

The European Court of Human Rights' Approach in the Protection of Rights of Religious Minority Groups

Chemen Bajalan^{1*}

¹The Public Prosecutor, Ministry of Justice, Sualiamaniah, Kurdistan Region- F. R. Iraq

*Corresponding author's email: chemen.bajalan@hotmail.com

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ABSTRACT

The European Court of Human Rights (ECtHR) is reluctant to distinguish the group right qua group. However, it is impossible to ignore the group dimension in the right to freedom of religion. Such a dimension is clearer in the manifestation of beliefs, which require more common practices than mere beliefs. The Court's decisions when dealing with the freedom of religion tend to be inconsistent because it considers the unique social and political situation of each member state. This limits the scope of the right to freedom of religion and the range of protection of a group's religious rights. Using a literature review and analyzing the case law, this paper highlights the inconsistencies in the Court's decisions in relation to acknowledging minorities' religious rights.

Keywords: ECHR (European Convention on Human Rights), ECtHR (European Court of Human Rights), Minorities, Religion, Manifestation of Beliefs, Minorities' identity, Minorities' Children's Education

1. INTRODUCTION

The main question that this paper addresses is the extent to which the European Court of Human Rights (ECtHR) has protected the rights of religious minorities. Hence, it analyzes the Court's interpretation of some related articles in the European Convention of Human Rights (ECHR) and the influence thereof in its decisions. Bearing in mind that in many countries, minorities are among the most marginalized groups, the issue of religious minority groups' struggles remains a significant area of focus in human rights. Freedom of religion and beliefs is a fundamental right,

which is enshrined not only in the ECHR but also in a wide range of national and international laws. The Court's global importance as a standard setter in protecting human rights is significant. The Court's power of enforcement makes the protection of human rights, including religious minorities' rights, under the Convention vital, not only for Europe and its 47 member states but also for setting international standards.

There are discussions around group rights and differentiating them from group human rights. This paper is concerned with group human rights. It is clear that, "Groups may have some sort of rights, but whatever those rights might be, they cannot be human rights. Human rights must be rights borne by human individuals" (Jones, 1999).

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There is no specific provision for minority rights in the ECHR (European Convention on Human Rights, 1950) and its Protocols. Apart from Article 14,¹ which prohibits discrimination against enjoying the Convention's rights "... on any ground such as ... associated with a national minority," the Convention is silent on the treatment of minorities. Despite the lack of specific provisions, the right to equal treatment and nondiscrimination reflects some of the minorities' concerns. In addition, the Court offers some protection to religious minorities by means of other provisions such as Articles 9² and 2 of Protocol 1.³

Despite the focus of the Convention on an individual as opposed to a group, ECtHR and the former Commission⁴ have often dealt with very complex issues of religious minorities and religious conflicts. Because it is almost impossible to separate individual cases from their historical and political background, (Medda-Windischer, 2003) the Court has started accepting complaints by legal, as opposed to natural, individuals, which include more group dimensions.

Minority groups, including religious minority groups, qua group, are not within the purview of the Convention. The right to enjoy religious freedom has been acknowledged specifically in favor of individual members of a group. However, an individual's right to freedom of religion according to Article 9 includes the right to manifest his/her religion and it allows a minority group the necessary degree of control over the community's religious matters. However, the Court's interpretation of the state's limitations in manifesting religions or beliefs

reduces the benefits of manifesting these as a means of protecting religious minorities.

Although the Convention's approach to the rights of religious minorities follows an individual approach, it is impossible to ignore the group dimension in some areas of the freedom of religion and beliefs. Cases concerning the recognition of some minority groups, state action in dealing with a conflict between these groups, the institutional lives of religious groups, their educational rights, and the limitations of the right to manifest religious beliefs are some areas which clearly deal with and affect religious minorities as a group.

The fundamental basis of liberal political thinking is an individual's rights. Its aim is to protect and guarantee individual rights that are free from the pressure of the majority. "Within liberalism individuals and not groups are considered to be the basic moral units of society and sole bearers of rights and obligations" (Singh, 2002). This notion of individual rights is manifested in the Convention. However, although no specific provisions for the protection of minorities exist in the Convention and its Protocols, the Strasbourg Organs have reviewed a number of cases concerning religious minorities' rights in ways which lead to further protection of minority groups. It is obvious that the Court's judgments in individual cases serve not only to decide the cases brought before it, but they also lead to more general safeguards of the rights set by the Convention. The Strasbourg Organs' case-by-case decisions have resulted in raising the standards of

¹ Article 14 states, "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds as sex, race, colour, language, religion, political or other opinion, national or social origin, associated with a national minority, property, birth or other status."

² Article 9 states, "1. 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 observation.' 2. Freedom to manifest one's religion or beliefs shall be subject to only to such limitation 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."

³ Article 2, Protocol 1 states, "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

⁴ The Court (hereinafter referred to as the Court") was set up in 1959 to deal with the alleged violations of the Convention. On 1 November 1998, a full time Court was established, replacing the two institutions, the part time Court and the European Commission of Human Rights (hereinafter "the Commission").

protecting human rights in public policy throughout the Convention's states (Moravcsik, 2000).

What follows is an assessment of the nature and extent of the protection of religious minorities' rights under the Convention through an evaluation of selected case laws. First, we examine what constitutes a minority, religion, or beliefs that need to be considered for protection within the scope of Article 9 and, accordingly, within the scope of the Convention. Second, we also discuss the internal and external aspects of religious freedom along with the limitations of religious manifestation in Articles 9 and 2.

Article 2 of Protocol 1 addresses the right to education, but it is related to the protection of minorities' rights through its consideration of the parents' beliefs. However, as a review of the law cases shows, the Strasbourg Organs are restrictive in their interpretation of the provisions. Further on, this paper also examines the manifestations of religion or beliefs, which bring beliefs from the private individual sphere to the community sphere which might possibly lead to some conflicts. There are different types of reactions by the state and these have different levels of limitations in the right to manifest religion or beliefs. The Court and Convention play a restrictive role in evaluating such limitations and case-by-case decisions are taken with wide consideration for each state party's special situation or the amount of appreciation.

The rest of this paper is organized as follows: section 2 provides the definitions for minorities, religions, and beliefs; section 3 discusses the internal and external aspects of religious freedom, thus adding to the limitations of religious manifestation in Article 9 and 2 of the Convention; section 4 discusses the recognition of religious minority groups in the context of ECHR and its Protocols; section 5 discusses the minority religious institutions and their autonomy in the light of ECtHR's decisions; the manifestation of religious beliefs by religious minorities in the context of ECtHR's view is discussed in section 6 while section 7 discusses the limitations in the manifestation of religious beliefs by religious minorities; section 8 discusses the application of the Margin of Appreciation for religious minorities; and section 9 gives the conclusion.

2. DEFINITIONS OF MINORITIES, RELIGIONS, AND BELIEFS

Adopted by consensus in 1992, the United Nations (UN) Minorities Declaration in its Article 1 refers to minorities as based on national or ethnic, cultural, religious, and linguistic identities and provides that states should protect their existence. There is no internationally agreed on definition as to which groups constitute minorities. It is often stressed that the existence of a minority group is a fact and that any definition must include both objective factors (such as the existence of a shared ethnicity, language, or religion) and subjective factors (including that individuals must identify themselves as members of a minority) (General Comment No. 22, 1993).

This paper uses the definition of religion given by the "historian of religion," Martin Riesebrodt, who tries to find one definition that includes both Abrahamic and Asian religions:

"Religion is complex of practices that are based on the premise of the existence of superhuman powers, whether personal or impersonal, that are generally invisible. The 'super humanness' of these powers consists in the fact that influence or control over dimensions of individual or social human life and the natural environment is attributed to them—dimensions that are usually beyond direct human control. Religious practices normally consist in using culturally prescribed means to establish contact with these powers or to gain access to them. What contact or access means depends on the religious imagination and on the social and cultural forms of accessibility" (Riesebrodt 2010) (Abdullah, 2018).

The Universal Declaration on Human Rights' Article 18, the International Convention on Civil and Political Rights (ICCPR) 1966 in Article 18(1), and the UN declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief of 1981 in its Article are international treaties that recognize the freedom of religion or beliefs. Similar to ECHR, none of these treaties provide definitions for religion and beliefs.

The Human Rights Committee (HRC), in a general comment on ICCPR's Article 18 stated that, "Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms 'belief' and 'religion' are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics

or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community” (Equal rights trust, 1993).

According to the Convention, when it comes to what constitutes religion as a right, the Commission does not place much emphasis on its definition. Both the Commission and the Court have adopted “a broad approach to the recognition of religions” (Ovey and White, 2006). However, the Commission acknowledges that “the belief had to attain a certain level of cogency, seriousness, cohesion, and importance” (Campbell and Cossans, 1982). Developing principles that provide a definition for beliefs that warrant protection under Article 9 are one of the areas that the Court needs to address in its jurisprudence (Gilbert, 2006). In such cases, the Court details the conditions of applying religious rights under the Convention.

In the case of X versus Germany, (X v. Germany, 1918) the Commission considered that the applicant’s desire to be cremated and have his ashes spread over his land was a desire with a “strong personal motivation” and it did not express some “coherent view on fundamental problems.” Accordingly, the Commission concluded that the applicant’s wish was not protected under Article 9. This approach reminds one of the cases of a member of the Wicca religion in which the applicant protested at the failure of the prison authorities to register his name in the prison records. The Commission noted that “the applicant had not mentioned any facts making it possible to establish the existence of Wicca religion” (X v. the United Kingdom, 1917).

The issue of considering a particular belief as a “religion or belief” remains controversial, especially in the case of a new religion, which should be included in the scope of the protection given under Article 9, although the state might not want to recognize it. The word “belief” in Article 9 widens the scope of beliefs and makes it possible to include beliefs and not just the traditional concept of religion (Evans, 2001). The jurisprudence of the Court and the Commission gives some directions about what constitutes a “religion or belief” in order for Article 9 to

be applied. The Court and the Commission have a very wide and liberal definition for “religion or belief” (Evans, 2001).

3. INTERNAL AND EXTERNAL ASPECTS OF RELIGIOUS FREEDOM

There is a distinction between a religion’s internal and external aspects. The general comment number 22 of the Office of the UN High Commissioner for Human Rights on the right to freedom of thought, conscience, and religion points out this distinction. The comment refers to the unconditional protection of the freedom of thought, conscience, religion, or belief and that no limitation whatsoever is permitted on the freedom to have or adopt a religion or belief of one’s choice (General Comment No. 22, 1993). There is unconditional protection for *forum internum* as stated by the UN General Assembly report of the special rapporteur on freedom of religion or belief (United Nation General Assembly, 2015). The same value of protection of the internal aspects of religious freedom is guaranteed by the Convention “as an essential right of considerable importance.” This protection is not at the same level with regards to the manifestation of religion or beliefs. “It is noteworthy that freedom of conscience and religion does not protect each and every act or form of behaviour motivated or inspired by religion or a belief, in other words, Article 9 of the Convention protects a person’s private sphere of conscience but not necessarily any public conduct inspired by that conscience” (EHCR, 2011).

The external dimension of the freedom of religion, including the freedom to manifest one’s religion or beliefs, is conditional. It is an aspect in which the freedom of religion could cause conflict with other society or state values or laws. Such circumstances are discussed in the Court’s decisions.

In the case of S.A.S. versus France which was about a French national’s complaint that the ban on wearing clothing to conceal one’s face in public places, introduced by law no. 2010-1192 of October 2010, deprived her of the possibility of wearing the full-face veil in public. She alleged that there had been a violation of her right to religion among other rights under the Convention. The

Court found that there was no violation of any of ECHR's provisions. (*S.A.S. v. France*, 2014).

In this case, the Court discussed and examined 5 aspects of the right to religion under the Convention:

- (1) if there had been a "limitation" or an "interference." According to the Court there was an interference and limitation to the right guaranteed by the Convention;
- (2) if the measure was "prescribed" by law. The Court found that the limitation was prescribed in the law of October 11, 2010;
- (3) if there was a legitimate aim. The Court was convinced by the government's submission and it did not doubt that gender equality might rightly justify as an interference;
- (4) if the measure was necessary in a democratic society. On this aspect, the Court made an important statement: "As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. This freedom 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 in dissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, inter alia, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion."

As noted earlier, different aspects of the external dimension of the freedom of religion and beliefs have been considered by the Court. In trying to strike a balance between the freedom of manifestation of religion and the justification by the state, the Court found that there had been no violation of the rights guaranteed by the Convention.

4. RECOGNITION OF RELIGIOUS MINORITY GROUPS IN THE CONTEXT OF ECHR AND ITS PROTOCOLS

It is almost impossible to find a homogenous society in which all people accept the same religion or no religion. There is an ongoing debate about whether minority groups, as opposed to the members of these groups, should be accorded religious rights (Wright, 1999). Religious rights are seen as individual rights rather than a group's rights. "The scope of the right to freedom of religion should be defined in terms of an individual's right which would allow for the impetus for social change through individual action as a manifestation of belief" (Gilbert, 2006). Such a perspective is in agreement with the Strasbourg Organs' earlier decision in a claim by a church.

In the case of the alleged breaches of Articles 9 and 2 of Protocol 1 by the church in X versus the United Kingdom, the Commission dismissed the case on the grounds that "a corporation being a legal and not a natural person, is incapable of having or exercising the rights mentioned in Article 9 and Article 2 of the first Protocol" (Church of X, 1968). In this case, the Commission was reluctant to recognize the church as a body, which may have a great role in promoting and protecting a religious group's identity. Such a role for the religious organization is significant "especially in cases where the government has undertaken an explicit campaign to limit the effectiveness of a religious group rather than to restrict the rights of individual members" (Evans, 2001).

Later, in the case of X and the Church of Scientology versus Sweden, (*X and Church of Scientology v. Sweden*, 1979) the Commission revised its decision for refusing to grant any standing to churches. The claim was brought by the minister of the church because the church was a representative of its members. In this case, the Commission overruled its previous decision in the case of X versus the United Kingdom. The Commission's position in recognizing the representative status of the church or any other religious body was an acknowledgment of a reality that the distinction between the church and its members is "artificial" (*X and Church of Scientology v. Sweden*, 1979).

In another case, the Metropolitan Church of Bessarabia and Others versus Moldova, (Metropolitan Church of Bessarabia and Others v. Moldova, 2002) the Court dealt with the issues of recognition. The claim was concerning the Moldovan authorities' refusal to recognize the applicant church (Orthodox Christian). The Court noted that it was impossible for the applicant church to organize itself with no legal recognition. Accordingly, the Court concluded that the recognition of the applicant church was essential for its right to freedom of religion.

In a recent case concerning recognition, the case of Izzettin Dogan and Others versus Turkey, the discrimination was very clearly related to the group more than being related to individual followers of the group. The case was concerned with the legal recognition for purposes of benefiting from public services. The Turkish state provides religious services to the Muslim religion as a public service. The Court addressed the question of whether there was a difference in the treatment of people in a similar situation. The Court observed that the main argument that the government relied on as justification for its differential treatment was based on a theological debate concerning the place of the Alevi faith within the Muslim religion. The Court found that there was a violation of Article 9 in conjunction with Article 14 (Izzettin Dogan et al., 2016).

The representation of the group is one of the most obvious areas that shows the importance of the group, as opposed to the individual dimension of enjoying the freedom of religion. The Commission's position in accepting a religious body as a party in a law case was viewed as a "welcome" change (Evans, 2001). Dismissal of cases on the ground that only natural persons have the right to claim the Convention's rights, allows the Commission to "refuse to deal with cases of widespread government actions against particular religious groups on largely technical grounds" (Evans, 2001),

The developments in acknowledging the protection of the rights of religious minority groups set in the Convention are inevitable and progressive. Religious minority groups' acknowledgment and protection are addressed by the political process of each member state and the "Judges cannot and should not substitute for the political process addressing minority group concerns. But they can and should inform that process with dynamic understanding

of human rights law. Whatever lies ahead in the jurisprudence of the Court, it will open up possibilities for a variety of groups irrespective of definitional hurdles. Claimants' expectations should be reasonable and proportionate to the scope of the Convention. The Court's persuasiveness will hinge on a modicum of methodology – a new interpretive ethos, as it were – as to how to handle relevant claims and what is at stake when it comes to considering them" (Pentassuglia, 2012).

Article 2, Protocol 1 is another means of protecting the minorities' identity through education of children belonging to these groups. The article provides only limited protection to those belonging to religious minorities. According to the Court, the right given by the article merely implies the right to access education and not to be educated in a certain way. The state is not required to "provide for or subsidize any particular form of education" (Craig, 2003). Such a restricted interpretation of the article is reflected in the Court's decision concerning the state's obligations to respect parental convictions within state owned and operated schools.

The Court noted that "persons subject to the jurisdiction of a Contracting State cannot draw from the Convention the right to obtain from the public authorities the creation of a particular kind of educational establishment; nevertheless, a State which had set up such establishment could not, in laying down entrance requirements, take discriminatory measures within the meaning of Article 14" (Belgian linguistic case, 1968). Accordingly, in the context of the protection of religious minorities, an important role is played by the application of Article 14 and the state's actions designed to eliminate existing and continuing forms of discrimination.

A recent case of Hassan and Eylem Zengin versus Turkey (Hassan and Eylem, 2007) involved the applicants' adherence to Alevism, a branch of Islam which has deep roots in the Turkish society. Applicant Eylem was obliged as a pupil in a state school to attend classes in religious culture and ethics. The applicant maintained that the way in which religious culture and ethics were taught in Turkey infringed on her right to freedom of religion and her parents' right to ensure her education's conformity with their religious convictions as guaranteed under Article 2 of Protocol 1 and Article 9 of the Convention.

The applicant alleged that the course was taught from a religious perspective which praised the Sunni interpretation of Islam and that no detailed information about other religions was included in the syllabus.

The Court found that religious culture and ethnic lessons in Turkey were not meeting the criteria of objectivity and pluralism necessary for education in a democratic society and for pupils to develop a critical approach toward religion. In the applicant's case, the lessons did not respect the religious and philosophical convictions of Zengin's father. In addition, there was no choice for the children of parents who had a religious or philosophical belief other than that of Sunni Islam. Accordingly, the Court concluded that there had been a violation of Article 2 of Protocol 1. (Hassan and Eylem, 2007)

In its judgment in the Zengin case, the Court did not go beyond its limited interpretation of the state's obligations under Article 2 of Protocol 1. As it did in its earlier judgments, the Court's emphasis in this judgment was also on "protection against indoctrination rather than on the preservation of minority values" (Craig, 2003). As the judgment acknowledged, "In short, the second sentence of Article 2 aims to safeguard the possibility of pluralism in education, a possibility which is essential for the preservation of the "democratic society" as convinced by the Convention" (Hassan and Eylem, 2007). In other words, "the purpose of the provision is to operate as a check against possible indoctrination" *Kjeldsen v. 1982*).

5. RELIGIOUS MINORITY INSTITUTIONS AND THEIR AUTONOMY IN THE LIGHT OF ECTHR'S DECISIONS

One important aspect of religious freedom is the traditional existence of religion in a community or some sort of organization. This dimension of practice is a right covered by Article 11 of the Convention, which safeguards an associative life against unjustified state interference (Hassan and Chaush, 2000).

It is obvious that it is not enough to let people believe and that their beliefs need to be institutionally established and that the state has to allow for this. The state is obliged to act neutrally, especially in relation to equality and conflicts between 2 branches of the same faith (Gilbert, 2002). The institutional life of a religion is central to minority culture. The state has to allow members of a

religious minority group to establish the required institutions. Permission for establishing institutions brings up possible conflicts between 2 branches of 1 particular faith. The issues of representation and recognition of a group are more problematic in the case of minorities within a minority in which the question of the group's autonomy is raised (Gilbert, 2002).

Decisions taken by a group for its members contribute to the autonomy of the religious group in running its affairs. Autonomy is regarded as "an appropriate vehicle for the enjoyment of human rights by minority groups. Clearly it is a mechanism which relates to the existence of the group, qua group and its shape and content will be variable according to the circumstances of the group" (Wright, 1999). However, it is not just the group's circumstances that determine the shape and the content of its autonomy, it is also the conditions imposed by the state which limit and shape such autonomy.

Decisions by a religious group may contradict those of the state in dealing with the group's affairs. The question of how far the state is allowed to interfere in the internal issues of a religious group has been addressed by the Court. However, the Court is not clear whether the decision taken by the state or the religious group has the highest priority. In the case of *Serif versus Greece* (*Serif v. Greece, 1999*) on the death of the local mufti (Muslim cleric), the applicant who wanted to replace the deceased mufti was an elected mufti. However, the Greek state appointed a new mufti. According to the original law the post was an elected one, but during the process, the President of the Greek Republic altered the law. The mufti elected by the members of the group was convicted for acting as if he was the mufti. The state's decision to convict and fine the elected mufti was considered by the group as a breach of its right to freedom of religion. The Court found it to be a violation of Article 9.

The Court upheld the essential need for autonomy of religious groups and their organizational lives in the case of *Hassan and Chaush versus Bulgaria* (Hassan and Chaush, 2000) The case was concerned with the forced replacement of the leadership of the Muslim community by Bulgarian authorities. The applicant claimed that the state interfered in the autonomy of the group. The Court upheld that "the autonomy of the existence of religious communities... concern not only the organization of the

community as such but also the effective enjoyment of the right to freedom of religion by all its active members. If the organizational life of the community is not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable" (Hassan and Chaush, 2000). It is clear from the Court's statement that the group and its organizational aspects are essential for the right to freedom of religion.

The recognition of a religious body as an official representative of a religious group does not prevent the possibility of the existence of other organizations as representative bodies within the same group. The case of the Supreme Holy Council of the Muslim community versus Bulgaria, (*Supreme Holy Council of Muslim Community v. Bulgaria*, 2001) involved the right of another group within the Muslim community to exist and manage its affairs. The applicant organization claimed in substance that it was entitled to remain the only legitimate organization of the Muslim community in Bulgaria and that this right was infringed upon by the recognition of another Muslim leadership. The Court, however, found the right to peaceful organizational life of a religious community free from arbitrary state interference. As is guaranteed by Article 9 of the Convention interpreted in light of Article 11, this did not lead to a right to official recognition of the sole organization of a religious community, nor to the exclusion of others (*Supreme Holy Council of Muslim Community v. Bulgaria*, 2001).

6. MANIFESTATION OF RELIGIOUS BELIEFS FOR RELIGIOUS MINORITIES IN ECtHR's VIEW

The manifestation of religion examines the extent of intolerance and tolerance toward minority groups in a specific society. One of the main sources of intolerance toward minorities is the fear that minority groups are a threat to the "core value in a society" (Vatte, 2014).

It is clear that the right to freedom of religion or beliefs is an important right under the Convention. The right to manifest religious beliefs has both positive and negative aspects. In the *Kokkinakis versus Greece* case, the first conviction issued by the Court concerning a Jehovah's witness who was convicted by Greek courts because of a conversation with a woman in which he allegedly tried to convince her to pursue his beliefs (*Kokkinakis v.*, 1993). The Court stated: "As enshrined in Article 9, 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 which go to make up the identity of believers and their conception of life, but it is also a precious asset to atheists, agnostics, sceptics and the unconcerned. The pluralism is dissociable from a democratic society, which has been dearly won over the centuries, depends on it."

There is agreement that the right to freedom of thought, conscience, and religion is one of the foundations of a "democratic society." However, an analysis of the wording of Article 9 shows that, "The Article itself suggests that a distinction must be drawn between the general right to freedom of religion or belief and the right to manifest that religion or belief" (Evans, 2001). Manifestation of religion or beliefs extends the right from its private invisible sphere into a more public visible sphere. This raises issues of manifestation of a particular faith within a community and its contradictions with other faiths or with some of society's interests.

According to the Court, this distinction is essential because the states are not allowed to derogate from the freedom to have or to change religion, whereas the right to manifestation may be subject to restrictions under certain circumstances. This seems to be what Arcot Krishnaswami suggested in his study of religious discrimination when he wrote the following: "Freedom to maintain or to change religion or belief falls primarily within the domain of the inner faith and conscience of an individual viewed from this angle, one would assume that any intervention from the outside is not only illegitimate but impossible" (Krishnaswami, 1960).

The second part of Article 9(1) states that everyone has the "freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observation." According to Article 9 (1) the believers of a particular religion or belief have the choice to practice their beliefs "alone or in community with others" and "in public or private." The manifestation of beliefs in common with others is essentially important for promoting and protecting religious minorities. It is considered a crucial part of the right to freedom of religion and beliefs.

In a discussion about which practices are considered a manifestation of religion or beliefs, the Commission acknowledges that not all acts are considered as such. In the case of *Arrowsmith versus the United Kingdom* (Arrowsmith, 1985) involving a committed pacifist who was convicted for distributing leaflets to soldiers in which he argued against accepting a tour of duty in Northern Ireland, the Commission “considered that the term ‘practice’ as employed in Article 9.1 does not cover each act which is motivated or influenced by a religion or belief”(Arrowsmith, 1985). Although it is clear from the quote that not every act is a “practice” covered by Article 9, it is not clear which acts of “practice” are covered by the word “practice.”

There is a clear consideration for the practice of religion in a “commune.” For example, the case of *X versus the United Kingdom* (*X v. the United Kingdom*, 1981) involved the refusal of a school to rearrange its time table to give a Muslim teacher a 45-minute extension of the lunch hour on Friday afternoons to allow him to attend prayers at a mosque. The United Kingdom argued that it was sufficient protection of his right to worship that he was given a room in the school in which he could pray in private. The Commission rejected this argument by saying that the right to practice one's religion in community with others, “has always been regarded as an essential part of freedom of religion” and found that the 2 alternatives “either alone or in community with others in Article 9(1) cannot be considered as mutually exclusive, or as leaving the choice to the authorities, but only as recognizing that religion may be practiced in either forms” (*X v. the United Kingdom*, 1981).

In this case, the applicant was not obliged to change his faith and he was free to relinquish his job although the Court in its decision gave valuable consideration to the practice of the applicant's beliefs. However, in other cases, the Commission found that the refusal to work in a specific time even if motivated by religious convictions, cannot as such be considered protected by Article 9(1). In the cases of *Konttinen versus Finland* (Kottinen, 1996), and *Stedman versus the (United Kingdom, Stedman v. United Kingdom, 1960)* the refusal to work during specific hours because of religious beliefs was a reason for losing their jobs. But the Commission found that the applicants' losing their jobs was not because of their beliefs but because of their refusal to work for certain hours.

Determining the scope of the manifestation of religion and beliefs raises the issue of if a particular act is encouraged or permitted by a religion or if it is a requirement of the religion. In the case of *Khan versus the United Kingdom* concerning a Muslim man who married a 14-year-old girl contrary to the wishes of her parents, the man was convicted and sentenced to prison under the British law for abducting the girl. The applicant's complaint that this breached his right to freedom of religion was dismissed by the Commission. The reason for the dismissal was in part that Islam permits marriage at an earlier age than British law (*Khan v.*, 1986). The same reasoning was given in the case of *X versus Austria* (*X v. Austria*, 1981).

However, in other cases the issue of how far an act or a practice is required by religion and not encouraged or permitted by law were neither considered nor discusses. The case concerning the wearing of Islamic headscarves is one of the practices that brings up the question of manifesting a religion or a belief and if such an act is required by religion. In the case of *Karadoman versus Turkey*, (*Karadoman v.*, 1993) the applicant refused to supply a photograph of her bare head for the university as required. Therefore, the university refused to provide her with a degree certificate. This refusal was an alleged violation of the applicant's right to freedom of religion because covering her head with an Islamic headscarf was a practice prescribed by her religion. The Commission decided that there was no interference with the applicant's right to manifest her religion without finding out whether covering one's head is a requirement for Muslim women.

Finding out whether there is an infringement of a protected right to freedom of religion or beliefs is vital for the protection of the minorities' religions. The recognition of the act is important in considering Article 14. In *Choudhury versus the United Kingdom*, (*Choudhury*, 1991) in a case involving blasphemy of Muslims, the applicant sought to bring criminal charges against the author and publisher of the novel “*The Satanic Verses*” by Salman Rushdie. The Commission found that Article 9 was not applicable and therefore, accordingly, Article 14 was also not applicable. The Commission held the view that in this case, no protection was granted to Islam against blasphemy of the religion by a publication.

However, in an analogous case of offensive action against a religious faith, *Murphy versus Ireland*, (*Murphy v.*, 2003) concerning the right to freedom of expression on religious matters, the Court followed a different approach. A pastor attached to the Irish Religious Faith Centre, a Bible-based Christian ministry in Dublin, was refused permission to transmit an advertisement of a religious video on a local, independent religious and commercial radio station. The advertisement covering different religious beliefs was seen by the Irish High Court, “to be offensive to many people” (Medda-Windischer, 2003). In the Court’s view, such a consideration provided “highly relevant reasons justifying the Irish State’s prohibition of the broadcasting of religious advertisements” (*Murphy v.*, 2003).

An indication of the negative orientation of the Court can be seen in the case of *Sinan Isik versus Turkey* in which the Court held the view that there had been a violation of Article 9 of the Convention for the fact that the applicant’s identity card contained an indication of his religion. The Court underlined that the freedom to manifest one’s religion had a negative aspect, namely the right not to be obliged to disclose one’s religion. Furthermore, the Court indicated that the deletion of the “religion” box on identity cards could be an appropriate form of reparation to put an end to the breach in question (EHCR, 2019). The same negative aspect of religious freedom by not revealing a person’s faith or religious belief was the basis for the Court’s decision in the *Dimirtas and Others versus Greece* case. The applicants complained that they had been obliged to reveal their “non-Orthodox” religious convictions when taking oath in court. The Court held that there was a violation of Article 9 of the Convention because the interference in the applicants’ religion was neither justified nor proportionate to the aim pursued (EHCR, 2019).

7. LIMITATIONS OF THE MANIFESTATION OF RELIGIOUS BELIEFS FOR RELIGIOUS MINORITIES

Unlike the freedom to have a religion or a belief, the right to manifest these is subject to limitations under Article 9(2). Manifestation of religion moves it from the private sphere to the common or public sphere. This may lead to a tendency to influence society. Individuals seek changes and their opposition to the current social structure may lead to resistance in society. Social or state opposition to

the diversity shaped in law is not considered an adequate reason for placing restrictions on the manifestation of religion or beliefs. “The manifestation of religion or belief may collide in one way or another with legislation, administrative practice, or social policy. It would not be disputed that Article 9 does not sanction manifestation of religion or belief contrary to the ordinary criminal law; but there can be conflict between conscience and social policy, expressed in law or practice” (Fawcett, 1987).

Placing limitations on manifesting religion or beliefs is a mechanism that society has developed as a reaction to resisting change. However, such limitations have to be described by law, and have to be necessary in a “democratic society.” The Court identified the need for such restrictions in the case of *Kokkinakis* “in ‘democratic societies,’ in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected” (*Kokkinakis v.*, 1993).

There is inconsistency in the Court and the Commission’s justification in relation to the restrictions imposed on the manifestation of religion or beliefs. In the case of *Serif versus Greece*, the Court maintained that the state had to ensure that different religious groups were tolerant of each other when it stated that, “Although the Court recognizes that it is possible that the tension is created in situations where a religion or any other community becomes divided, it considers that this is one of the unavoidable consequences of pluralism. 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” (*Serif v. Greece*, 1999). This inconsistency can also be seen more recently, in the case of *Genov versus Bulgaria* (2017). The case was concerned with the authorities’ refusal to register the new religious association of which Geno had been the chairman. The Court addressed such issues as the right to manifestation of a minority religious faith and the right to legal personality, allowing groups to carry out legal proceedings.

However, in the *United Christian Broadcasting (United Christian Broad. Ltd. v. United Kingdom)* case, the Court upheld that institutional freedom was not unlimited under Article 9. The state can limit the means of manifesting

religion or beliefs by a religious group, in this case by prohibiting the granting of national radio licenses to all religious groups for reasonable and objective reasons. In a state with many different faith groups, one may need to limit the manifestation of religion or beliefs to protect the sensibilities of all the groups. This Court's position contradicts its position in the Serif case mentioned earlier when, although recognizing the possibility of tensions between different groups, the Court acknowledged that the state should ensure tolerance between the groups rather than removing the cause of the tension.

A recent case of 97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others versus Greece (97 members of the Gldani Congregation of Jehovah's Witnesses and 4 others v., 2007) brought the state's role in conflict with different religious groups. The state was obliged to take the necessary measures. The case concerned an incident in which a fanatical group of Orthodox believers led by a defrocked priest (known as "Father Basil") attacked a congregation of Jehovah's Witnesses. Like its position in the Serif case, the Court found the state in violation of Article 9 because, "Through their inactivity, the relevant authorities failed to take the necessary measures to ensure that the group of Orthodox extremists led by Father Basil tolerates the existence of the applicant's religious community and enables them to exercise freely their right to freedom of religion" (97 members of the Gldani Congregation of Jehovah's Witnesses and 4 others v., 2007).

The Court also emphasized the manifestation of religion or beliefs in another case. In the case of Kokkinakis versus Greece, the Court stressed the importance of a distinction between "bearing Christian witness and improper proselytism" (Kokkinakis v., 1993) and that improper proselytism may be legitimately limited. The Court's latter decision is relevant for minorities' protection "in two respects. On the one hand, they are protected against improper proselytism (which can be accompanied by a positive state obligation) and on the other hand they are allowed to persuade others of their beliefs as long as they do not use inappropriate means" (Henarrd, 2007).

In the recent January 10, 2018 case of Osmanoglu and Konabas versus Switzerland concerning the authority's refusal to grant a Muslim family exemption in relation to

their refusal to send their daughter, who had not reached the age of puberty, to compulsory mixed swimming lessons as part of her schooling, the Court held the view that there was no violation of Article 9 of the Convention. The Court gave precedence "to the children's obligation to follow the full school curriculum and their successful integration over the applicant's private interests in obtaining an exemption from mixed swimming lessons for their daughter on a religious ground." In particular, the Court noted that the law prescribed the authority's interference and it was pursuing a legitimate aim of the school's role in the social integration of foreign pupils and protecting them from any form of social exclusion.

8. THE APPLICATION OF THE MARGIN OF APPRECIATION FOR RELIGIOUS MINORITIES

It is not enough that any restriction on the manifestation of religion or beliefs has legitimacy by law, but also that such a restriction has to be, "necessary in a democratic society." There are inconsistencies in the Court and the Commission's position with regard to the issue of necessity as a condition for legitimate restrictions on the manifestation of religion or beliefs. These inconsistencies arise because of a wide range of considerations of the circumstances of each case within a particular state. There is a tendency to provide a wide range of Margins of Appreciation for the requirement of "balancing a range of complex factors" (Evans, 2001).

According to some commentators, the concept of Margin of Appreciation is a welcome concept because it respects the diversity of values and traditions in member states. However, others view this as a hindrance that restricts the development of common human rights, values, and standards among the states party to the Convention (Palmer, 2007). According to some scholars, because of the Margin of Appreciation doctrine, the Court has failed in its role as a "guarantor" against the "tyranny of the majority," and that "the limited relevance of ECtHR in relation to majority/minority conflicts results principally from a reliance on the 'balance' metaphor and margin of appreciation doctrine" (Wheatley, 2007).

For the Strasbourg Organs, the states are in a better position to determine proper restrictions on the freedom of religion or beliefs according to the significance of religion in a particular society. The case of wearing

Islamic dresses in Turkey was considered a danger to the secular foundation of the Turkish state and, accordingly, there was a Margin of Appreciation by the Commission and the Court in such cases; whereas in other European countries, there is no such pressure on wearing headscarves and the subject has a different dimension (Henarrd, 2007).

The balancing of various factors appeared in the case of *Farnesco Sessa versus Italy* in which in April 2012 the Court held the view that there was no violation of Article 9. An Italian court refused the applicant's, a Jewish lawyer, request for the adjournment of the hearing date set by the Court as it would prevent him from attending a religious festival. According to the applicant, his religious obligations prevented him from attending the Court at the set date. The Court saw the applicant's refusal to attend on the fixed date as an infringement of his right to religious manifestation.

In particular, the Court was not convinced that holding the hearing in question on the date of a Jewish holiday and refusing to adjourn it to a later date amounted to a restriction of the applicant's right to freely manifest his faith. Even supposing that there had been an interference with the applicant's right under Article 9, the Court considered that such an interference, prescribed by law, was justified on the grounds of the protection of the rights and freedoms of others—and in particular the public's right to the proper administration of justice—and the principle that cases be heard within a reasonable time. The interference observed a reasonable relationship of proportionality between the means employed and the aim pursued.

9. CONCLUSION

Although no specific provisions for protecting religious minorities exist in the Convention and its Protocols, a number of cases dealing with the right to freedom of religion shed light on the concerns of religious minorities. This paper discussed the cases by individual, natural, and legal rights. However, while dealing with individual cases, the Court and the Commission have often dealt with religious conflict and religious minority protection because of the complexity of isolating individual cases from their group dimensions.

One important aspect of religious freedom is the traditional existence of religion in a community or some sort of an organization. Although the rights recognized under Article 9 are individual rights, a recognition of the collective aspect of religious freedom is inevitable.

There is a restrictive interpretation of related provisions concerning parents' rights to ensure the type of education for their children, which complies with their beliefs. This right is provided under Article 2 of the first Protocol of the Convention. The application of the provision does not play a role in protecting religious minorities. In dealing with cases related to religious beliefs, the Court and the Commission lean towards prohibiting indoctrination of beliefs in education rather than protecting religious minority groups.

The Strasbourg Organs' jurisdiction, in interpreting the religious dimension of the right enshrined in Article 9 to freedom of thought, conscience, and religion, has a very broad definition of what is considered "religion or belief" to be accorded protection under the provision. This means inclusion of wider groups and not limiting the provision of protection to official or traditional religions or beliefs.

However, even though such generous definitions of religion and beliefs coexist, there is a very restrictive view of what freedom of religion or beliefs involves. Limitations on what kind of religious practices are protected under the Convention diminish the benefits of the wide definitions of religion or beliefs because of the wide Margin of Appreciation that is provided to state parties in the evaluation of the limitations on the freedom of manifestation of religion and beliefs, and therefore the Convention's role in protecting religious minorities is doubtful. The Court showed inconsistencies in its decision in a case related to the practice of religion in the public space. This paper highlighted more than one instance of the Court's contradictory decisions. The very nature of religion and beliefs includes the right to manifestation in addition to practicing religion either alone or in the community, which makes considering what a violation entails a complex issue.

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