

Abstract: Freedom of Religion or Belief in the Context of European and International Law

This PhD dissertation focuses on selected aspects of freedom of religion or belief in Europe. It aims to introduce the legal framework in which religious freedom has to operate, and to place this essential freedom into a broader cultural, religious and human rights context. The contextualisation emphasised throughout this dissertation is based on an assumption that it is not possible to establish a pure legal notion of religious freedom that would not bear any imprint of the societal, legal, cultural and religious context of its authors; in reality, each person's understanding of religious freedom is rooted in his culture, religion and experience.

This should not lead, however, to a complete rejection of the possibility of a common understanding and universal protection of religious freedom. On the contrary, it should motivate each interpreter and law-maker in the area of religious freedom to study the understandings of all persons and entities involved in a particular case or situation. Having thoroughly studied all presented claims rooted in religious freedom and having taken into consideration all other rights, principles and interests involved, it should be possible for the decision-makers to resolve the case in a more just way than without the appreciation of those various understandings and contexts.

This dissertation's journey through various contexts of religious freedom starts in the first chapter with an introduction to the legal norms that regulate religious freedom in Europe. It covers the norms created under the auspices of the United Nations, the Council of Europe and the European Union. It also introduces various ways in which such norms are implemented. Particular attention is given to the European Court of Human Rights, which has substantially contributed to the European understanding of religious freedom. In addition to the international and European law framework, the first chapter also briefly characterises the legal regulation of religious freedom in four European countries: the Czech Republic, France, Greece and the United Kingdom, countries selected because they reflect the various approaches of European countries to managing church and state relations: clear separation of church and state (France), an established church open to religious pluralism (the United Kingdom), a state showing a strong preference to its established church (Greece) and a post-communist secular state undergoing a (currently unaccomplished) separation from the churches (the Czech Republic).

The second chapter aims to clarify various concepts frequently used in the context of freedom of religion, such as religion, belief, faith, (religious) conviction, (religious) confession, (freedom of) thought and (freedom of) conscience. After having enlightened these concepts, the second chapter proceeds to summarise three main arguments for justifying the protection of religious freedom. The first one builds upon the experience of religious

wars, persecutions and violence, and pragmatically concludes that it is better to live in a religiously tolerant society, in which one does not need to be afraid of holding a religious belief different from that of the majority. The second type of argument relies on the teaching of various religions or philosophies, in which it tries to find reasons why is it important to protect the religious freedom not only of one's own community, but also of the others'. The third argument posits religious freedom on the basis of human dignity as a concept shared by people of different faiths and convictions, and even by people who do not consider religious arguments legitimate in public reasoning.

The third chapter provides an overview of various ways in which nation states tackle the issue of religious freedom, the arguments by which they justify their choices, and the consequences these arrangements have. In order to provide a fuller image of the relations between the state, the society and the religions present on its territory, this chapter addresses the interrelation between religious and national identities, various concepts of secularism and laïcité and the concept of religious neutrality. This chapter also questions the traditional public-private divide in the context of acting according to one's religious conviction, and introduces problems linked to the existence of concurrent religious and national legal regimes. The chapter concludes with a description of a phenomenon which is present throughout most contemporary discussions on the presence of religion in the public sphere: fear of the other.

The fourth chapter conceptualizes the problems encountered when religious freedom is invoked not only by individuals, but also by groups. It focuses on the relations between religious groups and the state, religious groups and their members and religious groups and individuals outside of their structures.

The fifth chapter puts religious freedom into a broader human rights context. It summarises the most important situations when religious freedom is aligned with freedom of expression, freedom of association, the right to privacy and the right to education. It also covers cases when religious freedom appears to be in conflict with the aforementioned human rights.

The final chapter examines the issue of religious expression through symbols, since religious symbols have played a central part in a great number of recent and current controversies concerning religious freedom. This chapter therefore analyses contexts in which the regulation of religious symbols has been proposed, and the possible justifications for such regulations. It concludes that all religious symbols are context-dependent and any legal regulation affecting them needs to take into consideration their meanings, the contexts of their appearance, the importance of other legitimate aims involved and any alternative ways of achieving them, in order to pass the test of proportionality.

(6.049 znaku = 3,36 normostran)