Chapter 11

Freedom of Thought, Conscience, and Religion

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ABSTRACT

This chapter analyses the protection of freedom of thought, conscience, and religion under the European Convention on Human Rights, with a special focus on violations of religious freedom in Central and Eastern European states. In general, states have been granted a wide margin of appreciation in regulating their relationship with religions, including the legal status of religious organisations. Most countries in the region have adopted a cooperationist model of state-religion relations, which appears to be consistent with their obligations under Article 9. However, registration systems in some countries breach the Convention, as they create disparities in the treatment of religious organisations and violate the communal aspect of religious freedom. On the other hand, individuals have faced challenges in manifesting their religion in special institutional settings, such as hospitals and prisons. The chapter argues that while a significant portion of judgments in which the European Court of Human Rights has identified violations of Article 9 involves countries in Central and Eastern Europe, there is no evidence of systematic violations of the right to manifest one's religion in this region.

KEYWORDS

History of religious freedom protection, Freedom of thought and conscience, Freedom of religion or belief, European Convention on Human Rights, European Court of Human Rights, Central and Eastern European Countries, Recognition of religious organisations.

1. Introduction

Freedom of religion is undoubtedly one of the oldest human rights and was the first to draw the attention of the international state system. This is because religious persecution, unfortunately, is as old as religion itself. However, even in ancient times, there are instances of religious tolerance. For example, the Egyptian King Amasis (569–527 B.C.) allowed Greeks living in the self-governing settlement of Naucratis to practice their religion and live under Greek law.[1] Similarly, the Old Testament provides exam-

1 Nussbaum, 1954, p. 3.

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ples of tolerance towards Jews in the ancient Near East. Persians and Alexander, the Great recognised that successful empires must rely on tolerance of their inhabitants' beliefs rather than their destruction. The Roman Empire likely achieved the greatest success in implementing such policies. As Gibbon aptly noted, 'The various modes of worship which prevailed in the Roman world were all considered by the people as equally true; by the philosophers as equally false; and by the magistrate as equally useful. And thus, toleration produced not only mutual indulgence, but even religious concord.'[2] This tolerance ceased when religion became a threat to the unity of the Empire and Roman rule. Such was the fate of the Jews in the 1st century and the Christian Church during the periods of persecution, which continued until the Edict of Toleration was issued by Galerius in 311. This marked the failure of the Roman emperors' persecution policy.[3] With the Christian Church established as the official religion, internal doctrinal disputes among Christians emerged as a new source of tensions within the Roman Empire.

The evolution of religious freedom protection in Europe can be divided into three broad stages. The first stage saw religious tolerance and freedom employed as mechanisms to resolve the religious wars of the sixteenth and seventeenth centuries. The second stage was characterised by efforts to protect religious freedom through minority treaties during the interwar period. Finally, the third stage emerged after World War II, when freedom of religion became recognised as a fundamental human right protected by international human rights law.

The events that had catalytic influence on the evolution of religious liberty in Europe were the Protestant Reformation and religious wars that followed. The 1555 Peace of Augsburg guaranteed personal and legal security of Catholics and Lutherans, providing to Lutheran minority the right to exercise their religion. Sovereignty over religion was transferred to secular rulers under the principle *Ubi unus dominus, ibi una sit religio* ('where there is one ruler, there should be only one religion'), which was later reformulated as the well-known phrase *cuius regio, eius religio* ('whose realm, his religion'). These provisions were a step towards the abandonment of the universalist assumption that a single empire should be based upon a common religion, even though the Peace itself was founded on those very assumptions. This is evident from the provision that identified the unification of the Church as the desirable goal of the treaty, viewing it as the only way that religious issues would be finally settled.[4] A general freedom of religion was not established, even though the Peace granted Catholics and Lutherans the right to move to territories of their religious allegiance (the *ius emigrandi*).[5] Nonetheless, the Peace of Augsburg paved the way for new settle-

2 Gibbon, 1776, p. 29.
3 Malcolm, 1997, p. 19.
4 Geoffrey, 1990), p. 195.
5 Article 24 of the Augsburg Peace reads as follows: 'In case our subjects whether belonging to the old religion or the Augsburg Confession should intend leaving their homes with their wives and children in order to settle in another place, they shall be hindered neither in the sale of their estates after due payment of the local taxes nor injured in their honour.' Reich, 1905, p. 232.

ments of religious freedom in Europe, which were necessary for the peaceful coexistence of Catholics and Lutherans and affected the history of these denominations in Central and Northern Europe.

The next significant milestone in the evolution of religious freedom in Europe was the 1648 Westphalia Treaties, concluded in Münster and Osnabrück.[6] These treaties ended the Thirty Years' War, which was the culmination of broader conflicts among Catholics, Lutherans, and Calvinists across the countries of Central and Northern Europe. As M. Evans observed, the treaties emphasised 'the religious freedom of the State rather than of the individual.'[7] Once again, general freedom of religion was not established. However, the Reformed (Calvinist) Church was recognised as a permitted religion, and basic guarantees of freedom of worship were introduced. The Treaty of Osnabrück affirmed the dominance of the state in matters of religious governance and set the stage for future interstate treaties to move away from regulating religious differences. During this period, religious liberty and tolerance were not seen as ends in themselves but rather as instruments for eliminating religious conflicts or achieving strategic and even commercial goals.

The emergence of new nations in Southeastern Europe was formally acknowledged by the provisions of the 1878 Treaty of Berlin.[8] This treaty recognised the independence of Montenegro, Serbia, and Romania, subject to conditions that, among other matters, addressed specific religious issues. These conditions stipulated that, within the newly recognised states, religious differences could not be used as a ground for exclusion from 'the enjoyment of civil and political rights, admission to public employments, functions, and honours, or the exercise of the various professions and industries, in any locality whatsoever.' The Treaty required these states to guarantee freedom of all forms of worship and to ensure that no obstacles would hinder the hierarchical organisation of different religions or their relations with their spiritual leaders.[9] The provisions of the Treaty of Berlin safeguarded religious minorities not only in exercising their rights, such as freedom of worship and the ability to maintain relationships with religious centres abroad, but also by protecting them from discrimination in secular matters.[10]

After World War I, the focus shifted to the protection of ethnic and national minorities in the newly established states of Central and Eastern Europe. As the provisions of the Berlin Treaty guaranteeing the rights of Jews in Romania proved ineffective, efforts to create new, more effective mechanisms were introduced through the Polish Minority Treaty. This treaty served as a model for minority treaties later imposed on

6 Treaty of Peace between France and the Empire, signed at Munster 14 /24 October 1648 and Treaty of Peace between Sweden and the Empire, signed at Osnabriick 14/24 October 1648. Parry, 1969, pp. 119 and 271.

7 Malcolm, 1997, p. 50.

8 Treaty between Austria-Hungary, France, Germany, Great Britain, Italy, Russia, and Turkey for the Settlement of Affairs in the East, signed 13 July 1878 at Berlin. Parry, 1969, p. 171.

9 Articles 27, 35, and 44 of the Peace of Berlin.

10 Evans, 2004, p. 9.

the Serb-Croat-Slovene State, Czechoslovakia, Romania, and Greece. Article 2 of the Polish Minority Treaty stated: 'Poland undertakes to assure full and complete protection of life and liberty to all inhabitants of Poland without distinction of birth, nationality, language, race or religion. All inhabitants of Poland 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.'[11] This provision applied to all inhabitants and represented a step towards bringing international treaties closer to the general protection of religious freedom. However, each of these minority treaties included special clauses addressing the needs of specific religious organisations deemed to require special protection. As M. Evans noted, the association of these treaties with minorities limited their broader impact, leading him to conclude that 'The interwar system was designed to protect either the religious rights of minorities or the rights of religious minorities.'[12] The tragedy of the Holocaust proved the failure of the minority-based system of human rights protection.

It was only after World War II that the protection of minority rights gave way to the recognition of individual human rights. Following the establishment of the United Nations, the protection of individual rights was enshrined in the International Bill of Rights, which consists of the Universal Declaration of Human Rights (UDHR, 1948), the International Covenant on Economic, Social and Cultural Rights (ICESCR, adopted in 1966 and in force since 1976), and the International Covenant on Civil and Political Rights (ICCPR, adopted in 1966 and in force since 1976). The UDHR protects religious freedom in Article 18, which underwent significant changes and revisions during its drafting process. The initial 'Humphrey Draft,' prepared by the Division of Human Rights, simply stated in Article 14: 'There shall be freedom of conscience and belief and of private and public religious worship.'[13] The Third Committee Draft in Article 16 read, '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 teaching, practice, worship and observance.'[14] The same wording exists in Article 18 of the Declaration as it is today.[15]

The UDHR is a non-binding document, although it is often regarded as having the force of customary international law.[16] In contrast, the ICCPR and the ICESCR are binding law and the Vienna Convention on the Law of Treaties requires from state parties compliance with the terms of these covenants. The freedom of thought,

11 Woolsey, 1920, p. 393.
12 Evans, 2004, p. 10.
13 Glendon, 2001, p. 272.
14 Glendon, 2001, p. 205.
15 Universal Declaration of Human Rights, A Res. 217(III).
16 Durham, Scharffs, 2019, p. 84.

conscience and religion is protected under Article 18 of the ICCPR.[17] As a legally binding treaty, the ICCPR incorporates various enforcement mechanisms, including the establishment of the Human Rights Committee, which oversees the reporting system created by the Covenant. Due to international political complexities and the nature of religious issues, consensus has never been achieved regarding the creation of a legally binding treaty solely concerning religion. Instead, in 1981, the United Nations General Assembly adopted the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.[18]

One notable distinction between the UDHR and ICCPR on the one hand, and the 1981 Declaration on the other, lies in the scope of religious freedom. While the UDHR and ICCPR guarantee the freedom to "change" or "adopt" religion or belief, the 1981 Declaration omits these words and guarantees the freedom to have a religion or whatever belief. The words "change" or "adopt" were not acceptable for Muslim countries given that the Koran forbids Muslims to change religion.[19] The right to 'have a religion or belief of his choice' was acceptable to Muslim countries even though 'the phrase implies the right to change from any religion and the right to adopt a different religion from that previously held or to adopt a religion for the first time.'[20] The countries opposed to a different version from that in Article 18 of the ICCPR agreed to this change, believing that the Declaration would win wider acceptance throughout the Islamic world. However, to avoid any interpretation that restricted or derogated from the rights enshrined by ICCPR and ICESCR, Article 8 was added to reaffirm the right to "change" or "adopt" religion by emphasising the continued force of the twin Covenants.[21] This article 'underlines the validity of the rights defined in the Universal Declaration and the Covenants.'[22] The European Convention on Human Rights explicitly protects the freedom to change religion or belief. This protection

17 Article 18 of the ICCPR read as follows: 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), UN Doc A/RES/2200A(XXI).

18 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, GA Res. 36/55, UN Doc A/RES/36/55.

19 An-Na'im, 1987, p. 8.

20 Taylor, 2005, pp. 35–36.

21 Article 8 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief read as follows: 'Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.'

22 Walkate, 1983, p. 155.

has given rise to only a limited number of cases before the European Court of Human Rights (ECtHR), primarily involving issues of proselytism or the administrative consequences of leaving a particular religion.[23] These cases will be analysed in the following sections of this chapter.

Two provisions of the European Convention on Human Rights (ECHR) explicitly protect rights related to religion or belief. The first is Article 9, which is the main provision of the Convention addressing freedom of religion or belief. The second is Article 2 of Protocol No. 1 to the Convention, which protects the parental right to ensure their children's education aligns with their religious convictions. Together, these provisions offer protection comparable to that provided by Article 18 of the ICCPR.

2. The Scope of Article 9

The terminology used in Article 9 indicates that its scope is potentially wide and covers different forms of religious and non-religious beliefs. The beginning of paragraph 1, as well as the heading of the provision, explicitly refer to freedom of thought, conscience, and religion. The link between these three concepts has been highlighted by the Court in *Eweida* case: 'Religious freedom is primarily a matter of individual thought and conscience.'[24] However, the remainder of the Article employs the phrases "religion or belief" and "religion and beliefs." Additionally, Article 2 of Protocol No. 1 to the Convention refers to 'religious and philosophical convictions'. It is evident that, by protecting freedom of thought and conscience and by using terms such as "belief" and "philosophical convictions", the Convention goes beyond being solely a rationale for the protection of religious freedom.

Much of the jurisprudence is about religion, even though significant protection has been provided by Article 9 to non-religious beliefs and other expressions of freedom of thought and conscience. In some cases, the Court had to assess whether a particular belief, conviction, or even opinion qualifies as a "belief" within the meaning of Article 9. The Court's jurisprudence leaves no doubt that traditional religions and their denominations fall within the scope of the protection provided by the mentioned article. In *Eweida* the Court noted that

> 'It was not disputed in the proceedings before... this Court that Ms Eweida's insistence on wearing a cross visibly at work was motivated by her desire to bear witness to her Christian faith... the Court considers that Ms Eweida's

23 ECtHR, *Kokkinakis v. Greece*, Application nos. 14307/88 and 32782/03, Judgment of 25 May 1993; ECtHR, *Darby v. Sweden*, Application no. 11581/85, Judgment of 23 October 1990.
24 ECtHR, *Eweida and Others v. the United Kingdom*, Application nos. 48420/10, 59842/10, 51671/10, and 36516/10, Judgment of 15 January 2013, para. 80.

> behaviour was a manifestation of her religious belief, in the form of worship, practice and observance, and as such attracted the protection of Article 9.'[25]

In the case of *Leyla Şahin v. Turkey,* the Court acknowledged that restricting the applicant's right to wear an Islamic headscarf constitutes an interference with her freedom to manifest her religion.[26] The Court has recognised that ritual slaughter performed in accordance with the religious prescriptions of the Jewish faith falls under the right to manifest one's religion through observance, as protected by Article 9.[27] Among non-Abrahamic long-standing world religions, Buddhism, Hinduism, and Sikhism are also found by the Court to fall within the scope of the religious freedom protection.[28]

It is significantly more challenging for the Court to determine whether newly established groups and movements qualify for protection under Article 9. The Court has deliberately refrained from offering a definitive interpretation of what constitutes a "religion," stating 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" within the meaning of Article 9 of the Convention.'[29] This cautious approach is sensible, as defining religion requires striking a balance: the definition must be sufficiently inclusive to encompass the diversity of world religions while also precise enough to be practically applicable in specific cases.[30] Over-inclusiveness risks recognising as religions groups that should not qualify, whereas under-inclusiveness risks excluding groups that should be recognised as religions.[31] Furthermore, the use of the term "belief" in Article 9 enables the Court to avoid defining the term "religion".[32] Be that as it may, there is a general tendency towards adopting broader definitions of religion, along with expanding the protection afforded by Article 9 to cover various secular worldviews.

In the case of *Kimlya and others v. Russia* the Court had to determine whether the Church of Scientology qualifies to be recognised as a "religion". Considering its subsidiary role, the Court assessed whether a consensus exists among Council of Europe

25 ECtHR, *Eweida and Others v. the United Kingdom*, Applications nos. 48420/10, 59842/10, 51671/10, and 36516/10, Judgment of 15 January 2013, para. 89.
26 ECtHR, *Leyla Şahin v. Turkey,* Application no. 44774/98, Judgment of 10 November 2005, para. 78. Article 9 of the ECHR and Article 2 of Protocol No. 1 are found to be applicable in cases involving Alevi faith in Turkey. ECtHR, *Hasan and Eylem Zengin v. Turkey,* Application no. 1448/04, Judgment of 9 October 2007, para. 66; ECtHR, *İzzettin Doğan and Others v. Turkey,* Application No. 62649/10, Judgment of 26 April 2016, para. 68.
27 ECtHR, *Cha'are Shalom Ve Tsedek v. France*, Application no. 27417/95, Judgment of 27 June 2000, para. 74.
28 ECtHR, *Jakóbski v. Poland*, Application no. 18429/06, Judgment of 7 December 2010; ECtHR, *Genov v. Bulgaria*, Application no. 40524/08, Judgment of 23 March 2017; ECtHR, *Phull v. France,* Application no. 35753/07, Decision of 11 January 2005.
29 ECtHR, *Kimlya and Others v. Russia*, Applications nos. 76836/01 and 32782/03, Judgment of 1 October 2009, para. 79.
30 Harris et al., 2023, p. 576.
31 Durham, Scharffs, 2019, p. 41.
32 Harris et al., 2023, p. 576.

member states regarding the religious nature of specific groups and their teachings. In the absence of such consensus, the Court relies on the position of domestic authorities. In this case, Russian authorities had consistently expressed the view that Scientology groups are religious in nature, which the Court deemed sufficient for the application of Article 9.[33] In a case concerning the Osho movement, the Court examined their activities, which included operating Osho meditation centres, organising seminars, celebrating religious events, and engaging in joint work projects. The ECtHR recognised these activities as manifestations of belief falling within the scope of Article 9.[34] However, the Court refrained from determining whether these activities constituted manifestations of religion. Among religious groups of more recent origin that have been recognised are the Church of Jesus Christ of Latter-Day Saints,[35] the Secular Order of Druids,[36] Jehovah's Witnesses,[37] the Divine Light Zentrum,[38] the Unification Church,[39] etc.

The protection provided by Article 9 has been extended by the Court to cover a wide range of non-religious beliefs, non-beliefs and secular worldviews,[40] such as pacifism,[41] atheism,[42] opposition to abortion,[43] and veganism.[44] In the landmark *Lautsi* case the Court emphasised that the views of the supporters of secularism must be considered as "convictions" within the meaning of Articles 9 of the Convention and 2 of Protocol No. 1.[45] It should be noted here that the "principle of secularism" has gained importance in the Court's jurisprudence and has been invoked in numerous cases concerning the role of religion in the public sphere.[46] However, secularism itself, as a worldview, qualifies for protection under Article 9 of the Convention. Similarly, political ideologies, such as communism, have been afforded the same

33 ECtHR, *Kimlya and Others v. Russia*, Applications nos. 76836/01 and 32782/03, Judgment of 1 October 2009, paras. 79–81.
34 ECtHR, *Leela Förderkreis e.V. and others v. Germany*, Application no. 58911/00, Judgment of 6 November 2008, para. 81.
35 ECtHR, *The Church of Jesus Christ of Latter-Day Saints v. The United Kingdom*, Application no. 7552/09, Judgment of 4 March 2014.
36 ECtHR, *Chappell v. the United Kingdom*, Application no. 12587/86, Decision of 14 July 1987.
37 ECtHR, *Jehovas Zeugen in Österreich v. Austria*, Application no. 27540/05, Judgment of 25 September 2012
38 ECtHR, *Omkarananda and the Divine Light Zentrum v. Switzerland*, Application no. 8118/77, Decision of 19 March 1981, p. 118.
39 ECtHR, *Nolan and K. v. Russia*, Application no. 2512/04, Judgment of 12 February 2009.
40 Murdoch, 2012, p. 16.
41 ECtHR, *Arrowsmith v. the United Kingdom*, Application no. 7050/75, Decision of 16 May 1977.
42 ECtHR, *Angelini v. Sweden*, Application no. 10491/83, Decision of 3 December 1986.
43 ECtHR, *Knudsen v. Norway*, Application no. 11045/84, Decision of 8 March 1985.
44 ECtHR, *C.W. v. the United Kingdom*, Application no. 18187/91, Judgment of 10 February 1993.
45 ECtHR, *Lautsi v. Italy*, Application no. 30814/06, Judgment of 18 March 2011, para. 58.
46 ECtHR, *Ebrahimian v. France*, Application no. 64846/11, Judgment of 26 November 2015. ECtHR; ECtHR, *Dogan and Others v. Turkey*, Application no. 62649/10, Judgment of 26 April 2016; ECtHR, *Dogru v. France*, Application no. 27058/05, Judgment of 4 December 2008. An exhaustive list of cases involving the principle of secularism can be found in: Gunn, 2019, pp. 465–466.

level of protection.[47] All of the above highlights why the Court, in its very first case on religious freedom, concluded that 'Freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.'[48]

Even though the terms belief and conviction have been interpreted broadly, not every belief, conviction, opinion, view, or idea qualifies for the protection under Article 9. In its jurisprudence, the Court has established the criteria for determining whether certain belief or conviction falls within the scope of the protection provided by the mentioned article. The view must 'attain a certain level of cogency, seriousness, cohesion and importance,' relate to a 'weighty and substantial aspect of human life and behaviour,' be 'worthy of respect in a "democratic society,"' and 'not incompatible with human dignity.'[49] For example, the applicant's request to have his ashes scattered on his own land was deemed not to fall under the scope of 'practice' as defined within the provisions of Article 9.[50] In a case where the applicant claimed that her views on assisted suicide constituted beliefs, the Court determined that these views 'do not involve a form of manifestation of a religion or belief, through worship, teaching, practice or observance.'[51] In a case involving a member of the Wicca religion who was allegedly deprived of the right to manifest his religion by the prison authorities, the Commission observed that the applicant failed to present any evidence to substantiate the existence of the Wicca religion and therefore found the application to be ill-founded.[52] In a case involving a "Pastafarian," (a follower of the "Church of the Flying Spaghetti Monster"), the application for a new identity card and driving license was refused due to the fact that she submitted an identity photograph that showed her wearing a colander on her head. She insisted that her religion required her to wear a colander always and everywhere. However, the Court found that Article 9 does not apply to Pastarianism and that it cannot consider it as a religion within the meaning of that provision.[53]

Three components of the freedom protected by Article 9 can be identified: the freedom of thought, conscience, and religion as such (or the freedom to hold any religious belief), the freedom to change one's religion or belief and the freedom to

47 ECtHR, *Hazar and Açik v. Turkey*, Application no. 16311/90, Decision of 11 October 1991.
48 ECtHR, *Kokkinakis v. Greece*, Application no. 14307/88, Judgment of 25 May 1993, para. 31.
49 ECtHR, *Campbell and Cosans v. the United Kingdom*, Application nos. 7511/76 and 7743/76, Judgment of 25 February 1982, para. 36; ECtHR, *Jakóbski v. Poland*, Application no. 18429/06, Judgment of 7 December 2010, para. 44.
50 ECtHR, *X. v. Germany*, Application no. 8741/79, Decision of 10 March 1981.
51 ECtHR, *Pretty v. the United Kingdom*, Application no. 2346/02, Judgment of 29 April 2002, para. 82.
52 ECtHR, *X. the United Kingdom*, Application no. 7291/75, Decision of 4 October 1977.
53 ECtHR, *De Wilde v. The Netherlands*, Application no. 9476/19, Fourth Section Decision of 9 November 2021, para. 54.

manifest religion or belief.[54] In the following sections, these three components will be analysed in the context of the ECtHR jurisprudence.

3. Freedom of Thought and Conscience

In the General Comment on Article 18 of the ICCPR (Freedom of Thought, Conscience or Religion), the Human Rights Committee underscores the fact that 'The freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief.'[55] During the drafting of the provision of Article 9, Pierre-Henri Teitgen, who made his own proposal that included freedom of thought and conscience, explained to the plenary Consultative Assembly that

> 'In recommending a collective guarantee not only of freedom to express convictions, but also of thought, conscience, religion and opinion, the Committee wished to protect all nationals of any member State, not only from breaches of obligation for so-called reasons of State, but also from those abominable methods of police enquiry or judicial process which rob the suspected or accused person of control of his intellectual faculties and of conscience.'[56]

Freedom of thought under Article 9 is recognised as an absolute right, as long as it is unmanifested. Thoughts and views are intangible as they belong to the inner sphere of each person – known as the *forum internum*, which represents 'the inner realm of the mind.'[57] However, once manifested, they qualify for protection, although such expressions can be subject to limitations. These external manifestations of thought fall within the *forum externum*, described by Roberts as 'the external realm of action.'[58] Despite criticism of the traditional distinction between the *forum internum* and the *forum externum*, the absolute nature of unmanifested freedom of thought, as enshrined by the Convention, remains uncontested. The once prevailing view that inner freedom of thought holds symbolic importance, with minimal practical significance, has evolved towards a greater recognition of its intrinsic value.[59] This freedom is expected to gain increasing importance due to emerging technologies that may threaten the inviolability of human inner space. Such technologies heighten the potential use of the right to freedom of thought as a practical tool to defend fundamental rights and liberties.[60] Furthermore, the scope of this right should be extended

54 Schabas, 2015, p. 420 and ECtHR, *Eweida and Others v. the United Kingdom*, Application nos. 48420/10, 59842/10, 51671/10, and 36516/10, Judgment of 15 January 2013, para. 80.
55 UN Human Rights Committee, 1993.
56 Council of Europe, 1975, p. 198.
57 Roberts, 2017, p. 35; Đukić, 2024, p. 102.
58 Roberts, 2017, p. 35.
59 Vermeulen, 2006, p. 752.
60 O'Callaghan, Shiner, 2021, p. 114.

to include the right to seek information,[61] emphasising its vital role in safeguarding individual autonomy and dignity.

In practical terms, this freedom safeguards individuals against actions aimed at altering the human mind (such as "brainwashing"), or coercing them to change, express, or disclose their worldviews, opinions, and convictions. It also protects against any form of indoctrination. Moreover, it is important to emphasise that this right, along with its manifestations, is not solely protected under the provisions of Article 9. It is reinforced by the complex of rights enshrined in Articles 8–11 of the Convention.

There are two distinct approaches to understanding freedom of conscience: American constitutional law subsumes freedom of conscience into religious freedom, whereas international and European law subsume it into freedom of thought.[62] Conscience is closer to religion than to thought, as religion is considered 'a matter of individual conscience.'[63] The preference of the term "freedom of conscience" is justified by the fact that it covers not only religious beliefs, but also encompasses the positions of atheists, agnostics and those who are not affiliate with any religion but do possess 'individual conscience.'[64]

Paragraph 2 of Article 9 omits the term "conscience," which suggests that while Article 9 protects manifestations of religion and belief, it does not extend the same protection to external expression of conscience. Scholarly explanations for this omission vary, and some are contradictory. Schabas attributes the distinction to the notion that religious prescriptions may be subject to limitations, whereas prescriptions of conscience may not.[65] Conversely, Vermeulen argues that external freedom of conscience is not protected because 'It is clear that such freedom cannot be unlimited.'[66] Csink argues that 'No free state can ensure the unrestricted enforcement of conscience, free from external limitations'.[67]

To address this issue, differentiating between internal and external freedom can be useful. Article 9 protects freedom of conscience when it is confined to the internal realm (*forum internum*) of an individual but does not extend protection to its manifestations or expressions (*forum externum*). The primary reason for this differentiation lies in the "boundlessness of conscience," which renders the formulation and implementation of limitation clauses impossible. This reasoning is supported by the fact that

> 'Other human rights such as the freedom of speech or religion are concerned with certain specific areas of action, are connected with social institutions,

61 De Vergottini, 2017, p. 9.
62 Domingo, 2015, p. 177.
63 ECtHR, *Grzelak v. Poland*, Application no. 7710/02, Judgment of 15 June 2010, para. 93.
64 Schabas, 2015, p. 423.
65 Ibid., p. 424.
66 Vermeulen, 2006, p. 753.
67 Csink, 2024, p. 14.

> and have to do with foreseeable patterns of behaviour; this makes it possible to define their restriction clauses in general terms. As the external freedom of conscience lacks such an identifiable object and scope, it is not possible to frame a satisfactory and workable provision containing restrictions.'

If the freedom to act according to conscience were protected as an absolute right, it could potentially undermine the entire legal order, allowing unlimited appeals to conscientious objections and personal convictions.

The above interpretation is aligned with the ECtHR case law. Most of the jurisprudence is about conscientious objection. The *Pichon and Sajous* case involved two pharmacists who refused to sell contraceptive pills due to their religious convictions. The Court confirmed that 'The main sphere protected by Article 9 is that of personal convictions and religious beliefs, in other words what are sometimes referred to as matters of individual conscience.' However, the Court insisted that not each act or practice that is closely linked or inspired by beliefs falls within the meaning of the term "practice" used in 1st paragraph of Article 9. It concluded that 'The applicants cannot give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products.'[68]

There is a consensus at the level of the Council of Europe that conscientious objection to military service falls within the scope of Article 9.[69] However, the European Commission of Human Rights had previously been reluctant to apply Article 9 to conscientious objectors, leaving this matter to be regulated by the Contracting States. *Bayatyan v. Armenia* was the first case in which the Court examined the applicability of Article 9 of the Convention to conscientious objectors. In this case, the Court acknowledged that although Article 9 does not explicitly mention a right to conscientious objection,

> 'Where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of

68 ECtHR, *Pichon and Sajous v. France*, Application no. 49853/99, Decision of 2 October 2001.

69 Prior to the *Bayatyan* case, cases involving conscientious objection required interpreting Article 9 in conjunction with Article 4(3)(b) of the Convention, which stipulates: 'Any service of a military character or, in the case of conscientious objectors in countries where they are recognised, service extracted instead of compulsory military service' is excluded from the Convention's prohibition of 'forced or compulsory labour.' Grandrath v. Germany, Application no. 2299/64, Decision of 23. April 1965, Report of 12 December 1966. See also: CoE Parliamentary Assembly, Right of conscientious objection, Resolution no. 337 (1967): Persons liable for conscription to military service who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical, or similar motives, refuse to perform armed service shall enjoy a personal right to be released from the obligation to perform such service. This right shall be regarded as deriving logically from the fundamental rights of the individual in democratic Rule of Law States that are guaranteed in Article 9 of the European Convention on Human Rights.

> sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9.'[70]

This interpretation was supported by the Court's "living instrument" doctrine, which advocates for interpreting the Convention 'in the light of prevailing conditions and ideas in contemporary Europe.'[71] Consequently, the ECtHR considered the overwhelming recognition of conscientious objection among Council of Europe member states and Armenia's failure to align with this trend, and found that the applicant's imprisonment constituted a violation of Article 9 of the Convention.

Interestingly, in the post-*Bayatyan* cases, the Court found violations of Article 9 due to the state's failure to provide alternative services to conscientious objectors and the absence of effective mechanisms to examine matters related to conscientious objection.[72] The reasoning in *Bayatyan* has since been applied in various cases, including those concerning compulsory military service and the lack of civilian alternatives in Turkey.[73] However, this approach of the Court is not limitless. For instance, in a case involving a member of a pacifist religious organisation who refused to pay income tax without assurances that the funds would not be allocated to purposes conflicting with his conscience and beliefs, the Court held that 'Article 9 does not confer on the applicant the right to refuse, on the basis of his convictions, to abide by legislation, the operation of which is provided for by the Convention, and which applies neutrally and generally in the public sphere.'[74] In *Bayatyan* and the post-*Bayatyan* case law the Court reinforced the principle that the protection under Article 9 cannot be extended to encompass all forms of conscientious objection.[75] The Court's earlier reluctance to invoke Article 9 in such cases had drawn criticism for hindering the development of this right.[76] However, recent decisions reflect a significant shift, with the Court demonstrating greater willingness to apply Article 9 more effectively in conscientious objection cases.

Furthermore, when an individual seeks special treatment, exceptions, or privileges based on their religion, beliefs, or convictions, the state may require some level of substantiation of genuine belief; and, if such substantiation is not provided, may

70 ECtHR, *Bayatyan v. Armenia*, Application no. 23459/03, Judgment of 7 July 2011, paras. 102 and 110.
71 Harris, O'Boyle, Bates, Buckley, 2023, p. 585.
72 ECtHR, *Mammadov and Others v. Azerbaijan*, Application no. 52158/13 and others, Judgment of 4 June 2020; ECtHR, *Savda v. Turkey*, Application No. 42730/05, Judgment of 12 June 2012; ECtHR, *Adyan and Others v. Armenia*, Application no. 75604/11, Judgment of 12 October 2017; ECtHR, *Papavasilakis v. Greece*, Application no. 66899/14, Judgment of 15 September 2016.
73 ECtHR, *Erçep v. Turkey*, Application no. 43965/04, Judgment of 22 November 2011; ECtHR, *Feti Demirtaş v. Turkey*, Application no. 5260/07, Judgment of 17 January 2012; ECtHR, *Buldu and Others v. Turkey*, Application no. 14017/08, Judgment of 3 September 2014.
74 ECtHR, *C. v. the United Kingdom*, Application no. 10358/83, Decision of 15 Decembre 1983.
75 ECtHR, *Bayatyan v. Armenia*, Application no. 23459/03, Judgment of 7 July 2011, paras. 102 and 111. Furthermore: ECtHR, *Butan and Dragomir v. Romania*, Application no. 34644/02, Judgment of 5 January 2010.
76 Gilbert, 2001, p. 555.

reach a negative conclusion without violating freedom of conscience.[77] For example, in *Kosteski v. the former Yugoslav Republic of Macedonia*, the applicant was fined for being absent from work while celebrating a Muslim holiday. He claimed that the penalty interfered with the manifestation of his religious beliefs. During the proceedings, the applicant asserted that his faith belonged to his inner sphere of belief. However, the Government argued that he failed to prove his adherence to Islam, had no knowledge of its practices, did not follow its dietary rules, and had previously observed non-working Christian holidays. The ECtHR held that in the employment context, when an employee seeks a particular exception or privilege,

> 'It is not oppressive or in fundamental conflict with freedom of conscience to require some level of substantiation when that claim concerns a privilege or entitlement not commonly available and, if that substantiation is not forthcoming, to reach a negative conclusion'.[78]

Since the applicant was unable to produce any evidence to substantiate his claims, the Court concluded that there had been no violation of Article 9.

On the other hand, two similar cases involved prisoners in Romania who were denied pork-free meals after converting to Islam. In both cases, the ECtHR found violations of Article 9, as the authorities required the prisoners to provide proof of adhering to a specific faith. The Court determined that the state authorities 'went beyond the level of substantiation of genuine belief that could be required.'[79] This conclusion was based on the fact that prisoners were permitted to declare their faith freely and without proof upon entering the prison system, as well as the unique circumstances and restrictions to which prisoners are subjected. The Court adopts a sensitive and balanced approach to issues concerning the substantiation of religious or other convictions as grounds for special treatment, thoroughly scrutinising the circumstances of each case to ensure fairness and proportionality. Therefore, when individuals seek specific privileges or exemptions based on their religion or belief, they might be required to substantiate their claims and provide evidence of their religious or conscientious convictions while this demand does not violate their freedom of conscience.

4. Freedom to Manifest Religion or Belief

Article 9 protects the freedom to manifest one's religion or belief which may be exercised 'alone or in community with others' as well as 'in public or private'. The

77 ECtHR, *Dyagilev v. Russia*, Application no. 49972/16, Judgment of 10 March 2020, para. 62.
78 ECtHR, *Kosteski v. the former Yugoslav Republic of Macedonia*, Application no. 55170/00, Judgment of 13 April 2006, para. 39.
79 ECtHR, *Neagu v. Romania*, Application no. 21969/15, Judgment of 10 November 2020 and ECtHR, *Saran v. Romania*, Application no. 65993/16, Judgment of 10 November 2020.

same article lists four forms of protected manifestations of religion or belief: worship, teaching, practice and observance. In the first case where the Court found violation of Article 9 (*Kokkinakis v. Greece*), it acknowledged that freedom to manifest one's religion includes the right to try to convince others and to share one's faith by preaching.[80] Closely linked to this right is the freedom of distributing religious literature. In the case of *Nasirov and Others v. Azerbaijan* the Court found that the detention of Jehovah's Witnesses due to the distribution of religious literature 'amounted to an interference with the exercise of their right to freedom of religion, as guaranteed by Article 9 of the Convention.'[81] Additionally, religion might be manifested by wearing religious attires or religious dresses in public. Thus, for example, *in Eweida and Others v. the United Kingdom* and *Leyla Şahin v. Turkey,* the Court found that wearing a cross or Islamic headscarf were manifestations of religion or belief within the meaning of Article 9.[82] There are countless other forms of manifestations of religion or belief that fall within the ambit of Article 9 of the Convention.

The issue arises when the Court has to establish whether certain practice or behaviour constitutes manifestation of religion. As it has repeatedly stated, 'Article 9 does not protect every act motivated or inspired by a religion or belief.'[83] The Court has linked the manifestation of religion with the motivation behind it that 'can bring the Court dangerously close to adjudicating on whether a particular practice is formally required by a religion.'[84] However, the jurisprudence indicates that in each case, the Court, in order to determine whether an act constitutes manifestation within the meaning of Article 9, must establish 'the existence of a sufficiently close and direct nexus between the act and the underlying belief' while 'there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question.'[85] Instead of exploring the motivation behind the act in question, the Court should consider the nature of the act itself and the strength of its link to religion.

In a case involving a Buddhist prisoner who was denied a vegetarian diet, which he considered an essential aspect of his religious beliefs, the Polish Government argued that 'Vegetarianism could not be considered an essential aspect of the practice of the applicant's religion, since the strict Mahayana school to which the applicant claimed to adhere only encouraged vegetarianism but did not prescribe it.'[86] On the other hand, the Court held that 'The applicant's decision to adhere to a vegetarian

80 ECtHR, *Kokkinakis v. Greece,* Application no. 14307/88, Judgment of 25 May 1993, para. 31.
81 ECtHR, *Nasirov and Others v. Azerbaijan,* Application no. 58717/10, Judgment of 20 February 2020, para. 61.
82 ECtHR, *Eweida and Others v. the United Kingdom,* Applications nos. 48420/10, 59842/10, 51671/10, and 36516/10, Judgment of 15 January 2013, para. 91 and 96; ECtHR, *Leyla Şahin v. Turkey,* Application no. 44774/98, Judgment of 10 November 2005, para. 111.
83 ECtHR, *Arrowsmith v. United Kingdom,* Application no. 7050/75, Resolution of 12 June 1979.
84 Harris, O'Boyle, Bates, Buckley, 2023, p. H62.
85 ECtHR, *Eweida and Others v. the United Kingdom,* Application nos. 48420/10, 59842/10, 51671/10, and 36516/10, Judgment of 15 January 2013, para. 82.
86 ECtHR, *Jakóbski v. Poland*, Application no. 18429/06, Judgment of 7 December 2010, para. 43.

diet can be regarded as motivated or inspired by a religion and was not unreasonable' and concluded that this act of prisons authorities falls within the scope of Article 9 of the Convention.[87] As to the Court's jurisprudence, the state must remain neutral and has no power to assess the legitimacy of religious beliefs. Therefore, the state should refrain from exploring whether certain practices are mandatory according to the teachings of concrete religion. Even non-mandatory practices can constitute a manifestation of religion within the meaning of Article 9.

Freedom to manifest one's religion in democratic and pluralistic societies might be restricted 'to reconcile the interests of the various groups and ensure that everyone's beliefs are respected.'[88] The legal accommodation of some manifestations of religion or belief might be challenging since the legislator has to reconcile different competing interests. For example, the religious duty of Sikhs to wear a turban contravene the duty of wearing protective headgear prescribed by the law.[89] Similarly, issues can arise about wearing Kirpan (a small dagger), which is an integral part of the Sikh faith and is carried by baptised Sikh children even in schools.[90] The legislator must strike balance and decide whether to uphold religious freedom or safety and rights of others. As noted previously, religion can be manifested in countless ways in different places and contexts.

The manifestation of religion or belief in the place of work or in the context of employment has given a rise to a number of cases. The traditional approach of the Strasbourg organs was that there is no interference with Article 9 if the applicant has the possibility to resign from his work and to find another employment (the "free to resign" formula). In a case involving a vicar of Norwegian State Church who decided not to perform his duties complaining that the adoption of the Norwegian Abortion Act violated his freedom of religion, the Commission held that

> 'If the requirements imposed upon him by the State should be in conflict with his convictions, he is free to relinquish his office as clergyman within the State Church, and the Commission regards this as an ultimate guarantee of his right to freedom of thought, conscience and religion.'[91]

However, since *Eweida*, the Court has abandoned this approach and acknowledged that

> 'Given the importance in a democratic society of freedom of religion, the Court considers that, where an individual complains of a restriction on freedom of religion in the workplace, rather than holding that the possibility of changing

87 Ibid., para. 45.
88 ECtHR, *Kokkinakis v. Greece*, Application no. 14307/88, Judgment of 25 May 1993, para. 33.
89 For example, in the UK regulations on protective headgear do not apply to followers of the Sikh religion while they are wearing a turban. Road Traffic Act 1988.
90 Karamvir, 2020, p. 308.
91 ECtHR, *Knudsen v. Norway*, Application no. 11045/84, Decision of 8 March 1985.

> job would negate any interference with the right, the better approach would be to weigh that possibility in the overall balance when considering whether or not the restriction was proportionate.'

In *Ivanova v. Bulgaria*, the applicant, who had been involved in the religious activities of the Word of Life religious community, was terminated from her employment on account of her religious beliefs. The Court found that there had been a violation of Article 9, without refereeing to a possibility of moving to a less hostile working environment and avoiding to employ the "free to resign" test.[92] This important shift of the Court's reasoning has been described as a positive development because: 1. it ensures consistency between Article 9 and other articles of the Convention where such a test has never been employed; 2. it is aligned with the situation in the workforce in Europe where high rates of unemployment do not allow the practical implementation of this test; and 3. it makes possible the provision of more detailed guidance on the lawful parameters of manifestations of religion or belief.[93]

5. The Relationship Between Religion and the State

The freedom to manifest one's religion or belief is not protected exclusively as an individual right, but it also has its collective dimension. In the early stages of the ECHR implementation, the Commission initially held that churches, as legal rather than natural persons, were incapable of possessing and exercising rights under Article 9 and, therefore, could not claim to be victims of its violation.[94] However, the Commission later revised this position, recognising that 'When a Church body lodges an application under the Convention, it does so in real on behalf of its members. It should therefore be accepted that a church body is capable of possessing and exercising the rights contained in Article 9(1) in its own capacity as a representative of its members.'[95] Nonetheless, this collective right to manifest religion or belief is not limited to churches. It extends to various types of religious organisations, groups, and

92 ECtHR, *Ivanova v. Bulgaria*, Application no. 52435/99, Judgment of 12 April 2007, para. 84.
93 Harris, O'Boyle, Bates, Buckley, 2023, p. 588.
94 ECtHR, *Church of X v. the United Kingdom*, Application no. 3798/68, Decision of 17 December 1968, p. 6.
95 ECtHR, *X. and Church of Scientology v. Sweden*, Application no. 7805/77, Decision of 5 May 1979, p. 70.

movements, including those not recognised as legal entities by their home states,[96] and, in some circumstances, even to limited liability companies.[97]

One of the key factors influencing the legal status of religious organisations is the model of religion-state relations implemented in a specific country. The ECHR does not explicitly address the relationship between religion and the state in the state parties of the Convention. The Convention, however, 'indirectly regulates the permissible forms of relationship between religious institutions and the state by reference to religious freedom.'[98] As R. Barker aptly noted, 'A myriad of typologies have been suggested for the various ways that states have and can interact with religion.'[99] Without deeply analysing all possible configurations of state-religion relationships, it should be noted that neither the Convention nor its interpretation by the Court prohibits the establishment of a state religion or requires a specific degree of separation between state and religion. This flexibility explains why a wide range of configurations of state-religion relations can be found across Europe, all deemed compatible with the Convention. These range from established churches, such as in the United Kingdom, to strict separation models like *laïcité* in France. It should be highlighted that the Court has not dealt with certain model of state-religion relationship; rather, it examines whether particular aspect of this relation is permissible.

There are several underlying principles for the interpretation of the Convention that outline the position of the state towards religion within the CoE's human rights protection system: state neutrality, religious autonomy, the margin of appreciation doctrine, and religious pluralism. The implementation of these principles is particularly complex because they protect not only individuals but also, and more prominently, groups and religious organisations.

The notion of pluralism has been described as the central principle defining the scope and impact of many rights,[100] including freedom of religion. As has been noted, 'Religious freedom jurisprudence of the European Court of Human Rights most basically concerns the question of religious pluralism.'[101] In the first religious freedom case, *Kokkinakis v. Greece*, the Court linked pluralism with the concept of a democratic society.[102] In another landmark case, the Court emphasised that religious pluralism

96 ECtHR, *Canea Catholic Church v. Greece*, Application no. 25528/94, Judgment of 16 December 1997.

97 'Excluding the applicant company from its entitlement to freedom of religion on account of its corporate character would exclude the applicants from protection afforded to them by Article 9 (Article 9) merely because they chose to transfer some of their activities to that company. This would be an excessively formalistic approach.' ECtHR, *Kustannus Oy Vapaa Ajattelija AB and Others v. Finland*, Application no. 20471/92, Judgment of 15 February 1996. The oposite view can be found in: ECtHR, *Company X v. Switzerland*, Application no. 7865/77, Judgment of 27 February 1979.

98 Evans, Thomas, 2006, p. 699.

99 Barker, 2021, p. 8.

100 Nieuwenhuis, 2003, p. 368.

101 Calo, 2010, p. 261.

102 ECtHR, *Kokkinakis v. Greece*, Application no. 14307/88, Judgment of 25 May 1993, para. 31.

is 'inherent in the concept of a democratic society.'[103] Some CEE countries preserve autochthonous religious pluralism, which is not a consequence of modern immigration but rather stems from the fact that their populations have been historically divided into several different religions or denominations.[104] The Court has repeatedly relied on religious pluralism in its jurisprudence, particularly in cases involving religious minorities. This approach has elevated religious pluralism to the status of 'the cornerstone of a human rights regime and the norm by which other norms are to be assessed.'[105]

State neutrality and impartiality are also important characteristics of state-religion relations in the Court's jurisprudence. These principles prohibit arbitrary and unjustified state interventions.[106] The duty of state neutrality is 'incompatible with any power on the State's part to assess the legitimacy of religious beliefs, and requires the State to ensure that conflicting groups tolerate each other, even where they originated in the same group.'[107] When disputes arise between religious organisations or within factions of the same organisation, the state must maintain neutrality and refrain from evaluating the legitimacy of their claims or doctrinal positions. The state's primary objective should be to uphold religious pluralism by fostering conditions for the peaceful coexistence of all religious organisations, rather than resolving conflicts by favouring or eliminating one of the parties involved.

The freedom of individuals to believe and practice their religion of belief cannot be exercised without the freedom of communal belief. In most cases, religious beliefs and practices are expressed collectively; within groups, communities, or among those who share similar views. The protection of religious autonomy of those groups and communities enables them to provide their original and authentic contribution to society. Typically, religious organisations enjoy substantial autonomy in their internal domains, including matters such as religious teachings (doctrines) and organisational structure. As Chopko defines it, religious autonomy is 'the right of religious communities (hierarchical, connectional, and congregational) to decide upon and administer their own internal religious affairs without interference by the institutions of government.'[108] The Court has repeatedly emphasised that 'The autonomous existence of religious communities is indispensable for pluralism in a democratic society

103 ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, Application no. 45701/99, Judgment of 13 December 2001, para. 119.
104 Đukić, 2021, p. 145.
105 Calo, 2010, p. 263.
106 ECtHR, *Hasan and Chaush v. Bulgaria*, Application no. 30985/96, Judgment of 26 October 2000, para. 62; ECtHR, Metropolitan Church of Bessarabia and Others v. Moldova, Application no. 45701/99, Judgment of 13 December 2001, para. 118.
107 ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, Application no. 45701/99, Judgment of 13 December 2001, para. 123. Furthermore, the state should foster substantive religious neutrality which, according to D. Laycock, requires the government to 'minimise the extent to which it either encourages or discourages religious belief or disbelief, practice or nonpractice, observance or nonobservance.' Laycock, 1990, p. 1001.
108 Chopko, 2001, p. 96.

and is thus an issue at the very heart of the protection which Article 9 affords.'[109] This organisational autonomy benefits not only the religious institutions as wholes but also their individual members. The Court's jurisprudence in this area can be broadly divided into two categories: cases involving the recognition or registration of religious organisations, and cases addressing state interventions in religious disputes.[110]

Traditional jurisprudence under Article 9 grants states a broad margin of appreciation in matters of state-religion relations. However, this flexibility primarily applies to the overall model of state-religion relationships. When dealing with specific issues, such as the legal status of religious organisations and the full enjoyment of their rights, the Court applies a higher level of scrutiny, thereby narrowing the state's margin of appreciation. Moreover, by relying on this wide margin of appreciation in general, the Court avoids becoming entangled in contentious debates about the historical status of churches and religious communities in European countries.

6. Interferences with Freedom of Religion or Belief

The freedom of religion or belief is often conceptualised as comprising two elements – dimensions or spheres: the *forum internum* and *forum externum*.[111] While the former is generally regarded as an absolute right that cannot be limited, the latter is considered a qualified right, subject to restrictions under the limitation clause of Article 9.[112] The first one therefore cannot be limited, whereas the second one can be limited according to the rules stipulated in the limitation clause of Article 9. This traditional binary distinction has been criticised on several grounds. Critics argue that the structure of Article 9 does not clearly reflect such a division, that the drafters did not intend it, and that it is not supported by the Court's jurisprudence. More recent approaches emphasise the interconnection between *forum internum* and *forum externum*, suggesting that the jurisprudence in this area should be understood 'in terms of a series of concentric circles, rather than as a binary framework.'[113] Whilst this distinction holds importance in theory, its practical application is problematic.[114] Most of the case law is about interferences and restrictions on the freedom to manifest one's religion or belief. Similar to other neighbouring rights (protected by Articles 8, 10, and 11) the limitations clause of Article 9 stipulates that justifiable restrictions must be 'prescribed by law,' pursue a legitimate aim, and be 'necessary in a democratic society.'

109 ECtHR, *Jehovah's Witnesses of Moscow and Others v. Russia*, Application no. 302/02, Judgment of 10 June 2010, para. 99; ECtHR, *Hasan and Chaush v. Bulgaria*, Application no. 30985/96, Judgment of 26 October 2000, para. 62; ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, Application no. 45701/99, Judgment of 13 December 2001, para. 118.
110 Minnerath, 2004, pp. 311-312.
111 Harris, O'Boyle, Bates, Buckley, 2023, p. H69; Głogowska-Balcerzak and Wasiński, 2015.
112 Roberts, 2020.
113 Ibid.
114 Evans, 2001, p. 77.

The first condition for a legitimate restriction is that it must be 'prescribed by law,' meaning that the interference must be 'authorised by a rule recognised in the national legal order.'[115] In the Court's jurisprudence, the term "law" encompasses both written law including statutes and other lower ranking acts and unwritten law including judge made-law. Moreover, the Court holds that 'the "law" is the provision in force as the competent courts have interpreted it.'[116] Case law further requires such laws to be both adequately accessible and foreseeable, that is, formulated with sufficient precision to allow individuals, if necessary with appropriate advice, to regulate their conduct.[117] The Court also acknowledges that states possess a 'margin of appreciation' in determining the legal mechanisms by which they may limit or restrict the rights outlined in the Convention.[118] Another important basic principle of democratic society which should prevent the arbitrary interferences with the freedom of thought, conscience and religion is the rule of law, that requires the rules that provide a legal discretion to indicate 'with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise.'[119]

In most cases, the interferences meet this threshold, since state actions are typically based on some kind of regulation. Therefore, in the past, the Court avoided examining thoroughly whether interference fulfilled this requirement.[120] For example, in cases involving the punishment of Jehovah's Witnesses for the offence of proselytism in Greece (cases *Kokkinakis* and *Larissis*), the Court did not examine the Greek proselytism legislation, emphasising that domestic authorities and courts have the responsibility to interpret and apply domestic law.[121]

The landmark case in which the Court found that the "prescribed-by-law" requirement in Article 9 had not been satisfied is *Hasan and Chaush v. Bulgaria*. The case arose around the dispute over the leadership of the Muslim community in Bulgaria. The dispute was initiated by the attempt of Bulgarian Muslims to replace the leadership inherited from the Communist era, due to their alleged collaboration with the communist regime. The state, through the actions of the Directorate of Religious Denominations, repeatedly intervened by removing or recognising the new leadership of the Muslim community in Bulgaria. The Court found, *inter alia*, that

115 Schabas, 2015, p. 435.
116 ECtHR, *Leyla Şahin v. Turkey*, Application no. 44774/98, Grand Chamber Judgment of 10 November 2005, para. 88.
117 ECtHR, *Hasan and Chaush v. Bulgaria*, Application no. 30985/96, Judgment of 26 October 2000, para. 84.
118 Schabas, 2015, p. 436.
119 ECtHR, *Hasan and Chaush v. Bulgaria*, Application no. 30985/96, Judgment of 26 October 2000, para. 84.
120 Harris, O'Boyle, Bates, Buckley, 2023, p. H63.
121 ECtHR, *Kokkinakis v. Greece*, Application no. 14307/88, Judgment of 25 May 1993, para. 31; ECtHR, *Larissis and Others v. Greece*, Application no. 23372/94, Judgment of 24 February 1998, paras. 41-42.

> 'The interference with the internal organisation of the Muslim community and the applicants' freedom of religion was not "prescribed by law" in that it was arbitrary and was based on legal provisions, which allowed an unfettered discretion to the executive and did not meet the required standards of clarity and foreseeability.'[122]

In another case involving the disruption of a meeting of Jehovah's Witnesses in Russia, the Court found that

> 'The legal basis for breaking up a religious event conducted on the premises lawfully rented for that purpose was conspicuously lacking. Against that background the Court finds that the interference was not "prescribed by law" and that the Commissioner did not act in good faith and breached a State official's duty of neutrality and impartiality vis-à-vis the applicants' religious congregation.'[123]

A similar case emerged in Bulgaria, where the police interrupted the meeting of members of the Unification Church.[124] Post the *Hasan and Chaush* case, the Court was not reluctant to thoroughly examine the compatibility of state actions with the "prescribed-by-law" requirement in Article 9.

Justifiable restrictions of freedom of religion or belief must pursue one of the legitimate aims or purposes enumerated in Paragraph 2 of Article 9, namely the interests of public safety, the protection of public order, health, or morals, or the protection of the rights and freedoms of others. The Court has insisted that these exemptions must be narrowly interpreted and that 'their enumeration is strictly exhaustive and their definition is necessarily restrictive.'[125] Nevertheless, cases in which the Court has found that state actions do not pursue legitimate aims are rare. It is not uncommon for the Court to simply pass over the issue of the existence of legitimate aims and to proceed to the most important and controversial part of its analysis-assessing whether a limitation is 'necessary in democratic society.'[126] It has been noted by the Grand Chamber that Court's practice is 'to be quite succinct when it verifies the existence of a legitimate aim within the meaning of the second paragraphs of Articles 8 to 11 of the Convention.'[127] Finally, the Court has recognised that

122 ECtHR, *Hasan and Chaush v. Bulgaria*, Application no. 30985/96, Judgment of 26 October 2000, para. 86.
123 ECtHR, *Kuznetsov and Others v. Russia*, Application no. 184/02, Judgment of 11 January 2007, para. 74.
124 ECtHR, *Boychev and Others v. Bulgaria*, Application no. 77185/01, Chamber Judgment of 27 January 2011, para 48.
125 ECtHR, *Svyato-Mykhaylivska Parafiya v. Ukraine*, Application no. 77703/01, Judgment of 14 June 2007, para. 132.
126 Schabas, 2015, p. 436.
127 ECtHR, *S.A.S. v. France*, Application no. 43835/11, Grand Chamber Judgment of 1 July 2014, para. 175.

a range of different state interferences may be justified on pursuing legitimate aims such as protection of public order or public safety or health.[128] However, comparing to limitations clauses in neighbouring articles, Article 9 does not mention "national security" as a legitimate aim for an interference with freedom of religion or belief. As the Court emphasised, this is

> 'Far from being an accidental omission, the non-inclusion of that particular ground for limitations in Article 9 reflects the primordial importance of religious pluralism as 'one of the foundations of a 'democratic society' within the meaning of the Convention' and the fact that a State cannot dictate what a person believes or take coercive steps to make him change his beliefs'.[129]

In general, states easily satisfy this requirement, and the Court rarely finds that states have failed to prove that their measures were pursing legitimate aims.[130] Finally, a central part of the Court's examination is assessing whether the impugned measure is 'necessary in a democratic society'. It usually commences by exploring whether the measures respond to a "pressing social need". The reasons adduced by the national authorities to justify the interference must be "relevant and sufficient". In most cases, the "proportionality test" is employed, meaning that the impugned measures that restrict the right to manifestation of religion or belief are proportional to legitimate aim pursued.[131] The Court also applies the "margin of appreciation" doctrine that reflects the subsidiarity of the protection provided by the Convention and the Court's deference to states that allows them discretion in complex or controversial matters.[132] Even though this doctrine has been widely criticised, it remains an important fixture in the ECtHR's jurisprudence. The final objective is to consider whether the authorities have struck 'a fair balance between the competing interests of the individual and of society as a whole.'[133]

7. Concluding Remarks

Most cases in which the Court has found violations of the right to freedom of religion or belief involve states located in the eastern and southeastern parts of the European continent. From the case law, it is possible to identify certain areas in the protection

128 For examples of grounds on which states actions were justified, see: Harris, O'Boyle, Bates, Buckley, 2023, p. 590.
129 ECtHR, *Nolan and K v. Russia*, Application no. 2512/04, Judgment of 12 February 2009, para. 73.
130 Taylor, 2005, p. 305.
131 ECtHR, *Fernández Martínez v. Spain*, Application no. 56030/07, Grand Chamber Judgment of 12 June 2014, para. 124.
132 Berry, 2019, p. 105. More on the interconnection between the principle of subsidiarity and the concept of the margin of appreciation: Spano, 2014, pp. 490–492.
133 ECtHR, *Keegan v. Ireland*, Application no. 16969/90, Judgment of 26 May 1994, para. 49.

of freedom of religion or belief that are critical in the region of Central and Eastern Europe. When it comes to the collective aspect of freedom of religion, these include the registration of religious organisations (especially of those that are smaller and newly established), their access to the rights provided to traditional and historically established religious organisations, and the overall protection of religious autonomy. When it comes to the individual aspect of freedom of religion, breaches of the right have been identified in cases involving the provision of religious services and access to special diets in specialised institutional settings, as well as the wearing of religious clothing in public spaces.

Religious communities the of Central and Eastern European countries usually seek state recognition in order to obtain legal personality and access the benefits, favours, and privileges reserved for recognised churches and religious communities.[134] However, with regard to registration, state authorities are not always benevolent towards all religious organisations. Through the employment of different legal technics, they avoid recognising some of them. In cases that involve registration issues, the Court usually finds violations of Article 11 (freedom of association) in conjunction with Article 9. These cases can be divided into two groups using, as a criterion, the subjects of collective religious freedom.

The first group of cases involves new religious groups and movements that have been denied legal recognition or registration. The reasons for the refusal and the aim of state interferences usually were the protection of public order, public health, and the rights of others.[135] In addition to Jehovah's Witnesses, who have faced obstacles in obtaining official recognition throughout the region,[136] other new religious movements that encountered similar difficulties are the Church of Scientology,[137] the Word of the Life religious community,[138] and the Salvation Army.[139] However, in most cases,

134 Chaibi, 2022, p. 7.
135 ECtHR, *Church of Scientology Moscow v. Russia*, Application no. 18147/02, Judgment of 5 April 2007, para. 53.
136 *Association religieuse "Témoins de Jéhovah – Romania" and Others v. Romania*, Application nos. 63108/00 and nine others; the applicants reached a friendly settlement with the state. ECtHR, *Christian Religious Organisation of Jehovah's Witnesses in the NKR v. Armenia*, Application no. 41817/10; ECtHR, *Jehovah's Witnesses of Moscow v. Russia*, Application no. 302/02, Judgment of 10 June 2010; European Commission of Human Rights, *Khristiansko Sdruzhenie "Svideteli na Iehova" (Christian Association Jehovah's Witnesses) v. Bulgaria*, Application no. 28626/95, Decision of 3 July 1997; ECtHR, *Kimlya, Sultanov, and the Church of Scientology of Niznekamsk v. Russia*, Applications nos. 76836/01 and 32782/03, Judgment of 1 October 2009.
137 ECtHR, *Church of Scientology Moscow v. Russia*, Application no. 18147/02, Judgment of 5 April 2007; ECtHR, *Church of Scientology of St. Petersburg and Others v. Russia*, Application no. 47191/06, Judgment of 2 October 2014; ECtHR, *Sultanov and Church of Scientology Nizhnekamsk and 5 other applications v. Russia*, Applications no. 59470/11.
138 ECtHR, *Dimitrova v. Bulgaria*, Application no. 15452/07, Judgment of 10 February 2015, para. 7; ECtHR, *Ivanova v. Bulgaria*, Application no. 36207/03, Judgment of 14 February 2008, para. 9.
139 ECtHR, *Moscow Branch of the Salvation Army v. Russia*, Application no. 72881/01, Judgment of 5 October 2006.

the state failed to prove that the activities of these organisations posed a threat to public health, public order, or the rights of others.

The second group of cases concerns the denial of legal recognition to religious organisations that are either in conflict with already recognised organisations or have split from them. The justifications provided by state authorities include the prevention of religious conflicts and an ongoing dispute between competing denominations,[140] the risk of confusion arising from the existence of a recognised organisation with a similar name, the fact that applicants could continue their activities without registration,[141] procedural shortcomings,[142] and in some cases, even doctrinal reasons and the overlap between beliefs of the already recognised religious organisation and the one that seeks recognition.[143] Nevertheless, the Court has emphasised that in democratic societies, the state 'does not need to ensure that religious communities remain under a unified leadership,'[144] and that 'the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.'[145] While the Court has accepted that authorities may require a religious organisation to adopt a distinct name to avoid misleading believers or the general public,[146] the case law shows that in most cases, the Court finds this argument of the governments to be ill founded. Applicant organisations typically choose names that are sufficiently different from those of other recognised organisations and do not intend to associate themselves with them; state

140 ECtHR, *Bektashi Community and Others v. the former Yugoslav Republic of Macedonia*, Applications nos. 48044/10, 75722/12, and 25176/13, Judgment of 12 April 2018, para. 73; ECtHR, *Fusu Arcadie and Others v. the Republic of Moldova*, Application no. 22218/06, Judgment of 17 July 2012, para. 27.

141 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. 58. ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, Application no. 45701/99, Judgment of 13 December 2001, para. 97; ECtHR, *Svyato-Mykhaylivska Parafiya v. Ukraine*, Application no. 77703/01, Judgment of 14 June 200, para. 122.

142 ECtHR, *Metodiev and Others v. Bulgaria*, Application no. 58088/08, Judgment of 15 Jun 2017.

143 ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, Application no. 45701/99, Judgment of 13 December 2001, para. 98.

144 ECtHR, *Hasan and Chaush v. Bulgaria*, Application no. 30985/96, Grand Chamber Judgment of 26 October 2000, para. 78; ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, Application no. 45701/99, Judgment of 13 December 2001, para. 117; ECtHR, *Supreme Holy Council of the Muslim Community v. Bulgaria*, Application no. 39023/97, Judgment of 16 December 2004, para. 96; ECtHR, *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, Applications nos. 412/03 and 35677/04, Judgment of 22 January 2009, para. 120; ECtHR, *Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarch) v. The Former Yugoslav Republic of Macedonia*, Application no. 3532/07, Judgment of 16 November 2017, paras. 115-120.

145 ECtHR, *Serif v. Greece*, Application no. 38178/97, Judgment of 14 December 1999, para. 53.

146 ECtHR, *Genov v. Bulgaria*, Application no. 40524/08, Judgment of 23 March 2017, para. 43.

authorities have failed to provide reasons to justify the potential risk of confusion among believers.[147]

In some eastern European countries, disputes arose over the registration of small dissident religious groups that had split from the Orthodox Church and identified themselves as either a "True Orthodox Church" or an "Old Calendar Church."[148] The Court insisted that the interferences with the rights of these religious organisations were neither prescribed by law[149] nor necessary in a democratic society.[150] Therefore, in some cases, the parties reached friendly settlements, whereby the religious organisation was recognised and the state covered both pecuniary and non-pecuniary damages.[151]

In central and eastern Europe, individuals have faced difficulties in accessing the right to manifest their religion in special institutional settings such as prisons and hospitals. The Court has found violations of Article 9 in the cases that involved: a disciplinary punishment of a Muslim prisoner for conducting worship at nighttime in breach of prison schedule,[152] the failure of the prison authorities to provide prisoners with meals in conformity with the prescriptions of their religion[153] and a denial of any visit from a priest.[154]

In some cases, the Court has not found violations of Article 9 due to procedural reasons. In *Feldman v. Ukraine*, the impugned refusal took place more than six months before the particular complaint was raised for the first time. Therefore, the Court found that it was introduced out of time in accordance with Article 35 of the

147 *Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarch) v. The Former Yugoslav Republic of Macedonia*, Application no. 3532/07, Judgment of 16 November 2017, para 111; ECtHR, Bektashi Community and Others v. the former Yugoslav Republic of Macedonia, Applications nos. 48044/10, 75722/12, and 25176/13, Judgment of 12 April 2018, para. 71.

148 ECtHR, *Église Orthodoxe Indépendente and Zahariev v. Bulgarie*, Application no. 76620/14; Stavropigijalen ECtHR, *Manastir 'Sveti Jovan Zlatoust' and the Church of Real Orthodox Christians and Kiril Ivanovski v. Macedonia*, Application nos. 52849/09, 35700/11.

149 ECtHR, *Biserica Adevărat Ortodoxă din Moldova and Others v. Moldova*, Application no. 952/03, Judgment of 27 February 2007, para. 36.

150 ECtHR, *Bulgarian Orthodox Old Calendar Church and Others v. Bulgaria*, Application no. 56751/13, Judgment of 20 April 2021, para. 64.

151 ECtHR, *Eparhia Moldovei de Est a Bisericii Ortodoxe din Ucraina and Others v. Moldova*, Application no. 46157/07, Decision of 7 December 2010.

152 ECtHR, *Korostelev v. Russia*, Application no. 29290/10, Judgment of 12 May 2020, para. 64.

153 ECtHR, *Vartic v. Romania (No. 2)*, Application no. 14150/08, Judgment of 17 December 2013, para. 54; ECtHR, *Jakóbski v. Poland*, Application no. 18429/06, Judgment of 7 December 2010, para. 54.

154 In two cases that involved applicants who were sentenced to death in Ukraine and who were denied any visit from a priest, the Court found that this interference with the applicants' freedom to manifest their religion or belief was not "prescribed by law," as it is required by the second paragraph of Article 9. ECtHR, *Kuznetsov v. Ukraine*, Application no. 39042/97, Judgment of 29 April 2003, para. 150; ECtHR, *Poltoratskiy v. Ukraine*, Application no. 38812/97, Judgment of 29 April 2003, para. 170.

Convention.[155] Prisoners have complained unsuccessfully of not being able to attend religious services or not being allowed any visits from a priest in Poland,[156] Bulgaria,[157] and Romania.[158] In *Erlich and Kastro v. Romania*, two Jewish prisoners were denied kosher meals. The Court found that a whole set of appropriate measures had been put in place by the prison authorities, such as the possibility to obtain, by their own means, foodstuffs to be cooked and prepared on the spot. Furthermore, they could apply for reimbursement of any expenses by lodging a civil action. Therefore, it found that there was no violation of Article 9.[159] Similarly, the Court ruled there was no violation of the same Article in a case where the applicant complained that the prison authorities had refused to allow him to read religious literature, meditate and pray in isolation from other prisoners, and burn incense sticks for religious purposes.[160]

Issues concerning religious attire are more characteristic of Western countries and Turkey.[161] In the landmark case *SAS v. France*, a Muslim woman complained about the Law that prohibited women from wearing a burka or niqab. The Court accepted

155 *Feldman v. Ukraine (No. 2)*, Application no. 42921/09, Judgment of 12 January 2012, para 40. In another case, the Court found that the applicant had not exhausted domestic remedies regarding the refusal of visits by a priest but noted that the seizure of religious literature and items and refusals to allow visits to the prison chapel amounted to a violation of Article 9. ECtHR, *Moroz and Others v. Ukraine*, Application no. 36545/02, Judgment of 21 December 2006, paras. 101 and 109.

156 The application was submitted out of time or 'more than six months after the date on which the relevant period to be considered under Article 9 came to an end.' ECtHR, Kawiecki v. Poland, Application no. 15593/07, Judgment of 23 October 2012, para. 107. In *Zimny v. Poland* the Polish Government reached a friendly settlement with the applicant, who complained that he did not have access to an imam and food in conformity with the prescriptions of Islam. ECtHR, *Zimny v. Poland*, Application no. 41198/10.

157 The applicant was denied the right to attend church services during her stay in a psychiatric hospital. The Court struck the case from its list because she stopped to respond to the Court's letters. ECtHR, *Alichkova v. Bulgaria*, Application no. 20255/05.

158 The complaint of the applicants that they had been prevented from practicing their religion by the prison authorities in violation of Article 9 was dismissed due to a failure to exhaust domestic remedies. They were denied a visit from a rabbi (in the case of the first applicant) and were served meals not in in conformity with the prescriptions of Islam (in the case of the second applicant). ECtHR, *Berghea and Turan v. Romania*, Application no. 7242/14, Judgment of 8 November 2016.

159 ECtHR, *Erlich and Kastro v. Romania*, Applications nos. 23735/16 and 23740/16, Judgment of 9 June 2020.

160 ECtHR, *Kovaļkovs v. Latvia*, Application no. 35021/05, Judgment of 31 January 2012, paras. 67 and 68.

161 The landmark case on the ban of religious attire in Turkey is ECtHR, *Leyla Şahin v. Turkey*, Application no. 44774/98, Grand Chamber Judgment of 10 November 2005. Other cases that involved a ban on religious attire or symbols are: ECtHR, *Köse and Others v. Turkey*, Application no. 26625/02, Judgment of 24 January 2006; ECtHR, *Kurtulmuş v. Turkey*, Application no. 65500/01, Decision of 24 January 2006; ECtHR, *Dogru v. France*, Application no. 27058/05, Judgment of 4 December 2008; ECtHR, *Dahlab v. Switzerland*, Application no. 42393/98, Decision of 15 February 2001; ECtHR, *Ahmet Arslan and Others v. Turkey*, Application no. 41135/98, Judgment of 23 February 2010; ECtHR, *Ebrahimian v. France*, Application no. 64846/11, Judgment of 26 November 2015; ECtHR, *Belcacemi and Oussar v. Belgium*, Application no. 37798/13, Judgment of 11 July 2017; ECtHR, *Lachiri v. Belgium*, Application no. 3413/09, Judgment of 18 September 2018.

the Government's argument that this restriction was legitimate because it promoted 'respect for the minimum requirements of life in society,' or 'living together,' as referred to by the Government. The Court linked this argument to the 'protection of the rights and freedoms of others' and found that there had been no violation of Article 9.[162]

Recently, a case from the Central and Eastern European region has drawn significant attention. In *Hamidović v. Bosnia and Herzegovina*, the applicant was ordered by the court to remove his skullcap during courtroom proceedings. He refused, asserting that wearing it was a religious duty. As a result, he was fined for contempt of court; later, the fine was converted into imprisonment. He complained that the ban on wearing the skullcap amounted to an unjustifiable limitation on his right to manifest his religion. As in other cases involving religious attire, the Court acknowledged the wide margin of appreciation that states are afforded in such cases. However, the Court emphasised that

> 'Freedom to manifest one's religion is a fundamental right: not only because a healthy democratic society needs to tolerate and sustain pluralism and diversity, but also because of the importance to an individual who has made religion a central tenet of his or her life of being able to communicate that belief to others'.[163]

Furthermore, the Court found that the applicant was inspired by his sincere religious beliefs 'without any hidden agenda to make a mockery of the trial, incite others to reject secular and democratic values or cause a disturbance.' It reiterated that domestic authorities should not eliminate pluralism to remove tensions; instead, they should ensure that competing groups tolerate one another.[164] A similar reasoning was employed in *Lachiri v. Belgium*, where the Court recognised that courts have limited powers to restrict religious freedom in courtroom settings, though it remains unclear if this signals a broader shift in the Court's stance on banning religious attire in public spaces.[165]

Article 9 of the ECHR is interpreted broadly to encompass a wide range of religions, beliefs, convictions, worldviews, ideas, and opinions. The Court has established a test requiring 'a certain level of cogency, seriousness, cohesion, and importance' for ideas or views to qualify for protection under this provision. Long-established world religions, along with their branches or denominations, are readily recognised as beliefs within the meaning of Article 9. The same applies to many newly established groups and movements. Furthermore, the protection afforded by Article 9 also extends to

162 ECtHR, *S.A.S. v. France*, Application no. 43835/11, Grand Chamber Judgment of 1 July 2014, paras. 121 and 159.
163 ECtHR, *Hamidović v. Bosnia and Herzegovina*, Application no. 57792/15, Judgment of 5 December 2017, para. 41.
164 Ibid.
165 Harris, O'Boyle, Bates, Buckley, 2023, p. 594.

non-beliefs, secular worldviews, and even political ideologies. However, this inclusivist approach carries a potential risk: by broadly defining what qualifies for protection, the distinct status of religion itself may be diluted. If every kind of opinion, idea or worldview is treated as religion, the specific protection afforded to religion could be weakened, because the protection generally gets weaker as its range is broadened.

It can be concluded that while states in the CEE region have been found to violate the freedom to manifest one's religion in several cases, there is no evidence of systemic violations of this right. Moreover, progress has been observed in certain areas, including the accommodation of religious beliefs and practices in special institutional settings and the promotion of equality for all religious organisations. The case law of the Court has played a crucial role in these developments.

The Court has wisely been reluctant to engage in assessing the existing models of church-state relations across Europe. European states have a long history of traditional relations with certain religions, which over time have acquired unique constitutional and legal status. The Court should avoid any attempt to impose common standards on these relationships and focus instead on the protection of rights of particular religious groups and their members. By doing so, the Court can strike a balance between preserving the traditional and historical relationship between states and religions in Europe and ensuring the effective protection of Convention rights for religious organisations and their members.

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