

Protection and Promotion of Freedom of Religions and Beliefs in the European Context

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Editors


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Foreword by Philippe Couvreur

 Springer

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Foreword by Philippe Couvreur, Judge *ad hoc* and Honorary Registrar of the International Court of Justice, *Associé de l'Institut de Droit international*

La liberté d'aimer est le même droit que la liberté de penser, l'une répond au cœur, l'autre à l'esprit ; ce sont les deux faces de la liberté de conscience; elles sont au plus profond sanctuaire de l'âme humaine—Victor Hugo

I have read with great interest the contents of this new book, which is as richly documented as it is original, and it is with real pleasure that I will endeavour, in the following few lines, to introduce it very briefly, hoping to encourage many readers to discover it further.

As is the case with most of the essential subjects that touch the very depths of our lives, the subject of freedom of religion, conscience and thought—which we sometimes feel can be covered, in its most diverse aspects, by the more concise expression 'freedom of belief'—appears to many of us to be both extremely familiar, when it is mentioned furtively in the course of a conversation, and surprisingly foreign, when it comes to defining its precise ins and outs in greater depth.

The familiarity that is immediately felt when this freedom is mentioned is undoubtedly due to its truly fundamental and, therefore, 'immediate' character in our democratic societies. Its various facets are so closely interdependent that no one would think of conceiving one without the other. The fact that everyone is free to believe or not to believe, and to think what he or she wants, seems today to constitute an *a priori* given, so obvious in these societies that the reasons for this state of affairs, perceived as fairly banal, now seem rather indifferent. And yet, even in contemporary democratic societies, what appears to be an obvious fact, so firmly anchored in the collective unconscious, is of recent appearance.

This is not to say that the problems associated with the emergence of beliefs, their adoption, manifestation or transmission are new—on the contrary. Human beings' relationship with phenomena of immanence and transcendence, their intuitions in this respect, their questions and concerns in the face of intensely challenging issues which, although so intimately linked to their being, are nonetheless largely beyond the reach of their reason—which perhaps explains why these issues have continued to be posed, over the centuries, in such astonishingly identical terms—go back, like the sense of the sacred that can permeate this permanent quest,

and the mystical impulses that can accompany it, to the dawn of human times. The same is true of the rites and other varied cultural expressions to which this existential journey of the heart and the mind has given rise, marking societal behaviour to a greater or lesser extent, as well as of the progressive development of ideas—critical or otherwise—which is necessarily associated with such a journey.

This search, so noble and so elementary at the same time, in human beings, for the meaning of their being, or even for its sublimation into a beyond, has unfortunately not been without forms of intolerance, sometimes so radical that they have given rise to the cruellest conflicts and the most merciless persecutions. Such excesses have tended to become more pronounced, and even more widespread, as forms of social organisation have taken shape and the emergence of a diversity of beliefs and thought has been seen as incompatible, in one way or another, with the integrity of that organisation, or dangerous to it, whatever its state of development. The history of Europe, to limit ourselves to it, is unfortunately full of tragic episodes of anti- and inter-religious violence, more or less recurrent, from ancient Rome to the end of the Second World War. We need only think of the horror still inspired today by the mere reference to the Inquisition born in the thirteenth century, to the wars of religion of the sixteenth and seventeenth centuries, or to the bloody excesses of the French Revolution, despite the solemn proclamation, in Article 10 of the 1789 *Déclaration des droits de l'homme et du citoyen*, of the principle according to which '*Nul ne doit être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établi par la loi*'.

While the emergence of beliefs and the conflicts that accompanied it are thus ancient, the definitive consecration, in a fairly rigorously 'codified' form, of the ideals of religious tolerance and pluralism of ideas, which were born of the Reformation and Humanism and developed during the Enlightenment, is comparatively very recent. Freedom of religion, conscience and thought has thus made its entry, successively, at the internal level, into various constitutional texts and, at the external level, into such pre-eminent instruments as the 1948 Universal Declaration of Human Rights (Article 18), the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 9), the 1966 Covenant on Civil and Political Rights (Article 18), the 1969 American Convention on Human Rights (Article 12) and, closer still, the 1981 African Charter on Human and Peoples' Rights (Article 8), as well as in various instruments of primary and secondary European Union law (notably Article 6 of the Treaty on European Union and Article 10 of the Charter of Fundamental Rights of the European Union).

But while the *principle* of this freedom has since been so well established that it has become an integral part of our life, this is not the case with its material content and, above all, the conditions under which it must be exercised. However fundamental it may be, the freedom of belief of each individual *in foro interno*, like all the other freedoms, can only be manifested *in foro externo* while respecting the freedoms of others and the essential values of '*vivre ensemble*' within the societies concerned. It is therefore not surprising that the above-mentioned texts all set out, in fairly similar terms, certain limits to the realisation of this freedom, relating to the rights and freedoms of others, public safety and public order, health, morals, etc.

Stated in general terms, such limits obviously give rise to problems of interpretation when they are applied to the increasingly diverse concrete cases that arise in our communities. Phenomena such as the ‘globalisation’ of the world, and the ever-increasing and difficult-to-order migrations, have made the social fabric of these communities sometimes so complex that they have seen the resurgence of not only certain tensions, thought to be outdated, between philosophical or religious orientations of various kinds, resurrecting the classic divisions of hostility between ‘majority’ and ‘minority’ groups, but also a growing degree of intolerance, or even radicalism, which was also thought to belong to the past. In such a context, where the modern liberal, ‘materialistic’ and ‘hypocritically neutral’ State is often called into question, the balance between, on the one hand, the full enjoyment of such an essential freedom as freedom of religion, conscience and thought, and, on the other, the limits necessary for its harmonious and serene manifestation in a democratic and open society, is particularly delicate to achieve. All freedom is difficult to assume. As Sartre wrote, following Kierkegaard, ‘*c’est dans l’angoisse que l’homme prend conscience de sa liberté*’; and we know Dostoevsky’s famous phrase: ‘Nothing is more attractive to human beings than their freedom of conscience, but nothing is more of a cause of suffering’. It is by being aware of one’s freedom of belief and by assuming it that the holder himself or herself becomes the first actor responsible for regulating its manifestation. States further have a certain margin of appreciation and action in this respect, which is not easy to handle nor to control. As for the role of the judge, whether national, regional or international, it is undoubtedly essential, here as elsewhere, to ensure the effectiveness, in all its complexity, of the rule of law concerned, and its integrity, without which this rule could not fulfil its eminent social purpose. The intervention of the judge constitutes, particularly in the matter at hand, given the difficulty that characterises it, a privileged instrument for the fair and balanced protection of the rights of individuals and communities (including States), while respecting their duties.

Given its major importance in so many respects, freedom of belief has naturally been the subject of numerous studies, using a wide range of approaches and disciplines, including, of course, legal ones. This book is not just another one. Its editors have met the ambitious challenge of bringing together in a single volume a series of contributions of a high scientific level, but accessible to all, which, as self-sufficient but complementary monographs, offer a complete and up-to-date overview of the work of the two major European Courts—the European Court of Human Rights and the Court of Justice of the European Union—each with regard to its own legal system, both in terms of the definition and interpretation of the theoretical components of freedom of religion, conscience and thought, and in terms of the practical applications, individual and collective, to which these components may give rise in the most varied cases of everyday life (wearing of signs and symbols, exercise of worship, performance of rites, observance of special days off, etc.). The editors’ choice of limiting the book to the state of the problem in Europe seems judicious, since it was also a question of attempting to make certain comparisons and to identify certain interactions in a relatively more homogeneous human and cultural space-time.

The reader, whether a lawyer or not, a theoretician or a practitioner, will thus find in this book, which is quite unique from this point of view, precise answers to the many questions he or she may have concerning the general or concrete legal scope of this freedom, its necessary relations with related rights, such as those to private and family life, equal treatment and non-discrimination, education, or non-refoulement, as well as the limits to which its exercise is subordinated in the case law of the two Courts. In the course of the book, the reader will discover the points of convergence, and sometimes divergence, of these jurisprudences, particularly taking into account the institutional architectures in which these Courts exercise their specific functions and the links maintained by the distinct legal orders in which they operate (including the references made by EU instruments to the ECHR and the interferences between freedom of belief and the strictly ‘Community’ freedoms). The book approaches the work of these Courts both analytically and synthetically, in a dynamic and evolutionary perspective, and with a constructive critical spirit. It gives a clear indication, where appropriate, of the hesitations that their judges have sometimes experienced when making decisions, faced as they were with the uncertainty of certain values in rapidly changing societies, as well as the complexity of the subject, which thus remains, in various respects, open ...

This valuable overview of jurisprudence is very usefully completed by a final section concerning the measures, of a different nature, taken by certain organisations such as the ILO, the Council of Europe or the OSCE to promote freedom of religion, conscience and thought, inter-cultural dialogue and tolerance. Of particular interest is the study devoted to the position of the Holy See on religious freedom since the adoption on 7 December 1965, within the framework of the Second Vatican Council, of the famous Declaration *De Libertate Religiosa Dignitatis Humanae*, which constituted a true Copernican revolution within the Catholic Church. Since then, this position has been enriched by reflections in the wake of the Declaration to take full account of the evolution of our societies, as shown, for example, by the important document of the International Theological Commission entitled ‘Religious Freedom for the Good of All. Theological Approaches and contemporary Challenges’, published in April 2019, which contains interesting developments concerning, among other things, religious freedom and evangelisation. This chapter highlights the efforts of the Holy See, through various mechanisms, to strengthen dialogue between religions and with States, thus ensuring peaceful coexistence and constructive cooperation in their mutual relations.

To all those who have chosen to purchase this beautiful book, I wish them a good and fruitful reading!

The Hague, The Netherlands

January 2023

Philippe Couvreur

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