certain jurisdiction, the social aims, and activities of the religious group, etc. However, the fact that certain religious communities have entered into agreements with the state differentiates them from the rest of the religious organisations that have not signed such an agreement. The ECtHR noted that "the conclusion of agreements between the State and a particular Church establishing a special tax regime in favour of the latter does not, in principle, contravene the requirements of Articles 9 and 14 of the Convention, provided that there is an objective and reasonable justification for the difference in treatment and that similar agreements may

39 Agreement between the Republic of Serbia and the Holy See on the Cooperation in Higher Education, *Official Gazette of the Republic of Serbia*, No. 17/2014.

40 Đurić, 2019, p. 361.

41 This was the case in Montenegro, where the government had been refusing to enter into an agreement with a major religious organisation for years. Robbers, 2021, p. 55.

be entered into by other Churches wishing to do so."[42] Consequently, the system of agreements should be accessible to all religious organisations, and any distinctions among them must be based on objective and reasonable justifications.

An issue usually appears when the state denies the request of a particular religious organisation to enter into an agreement. A consortium of registered religious organisations in Croatia sought to conclude an agreement with the Croatian government in June 2004. This agreement would allow them to provide religious instruction in public schools, conduct religious marriages with civil effects, and offer pastoral care in public institutions. After six months the relevant authority informed them that they did not meet the newly established requirements set by the government. Subsequently, this group of churches lodged an application with the ECtHR. The court examined the case and found that the applicants were treated differently compared to religious organisations that had previously concluded agreements with the government. Therefore, the court had to evaluate whether this differentiation "had 'objective and reasonable justification', that is, whether it pursued a 'legitimate aim' and whether there was a 'reasonable relationship of proportionality' between the means employed and the aim sought to be realised." The court noted that the Croatian government had entered into agreements with religious organisations that did not fulfil the newly established criteria before the applicants had submitted their request. The court concluded that the criteria established by the government were not equally applied, and that the differential treatment lacked any objective and reasonable justification. Consequently, the court found a violation of Article 14 in conjunction with Article 9 of the ECHR.[43]

The analysed case endorses the equal treatment of religious organisations seeking agreement with the state. It underscores the need for consistent application of criteria by governments when entering into agreements with religious organisations. Differential treatment without valid justifications constitutes a breach of human rights protections outlined in the ECHR. One could conclude that when a state enters into an agreement with a religious community, it holds the obligation to engage in similar agreements with any other religious community that seeks this type of relationship with the state.

42 ECtHR, Alujer Fernández and Caballero García v. Spain, Application no. 53072/99, Judgment of 14 June 2001.

43 ECtHR, Savez crkava 'Riječ Života' and others v. Croatia, Application no. 7798/08, Judgment of 9 March 2011.

6. Freedom of religion and freedom of expression

Freedom of expression shares a historical connection with freedom of religion, originating from the struggle of religious dissenters to freely express their beliefs. However, modern societies face two distinct tensions between these rights. One involves religiously motivated speech that offends others, while the other entails offensive speech against religion causing harm to believers or the religion itself.[44] Balancing between freedom of religion and freedom of expression poses diverse challenges globally.[45]

A recent case involving a Central European state drew attention due to the ECtHR's inconsistent approach. Many European countries have criminal laws where offending religious feelings or inciting religious hatred constitutes an offense. In the case of Rabczewska v. Poland, a renowned Polish singer was convicted for insulting the Holy Bible during an interview for a news website. After the publication of the interview, two individuals filed a complaint with the prosecutor, who indicted the singer for "offending the religious feelings of the two individuals by insulting the object of their religious worship." Polish courts of all instances found her guilty of insulting an object of veneration.[46]

The ECtHR, referencing the Handyside case, reiterated that freedom of expression – as a foundation of democratic society – encompasses both acceptable and offensive ideas. The court restated that states have a positive obligation to ensure peaceful coexistence and tolerance among all religions and those who are not affiliated with any religion. Also, it acknowledged the state's broader margin of appreciation when regulating expression connected to religion. However, in the court's opinion the domestic courts had not assessed properly whether the applicant's statements constituted factual statements or value judgments, and they failed to weigh competing interests – i.e. they did not scrutinise whether the applicant's statements were capable of inciting hatred or disturbing religious peace and tolerance in Poland. The court concluded that the statements under consideration "did not amount to an improper or abusive attack on an object of religious veneration, likely to incite religious intolerance or violating the spirit of tolerance, which is one of the bases of a democratic society."[47] Therefore, the court found a violation of Art. 10 of the ECHR.

It should be noted that in other similar cases, the ECtHR delivered decisions in favour of what was defined as 'the protection of religious feelings',[48] even though it

44 Durham, Scharffs, 2019, pp. 199–200.

45 E.g. see: ECtHR, Vejdeland v. Sweden, Application No. 1813/07, Judgment of 9 February 2012; Supreme Court of Sweden, The Pastor Green case, Case No. B 1050-05, Judgment of 29 November 2005; Supreme Court of the United States, Joseph Burstyn, inc. v. Wilson, 343 U.S. 495 (1952).

46 ECtHR, Rabczewska v. Poland, Application No. 8257/13, Judgment of 30 January 2023.

47 ECtHR, Rabczewska v. Poland, Application No. 8257/13, Judgment of 30 January 2023, para. 64.

48 ECtHR, Otto-Preminger-Institut v. Austria, Application No. 13470/87, Judgment of 20 September 1994; ECtHR, İ.A. v. Turkey, Application No. 4257/1998, Judgment of 13 December 2005; ECtHR, E.S. v. Austria, Application No. 38450/12, Judgment of 18 March 2019.

had been noted that ECHR does not guarantee such a right, nor can it be derived from Art. 9 of the ECHR.[49] Tommaso Virgili has emphasised that "'religious feeling' is a vague phrase hard to define and inevitably linked to the ethos and sensitivity of the individual or of that (allegedly) prevalent in the group'."[50]

The inconsistency of the court's jurisprudence in blasphemy cases becomes even more evident when comparing the case under scrutiny with E.S. v. Austria, where the applicant was convicted for blasphemous remarks against the Prophet Mohamed. The primary difference between these cases is in the context in which the statements were made.[51] E.S.'s statement occurred during a seminar hosted by the right-wing Freedom Party Education Institute, while Rabczewska's remarks were part of an interview conducted for a news website. It could be argued that interviews with singers are typically perceived as less impactful than seminars organised by institutes, potentially justifying the court's conclusion that E.S.'s statement "contained elements of incitement to religious intolerance", whereas similar blasphemy against the Bible's authors did not.[52] However, the court overlooked some crucial facts, namely the wide accessibility of Rabczewska's interview compared to the limited audience of less than 30 people for E.S.'s statement. Additionally, the continuous public impact of Rabczewska's interview contrasts with the one-time use of E.S.'s statement. To ensure a more consistent jurisprudence and coherent reasoning, the court should refrain from implementing vague standards like 'religious feelings', 'religious peace', and 'factual accuracy' in blasphemy-related cases. This approach could ensure a higher degree of consistency of the court's decisions.

7. Conclusions

The analysis indicates that the Central European region demonstrates a positive track record in protecting freedom of religion. Instances of cases falling under Article 9 are relatively infrequent, and actual infringements upon religious freedom are uncommon. The jurisprudence established by the ECtHR reveals that the majority of issues stem from other rights interlinked with Article 9, such as the freedom of association and assembly, freedom of expression, and the prohibition of discrimination on grounds of religion or belief. In essence, the court has found violations relating to the collective rights of religious organisations rather than individual aspects of religious freedom.

49 Abdou, 2022, p. 142.

50 Virgili, T. (2022) Rabczewska v. Poland and Blasphemy before the Ecthr: a Neverending Story of Inconsistency [Online]. Available at: https://strasbourgobservers.com/2022/10/21/rabczewska-v-poland-and-blasphemy-before-the-ecthr-a-neverending-story-of-inconsistency/.

51 For the opposite opinion see: Virgili 2022.

52 Compare E.S. v. Austria, para. 57 with Rabczewska v. Poland, para. 64.

Central European states typically adopt a model of cooperation between the state and religious organisations, with inclination toward stronger state-religion identification models. This cooperative model permits tailored state support for religious organisations, aiming to revive religious communities following historical periods of persecution, particularly during communist rule. The challenge persists in aligning these models with international standards of religious freedom protection, ensuring state neutrality in religious affairs and equal treatment of all religious organisations.

Central to this context are multi-tiered systems for registering religious organisations, which remain prone to arbitrariness. While these systems protect the autonomy of diverse religious organisations, they can foster discrimination against non-traditional religious groups. The ECtHR acknowledges states' wide margin of appreciation in their relationships with religious communities, but emphasises the need to be operated in a non-discriminatory manner. The ECtHR's scrutiny, evident in cases like Hungary's Church Act, underlines the requirement for objective and reasonable criteria in differentiating legal statuses among religious entities.

The multi-tiered registration systems, while intended to accommodate diverse religious needs, should be implemented in a manner that allows balancing between cooperation and discrimination concerns, as pointed out in ECtHR rulings. The court's emphasis on non-discrimination within these systems underlines the necessity for fair and justified differentiation among religious groups, echoing the principles of the ECHR in protecting religious freedom.

All Central European states have entered into agreements with various religious organisations. The ECtHR has stressed the necessity for fair access to these agreements, emphasising that any differentiation among religious groups must be objectively justified, aligning with Article 9 and Article 14 of the European Convention. A case involving Croatia highlighted the importance of consistent criteria and unbiased treatment when entering into agreements with religious entities. Differential treatment by states in accepting agreements was challenged before the ECtHR, resulting in the court finding a violation of Article 14 taken in conjunction with Article 9 where legitimate justifications were lacking. The court reiterated that states engaging in agreements with one religious community hold the obligation to provide similar opportunities to other religious organisations seeking a similar arrangement.

The intersection between freedom of expression and freedom of religion is evident in cases where offensive speech affects religious beliefs. The ECtHR's varied rulings on blasphemy cases underscore inconsistencies in its jurisprudence. While the court recognises the importance of freedom of expression, it also attempts to achieve a balance between protecting religious feelings and ensuring freedom of speech. This is especially evident in contrasting cases like Rabczewska v. Poland and E.S. v. Austria, where context and perceived impact played pivotal roles. The court should establish explicit criteria in handling blasphemy issues to ensure a more consistent application of human rights protections.

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