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FREEDOM TO BELONG AND FREEDOM TO LEAVE RELIGIOUS COMMUNITIES ACCORDING TO THE EUROPEAN COURT OF HUMAN RIGHTS CASE LAW

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1. Introduction

Religious diversity has become an increasingly common fact of life as migratory flows take on planet-wide dimensions. Changing religion and the legal consequences of such a change take on a growing importance in multicultural societies, in which those changes are made more possible by increasing contact among people of different faiths. Conversion is also the result of proselytising activities carried out by various religious faiths or groups. Both religious affiliation and changing religion can have legal consequences with respect to State laws.

This social reality requires that thought be given to the issue of managing religious diversity in accordance with the fundamental principles of democratic systems. The aim of this contribution is to reflect on major moments involving religious affiliation. How should religious law and State law interact at these moments? State law should protect religious freedom at any time, but how far should such protection go? It is also necessary to determine how and to what extent the State can impose legitimate limitations on the autonomy of religious communities. To a religious body, autonomy is what religious freedom is to individuals, and it reflects the true essence of the right to religious freedom in its collective dimension.[1] We will take into consideration the European Court of Human Rights' (ECtHR) case law in trying to answer these questions.

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1 "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." (*Metropolitan Church of Bessarabia and Others v Moldova*, n. 45701/99, March 27 2002, §118).

2. Becoming member of a religious community

The first moment comes with incorporation into a specific religious community: the conditions for affiliation are a matter of religious law. Can State law establish any limits? How should State laws protect individual religious freedom at this time? Religious beliefs may be expressed externally through adherence to a religious institution. The European Court supports the need that such adherence should be a free act. Thus it is considered that State Church System does not contravene Article 9 of the Convention if no one may be forced to enter or prohibited from leaving it.[2]

Freedom of incorporation into a specific religion could also be limited where religious proselytising is banned (*Stahnke* 1999, 295.).[3] The ECtHR, however, has made it clear that religious freedom becomes no more than a 'dead letter' if it does not include the right to try to win over one's neighbour to one's own beliefs as long as the means used are lawful. In the case *Kokkinakis v Greece*, the ECtHR sustained that Article 9 includes the right of individuals and of religious groups to spread their doctrine and to win new followers through proselytism, as long as they do not use fraudulent or violent means.[4]

Outside Europe, however, a number of Asian States – for example India, Sri Lanka, Indonesia and Nepal – have enacted anti-apostasy or anti-conversion laws[5]. These are usually said to be laws on religious freedom aimed at preventing forced conversions, but in practice, they have tended to become legislation restricting the freedom of choice in religious matters. In effect, they grant the State the power to

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[2] See *Darby v. Sweden*, n. 11581/85, May 9 1989, § 45: "A State Church system cannot in itself be considered to violate Article 9 of the Convention. In fact, such a system exists in several Contracting States and existed there already when the Convention was drafted and when they became parties to it. However, a State Church system must, in order to satisfy the requirements of Article 9, include specific safeguards for the individual's freedom of religion. In particular no one may be forced to enter, or be prohibited from leaving, a State Church".

[3] The government of Malaysia, in a report to the UN Human Rights Committee, takes the view that the prohibition against proselytising is a measure to prevent the use of coercion against Muslim believers. This prohibition is not an obstacle to the recognition of individuals' right to change religion (UN ESCOR 1990, Capital Provisional Agenda Item 24, Committee on Human Rights, para. 58).

[4] *Kokkinakis v Greece*, § 17. However, the government of Greece succeeded in persuading the ECtHR that restrictions on proselytising can, in theory, be upheld as a way to protect the right to identity and the peaceful enjoyment of religious freedom (M. D. Evans: *Religious Liberty and International Law in Europe*. Cambridge, Cambridge University Press, 2008. 100.). A detailed comment on this decision can be found at Gunn. J. Gunn: Adjudicating Rights of Conscience Under the European Convention on Human Rights. In: J. D. van der Vyver – J. Witte (eds.): *Religious Human Rights in Global Perspective*. The Hague, Martinus Nijhoff, 1996. 305–330.

[5] According to the last U.S Department of State *International Religious Freedom Report*, in 2015 six out of 29 state governments in India had and enforced anti conversion laws: Arunachal Pradesh, Gujarat, Himachal Pradesh, Chhattisgarh, Odisha, and Madhya Pradesh. According to the Evangelical Fellowship of India, a Christian advocacy organization, there were 177 incidents of violence, harassment, or discrimination across the country targeting Christians. Incidents included assaults on missionaries, forced conversions, and attacks on churches, schools, and private property. The report can be accessed at http://pa-public.state.gov/mystatedept/reports/pdfreport_1370.pdf.

decide the legitimacy of conversions and they often hinder abandonment of a given religious faith, which is generally the one to which the State gives preferential treatment on the basis of considerations of public order, social cohesion and national security.[6] In addition to limiting the right to freedom of religious choice, these laws have contributed to rising tension among the various groups in the countries in which they are in force.[7]

In Israel, controversy has been sparked by the refusal of Orthodox Jewish courts to deem valid the conversions performed according to the rites of Reform Judaism. The State of Israel grants a privileged status to such courts, with the result that these

[6] There is no implementing legislation for Arunachal Pradesh's anticonversion law. Gujarat mandates prior permission from the district magistrate for any form of conversion and punishes forced conversions with up to three years' imprisonment and a fine up to 50,000 rupees ($756). Chhattisgarh and Madhya Pradesh prohibit religious conversion by the use of "force," "allurement," or "fraudulent means" and require district authorities be informed of any conversions one month in advance. Violations are subject to fines and other penalties. Himachal Pradesh maintains similar prohibitions against conversion through force, inducement, or fraud and bar individuals from abetting such conversions. In Himachal Pradesh, penalties are up to two years' imprisonment and/or fines of 25,000 rupees ($378). Punishments are harsher for conversions involving minors, Scheduled Tribe or Scheduled Caste members (historically disadvantaged groups also known as Dalits), or, in the case of Odisha, women (U.S. Department of State: *International Religious Freedom Report* 2015).
Current law in the state of Odisha requires under penalty of a fine (1000 rupees) that the priest performing the conversion ceremony indicates to the district magistrate, with 15 days' notice, the date, time and place of the ceremony as well as the name and address of any individual who is going to convert (Odisha Freedom of Religion Rules 1989, para. 7). It also requires district magistrates to maintain a list of religious organizations and individuals engaged in proselytism. The Odisha Freedom of Religion Act was enacted in 1967 by the Rajendra Narayan Singhdeo government to regulate forced or manipulative conversion (the text of the law is available at: http://www.lawsofindia.org/statelaw/2512/TheOrissaFreedomofReligionAct1967.html. It could not be implemented for the next 22 years because of the absence of Rules to support it. In 1989 the Odisha Freedom of Religion Rules were framed (Chang et alt. 2014, 807–808). The first case under the Act was registered in 1993 when a superintendent of police booked 21 pastors in Nowrangpur for breaking the law (B. Parker: *Orissa in the Crossfire*. Morrisville, North Carolina, Lulu Press Inc., 2011. 328.).
There were various cases in which Catholic priests in India have been punished even though the converts in question stated that they had changed religion of their own volition. In 2002 a Court in Raigarh, in the State of Chhattisgarh, sentenced two priests and a nun to prison on charges of induced or fraudulent conversion (L. Dudley Jenkins: Legal Limits on Religious Conversion in India. *Law and Contemporary Problems*, Vol. 71., 2008. 116.). According to the last U.S Department of State *International Religious Freedom Report*, in July 2015 police arrested Reverend Timothy Chaitanya Murmu, a Pentecostal minister in the Village of Manohar in Odisha, and charged him with forced conversions after he baptized 16 members of Scheduled Tribes. According to the indictment, he induced them to embrace Christianity in exchange for money. On October 23, an Ahmedabad di strict magistrate court ordered an inquiry a day after 90 members of Scheduled Castes converted to Buddhism at a program in Dholka town in Gujarat. According to the court, those performing the conversion ceremony had not obtained prior permission from district authorities as required by Gujarati law. More information about other cases can be found in European Centre for Law and Justice 2012 and US Department of States' Religious freedom reports.

[7] U.S. Department of State: *International Religious Freedom Report* 2015.

conversions do not have civil effect, thus raising issues for non-Orthodox Jewish immigrants seeking to acquire Israeli nationality through the Law of Return.

Lastly, it is necessary to consider the extent to which automatic incorporation – according to the criteria of *jus sanguinis*, as in the case of Islam or Judaism – respects the religious freedom of the individual. The Supreme Court of Israel declared back in 1966 that there can be no religious freedom if the citizen does not have the freedom to belong to no religion.[8] In Israel, however, Jews – believers and non-believers alike –must submit to religious courts in the area of marriage and divorce, because civil marriage does not exist. In 2014 the case of Meriam Ibrahim, a citizen of Sudan, led to much discussion. She had been baptised by her mother, who was a Coptic Christian, but her father was Muslim. As a result, the law of her country (*sharia*) viewed her as Muslim and she was sentenced to death for apostasy from Islam, a religion to which she had never considered herself affiliated. Ultimately, as we know, the sentence was not applied and she was granted asylum in the United States[9].

3. Membership status

Religious laws usually determine the rights and the duties of members inside the group. In which sense could this position as a member put some limits on freedom of religion? History has shown cases where belonging to a particular religious body has had a direct influence on the legal status of persons (rights of citizenship). In such circumstances, religious membership has a direct influence on the regulation of numerous legal relations existing under private and public law. This was the case of Italy's colonies in Africa in the early twentieth century. And this is the current situation in Israel, where there is a recognised variety of personal statutes based on religious affiliation. The religious law of the individual governs personal status matters, such marriage and divorce; and, in some cases, also issues of child custody and inheritance. This structure is based on the Ottoman Empire's millet system, which was applied during the 400 years of its rule in the area (1517–1917). Under this system, a dominant State religion (Islam) operated also as a source of law of the State, while the courts of minority religions were granted authority to decide in their religious matters for the members of their own communities. Israel has adopted the millet system with some significant differences.[10] There is a similar situation in India,

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8 N. Lerner: Retos de la protección jurídica de la diversidad religiosa en Israel: In: F. Pérez-Madrid (coord.): *La gestión de la diversidad religiosa en el área del Mediterráneo*. Barcelona, 2011. 178., footnote n. 15.

9 U.S. Department of State: *International Religious Freedom Report* 2014.

10 For example, it has not adopted Judaism as its official religion or source of its laws. Nevertheless, because Israel is a Jewish and democratic state, the Jewish religion has a more dominant status. This can be seen both in the fact that the regulation of the public sphere is sometimes affected by Jewish norms and in the fact that Jewish institutions receive differential treatment in terms of statutory recognition and budget allocations. M. Karayanni: The Separate Nature of the Religious Accommodations for the Palestinian-Arab Minority in Israel. *Northwestern Journal of International Human Rights,* Vol. 5., N. 1., 2007. 55–57.; H. Moodrick-Even Khen: Revisiting the Protection

where "Personal status laws" are applicable only to certain religious communities in matters of marriage, divorce, adoption, and inheritance. The Government grants significant autonomy to personal status law boards in drafting these laws. Law boards are selected by community leaders; there is no formal process and selection varies across communities. Hindu, Christian, Parsi, and Islamic personal status laws are legally recognized and judicially enforceable. These laws, however, do not supersede national and state-level legislative powers or constitutional provisions. If the law boards cannot offer satisfactory solutions, the case is referred to the civil courts.[11]

Such a societal model cannot be considered compatible with the European Convention on Human Rights. In the case *Refah Partisi v Turkey* (July 31, 2001), the European Court pointed out that such a system "would introduce into all legal relationships a distinction between individuals grounded in religion, would categorise everyone according to his religious beliefs and would allow him rights and freedoms not as an individual but according to his allegiance to a religious movement" (§70). There are two main reasons why this is incompatible: firstly, "it would do away with the State's role as the guarantor of individual rights and freedoms and the impartial organiser of the practice of the various beliefs and religions in a democratic society" (§70). Secondly, "such a system would infringe the principle of non-discrimination between individuals as regards their enjoyment of public freedoms, which is one of the fundamental principles of democracy".[12]

Another issue we should examine in relation to membership status concerns dissidence within religious organisations. If the State safeguards religious freedom, is it possible to seek its protection in case of religious dissidence? That is, can the State be requested to safeguard religious freedom within religious communities? According to the ECtHR the individual right to change religion or belief cannot be understood as a right to remain within the religious body, maintaining a heterodox attitude (*Martínez-Torrón* 1986, 427.). The Court has expressly recognised the right of religious faiths to impose uniformity in internal questions. So, they are not obliged to grant "religious freedom" to their members or ministers.[13] Churches and other Faith organisations have the right to set limits to the exercise of religious freedom by their members within the religious organisation itself. This is the basis of their right to sanction or expel members in accordance with the norms of religious law. In all cases, according to European Court case law, the religious freedom of the individual is sufficiently safeguarded by the fact that a person is free to abandon his

of Individual Rights and Community Rights on the Grounds of Religious Belief in Israel. In: F. Pérez-Madrid – M. Gas-Aixendri: *La gobernanza de la diversidad religiosa*. (The Governance of Religious Diversity) Cizur Menor, Thomson Reters Aranzadi, 2013. 219–220.

11 U.S. Department of State: *International Religious Freedom Report* 2015.

12 "A difference in treatment between individuals according to their religion or beliefs cannot be justified under the Convention, and more particularly Article 14 thereof, which prohibits discrimination" (§ 70).

13 *Case X. v Denmark*, n. 7374/76, March 8 1976.

religious community at any time.[14] The case law of the European Court has remained consistent over time on this issue.[15] This represents an example of respect for the autonomy of religious faiths (i.e., religious freedom in its collective dimension).

4. The third and the last moment: departure

Changing religion is not merely the individual and internal act of the person who undertakes it. The exercise of this right reflects the various dimensions of the right of religious freedom, related to the individual, the State and religious institutions. The abandonment of a religious community is an expression of religious freedom but at the same time is an act with religious content. One may wonder what should be the role of State and religious bodies on this issue. As we have already seen, on the one hand, some countries with State religions have put limits on the right to abandon the official religion by prohibiting proselytising and enacting anti-conversion laws. On the other hand, as an external act of religious content, changing one's religion should also be an affair between the individual and the religious Faith.

Article 9 of The European Convention on Human Rights (1950) not only safeguards the formation and changing of religious beliefs internally in the individual (the *forum internum*), it also protects the individual's outward expression of these beliefs, that is, the ability to belong to a given religious organisation and to change this membership. Therefore, religious freedom also covers the external institutional act of leaving a religious organisation (apostasy) and joining another one. The right to hold and change religious beliefs is an absolute right. The State cannot limit its free exercise since it cannot control the thoughts of people (*Doe* 2011, 48; *Martínez-Torrón* 2005, 582).

In fact, the Strasbourg Court has pointed out that the limitations established by article 9.2 of the Convention are applicable only to the external dimension (freedom of manifestation) not to the internal dimension (freedom of choosing one's religion or beliefs).[16] But we can pose the question whether the State should be able to impose limitations on individuals or on faiths with respect to the right to leave a

[14] "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 guarantees their freedom of religion in case they oppose its teachings" (*Case X. v Denmark*, n. 7374/76, n. 1). A similar ruling has subsequently been delivered in the cases *Finska församlingen i Stockholm and Hautaniemi v Sweden*, n. 24019/94, April 11 1996, in which a pastor of the Church of Finland in Stockholm refused to change liturgical books as required by the church authorities. In the case of *Williamson v United Kingdom*, n. 27008/95, May 17 1995, an Anglican minister refused to accept the ordination of women as the doctrine and practice of his church.

[15] Recent cases: *Fernández Martínez v Spain*, n. 56030/07, June 14 2014 § 128; *Miroļubovs and Others v. Latvia*, n. 798705, September 15 2009, § 80 d); H*oly Synod of the Bulgarian Orthodox Church (Metropolitan Inokentyi) and Others v Bulgaria*, n. 412/03 and n. 35677/04, January 22 2009 § 137. There are other previous rulings where the criteria are reaffirmed: *Karlsson v Sweden*, n. 12356/86, September 8 1998; *Spetz and others v Sweden*, n. 20402/92, October 12 1994); *Williamson v United Kingdom*, n. 27008/95, May 17 1995.

[16] See *Kokkinakis v Greece*, n. 14307/88, May 25 1993, §§ 31 and 33.

religious organisation. For example, in order to safeguard the religious freedom of citizens, should religious organisations be required to establish legal channels for leaving? Should they be allowed to have systems that restrict either direct or indirect abandonment of the community? Or should the State be able to reject the registration of a religious organisation that does not permit leaving or puts obstacles to members wishing to leave? In 1987 Spain's Directorate General for Religious Affairs (DGAR) denied registration in the Register of Religious Bodies to the Evangelical Church of the Good Shepherd, because, among other grounds (and this was not the main one), it had a clause that was incompatible with the freedom to change religion (the withdrawal of a member had to be submitted to the General Assembly for authorisation by absolute majority). The Directorate General took the view that such a restriction was incompatible with the constitutional clause on public order.[17] The right to change religion should be one of the powers or faculties of religious manifestation; therefore it should have some limits. In this sense, the law of the State could require such hurdles to be removed if they are considered incompatible with public order.[18]

The European Court in Strasbourg has applied the right to change religious belief in several landmark cases and it prohibits States both from penalising apostasy and from the obstruction of free religious affiliation. Just as religious affiliation to a given faith can have significance under State law, changing that affiliation can also have certain consequences in the same sphere. In some Central European States, the existence of a system of Church taxes has made it necessary to establish a civil procedure for abandoning a Church (*Kirchenaustritt*), leading to a situation in which acts are duplicated, but with differing force before the State and the Church to which the individual belongs. The State has a margin of appreciation when defining the formal requirements that individuals must fulfil in order to declare that they are abandoning their Faith organisation, especially when such membership has certain effects in the civil domain. In the case *Gottesman v Switzerland* the Court found that the position taken by the Swiss authorities was legitimate when they held that two Catholic citizens had not clearly and unequivocally expressed their abandonment of the Catholic Church. These citizens had not declared their affiliation to a specific religion in the municipal registry, and had left the section blank on their income tax

[17] Resolution DGAR of 10 September 1987 which, in point 4, deems that the effectiveness of the right to freely abandon a religious faith can be hindered or even prevented by the real means of external control (of the community) and even internally (if mind-control techniques are employed). Obviously, such cases, which are occasionally mentioned in the media by former members of this or that new religious movement, can be combatted only through police investigation and the *ius puniendi* of the state (A. López Castillo: *La libertad religiosa en el jurisprudencia constitucional*. (Religious Freedom in: Constitutional Case-law) Cizur Menor, Aranzadi, 2002. 60.). The text of the Resolution is published in S. Català Rubio: *El Derecho a la personalidad jurídica de las entidades religiosas.* (The Right to the legal status of religious organizations) Cuenca, Universidad de Castilla-La Mancha, 2004. 370–372.

[18] On the neutrality of the State in the registration of religious bodies, see J. Murdoch: *Protecting the Right to Freedom of Thought, Conscience and Religion under the European Convention on Human Rights.* Strasbourg, Council of Europe, 2012. 55–60.

form where they were supposed to state their religion. The government upheld their obligation to pay the religious tax to the Catholic Church, because, at least in the eyes of the State, they had not yet terminated their membership.[19]

According to the case law of the Court, the right of religious freedom can require the State to establish rules to determine the leaving of a religious body when this has civil effects. Therefore, it can be considered that the European Court has admitted indirectly that when the leaving of a religious organisation has no civil effects, the religious organisation itself should establish the conditions for departure just as it does the conditions for membership, which are acts of a religious nature and the regulation of which falls within the autonomy of religious organisations.

In the case *E & GR v Austria*,[20] the appellants – an Austrian couple who were both Catholic – alleged that the system of religious taxation in force in the country forced citizens into the position of paying the tax or abandoning the Church. The appellants considered it incompatible with religious freedom that the State directly or indirectly compels the performance of an act of religious relevance (the *Kirchenaustritt*) if someone does not want to pay the tax[21]. The Commission held that the obligation to pay the tax is a direct consequence of their freely taken decision to be members of a given religious body.[22] In addition, their religious freedom was protected by their ability to abandon the Church.[23] Accordingly, Article 9 of the Convention does not allow for continued membership in a church and at the same time claiming to be

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19 "The Commission finds […] that for the purposes of Article 9 of the Convention the domestic authorities have a wide discretion to decide on what conditions an individual may validly be regarded as having decided to leave a religious denomination. It accordingly does not consider arbitrary the domestic courts' refusal to recognise a decision to leave a religious denomination unless such decision is unambiguously intimated, where no formality for that purpose is prescribed in cantonal law."

20 *E & GR v Austria* , n. 9781/82, May 14 1984.

21 "They submit, in particular, that the provisions applied to them leave them no other choice than either to pay Church contributions, or else to terminate their Church membership. They consider it incompatible with freedom of religion that the State directly or indirectly compels a person to perform an act of religious relevance, including State assistance to a Church to enforce contributions from its members." (*E & GR v Austria*, n. 9781/82 § 2).

22 "The Commission notes that in Austria the individual's duty to pay contributions to a certain Church does not arise directly under the State's legislation which merely authorises (but does not require) the Churches to prescribe such contributions from their members. The fact that the Churches are in this respect subject to State control does not change the nature of the levy of contributions as an autonomous activity of the Churches. Under Austrian law, the individual's duty to pay these contributions is considered as an obligation of civil law which the Church in question may enforce against the individual by an action in the civil courts. It is thus left to the Church's discretion whether or not it wishes to bring such an action against any particular person." (*E & GR v Austria*, n. 9781/82, § 1).

23 "The applicants are entirely free to practise or not to practise their religion as they please. If they are obliged to pay contributions to the Roman Catholic Church, this is a consequence of their continued membership of this Church in the same way as e.g. the duty to pay contributions to a private association would result from their membership of such association. The obligation can be avoided if they choose to leave the Church, a possibility for which the State legislation has expressly provided." (*E & GR v Austria*, n. 9781/82, § 2).

free of the legal obligations that derive from such membership, including any tax liability.[24]

The German courts do not accept as valid so-called "modified" declarations. These declarations express the individual's desire to leave only the civil religious corporation in order to stop paying the church tax, while at the same time remaining a member of the religious faith. In practice, the State is obliged to perform a religious act of apostasy. By contrast, the intention of the individual is only to stop paying a tax. The Holy See has agreed with these members, taking the view that the wish to stop paying the church tax is not sufficient to renounce membership in the Catholic Church.

In my opinion, when regulating the abandonment of a Faith, the State should limit itself to determining the effects of this action in the civil domain. The principle of neutrality necessitates that the State make no ruling on the religious effects of the action, and it must respect the autonomy of religious bodies: in this case the decision of the Church not to grant religious effects to a declaration of abandonment made to the State. In other words, an act of abandoning a Church carried out before the State should not necessarily be a religious act of apostasy. It is the Church that should establish the channels for leaving the religious institution or renouncing that religious faith. Since 2007, Swiss courts have accepted that the *Kirchenaustritt* has effects only before the State, leaving religious communities to determine the conditions of the act of apostasy.

Applications to apostatise by removing baptism records from Church registers, which are covered by legislation on data protection, have given rise to conflicts in various European countries such as Italy, France and Spain (*Gas Aixendri* 2015a). However, this is not an issue in which there is a conflict involving religious freedom. Rather, it concerns the autonomy of religious faiths in the management of their files and registers and, at a deeper level, a dispute over jurisdiction between the government and Catholic Church bodies. In fact, these conflicts have been a way to voice protest against particular stances taken by the Catholic Church.

In the area of family law, religious affiliation and its modification are important factors in family relations. For example, changing religion can be indirectly relevant in determining the custody of children when a marriage breaks up. A parent's change of religion must be taken into consideration when the profession of a given religion can have an influence on the interests of the dependant minors. If one of the parents changes religious affiliation, it can cause conflicts if this parent tries to educate the children in these new beliefs.[25] The standard under case law is that the children

[24] "By making available this possibility, the State has introduced sufficient safeguards to ensure the individual's freedom of religion. The individual cannot reasonably claim, having regard to the terms of Art. 9 of the Convention, to remain a member of a particular Church and nevertheless be free from the legal obligations, including financial obligations, resulting from this membership according to the autonomous regulations of the Church in question." (*E & GR v Austria*, n. 9781/82, § 2).

[25] A number of decisions at the ECtHR have been issued on this matter. In the case of *M. M. v Bulgaria*, n. 27496/95, September 10 1996, a mother claimed that the national courts had based their granting

should continue with the religious education that they have received since childhood. However, in the case *Hoffmann v Austria*, the ECtHR acted inconsistently by reversing this line of rulings. The ECtHR held that awarding custody of the children to the father had discriminated against the mother, because the decision was based on the mother's newly adopted religion (she had become a Jehovah's Witness).[26]

In legal relations defined by religious membership, a change of affiliation will have inescapable effects before the law of the State. In the workplace, this occurs in companies or non-profit organisations (a media company, hospital or school, for example) that may be described as having a religious character. Changing religion will also be a determinant factor in paid and voluntary activities performed in the service of religious faiths. In these cases, the termination of an employment relation could be justified and will not constitute discriminatory treatment on religious grounds where there is a genuine occupational requirement to share the religion of the employer.

Lastly, the European human rights system safeguards the religious freedom of individuals who have decided to change religion by recognising the right of asylum. Individuals who are persecuted in their countries of origin can seek asylum in countries that have signed the Convention. In the case *M. B. and others v Turkey,*[27] the European Court found that the Turkish government had violated the Convention when it denied asylum to several Iranian citizens who had converted to Christianity and then been sentenced for the crime of apostasy from Islam.

5. Conclusion

Recognition of the right to belong to a religious faith and to change religion appears as an essential aspect of the complete safeguarding of religious freedom, which is one

of her child's custody on the fact that she had converted to a non-traditional religious group (the Warriors of Christ). She argued that Article 9 of the European Convention had been violated because the ruling had coerced her to change her religious belief if she wished to have any chance to gain custody of her child. In the ruling in the case *Palau-Martínez v France*, n. 64927, December 16 2003, the ECtHR found that the freedom of belief is violated when a decision on the care and custody of children uses the parents' religious beliefs as the sole or principle criterion. Along the same lines, the ruling in the case *Gineitiené v Lithuania*, July 27 2010, found that the decision on child custody had not been based on the religion of the mother (a convert to the Osho group a year prior to divorce), but on the best interests of the child (the minor's stated wishes to live with the father and the better living conditions offered by him). That religion is not the determining criterion in the awarding of care and custody does not exclude the consideration of any negative impact of a given religion on minors. Potential harm to child's physical and mental well-being and to the free development of his or her personality are factors that can have an influence on awarding of care and custody, provided that a causal link may be shown between the religious beliefs of one of the parents and the existence of harm to the minor [M. Gas-Aixendri: The Religious Factor in Family Conflicts. In: M. Gas-Aixendri – R. Cavallotti (eds.): *Family and Sustainable Development*. Cizur Menor, Thomson Reuters Aranzadi, 2015. 333–334.].

[26] *Hoffmann v Austria*, n. 12875/87, June 23 1993, § 33.

[27] *M. B. and Others v Turkey*, Application no. 36009/08, June 15 2010.

of the foundations of a peaceful society. The secular nature of the state represents a prerequisite to fully safeguarding the freedom of choice in religious matters. According to the international human rights legal system, the function of the secular State should be to safeguard equal treatment for all citizens, ensuring that neither religious affiliation nor a change of such affiliation results in discrimination.

The European human rights system protects this right adequately, but States should review whether in practice their religious freedom laws properly recognise the right of individuals, and at the same time respect the legitimate autonomy of religious communities. The full recognition of the right to change religion is a necessary step on the road to achieving a better management of religious diversity in the multifaith societies that characterise Western countries.

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