De la Roma la Lisabona. Libertatea religiei de-a lungul a 60 de ani

Title: From Rome to Lisbon.The freedom of religion in 60 years
Abstract: 60 years ago was adopted the European Convention for Protection of Human Rights which entered into force three years later. In Article 9 of this Convention, it is guaranteed the right to freedom of conscience and religion of all citizens. In this material I would like to make a historical incursion and in the same time a comparison on the modalities of dealing with this very sensible aspect of religious faith and beliefs of each person as law subject. In all this period of more than half a century the optic on these aspects has changed a lot, and now we are facing the reality of not finding the Christian tradition in the fundamental document of the European Union, the new Lisbon Treaty and the national practice in religious matters to be denied or neglected by "interesting" decisions of the international Courts, known being the fact that in ecclesiastical (religious) law matters can not be used general models used in other circumstances or on other fields.
Keywords: Human Rights, Religious Law, Freedom of Religion, European practice,

The Convention for the Protection of Human Rights and Fundamental Freedoms was solemnly signed in Rome, on the 4th of November 1950 and entered into force on the 3rd of September 1953. The right of freedom of religion is announced in Article 9 of the Convention in the following terms:

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 observance.

2.Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

The question of church-state relations is becoming relevant in most of the European countries and religious pluralism and the increasing number of new religious movements represent a serious challenge for the established models of Church-State relations. Article 9 of the Convention, as interpreted by the jurisprudence of the European Commission of Human Rights and the European Court of Human Rights represents a certain *minimum European standard* that the member states have to respect in their relationship with churches and religious communities. Article 9 of the Convention should therefore be taken into consideration whenever there is any serious discussion about the relations between the two entities in Europe.

Holders of the Right to freedom of Religion

According to Article 9, Par. 1, the right to freedom of religion belongs to *everyone*. However, there is no definition of the term in the Convention and the difficult task of its interpretation has been left to the Court and the Commission. In its first decisions, the Commission refused to give churches and religious communities the right to freedom of religion. According to the Commission, churches and religious communities, as legal entities are incapable of having or exercising the rights mentioned in Article 9 of the Convention. *(see the case Church of X vs. United Kingdom, Decision of the Commission from 17th of September 1968).* The first temperate shift in this argumentation can be found only in 1976, in the case of *X. vs. Denmark.* For the first time, the Commission acknowledged that *a church is an organized religious*

community based on identical or at least substantially similar views. Through the rights granted to its members under Article 9, the church itself is protected in its rights to manifest its religion, to organize and carry out worship, teaching, practice and observance and it is free to act out and enforce uniformity in these matters.[1]

The fundamental revision of the argumentation occurred a few years later in the case of X. and Church of Scientology vs. Sweden. According to this decision *the Commission would take this opportunity to revise its view as expressed in Application Number 3798 of 1968. It is now of the opinion that the above distinction between Church and its members under Article 9 Par. 1 is essentially artificial. When a church body lodges an application under the Convention, it does so in reality, on behalf of its members. It would therefore be accepted that a church body is capable of possessing and exercising the rights contained in Article 9 Par. 1 in its own capacity as are representative of its members.*[2] According to the jurisprudence, the rights under Article 9 can also be possessed and exercised by an association with religious and philosophical objectives, as well as by an individual church body, such as a parish.

Not all entities of a religious character can claim the right to freedom of religion. However, churches and religious communities can not posses and exercise all the rights mentioned in Article 9 of the Convention.[3] As a result of the Commission's decision in the case of *Verein Konakt Information Therapie and Hagen vs. Austria* that the right to freedom of conscience is not susceptible of being exercised by a legal person. A distinction must be made between the freedom of conscience and the freedom of religion, which can also be exercised by a church as such.[4]

The capacity of churches and religious communities to possess and exercise rights under Article 9 of the Convention is inherently linked with the capacity to claim judicial protection of these rights. Churches and religious communities can introduce individual applications as non-governmental organizations and can be considered as applicant pursuant to Article 34 of the Convention.[5] The Commission recognized this right also in individual church bodies, such as parishes. In this way, new religious movements have also acquired the possibility of claiming the judicial protection of their rights.

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[1] In the religious context, the case X. vs. Denmark concerned the refusal of a clergyman to baptize a child unless the parents underwent a number of sessions of instruction on baptism, a condition imposed by him as a matter of personal conscience which resulted in disciplinary action by his employer. The applicant's complaint, couched nearly clearly in terms of coercion to perform christenings without allowing him to provide such instruction, was that, as a clergyman in the State Church of Denmark, he has been requested by the Church Ministry under threat of sanctions to abandon a certain practice of christening. The European Commission summarized the entirety of article 9 and conceded that it is conceivable that a dismissal for disobedience could raise an issue under this Article.

[2] Decision of the Commission from the 8th of March 1976, Application Number 7374 of 1976, DR 5, page 158.

[3] Pavol Polaček, *Churches and Religious Communities in the Jurisprudence of the European Court of Human Rights,* in *State-Church Relations in Europe: Contemporary Issues and Trends at the Beginning of the 21st Century,* Institute for State Church Relations, Bratislava, 2008, p. 92.

[4] Decision of the Commission from the 12th of October 1988, Application nr. 11921/1986.

[5] Rafael Palomino, *The Concept of religion in the Law: European Approaches, State-Church Relations in Europe: Contemporary Issues and Trends at the Beginning of the 21st Century,* Institute for State Church Relations, Bratislava, 2008, p. 41.

"Religion" in the Court's perspective

Defining religion is a task that has occupied some of the greatest philosophical and theological minds. Domestic courts that have had decades or even centuries in which to develop an appropriate definition have struggled to develop a conception of religion that is sufficiently inclusive to ensure that it gives appropriate protection, but is not so extensive that it becomes almost meaningless. The pluralism of modern societies has made this task even more difficult, as pointing to any social consensus in relation to the definition of religion is increasingly problematic. These difficulties are more acute in the international sphere, where there is even less sense of a shared history, culture or political philosophy than in individual states.[6]

There is no definition of religion to be found in the Convention, *traveaux preparatoires* or jurisprudence of the Court and the Commission. Article 9 of the Convention indicates only that the sphere of religion should not be mixed with the sphere of thought and conscience or with other areas better protected by other articles of the Convention. Analysis of the jurisprudence reveals that the Court and the Commission have taken a generous approach to defining religion. Traditional religions and confessions such as Judaism, Islam, Catholicism, Buddhism, Hinduism, Protestantism or Orthodoxy have been accepted as religions without any hesitation. Minority religions and new religious movements such as scientology, Jehova Withesses, Seventh Day Adventists, Druids and Quakers have also been recognized as falling within Article 9 of the Convention.

However, the applicant should be able to prove the existence of an obscure or unknown religion. For example, the Commission dismissed the application of a prisoner claiming to be member of the Wicca religion on the basis that the applicant *has not mentioned any facts making it possible to establish the existence of the Wicca religion.* A similar argument was used in the case of a light-worshipper.

There is concern in many legal systems also over the meaning of the term "religion" which the law contains. This concern is manifested in those borderline cases in which new religious movements come to the law seeking legal recognition as religious communities or groups. It is also apparent in cases in which a group or association seeks a legal status (a tax-exempt status) which is specifically confined to religious institutions in particular or to non-profit organizations in general.

In recent times many States have enacted special laws to bestow or recognized the legal personality of religious groups in countries with a strong tradition attached to a certain religious denomination or in countries in which religious freedom has been recognized very recently.[7] Usually, these special laws make explicit or implicit references to conditions to gain the status of religious community, which are not specifically linked to a religion, but to other issues, such as time of implementation, number of members, statutes or regulations content, etc.

An important sector of the academy feels that according to the very nature of religious freedom it is unlawful to craft any kind of definition or concept of religion. According to this trend the law has nothing to do with religion and its only task is to protect religious freedom. Any person or any group who assert any kind of injure on

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[6] Evans C., *Freedom in European Human Rights Law: The search for a guiding Concept,* in Janis, W.M. (ed.), *Religion and International law,* Leiden Martinus Nijhoff Publishers, 2004, p. 291/2.
[7] Rafael Palomino, *The Concept of religion …,* p. 38/39.

religious freedom grounds deserves protection or at least attention. The question then is not if the group or the individual is religious, but the factual aspects of the specific case, under which the law affords protection to the individual.

Being that true, to other scholars the question still remains. Although the State has neither the skills nor the competence to define what is religion for legal purposes, it is clear that the word "religion" or the word "beliefs" appear in legal text and probably would be necessary to proceed with this concept the same way as with any other word of the same category, like "art," "culture," "sport," "literature" and so forth.

Autonomy of Churches and Religious Communities

On several occasions, the Court has emphasized that the *Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified state interference. Seen in this perspective, the believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary state intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords.*[8]

The principle of autonomy implies that churches and religious communities have a possibility to ensure and enforce internal uniformity regarding worship, teaching, practice and observance. Churches and religious communities are not required to grant religious freedom to its members, as long as members are free to leave the Church. According to the Commission, the servants of a church are *employed for the purpose of applying and teaching a specific religion. Their individual freedom of thought, conscience or religion is exercised at the moment they accept or refuse employment as clergymen, and their right to leave the church is not obliged to provide religious freedom to its servants and members, as is the state as such for everyone within its jurisdiction.*[9] In the case of Karlsson vs. Sweden the Commission observed that *if the requirements imposed upon a person by the church should be in conflict with his convictions he should be free to leave his office, and the Commission regards this as an ultimate guarantee of his right to freedom of thought, conscience and religion.* A similar argument has been used in a case concerning the obligation of believers to pay financial contributions to their church.[10]

Another case on this theme would be the one of the Bulgarian Orthodox Church, where a decision was issued in February 2009.[11] But there is some information about the history of the case:

In 1992 the reformist United Democratic Forces (UDF) government used a hangover from communism, the Board of Religious Affairs (BRA), and made a disastrous foray into the affairs of the Bulgarian Orthodox Church, to which 85 percent of Bulgarians, six and a half million, nominally belong. The schism this action

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[8] *Hassan and Tchaouch vs. Bulgaria*, Judgement of the Court on the 26th of October 2000.

[9] X. vs. Denmark, Decision of the Commission on the 8th of March 1976.

[10] E.&G.R. vs. Austria, *Decision of the Commission from the 14th of May 1984.*

[11] See also for this theme, Emanuel Tavala, *Decizia Curții Europene a Drepturilor Omului a determinat Reuniunea reprezentanților Bisericilor Ortodoxe autocefale la Sofia,* in *Romanian Telegraph,* February 2009, Sibiu, p. 3.

provoked still rumbles on many years later. Under the pretext that the election of Patriarch Maksim back in 1971 was rigged, and therefore invalid, the government declared the Church's ruling body, the Holy Synod, illegitimate. They chose to ignore the obvious fact that under communism no elections of officials were free. The Holy Synod--somewhat of a misnomer since several of its members were police agents--was replaced by a Provisional Synod headed by Maksim's close colleague, the maverick Metropolitan Pimen of Nevrokop. The opposition Bulgarian Socialist Party (BSP), which was the communist party recycled, backed Maksim and the Holy Synod.

Since Pimen and the defecting metropolitans like Pankrati of Stara Zagora and Kalinik of Vratsa had been even more compromised by their assiduity in executing communist policies than Maksim, the raskolniks (schismatics) lacked credibility. The main protagonist of the schism, the monk Khristofer Subev, had in 1989 earned a considerable reputation with democratic Bulgarians and observers abroad as a champion of religious rights. After the overthrow of the communists, under the banner of the UDF, Subev challenged the complacent Holy Synod to push ahead with urgently needed church reform. By 1993 he had parted from the other raskolniks and declared himself a bishop. He proved to be unbalanced and was unmasked as a former security officer. He was just one of the many infiltrated into Sofia Theological Academy during the later years of communism in order to obtain key posts in the higher echelons of the clergy and eventually to destroy the church from within. Alexander Gospodinov, a teacher there, estimated that by 1990 probably half of his students were police agents or had been turned into informers. He had long had good reasons to suspect Subev.

According to Archimandrite Pavel Stefanov, a Shumen University lecturer whose views on the Holy Synod generally reflect the popular consensus; “Maksim and his synod did almost nothing to improve the image of the church in this country and abroad and it has lost most of its prestige. Their activities are limited to liturgies and long dinners. Few books are published, church periodicals are at an all time low, no pastoral letter was ever issued to found Sunday schools or youth societies. The church is just left to drift or rather to rot. Many priests are trying desperately to feed their struggling families because they get hardly any salaries while bishops are driving around in limousines and donating millions to football clubs”.[12]

Despite re-iterated pleas from several directions for Patriarch Maksim (now ninety six) to resign and leave the field to a younger, more dynamic successor, he has stood his ground. In 1996 a raskolnik national subor elected its figurehead Pimen - who was even older - as a rival patriarch. In 1997 during the widespread pro-democracy demonstrations which caused the collapse of the compromised BSP government and brought the UDF back to power, it was Pimen who seized the initiative, reflecting popular feeling. Nevertheless, since Pimen's death three years later there has been no move to elect his successor, Innokenti, 'Metropolitan' of Sofia, as patriarch. In 1998 the Pan-Orthodox Council with a flotilla of patriarchs under the Ecumenical Patriarch Bartholomaios descended on Sofia to read the riot act. They endorsed Maksim and the Holy Synod and after tortuous negotiations to persuade the reluctant raskolniks to proffer their repentance, they declared the schism at an end.

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[12] Janice Broun, *Schism in the Bulgarian Orthodox Church and its Repercussions on Religious Developments and the New Law of Confessions*, in R*eligion in Eastern Europe* XXIV, 2 (April 2004) page 20.

They even generously re-instated raskolnik metropolitans as titular bishops.

The raskolnik promises were not worth the paper they were written on; they promptly called another council which, backed by hardliner UDF government members, 'deposed' Maksim. All attempts to reconcile the two sides, including those of the former (UDF) President Petur Stoyanov, have failed.

The root of the Church's problems stems not only from persecution and subjugation under communism but from Bulgaria's chequered past. It has never been able to make up for five centuries under Ottoman domination (which ended not much more than a century ago) when it was forced to keep a very low profile and was completely cut off from church life and theological developments in the rest of Europe.

The fact that only two patriarchs and no-one higher than a vicar bishop from the Moscow Patriarchate turned up at the Bulgarian Patriarchate's fiftieth anniversary celebration in 2003 could signal the growing impatience of other Orthodox churches with the Bulgarian church's failure to put its house in order.

In 1998 the Bulgarian Orthodox Church was withdrawn by its Holy Synod from the World Council of Churches, mainly as a protest against what was seen as large scale proselytism within Bulgaria by foreign missionaries under the aegis of long-standing fellow WCC members. The bishops claimed that the gap between Orthodox and Protestants had widened, and that proselytism was confusing people's understanding of Orthodoxy.

The alternative synod, particularly under Pimen, tended to look to other schismatic Orthodox churches for support, in particular, to Metropolitan Filaret (Denisenko), head of the Kievan Patriarchate of Ukraine, who sought to create a sort of schismatic 'Internationale', and also to the Macedonian Orthodox Church. The latter had become the 'de facto' Orthodox Church in Macedonia since Tito's creation of a Macedonian republic in 1945 but its relations with the church it had left, the Serbian Orthodox Church, have remained very tense. With the Bulgarian government's recognition of Macedonia in 1999 there have also been occasional exchanges with the canonical synod. Maksim was the only Orthodox patriarch to intercede with the Ecumenical Patriarch Bartholomaios for recognition of the Macedonian church. Last summer Metropolitan Kalinik served a liturgy in Macedonia with Metropolitan Peter and predicted that his church would be the first local Orthodox Church to endorse the Macedonian Church.

Neutrality and Impartiality of the State

On several occasions the Court has emphasized that *the State has a duty to remain neutral and impartial in exercising its regulatory power and in its relations with the various religions, denominations and beliefs.*[13] According to the Court, *the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the state to determine whether religious beliefs or the means used to express such beliefs are legitimate.*[14]

In practice, violations of the principle of neutrality and impartiality by the state occurs most often in cases where a division inside certain church or religious

[13] Metropolitan Church of Bessarabia vs. Moldova, Judgement of the Court from the 13th of December 2001, Application nr. 45701 of 1999.

[14] Manoussakis vs. Greece, Judgement of the Court from the 26th of September 1996.

community takes place as state authorities usually try to intervene in favour of one or another party.[15]

On this theme a very interesting subject is the religious education in the public schools. Public education is based on the idea that the state is obliged to educate the young generation. Not the least this is done with the objective to integrate the population, holding them together, unifying the pluralistic or sometimes antagonistic society. Equally, education aims at developing the young individuals own identity, his or her ability to self-determination. Education is a process touching the whole personality of a young human being and developing it. Education does not mean only to convey certain specific knowledge of facts and specific technical abilities. Education means to form a personality integrating in a culture. This holistic understanding of education also covers and includes religion. To form a personality also means to open the field of religious convictions and ideas to him or her. The religious side of a personality cannot be formed only by confronting a young boy or girl with different ideas leaving the decision completely to him or herself at a later age. Forming a personality within religious life means to convey a set of truths and deeply rooted convictions. Religion means to rely on certain truths. This can be compared to language: Romanian is not taught to a Romanian child in Romania – its mother tongue – by showing all the different, mayor languages in the world in order to enable the child to one day choose between all of them what may fit most to its conviction. What is taught is Romanian; otherwise the child will never be able to speak at all.

This is a dilemma for the neutral state. The neutral state cannot implement religious truth, but has to be open to different religious ideas. Being responsible – alongside with the parents – for forming the personality of the young person, the state has also responsibility for the religious side of this personality.[16] Rejecting religion completely, pushing it aside to the evening hours or the Sundays, and ignoring the thrust for truth would discriminate against religion. This again would mean a contradiction to state neutrality. More than that, rejecting religion would mean to fail in the task of forming the whole personality of the child.

The solution of the dilemma is that the state organizes the possibility of religious instruction within public schools, while leaving the contents of that instruction to the relevant churches. They decide on the curriculum, they decide on truth. The state sees to that it happens, churches see to how it happens. The state is obliged only to make religious instruction adequately possible and to guarantee that no one is forced against his or her will to follow these courses. If this is guaranteed, the cooperationist approach is an exact expression of the separation of state and church.

Juridical speaking we have to make the distinction between the obligations which the European states accepted on the field of international law on this filed and the internal legislation which was adopted by each country. On the field of *international law* we have to take into account *Article 2 of the First additional protocol to the Convention of Human Rights*, adopted by the Council of Europe in Paris on 20th of March 1952:

Right to education

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[15] Pavol Polaček, *Churches and Religious Communities ...,* p. 93.

[16] Gerhard Robbers, *The Church in Germany,* Institute for European Constitutional Law, Trier, 2010, p. 139.

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.

From here do result two consequences:

1. The right to create private schools with a religious orientation;[17]
2. The students have the right not to be obliged to participate to the confessional teaching of religion in the public schools.

In Article 18 Par. 4 of the International Covenant on Civil and Political Rights[18] is stipulated that:

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.[19]

Comment Nr. 22 to this Covenant, gives a broad aim to the terms *religion* and *belief*, stating: *"Article 18 protects theistic, non-theistic and atheistic beliefs, ... Article 18 is not limited in its applications to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions."*[20] This means that the confessional religious education within the public education is not compatible with this article, when there is no other optional discipline.

The same conception inspired the resolution of *the European Parliament on the*

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[17] It would be interesting to see Art 13.3 of the *International Covenant on Economic, Social and Cultural Rights*, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976: *13.3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.* In the same direction goes Art. 5.1.b of the Convention against Discrimination in Education Adopted by the General Conference at its eleventh session, Paris, 14 December 1960: Art.5.1.b.: *1. The States Parties to this Convention agree that: (b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions. cf.* Silvio Ferrari, *L'enseignement a propos de la religion dans l'Union Europeenne: apercu juridique*, in *Libertatea religioasa in contest romanesc si European,* Ed. Bizantina, Bucuresti, 2005, p. 325-336

[18] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

[19] Article 13, par. 3 of the International Covenant on Economic, Social and Cultural Rights goes in the same direction and says that: *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*

[20] Human Rights Committee General Comment 22, para. 2.

human rights in 2002 and the politic of the European Union on the field of human rights (2002-2011 INI): *Taking into account the fact that the state has to be, by definition, non-religious and where the separation between State and Religion does not exist, the good cohabitation between the religious and non-religious persons is difficult to be realized, which generates different problems on the field of minorities.*

Recently, in its answer on the 16th of September 2008 to the two recommendations of the Parliamentary Assembly of the European Council, the Ministers Committee reaffirmed its attachment to the common European principle of separation between State and Religions in the member states of the European Council. The 20th century is considered to be "the century of separation"[21] between Church and State. This principle, together with the one of freedom of conscience and non-discrimination are intrinsic part of the main principle of *laïcité européenne.*[22]

In Article 12 Par. 1 of the *Convention on the Rights of the Child* it is stipulated that: *States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

In Article 2 to the First additional Protocol to the Convention on Human rights, which represents the *lex specialis*, it is underlined that: *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 religions and philosophical convictions.*

Human rights in classrooms, seems to be a topic of increasing popularity (or concern) in Strasbourg Court. On the 15th of June 2010 the Court issued its judgment in the case of *Grzelak v. Poland*. The case concerned a Polish boy who refused to attend religious education in the various primary (and later secondary) schools he attended for reasons of personal conviction, with the full approval of his parents who were agnostics. Since, for a lack of other pupils in a similar situation no alternative courses such as ethics were offered, he had to spend such hours alone, apart from the other pupils. According to his parents, that made him the subject of social ridicule and exclusion. In spite of various demands by the parents, no inter-school ethics were organised, since the number of interested pupils was too small. On his school reports, the place was the mark for religion/ethics was instead filled up by a straight line.

The first complaint related to the fact that the marking with a line, although seemingly neutral in effect revealed the convictions of the applicant against his will. For in practice, most schools did not offer ethics courses but only religious ones. A straight line under the heading 'religion/ethics' thus would reveal more than one might want. The Court considered this part of the complaint under Articles 9 (freedom of religion) and 14 (prohibition of discrimination) taken together. First the Court re-emphasized that Article 9 also protected non-believers. In par. 87 it held: It necessarily follows that there will be an interference with the negative aspect of this provision when the State brings about a situation in which individuals are obliged – directly or indirectly – to reveal that they are non-believers. This is all the more important when such obligation occurs in the context of the provision of an important public service such as education.

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[21] Claus Dieter Classen, *Religionsrecht,* Mohr Siebeck, Tübingen, 2006, p. 10.

[22] Conseil de l'Europe, Bulletin d'information sur les droitsde l'homme, no. 75, p. 52.

It continued by noting, in Par. 93, on religious information:

The Court reiterates that religious beliefs do not constitute information that can be used to distinguish an individual citizen in his relations with the State. Not only are they a matter of individual conscience, they may also, like other information, change over a person's lifetime.

Especially in a country like Poland, with a great majority of the people adhering to one specific religion, the situation of the boy took on a "particular significance" (par. 95). In this case, in the Court's view, the very core of the boy's right not to manifest his convictions was infringed.

The second complaint related to the refusal to offer alternative courses in ethics to the boy. On that matter, the Court concluded under Article 2 of Protocol 1 (right to education) that Poland had remained within its margin of appreciation. After all, both religious and ethics education were optional and not compulsory, subject to the requirement that a minimum number of students is interested. The practice in Poland of a minimum seven pupils for such classes was in that sense not deemed unreasonable. No violation on that count therefore.

The Court was at pains to distinguish the case from its own decision in *Saniewski v. Poland* of 2001, in which it declared a very similar complaint on the straight line in school reports "manifestly ill-founded". The only dissenting judge in the Grzelak case, David Thór Björgvinsson, quite convincingly points out that the two cases are not that different. It seems rather that the Court, nine years later simply takes a different position. It would have been clearer if it would have openly argued so.

In conclusion, Article 9 of the Convention guarantees the right to freedom of religion to everyone. The Commission recognized relatively quickly that in addition to natural persons, churches and religious communities, as legal entities can also be possess and exercise rights mentioned in Article 9 of the Convention. The Court and the Commission have taken a generous approach to defining religion. They have defined as religion a wide range of different religious movements and only very rarely have they dismissed an application on the grounds that something considered as religion by the applicant do not fall within Article 9 of the Convention.

In the same time it is interesting to compare the change of view on this field of right to freedom of religion and human rights during the time until the new European Constitution was adopted and the Christian roots of the continent were not even mentioned, also based on the equality and freedom of conscience.

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