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Freedom of religion

Cases before the European Court of Human Rights concerning…

The obligation to swear a religious oath

Buscarini and Others v. San Marino (application no. 24645/94)

Grand Chamber judgment 18.02.1999

Elected to the San Marino parliament in 1993, the applicants complained of the fact that they had been required to swear an oath on the Christian Gospels in order to take their seats in parliament, which in their view demonstrated that the exercise of a fundamental political right was subject to publicly professing a particular faith.

The Court found a violation of Article 9 of the European Convention on Human Rights (freedom of thought, conscience and religion). It held in particular that the obligation to take the oath was not "necessary in a democratic society" for the purpose of Article 9 § 2, as making the exercise of a mandate intended to represent different views of society within Parliament subject to a prior declaration of commitment to a particular set of beliefs was contradictory.

Alexandridis v. Greece (19516/06)

Chamber judgment 21.02.2008

Mr Alexandridis was admitted to practise as a lawyer at Athens Court of First Instance and took the oath of office in November 2005, which was a precondition to practising as a lawyer. He complained that when taking the oath he had been obliged, in order to be allowed to make a solemn declaration, to reveal that he was not an Orthodox Christian, as there was only a standard form to swear a religious oath.

The Court found a violation of Article 9, holding that that obligation had interfered with Mr Alexandridis' freedom not to have to manifest his religious beliefs.

The mandatory indication of one's religious affiliation on official documents

Sinan Isik v. Turkey (21924/05)

Chamber judgment 02.02.2010

A member of the Alevi religious community, Mr Işık in 2004 unsuccessfully applied to a court requesting that his identity card feature the word "Alevi" rather than the word "Islam". It was obligatory in Turkey for the holder's religion to be indicated on an identity card until 2006, when the option was introduced to request that the entry be left blank. His request was refused on the grounds that the term "Alevi" referred to a sub-group of Islam and that the indication "Islam" on the identity card was thus correct.

The Court found a violation of Article 9 which had arisen not from the refusal to indicate Mr Işık's faith (Alevi) on his identity card but from the fact that his identity card contained an indication of religion, regardless of whether it was obligatory or optional. The Court underlined that the freedom to manifest one's religion had a negative aspect, namely the right not to be obliged to disclose one's religion.

Wasmuth v. Germany (12884/03)

Chamber judgment 17.02.2011

The case concerned the German system of levying religious tax. Mr Wasmuth unsuccessfully requested the authorities to issue him a wage-tax card without any reference to the fact that he did not belong to a religious society authorised to levy religious tax. He complained to the Court that this compulsory information on the tax card amounted, in particular, to a breach of Articles 9 and 8 (right to respect for private and family life).

The Court found no violation of Article 8 or 9. While there had been an interference with Mr Wasmuth's rights under both Articles, the interference had served the legitimate aim of ensuring the right of churches and religious societies to levy religious tax. It was further proportionate to that aim, as the reference at issue was only of limited informative value concerning Mr Wasmuth's religious or philosophic conviction: it simply indicated to the fiscal authorities that he did not belong to one of the churches or religious societies which were authorised to levy religious tax and exercised that right in practice.

Conscientious objection

Thlimmenos v. Greece (34369/97)

Grand Chamber judgment 06.04.2000

A Jehovah's Witness, Mr Thlimmenos was convicted of a felony offence for having refused to enlist in the army at a time when Greece did not offer alternative service to conscientious objectors to military service. A few years later, he was refused appointment as a chartered accountant on the grounds of his conviction despite his having scored very well in a public competition for the position in question.

The Court found a violation of Article 14 (prohibition of discrimination) in conjunction with Article 9, holding that Mr Thlimmenos' exclusion from the profession of chartered accountant was disproportionate to the aim of ensuring appropriate punishment of persons who refuse to serve their country, as he had already served a prison sentence for this offence.

Bayatyan v. Armenia (23459/03)

Grand Chamber judgment 07.07.2011

A Jehovah's Witness, Mr Bayatyan refused to perform military service for conscientious reasons when he became eligible for the draft in 2001, but was prepared to do alternative civil service. The authorities informed him that since there was no law in Armenia on alternative service, he was obliged to serve in the army. He was convicted of draft evasion and sentenced to prison. Mr Bayatyan complained that his conviction violated his rights under Article 9 and submitted that the Article should be interpreted in the light of present-day conditions, namely the fact that the majority of Council of Europe Member States had recognised the right of conscientious objection.

The Court found a violation of Article 9, taking into account that there existed effective alternatives capable of accommodating the competing interests involved in the overwhelming majority of European States and that Mr Bayatyan's conviction had happened at a time when Armenia had already pledged to introduce alternative service.

State recognition of religious communities or their leaders

Hasan and Chaush v. Bulgaria (30985/96)

Grand Chamber judgment 26.10.2000

Mr Hasan was the national leader (Chief Mufti) of the Bulgarian Muslim community as from 1992. Together with another member of the community, he complained that following a dispute in the community in 1994-95 as to who should be its leader, he was

effectively replaced by the Government with another candidate who had previously held the post.
The Court found a violation of Article 9 and of Article 13 (right to an effective remedy), holding that the State had interfered with the internal affairs of the religious community, favouring one faction to the complete exclusion of the hitherto acknowledged leadership.

Metropolitan Church of Bessarabia and Others v. Moldova (45701/99)

Chamber judgment 13.12.2001
The Metropolitan Church of Bessarabia, an Orthodox Christian church, was refused recognition by the authorities on the ground that it had split up from the Metropolitan Church of Moldova, which was recognised by the State. The Metropolitan Church of Bessarabia and a number of individuals holding positions in that Church complained of that refusal, claiming that without recognition a religious denomination could not be active on Moldovan territory.
Noting in particular that, under the relevant domestic legislation, without official recognition the church's priests could not take divine service, its members could not meet to practise their religion and, not having legal personality, it was not entitled to judicial protection of its assets, the Court found a violation of Article 9. It further found that the applicants had not been able to obtain redress before a national authority in respect of their complaint, in violation of Article 13.

Taxation of religious communities

Association Les Témoins de Jéhovah v. France (8916/05)

Chamber judgment 30.06.2011
The case concerned a supplementary tax demand for several dozen million euros, claimed from the association Les Témoins de Jéhovah (Association of Jehovah's Witnesses). According to the association, the procedure in question had been flawed, and, given its scale, had infringed its freedom of religion.
The Court found a violation of Article 9, holding in particular that the relevant provisions of the tax code under which the gifts to the association Les Témoins de Jéhovah were automatically taxed had not been sufficiently foreseeable.

The right to wear religious dress and display religious symbols

Dahlab v. Switzerland (42393/98)

Declared inadmissible 15.02.2001
Ms Dahlab, a primary-school teacher who had converted to Islam, complained of the school authorities' decision to prohibit her from wearing a headscarf while teaching, eventually upheld by the Federal Court in 1997. She had previously worn a headscarf in school for a few years without causing any obvious disturbance.
The Court declared the application inadmissible, holding that the measure had not been unreasonable, having regard in particular to the fact that the children for whom Ms Dahlab was responsible as a representative of the State were aged between four and eight, an age at which children were more easily influenced than older pupils.

Leyla Sahin v. Turkey (44774/98)

Grand Chamber judgment 10.11.2005
Coming from a traditional family of practising Muslims, Ms Şahin considered it her religious duty to wear the Islamic headscarf. She complained about a rule announced in 1998, when she was a medical student Istanbul University, prohibiting students there from wearing such a headscarf in class or during exams, which eventually led her to leave the country and pursue her studies in Austria.
The Court found no violation of Article 9, holding that there was a legal basis in Turkish law for the interference with Ms Şahin's right to manifest her religion, as the Turkish Constitutional Court had ruled before that wearing a headscarf in universities was

contrary to the Constitution. Therefore it should have been clear to Ms Şahin, from the moment she entered the university, that there were restrictions on wearing the Islamic headscarf and, from the date the university rule was announced, that she was liable to be refused access to lectures and examinations if she continued to wear it. Having regard to States' margin of appreciation in this question, the Court further held that the interference could be considered as "necessary in a democratic society" for the purpose of Article 9 § 2. In particular, the impact of wearing the Islamic headscarf, often presented or perceived as a compulsory religious duty, might have on those who chose not to wear it, had to be taken into consideration.

El Morsli v. France (15585/06)

Declared inadmissible 04.03.2008

Ms El Morsli, a Moroccan national married to a French man, was denied an entry visa to France, as she refused to remove her headscarf for an identity check by male personnel at the French consulate general in Marrakech. She alleged a violation of her rights under Article 9 and Article 8.

The Court declared the application inadmissible, holding in particular that the identity check as part of the security measures of a consulate general served the legitimate aim of public safety and that Ms El Morsli's obligation to remove her headscarf was very limited in time.

Dogru v. France (27058/05) and Kervanci v. France (31645/04)

Chamber judgment 04.12.2008

Ms Dogru and Ms Kervanci, both Muslims, were enrolled in the first year of a state secondary school in 1998-1999. On numerous occasions they attended physical education classes wearing their headscarves and refused to take them off, despite repeated requests to do so by their teacher. The school's discipline committee decided to expel them from school for breaching the duty of assiduity by failing to participate actively in those classes, a decision that was upheld by the courts.

The Court found no violation of Article 9 in both cases, holding in particular that the conclusion reached by the national authorities that the wearing of a veil, such as the Islamic headscarf, was incompatible with sports classes for reasons of health or safety was not unreasonable. It accepted that the penalty imposed was the consequence of Ms Dogru's and Ms Kervanci's refusal to comply with the rules applicable on the school premises – of which they had been properly informed – and not of their religious convictions, as they alleged.

Aktas v. France (43563/08), Bayrak v. France (14308/08), Gamaleddyn v. France (18527/08), Ghazal v. France (29134/08), J. Singh v. France (25463/08) and R. Singh v. France (27561/08)

Declared inadmissible 30.06.2009

The applications concerned the expulsion of six pupils from school for wearing conspicuous symbols of religious affiliation. They were enrolled in various state schools for the year 2004-2005. On the first day of school, the girls, who are Muslims, arrived wearing a headscarf or kerchief. The boys were wearing a "keski", an under-turban worn by Sikhs. As they refused to remove the offending headwear, they were denied access to the classroom and, after a period of dialogue with the families, expelled from school for failure to comply with the Education Code. Before the Court, they complained of the ban on headwear imposed by their schools, relying in particular on Article 9.

The Court declared the applications inadmissible, holding in particular that the interference with the pupils' freedom to manifest their religion was prescribed by law and pursued the legitimate aim of protecting the rights and freedoms of others and of public order. It further underlined the State's role as a neutral organiser of the exercise of various religions, faiths and beliefs. As to the punishment of definitive expulsion, it was not disproportionate to the aims pursued as the pupils still had the possibility of continuing their schooling by correspondence courses.

Ahmet Arslan and Others v. Turkey (41135/98)

Chamber judgment 23.02.2010

The applicants, 127 members of a religious group known as *Aczimendi tarikatÿ,* complained of their conviction in 1997 for a breach of the law on the wearing of headgear and of the rules on wearing religious garments in public, after having toured the streets and appeared at a court hearing wearing the distinctive dress of their group (made up of a turban, baggy trousers a tunic and a stick).

The Court found a violation of Article 9, holding in particular that there was no evidence that the applicants had represented a threat to the public order or that they had been involved in proselytism by exerting inappropriate pressure on passers-by during their gathering. The Court emphasised that in contrast to other cases, the case concerned punishment for the wearing of particular dress in public areas that were open to all, and not regulation of the wearing of religious symbols in public establishments, where religious neutrality might take precedence over the right to manifest one's religion.

Lautsi v. Italy (30814/06)

Grand Chamber judgment 18.03.2011

Ms Lautsi's children attended a state school where all the classrooms had a crucifix on the wall, which she considered contrary to the principle of secularism by which she wished to bring up her children. During a meeting of the school's governors, Ms Lautsi's husband raised the question of the presence of religious symbols in the classrooms, particularly mentioning crucifixes, and asked whether they ought to be removed. Following a decision of the school's governors to keep religious symbols in classrooms, Ms Lautsi brought administrative proceedings and complained in particular, without success, of an infringement of the principle of secularism.

She complained before the Court that the display of the crucifix in the State school attended by her children was in breach of Article 9 (freedom of thought, conscience and religion) and of Article 2 of Protocol No. 1 (right to education).

In its Grand Chamber judgment, the Court found no violation of Article 2 of Protocol No. 1, and it held that no separate issue arose under Article 9. It held in particular that the question of religious symbols in classrooms was, in principle, a matter falling within the margin of appreciation of the State - particularly as there was no European consensus as regards that question - provided that decisions in that area did not lead to a form of indoctrination. The fact that crucifixes in State-school classrooms in Italy conferred on the country's majority religion predominant visibility in the school environment was not in itself sufficient to denote a process of indoctrination. Moreover, the presence of crucifixes was not associated with compulsory teaching about Christianity; and there was nothing to suggest that the authorities were intolerant of pupils who believed in other religions, were non-believers or who held non-religious philosophical convictions. Lastly, Ms Lautsi had retained her right as a parent to enlighten and advise her children and to guide them on a path in line with her own philosophical convictions.

Complaints against Switzerland concerning the ban on the construction of minarets

Following the popular vote of 26 November 2009 in Switzerland to prohibit the building of minarets, the Court received a number of complaints.

Association Ligue des Musulmans de Suisse and Others v. Switzerland (66274/09) and Ouardiri v. Switzerland (65840/09)

Declared inadmissible 28.06.2011

The applicants, a former spokesman for the Geneva Mosque in the first case and three associations and a foundation in the second, complained that the constitutional amendment in Switzerland prohibiting the building of minarets was incompatible with the Convention. The Court declared their applications inadmissible, on the ground that they could not claim to be the "victims" of a violation of the Convention.

The following applications are still pending:

Baechler v. Switzerland (66270/09)

Koella Naouali v. Switzerland (1317/10)

Al-Zarka v. Switzerland (9113/10)

Proselytism

Kokkinakis v. Greece (14307/88)

Chamber judgment 25.05.1993

A Jehovah's Witness, Mr Kokkinakis complained of his criminal conviction of proselytism by the Greek courts in 1988 after engaging in a conversation about religion with a neighbour, the wife of a cantor at a local Orthodox church.

The Court found a violation of Article 9, holding that the conviction was not shown to have been justified in the circumstances of the case by a pressing social need. The Greek courts had merely reproduced the wording of the law that made proselytism illegal without sufficiently specifying in what way Mr Kokkinakis had attempted to convince his neighbour by improper means.

Larissis and Others v. Greece (23372/94; 26377/94; 26378/94)

Chamber judgment 24.02.1998

Air force officers and followers of the Pentecostal Church, the three applicants were convicted by Greek courts, in judgments which became final in 1992, of proselytism after trying to convert a number of people to their faith, including three airmen who were their subordinates.

The Court found no violation of Article 9 with regard to the measures taken against the applicants for the proselytising of air force service personnel, as it was necessary for the State to protect junior airmen from being put under undue pressure by senior personnel. However, the Court did find a violation of Article 9 with regard to the measures taken against two of the applicants for the proselytising of civilians, as they were not subject to pressure and constraints as the airmen.

Freedom of religion and the right to education

Folgerø and Others v. Norway (15472/02)

Grand Chamber judgment 29.06.2007

In 1997 the Norwegian primary school curriculum was changed, with two separate subjects – Christianity and philosophy of life – being replaced by a single subject covering Christianity, religion and philosophy, known as KRL. Members of the Norwegian Humanist Association, the applicants attempted unsuccessfully to have their children entirely exempted from attending KRL. Before the Court, they complained in particular that the authorities' refusal to grant them full exemption prevented them from ensuring that their children received an education in conformity with their religious and philosophical convictions.

The Court found a violation of Article 2 of Protocol No. 1 (right to education), holding in particular that the curriculum of KRL gave preponderant weight to Christianity by stating that the object of primary and lower secondary education was to give pupils a Christian and moral upbringing. The option of having children exempted from certain parts of the curriculum was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of their private life, and the potential for conflict was likely to deter them from making such requests. At the same time, the Court pointed out that the intention behind the introduction of the new subject that by teaching Christianity, other religions and philosophies together, it would be possible to ensure an open and inclusive

school environment, was in principle consistent with the principles of pluralism and objectivity embodied in Article 2 of Protocol No. 1.

Hasan and Eylem Zengin v. Turkey (1448/04)

Chamber judgment 09.10.2007

Pointing out that his family followed the Alevist branch of Islam, Mr Zengin in 2001 requested for his daughter to be exempted from attending classes in religious culture and ethics at the State school in Istanbul where she was a pupil. His requests having been dismissed, he complained of the way in which religious culture and ethics were taught at the State school, namely from a perspective which praised the Sunni interpretation of the Islamic faith and tradition and without providing detailed information about other religions.

The Court found a violation of Article 2 of Protocol No. 1. Having examined the Turkish Ministry of Education's guidelines for lessons in religious culture and ethics and school textbooks, the Court found that the syllabus gave greater priority to knowledge of Islam than to that of other religions and philosophies and provided specific instruction in the major principles of the Muslim faith, including its cultural rites. While it was possible for Christian or Jewish children to be exempted from religious culture and ethics lessons, the lessons were compulsory for Muslim children, including those following the Alevist branch.

Appel-Irrgang v. Germany (45216/07)

Declared inadmissible 06.10.2009

The applicants, a pupil and her parents, disagreed with a 2006 law making it mandatory for pupils of grade 7 to 10 in Berlin to attend ethics classes in school, because they considered the instruction's secular character contrary to their Protestant belief. Their constitutional complaint was unsuccessful. Relying on Article 9 and Article 2 of Protocol No. 1, they complained that the compulsory ethics classes were contrary to the state's obligation of religious neutrality.

The Court declared the application inadmissible, holding in particular that according to the law in question the ethics classes' aim was to examine fundamental questions of ethics independently of pupils' cultural, ethnic and religious origins and that the classes were therefore in conformity with the principles of pluralism and objectivity embodied in Article 2 of Protocol No. 1.

Grzelak v. Poland (7710/02)

Chamber judgment 15.06.2010

Declared agnostics, Mr and Ms Grzelak did not wish for their son to attend religious classes in school. Despite their wish, neither of the schools he attended offered him an alternative class in ethics. Before the Court they complained, together with their son, about the schools not having organised a class in ethics for him, about him having been harassed in that connection, and about him not having had a mark in his school reports in the space reserved for "religion/ethics".

The Court found a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 9, holding in particular that the absence of a mark for "religion/ethics" on the pupil's school certificates throughout the entire period of his schooling had amounted to his unwarranted stigmatisation, in breach of his right not to manifest his religion or convictions.

Employment by churches or religious groups

Schüth v. Germany (1620/03)

Chamber judgment 23.09.2010

Mr Schüth, who had been the organist and choirmaster in a Catholic parish, complained of the refusal of the courts to overturn his dismissal in 1998 for having violated the

regulations of the Catholic Church on employment by having separated from his wife and having started to live with another woman. He relied on Article 8.
The Court found a violation of Article 8, holding in particular that the German courts had not balanced the interests of the Church employer – to maintain credibility - against Mr Schüth's right to respect for his private and family life. The Court further attached importance to the fact that an employee who had been dismissed by a Church employer had only limited opportunities of finding another job.

Obst v. Germany (425/03)

Chamber judgment 23.09.2010
Mr Obst, who had been the Mormon Church's director of public relations for Europe, complained of the refusal of the courts to overturn his dismissal in 1993 after having confided to his pastor that he had had an extramarital affair. He relied on Article 8.
In contrast to the case of Mr Schüth (above), the Court found no violation of Article 8, holding that the labour courts had undertaken a thorough balancing exercise regarding the interests involved. Their conclusion that Mr Obst had not been subject to unacceptable obligations was reasonable, given that, having grown up in the Mormon Church, he should have been aware when signing the employment contract of the importance of marital fidelity for his employer and of the incompatibility of his extra-marital relationship with the increased duties of loyalty he had contracted towards the Church as director for Europe of the public relations department.

Siebenhaar v. Germany (18136/02)

Chamber judgment 03.02.2011
Ms Siebenhaar, a Catholic, was employed by a Protestant parish as a childcare assistant and later in the management of a kindergarten. She complained of her dismissal as from 1999, confirmed by the German labour courts, after having been active as a member of another religious community (the Universal Church/Brotherhood of Humanity) and having offered primary lessons in that community's teachings.
The Court found no violation of Article 9, holding that the labour courts had undertaken a thorough balancing exercise regarding the interests involved. Their findings that the dismissal had been necessary to preserve the Church's credibility and that Ms Siebenhaar should have been aware from the moment of signing her employment contract that her activities for the Universal Church were incompatible with her work for the Protestant Church, was reasonable.

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