

# Contemporary Importance of Freedom of Religion and Belief (FoRB)

## Intellectual Output 2 UNIT VI



Co-funded by the  
Erasmus+ Programme  
of the European Union

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## CONTEMPORARY IMPORTANCE OF FREEDOM OF RELIGION AND BELIEF

Modules:

[Religious Diversity in Contemporary Europe](#)  
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Preface: 2018 marks an important anniversary within human rights and religion, not least the article on freedom of religion or belief. On May 25, 1993, 25 years ago, the European Court of Human Rights ('Court'), for the first time issued a judgment with special regard to article 9 in the European Convention of Human Rights ('Convention'). This was the judgment in the so-called *Kokkinakis v. Greece* case (Application no. [14307/88](#)), holding that there had indeed been a violation of article 9 when Kokkinakis, the complainant, had, several times, been prosecuted, sentenced and also imprisoned for what by the courts in Greece held to be illegal proselytism in Greece. Mr. Kokkinakis was an active member of Jehova's Witnesses, and his proselytizing had been, *inter alia*, directed towards Orthodox Christians (the Greek Orthodox Church is the majority religion in Greece and has a status of an established religion with special rights under the Greek state, cf. *The Case*).

This is not the place to go into any details with the verdict and the many interesting aspects of the ruling. The main thing for the purpose of this is the general principles with regard to freedom of religion and the article on freedom of religion or belief expressed in the verdict. It says (our emphases):

*“As enshrined in Article 9 (art. 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 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**. While **religious freedom is primarily a matter of individual conscience**, it also implies, *inter alia*, freedom to ‘manifest [one’s] religion’. Bearing witness in words and deeds is bound up with the existence of religious convictions.”*

According to Article 9 (art. 9), freedom to manifest one’s religion is not only exercisable in community with others, "in public" and within the circle of those whose faith one shares, but can also be asserted "alone" and "in private"; furthermore, it includes in principle the right to try to convince one’s neighbour, for example through "teaching", failing which, moreover, "freedom to change [one’s] religion or belief", enshrined in Article 9 (art. 9), would be likely to remain a dead letter.

This verdict has provided the human rights' world with a view on the importance of religion and the freedom of religion or belief provisions in European human rights law that has had lasting effect. Nevertheless, it may be argued that the Court over the past 25 years in several cases has not based its judgments on these very principles. Rather, it has, at times, given more and more space to the state parties to 'know better' than the Court (the principle of *subsidiarity* and *margin of appreciation*) in matters pertaining to religion and thus in fact not paying equal respect to the trans-

national democratic values enshrined in the Convention and to be defended and practised by the Council of Europe member states.

Recently, as also noticed by Lassen in her report on the situation for religious minorities in the EU (Lassen 2016, 163 with reference to another human rights scholar, Malcolm Evans) there are indications that the Court nowadays tends to refer to the 'margin of appreciation' especially in cases judged sensitive and of high importance, both to the common good of the European community and to the European states. The Court, thus, prefers not to get too involved, not to take responsibility.

Moreover, Evans recently also claimed in a public lecture given at the Danish Institute of Human Rights (November 9, 2018), that more and more attention has been paid to religion seen as a challenge to democracy, and that it is the place of religion in the public sphere (where the freedom to manifest one's religion time and time again has been restricted) and the fear of terrorism that has become decisive in many more rulings. The Court thus is paying less and less attention to religious freedom as "primarily a matter of individual conscience", to religion as one of the "foundations of a "democratic society", and to religion as indissociable from a pluralistic democratic society.

One might, however, add that other observers tend to see the Court as not totally in agreement with itself as regards its stance to cases implying religion and freedom of religion or belief. While at one time stressing the importance of the secularity of law and state (e.g. in regard to the wearing of headscarves and other religious symbols in the public arena, as well as to criticism of religion as a part of freedom of expression, another fundamental human rights principle with regard to democracy), the Court at other times stresses the right of religious people to have even their *feelings* protected (cf. the famous Otto Preminger case; as for this see for example: <https://www.bailii.org/eu/cases/ECHR/1994/26.html>).

Furthermore, in the Lautsi vs. Italy case (see for example: <http://www.bailii.org/eu/cases/ECHR/2011/2412.html>), the Court first stressed the right of the parents to expect the state to not interfere with their right to freedom of thought, conscience and religion (and therefore found the display of a crucifix on the walls of Italian public schools at variance with article 9); however, when this verdict was reconsidered, the Court came to another conclusion, with reference to the 'margin of appreciation' and 'subsidiarity': the state (in this case the Italian state) has the right to display religious-cultural-national symbols and the crucifix on the wall was not what the Court called an 'active' symbol but a 'passive' symbol. It did not interfere with the right to freedom of religion, including freedom from religion, and it was more of a cultural symbol than a religious one.

One notes here once again the importance of definitions of 'religion' (not to talk about definitions of, respectively, a passive and an active symbol) in this case over against 'culture'. When is religion 'religion', when is culture 'culture', and when is a culture a religious culture or a culture deeply influenced by religion? Who decides whether someone wears a scarf for religious reasons or as a fashion or symbol of suppression, and who decides if celebration of Christmas with a public display of say

Jesus in a crib and a Christmas tree is but 'tradition' and 'culture', while the celebration of Ramadan by Muslims is a religious festival? All such discussions can come into play when states and the public discuss or handle religions, the religion of the majority, and the religions of the minorities, and when states and the public discuss where religion 'belongs': to the so-called private sphere only or primarily, or to the public, otherwise, secular sphere, too? Are there religions, e.g. Islam, that 'by nature' do not respect a postulated 'wall of separation' (used here to refer to the postulated 'wall of separation' between state and religion in the US Constitution, First Amendment) between the private and the public, the religious and the secular? And with regard to the articles on freedom of religion or belief, and the right to manifest one's religion or belief alone or in community with others, in private and in public: who decides when the state can exercise the right it has to (cf. below), on certain conditions, limit this right to manifestation of religion, a right that includes, in principle - one must say - the right to wear head scarves and burqas, the right to build churches and mosques and go there, and the right to build mosques and churches with towers and minarets, and to call for prayer from the minarets and call for service by the tolling of the church bells?

In a 2016 report on the EU and religious minorities, human rights scholar Eva Maria Lassen writes (Lassen 2016,159-60):

*“Reports on freedom of religion or belief around the world indicate that religious minorities in a very large number of countries find themselves in a precarious situation. Not only are individuals belonging to religious minorities often faced with discrimination because of their religion; there is also a rise in the number of hate crimes against persons belonging to religious minorities. Globally, the discrimination, harassment and persecution of religious minorities takes both legal and non-legal forms, and may be backed or initiated by both states and non-state actors. Furthermore, religiously founded extremism and radicalisation are on the rise, which cause religious minorities harm in a number of ways.”*

She continues (*ibid*, 160), with regard also to the EU:

*“Religious minorities also experience pressure of a different nature. Both in a European and global context, the position of religious minorities in society and the protection of their rights present considerable challenges. In a European context, there is a growing tendency towards state interference in that specific part of religious freedom that concerns the manifestation of religious beliefs, in the form of rituals and symbols; there is also a growing debate about such interferences. Often religious minorities are not explicitly targeted but end up, more often than not, being particularly affected by these developments, thereby experiencing an accumulative pressure on their right to manifest their religious beliefs. [...]*

In the following we cannot go into detail with all these specifics. We have to elucidate the general implications of the human rights articles, not least their notions of religion and belief, i.e. what might be termed the human rights' documents discourse on and about notions of religion.

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