

Université Chouaib Doukkali

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**Religion in a Globalized Context:
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***State-Church Relationships Regulation Systems:
between National Identities and Minority
Religions Rights***

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Religious Freedom or Freedom of Religion

What are the main sources of Religious Freedom protection in the International Human Rights Instruments?

Basically

Three are the main sources from which religious freedom protection stems:

UN level: art. 18 UDHR + art. 18 ICCPR

COE level: art. 9 ECHR

Others

Indeed other articles dealing with religious freedom matters do exist both at level of United Nations documents and of Council of Europe's documents; as well as provisions concerning religious freedom can actually be found also in the other regional human rights systems instruments. However in this lecture we will only consider the two abovementioned systems.

United Nations

Art. 18 UDHR

- Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Art. 18 ICCPR

- 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
- 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
- + other two paragraphs.

Council of Europe

European Convention on Human Rights

Art. 9 – Freedom of Thought, Conscience and Religion

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. (...)

Comparison UDHR + ECHR

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Art. 9 ECHR

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- 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Limitations ECHR + ICCPR

Art. 9 ECHR

- 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 for the protection of the rights and freedoms of others.

Art. 18 ICCPR

- 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
- 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

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Art. 9 European Convention on Human Rights

Freedom of thought, conscience and religion

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- 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 for the protection of the rights and freedoms of others.

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Article 9 ECHR is shaped in the classical form in which human rights articles are elaborated.

Paragraph 1 does enunciate the content of the right to freedom of religion and its extension.

Paragraph two does set out the possible limitations to such right(s) and the criteria that must be fulfilled for these limitations to be acceptable by the Court of Strasbourg.

The content of the right in brief

- Everyone enjoys the freedom of thought, conscience and religion, essentially means that art. 9 protects the inner creeds and personal beliefs of people.
- Such beliefs and creeds do relate to so-called *forum internum*, meaning the internal representation that everyone has of the most important things they believe in. Such sphere is inviolable and no limitation is allowed to States. People must remain free to think and to believe in whatever they want, regardless how much it may appear strange or peculiar or even weird to others. They are completely free in respect of this inner area.

Forum externum

We have previously spoken of *forum internum*, and it is now just the case to speak of *forum externum*.

It is a multifaceted concept.

In brief again it relates to the manifestation of inner convictions to others.

Then it relates to the right to manifest people's creeds, religions, beliefs and so on.

Some Questions

- What is a religion or a belief?
and
- What do we mean with
manifestation of a creed or of a
religion or belief?

What is a religion or a belief?

- The ECtHR has dealt with this issue several times so far developing a rather prosperous case-law and some consolidated principles that might be applied generally to all people.
- In order to see what has been the general consideration of the Court in this regard I will mention just two relevant affirmations with which the Court has clarified which beliefs fall under the application of art. 9 ECHR and which ones fall under the application of other articles, namely art. 10 ECHR about Freedom of Expression.

Beliefs protected by art. 9 ECHR

- Not only beliefs strictly related to mainstream religions are protected by art. 9 ECHR.
- The former Eur. Comm. HR as far back as in 1978 in a pronouncement on case *Arrowsmith vs. UK* stated that “pacifism as a philosophy [...] falls within the ambit of the right to freedom of thought and conscience. This attitude of pacifism may be seen as a belief (“conviction”) protected by art. 9(1)”. (1978)

Inclusive Approach...

- Such a wide and extensive approach has been largely employed by both the former Commission and the Court so far.
- This does not imply that necessarily all beliefs without exception fall under the protection accorded by the ECHR: e.g. the Court has stated that discriminatory and offensive beliefs “which are incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination” cannot benefit of the protection acknowledged by the ECHR (*Norwood vs. UK* 2004).

...but not limitless

- Although the Commission and the Court have followed such an inclusive approach in respect of the forms of beliefs that fall under the protection of art.9 ECHR, such inclusion has its own borders.
- It has been declared by the Court in fact that in order to be entitled to be protected by art. 9 of ECHR such beliefs have to consist in “views that attain a certain level of cogency, seriousness, cohesion and importance” (*Campbell & Cosans vs. UK* 1982)

Ideas & Opinions vs. Beliefs

- Ideas and opinions and other human thoughts and inspirations will still and also be protected by the ECHR, says, the Court but this will happen through different provisions, namely art. 10 on Freedom of Expression.
- The use of the term belief as it appears in the context of art. 9 ECHR has consequently hinted at something with a stronger significance to people and with a major meaning within their lives, than simple opinions and ideas, protected by art. 10 ECHR (*Arrowsmith vs. UK*, 1978)

From the Belief to its Manifestation

- As we read in art. 9, religious freedom does include also the right to manifest one's religion or beliefs in different ways and in public or in private...
- According to this people are allowed to put in practice some behaviours that have a strict correlation with their beliefs (go to the temple or to the mass for the functions, use certain clothes or symbols, practise certain rituals and so on).

The types of manifestation

- The ECHR in art. 9 enunciates basically four ways to manifest one's religious freedom:

- 1. Worship**

- 2. Teaching**

- 3. Practice**

- 4. Observance**

All of them are rather ample in meaning and indeed subject to interpretation.

Forum Internum vs. Forum Externum

- Whereas we said that the *forum internum* and the *main beliefs* never can actually be subject to any restrictions or limitations by the national authorities, ***instead***
- The manifestation of a belief in any of the mentioned form could be subject of one or more limitations for the reasons and with the aims and the limits also contained in art. 9 ECHR itself.

Limitations/Restrictions & State Interference

- States are allowed to “interfere” with people’s rights placing limitations and restrictions to one or more rights, included the right to religious freedom, when this becomes necessary.
- In order to avoid abuses and misuses by the States the ECHR art. 9 contains clear indications as regards the criteria that must be fulfilled for a limitation to be considered as acceptable by the Court.

The types of Restrictions

- **General restrictions:**

are those which are applied to a series of people and in case to all people in a given countries in case it becomes necessary, e.g. in case of war. The manifestation of some beliefs could be restricted on the basis of art. 15 ECHR which states that “1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law”.

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- **Individual or particular restrictions:**
those applied in respect of a single individual or a couple or a group of people in certain circumstances.

Conditions for Restrictions

- In order to be acceptable as taken in conformity with the ECHR such restrictions must:
 1. Be **prescribed by law** at the time when the restriction was applied/imposed
 2. Follow a **legitimate aim**
 3. Be **necessary in a democratic society**.

Prescribed by Law

- The Court has specified the meaning of this expression stating that “the law must be adequately accessible; the citizen must be able to have an indication that is adequate in the circumstances” and that such law must be “formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able to foresee to a degree that is reasonable in the circumstances which a given action may entail” (Sunday Times vs. UK 1979)

Legitimate Aim

- The aim for which such restriction was placed has to be a legitimate one and not, for instance, founded on discriminatory purposes.
- Ex. of legitimate aims: protection of public safety, public order, morals, health, freedoms of others and so on.

Necessary in a Democratic Society

- In several judgments the Court has emphasised the fact that freedom of religion is one of the basic foundations of a democratic society.
- The “necessariety” (the absolute need of such restriction) in a democratic society hints at the fact that such restriction was inescapable for the pursue of a given legitimate aim, e.g. in order to protect public health (legitimate aim) it was necessary in a democratic society to deny the right to religious sacrifice of certain animals.

The margin of Appreciation

- The margin of appreciation also called “room for manoeuvre” is the principle for which states are allowed a certain degree of liberty in determining in finding the legitimate aims pursued and in identifying whether a restriction was necessary in their democratic society.
- The Court in fact recognises that not all the countries have the same values and the same social systems and accordingly the reasons for which to apply some restrictions could be valid in a country and not in another one.

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- The European Court has summarised in the following sentence the main meaning of the margin of appreciation:

“By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the ‘necessity’ of a ‘restriction’ or ‘penalty’ intended to meet them” (*Handyside vs. UK* 1976)

Principle of Subsidiarity

- The principle of subsidiarity is at the base of the above statement of the Court concerning the margin of appreciation.
- States are in a better place to decide whether a restriction was prescribed by law, was legitimate in its aim and whether it was to be considered necessary in a democratic society.
- If the individual(s) are dissatisfied with the assessment given by the national courts they are allowed to file an application before the ECtHR as we have previously see.

**“What Human Rights
for Religious
Minorities in Today’s
Europe?”**

Main Topic

Main topic of this presentation is the relationship between religions and States and it investigates about the links between human rights and religion. And specifically the religious freedom of minority groups.

The turn-key

In fact among human rights, religious freedom is the turn-key to analyse the multiple issues that lay at the basis of the general question “What rights?” in respect of new and new-new religions movements and indeed religious minorities generally speaking.

Problems and...

When we talk about the human rights of religious minorities as well as about those of individuals belonging to such groups, problems that raise are many and surely more than those connected to traditional religions in a given territory.

The Problem of the definitions

It is a fact that if it is difficult to define what is religion and we know that an agreement on its definition does not exist so far, even more complex is the configuration of a cult or sect.

“Originality” of NRMs

(NMRs: New Religious Movements)

The more these groups are characterized by original or peculiar elements that make them differing much from traditional local religions, the more it is hard for these groups and their followers to fully enjoy their rights within a certain society.

Stereotypes, the Magic & Brainwashing

Furthermore when new religious or spiritual groups begin operating in a given society, the the spectral monster called brainwashing does appear immediately along with other negatively labelling expressions like cult, psycho-cult, sect, destructive religion and so on.

The Anti cultic groups

Anti cultic groups often with the support of the governments use these expressions also to oppose to the conversions to these religions or spiritualities as they affirm that the new followers are feeble people and so victims of indoctrination and brainwashing, also referred to as “love bombing” in some circumstances.

Brainwashing in Italy...

There is no agreement on the meaning of brainwashing and it has been criticized several times also at judicial level in the courts. In 1981 the Italian Constitutional Court declared the expression “*plagio*” that can be assimilated to brainwashing as unclear and unproven.

...and in Spain

In 1996 also Spanish National Court intervened on this matter in a case concerning a member of a Catholic group called Family, Tradition and Property who had been abducted to be re-programmed. This Court concluded that the expression brainwashing was not scientifically proven nor based on any real evidence; it has different meanings and has been used time by time to signify “mind control”, and to describe many forms of influence such as hypnosis, psychotherapy, mass media, propaganda, behavioural changes, and other techniques that imply a change of attitudes and behaviours.

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The Court concluded that from a legal point of view the expression brainwashing is an irrational and meaningless word; in addition its indiscriminate and irresponsible use risks to interfere with some basic fundamental rights of the individuals and with which the governments are not allowed to interfere.

From the Courts to the Parliaments

Unlike what stated at judicial level, instead at legislative level many are the cases of undue interference with the rights of the religious groups with pieces of legislation overtly against some or many religious minorities usually called cults.

Witch-Hunt in France and Belgium...

- The cases of Belgium and France with their respective CIAOSN (*Centre d'Information and Avis sur les Organisations Sectaires Nuisibles*) and MIVILUDES (*Mission Interministerielle de Lutte contre les Derives Sectaires*) are telling; as well as telling are the legislative initiatives of the parliaments of these countries that set up real black-lists of what they called harmful sects that indeed produced many problems to different groups and their followers.
- Actually 176 and 189 were the groups listed respectively in France and in Belgium.

...and somewhere else too

Also other countries did the same, this is the case for instance of Czech Republic, Romania, Bulgaria, Russia to name just a few. They all have adopted national legislation on or against one or different new religious movements and cults. On the basis of such acts it is barred the registration of these groups as they allegedly limit the personal freedom of people, do use psychological tools and even physical violence to submit them, do exploit individuals to get money from them, do refuse some medical treatments and so on.

The requisites for registration

These legislations in some cases list a series of requirements for these new religious groups to be registered, such as a minimum number of years operating in the national territory, a certain number of active followers in the country and some other strict requirements to meet that only apply to minority groups.

Is it really necessary..?!

Then it is apparent that in some countries it is opinion of the National authorities that legislations on or against some religious groups are absolutely necessary!

The Voice of the Council of Europe

In any case whatever is the personal opinion in respect of these matters, what is significant is what officially stated by the International Organizations: the Council Of Europe for instance throughout the last 20 years has intervened several times issuing statements and declarations and even recommendations within this field, making it clear to the governments that any distinctions between and any discriminations against religious groups are not allowed and specifically barred according to the European Law and they cannot be tolerated whatever is the reason on which the national authorities found their legislations.

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- The Parliamentary Assembly of the Council of Europe has dealt with these issues several times also issuing recommendations to member states.
- This has happened in 1992 with Recommendation 1178/92 and some years later with Recommendation 1412/99 both aimed at providing the criteria to follow when dealing with religious issues and when facing problems related to the activities of religious, spiritual and esoteric groups.

Recommendation 1178 of 1992

- In particular, in the Recommendation 1178 of 1992, relating to sects and new religious movements, the Assembly had judged as neither opportune nor necessary the adoption of any different – namely stronger – legislation for cults because it could result in a violation of the freedom of conscience and religion allowed by Art. 9 ECHR, also for traditional religions (*“estimé inopportun le recours à une législation majeure pour les sectes au motif qu’elle risquerait de porter atteinte à la liberté de conscience et de religion garantie par l’article 9 de la CEDH, ainsi qu’aux religions traditionnelles”*)..

Recommendation 1412 of 1999

- and again, the Recommendation 1412 of 1999, invited, also, the governments of the member States to use the **ordinary procedures provided by criminal and civil laws** against any illegal behaviours and actions of which religious, esoteric and spiritual groups should be found responsible (“[...] *10.iii à utiliser les procédures normales du droit pénal et civil contre les pratiques illégales menées au nom de groupes à caractère religieux, ésotérique ou spirituel*”).

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- Among other statements with Recomm. 1412 the Council of Europe has auspicated what follows:
- To set up or support independent national or regional info centres on groups of a religious, esoteric or spiritual nature (point i);
- To use the normal procedures of criminal and civil law against illegal practices carried out in the name of groups of a religious, esoteric or spiritual nature (point iii);
- To encourage an approach to religious groups which will bring about understanding, tolerance, dialogue, and resolution of conflicts (point vi);
- To take firm steps against any action which discriminates or marginalizes religions or spirituality minority groups.

BUT

However, the temptation for some States to intervene in regulating also the internal affairs of religious communities has been demonstrated, often.

The Voice of the European Union

The European Parliament has thus recalled in the resolution of 13 April 2006 that freedom of expression should always be exercised within the limits allowed by law and should co-exist with the responsibility and respect of human rights, opinions and religious beliefs, regardless of whether they concern Islam, Christianity, Judaism or any other religion.

The PACE in 2006

And the Parliamentary Assembly of the Council of Europe, again, in Resolution 1510 of 28 June 2006 asserted that: “The Assembly encourages religious communities in Europe to discuss freedom of expression and respect for religious beliefs within their own community and to pursue a dialogue with other religious communities in order to develop a common understanding and a code of conduct for religious tolerance which is necessary in a democratic society”.

The PACE in 2007

I also want to recall Recommendation n° 1804 on “State, religion, secularity and human rights” adopted by the Council of Europe’s Parliamentary Assembly in 2007 which stated that “...education is the key to combating ignorance, stereotypes and misunderstanding of religions and their leaders”.

The PACE in 2011

Once again last year the Council of Europe's Parliamentary Assembly has recalled the abovementioned Recomm. 1412 and 1178 issuing a new Recomm. no. 1 of 2011 with which the Parliamentary Assembly of the Council of Europe has asked to governments of member States to enforce and implement what contained in the abovementioned Rec. no. 1178 and 1412.

The Voice of the Human Rights Committee

In addition, the Human Rights Committee has also determined that any attempt to limit the right to manifest religion or belief may not be “imposed for discriminatory purposes or applied in a discriminatory manner” and “any distinction based on religion or belief should be supported by reasonable and objective criteria in pursuit of a legitimate aim under the ICCPR” (United Nations Human Rights Committee, General Comment 22). [ICCPR is the International Covenant on Civil and Political Rights of 1966].

BAD-GOOD Distinction

Thus, all of the distinctions based on a classification of religions into two groups, one consisting of those communities considered acceptable by the State and classified as “religions” or “mainstream religions” and the others considered unacceptable by the State and classified as “sects” subject to repressive investigation and legislation is unacceptable, not allowed and actually barred. Such a behaviour instead has resulted in the stigmatizing and blacklisting of hundreds of religious groups as “sects” and “cults” in Belgium and France. There is no legal justification for such a classification. Indeed, classifying religious groups into “religions” and “sects” or “cults” is itself a violation of religious freedom and of human rights standards.

NO Classification admitted

It is impermissible and arbitrary for the government to confer benefits on groups it classifies as “religions” while denying benefits and enacting oppressive measures against groups it classifies as “sects” and/or “cults”.

HR Committee on art. 18 ICCPR

As the Human Rights Committee has declared:

“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 by a predominant religious community”.

UN Special *Rapporteur* for Religious Freedom

- Likewise, Mr. Abdelfattah Amor, during his activities as UN Special *Rapporteur* for Religious Freedom, rejected the type of classification that forms the methodology of the draft laws about religious minorities, mind control and brainwashing in different countries:

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- “All in all, the distinction between a religion and a sect is too contrived to be acceptable. A sect that goes beyond simple belief and appeals to a divinity, or at the very least, to the supernatural the transcendent, the absolute, or the sacred, enters into the religious sphere and should enjoy the protection afforded to religions”.

(1996 Annual Report by the Special *Rapporteur* on Religious Freedom to the United Nations Human Rights Commission).

Equality and equal treatment

And now about the equality and equal treatment of New Religious Movements (NMRs) and Minority Religions generally speaking.

NMRs & mainstream religions

NMRs and minority religions generally speaking often claim to be victims of discrimination and that the national authorities treat them unequally, apply the law differently, and unlike traditional or mainstream religions they receive a wholly different treatment.

Cases of unequal treatment

Cases of unequal treatment regard for instance the refuse of recognition of these groups as religious entities, the denial of the status of religions, the fiscal exemption, the right to visit detainees and ill people in jails and hospitals, the right to use some religious symbols or to wear some typical clothes and others too.

The National authorities

- It often happens that the National authorities are unable to deal with such issues, sometimes they prefer not to cater for the needs of these communities in order to avoid problems with and pressures from the religious authorities of the mainstream groups.
- As a consequence of such a behaviour these minority religions and their followers often do file complaints at national and European level to ascertain their rights.

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- These kinds of cases are many and we cannot analyse all of them here now as they concern several aspects of the religious life as previously said.
- These complaints often are the result of unequal treatments carried out by the national governments that in some cases create lists of cults and publish reports on some religious groups generally called sects and cults.

National Initiatives and the ECtHR

- Within this track of the initiatives of the governments aimed at contrasting the activities of some NRMs called sects and cults we must draw our attention on case *Leela Forderkreis and others vs. Germany* which concerned some groups linked to the Osho Movement in Germany.
- They complained that the use of negatively labelling words like cults and sects and psycho sects and manipulative religion in respect of their movement in official documents issued by the govt. had been arbitrary and had constituted a violation of their human rights as in the ECHR and specifically art. 9 about religious freedom.
- The ECtHR found a violation of art. 6 because the proceeding at national level had lasted too many years but no violation of art. 9 of the ECHR.

The anti-cultic movements

- Some anti cultic movements were rather happy for the issue of this judgment and stated that the ECtHR had accepted the use of those labelling words, however... this is not true; it's in fact completely false! By reading the judgment it is clear that the Court justified its decision arguing on the fact that the govt had stopped the use of those words some years before, as a result of a judgment of the National Constitutional Court that had declared the use of those words as not allowed and forced the govt to stop their use.

...consequently...

- if the government had continued the use of those words, surely the ECtHR in this case, would have also found a violation of art. 9 ECHR.

Registration (again)

- As previously said another way followed by the governments to prevent minority groups from operating in a country is to deny them the registration with some National departments.

The case of Scientology

- An important case within this track concerned the Church of Scientology. This case regarded the granting of legal status to the Church of Scientology in Russia. The authorities did not acknowledge such a right to the applicant Church on the basis of a series of excuses such as the number of followers in the country and the length of time the Church had existed and operated in the national territory.
- The ECtHR found a violation of the applicant church's rights and defined the criteria set up in the legislation for the registration of religious groups as subterfuges aimed at preventing minority groups from existing and operating any longer in that country.

Croatia

- This case has given life to a new judicial orientation that has subsequently been confirmed and even emphasized in case *Savez Crkava Rijec Zivota and others vs. Croatia* concerning some Reformed Christian Churches that claimed to be treated unequally in Croatia.

(Convention as a living instrument and role of the Court's judgments; see cases Tyrer 1978 and Marckx 1979)

No disparity

- The Court in this case has stated it is not possible to accept in the modern democratic society any disparity of treatment nor any differences between religious groups.
- Specifically in Croatia a system of Agreements between State and Religions is enforced and these churches that had been legally registered as churches in 2003 applied for being granted an Agreement on the basis of the relevant legislation in 2004.
- The national authorities refused such an Agreement twice on the basis of the fact that these groups could not meet two basic requirements to enjoy such a right to an Agreement, namely they had not been existent in the country as at 6 April 1941 and the number of their followers was below 6,000 people.
- These churches claimed that they had been treated unequally and on the basis of such a denial they could not teach their precepts in the public schools unlike other religions did, they could not visit people in jails and hospitals, could not consider their weddings as legally recognized and so on another list of assumed discriminations.

The others and the govt.

- Other religious groups such as the Old-Catholics, the Macedonian Orthodox and the Bulgarian Orthodox had been granted an agreement and the applicant churches considered it unequal because these groups did not meet the requirements listed by the national authorities.
- Namely they had less than 6,000 followers and had not been present in the territory as at 6 April 1941.
- The government justified the concession of the Agreements to those religious minorities arguing on the fact that they meet an alternative requirements, specifically they could be considered as “historical religious groups” within the European cultural environment.

No way..

- The ECtHR found the statements of the government unjustifiable excuses and declared a violation of the Convention because every religions must be treated equally and that the governments cannot use subterfuges to justify different treatments or omissions or denial of rights to some groups considered less important than others.

A New Era

- This case of the Reformed Churches opens a new era in the State-Church relationships stating that all religious groups have a right to the Agreement with the Government and that the government must treat all religious groups in the same way no matter how big or small the community is, how new and peculiar the creed is or how long the community has operated within the country and so on.
- The human rights instruments and the judgments of the ECtHR do demonstrate that they can facilitate the creation of an harmonious system of coexistence of different religions within the European continent allowing all people to enjoy the same basic human rights regardless of their religious affiliation.
- Furthermore on the basis of this judgment all the religious groups present in those countries where a system of Agreements does exist will be entitled to claim to be granted an Agreement and the govt could not refuse such an acknowledgment.

Italy: religious minorities

- This will happen also in Italy where apart from the Roman Catholics only 9 groups so far (6 of them many years ago and 3 of them last month) have been granted an Agreement with the State.
- Italy will need to accelerate the procedures, to be more clear and straightforward, to ensure equal treatment to all religious groups. Some of them in fact lasted more than 20 years unlike others that lasted very little.
- At the present time the Buddhists and Hinduists have waited to have their Agreements ratified for many years; the Jehovah's Witnesses signed the Agreement in 2000 after 9 years from the first meeting with the National Commission and still in 2012 have not obtained the ratification of such an Agreement.

Italy: Islam

- Although Islam is numerically the second religion practised in Italy and the third one when considering only the Italian believers, and although Islam has been present in Italy since centuries having Venice and Palermo as the two of its most important places, at the moment no Muslim group has obtained an Agreement with the Italian State; three Muslim groups have filed a request so far and never the govt seriously analysed their requests.

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- The reason to justify the refuse of an Agreement with Islam is always the same: there are many groups that claim to be Muslim, it is impossible to control their activities because they use Arabic during the functions, there is no clergy within Muslim groups and the govt does not know who to talk with and because anyone might claim to be an Imam and other similar stories.
- Apart from the Israelite Communities only Christian groups have been acknowledged the right to the Agreement in Italy.

Italy: a confused legislation and its consequences

- What is clear in Italy is that a single piece of legislation about Religious Minorities does not exist. There only is art. 8 of the Constitution that states that non-Catholic Religious Confessions are allowed to have relationship with the State through Agreements. There also is an Act on Tolerated Religions that dates back to 1929 and that was promulgated under Mussolini Regime and that the govt still considers to be implemented.
- On the basis of this situation some groups have an Agreement with the govt, others only are granted the legal status, some others are considered only associations if have not been granted the legal status, and some others are only considered as de facto entities and not association if they have not been registered as such.
- So the different and unequal treatment is clear and unacceptable for and in a democratic country.

Special unequal treatment in France

- Another case of apparent discrimination has occurred in France where the govt applied a legislation about the taxation of 60% to the money given by people to the Congregation of Jehovah's Witnesses only to this group not to other ones.
- The European Court found an evident violation of the Convention because the govt treated the JW unequally and condemned the State.

The Italian Constitutional Court

- Going back to the Italian situation the Italian Constitutional Court during the last 20 years has issued two very important judgments in this regard in 1992 and in 2002.
- The judges have clarified that the existence of the Agreements system cannot be the basis on which to discriminate against those groups that have not yet been granted an Agreement. There are in fact some basic rights that all groups have and should enjoy regardless they have obtained an Agreement with the State or not (1992).
- Furthermore the Constitutional Court said that the existence or not existence of such an Agreement with the religious groups cannot be considered the basis on which to consider such groups as religions or not (2002).
- Following that way in fact, as some scholars did, many groups should not be considered as religions although they indisputably are such as Islam in Italy for instance and that would clearly be both absurd and insane!

State's control duties and equality

- Such statements – concerning equality and the right to equal treatment for all the religious groups – do not automatically imply that the national authorities are deprived of their control functions; it does not mean that the govts will have no longer means to investigate about the groups applying for an Agreement nor that would be no way to analyze their requests accurately.
- The equal treatment, instead, does ensure a clear and straightforward and transparent unequivocal procedure that is applied to all the groups in the same way!

Which way to follow?

- The situation of apparent confusion, in Italy as well as in other countries, should lead to the approval of a single new legislation on religious freedom and religions that might allow all the groups the same rights, same prerogatives, same exemptions and of course same duties.

Procedures lasting years and years...

- Following the last reasoning the ECtHR in the case *Religionsgemeinschaft* concerning the JW's has stated that while it is acceptable that the govt's investigations to acknowledge the legal status of religious entity to a new group might last up to 10 years has occurred in Austria if the group is unknown by authorities and experts, instead such a behaviour it is completely unacceptable in respect of the JW's as their operate at international level since decades and are then well known by the authorities and the religion scholars.

Conclusion

- In order to conclude we can say that, as a rule, all the religious groups present and operating within the territory of the 47 States member of the Council of Europe, are entitled to enjoy equal rights and freedoms and that, on the basis of the ECtHR judgments, they all have a well founded hope to be treated in the same way exactly like the mainstream and traditional religions and that, surely, in case of discrimination and unequal treatment they would obtain a remedy from the ECtHR that has, once and forever, recognized that all the religious groups must be treated equally!

**Thank You
for Your Attention!**

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