

Summary of doctoral thesis

Protection of Freedom of Religion Within the European Convention on Human Rights System. Critical Analysis.

This work concerns freedom of religion in the system of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR, Convention). The basic research problem is the scope and specificity of the protection of religious freedom within the standard expressed in Article 9 ECHR. The shape and scope of the human rights standard is influenced mostly by the wording of the legal provision but only through the interpretation of the provision made by the judiciary authorities the content and scope of the examined standard can be determined more precisely. However, the mere interpretation of the provisions of the Convention may be insufficient. Thus, in order to establish the shape of the standard it is necessary to interpret the case-law of the Commission and the Court. For this reason, the main purpose of this work is to critically analyze and evaluate the content of the provision of Article 9 of the Convention as well as the jurisprudence of the Strasbourg authorities, taking into account the broader context of values and protected goods within the framework of religious freedom. Analysis of the content of Article 9, ECHR case-law, as well as the literature on this subject, gave rise to a critical assessment of not only the contemporary position of religious freedom in Europe, but also the very way of drafting Article 9 of the Convention and the corresponding case-law. The author of this thesis shares opinions pointing at the theoretical weaknesses of the standard itself. The dissertation puts forward a thesis about a narrow and insufficient scope of protection of freedom of religion in the ECHR system.

The author utilized traditional methods used in legal sciences, with the dogmatic method at the forefront. To a significant extent, he also used the legal-comparative, theoretical-legal and historical-legal method.

From a formal point of view, the work is divided into six chapters. The first three chapters are devoted to the analysis of religious freedom in theoretical-legal terms and an attempt to establish a standard of religious freedom within the meaning of Article 9 of the Convention. The three subsequent ones are used for practical verification of the critical theses already advanced, regarding the narrow scope of religious freedom in the Convention system: In the fourth chapter - *forum internum* (perspective of internal autonomy, freedom of thought, conscience and religion) of the freedom of religion, chapter

five - *forum externum* of the standard (manifestation of religion or beliefs), chapter six - parents' rights to bring up children in accordance with their own convictions (Article 2 of Protocol No. 1 to the Convention), as a complement to the norm protecting religious freedom in the Convention system.

The first chapter, through theoretical legal analysis of the studied phenomenon, attempts to find non-legal causes of the weakness of the discussed standard. In the first place, the thesis of a specific "incompatibility" of religion to the framework of the contemporary system of European states, determined to a large extent by human rights and the doctrine of liberalism, was verified.

In the second chapter of the dissertation, the normative position of religious freedom in the ECHR system was analyzed. Analyzing the individual components of the standard, one can state structural weaknesses of this standard, which make it difficult to determine the final scope of the discussed law in a significant way. Unfortunately, the case law of conventional bodies and doctrine are of no substantial help in this matter. The analysis of case law allows to conclude that over a period of over sixty years a coherent doctrine of interpretation of the standard has not been developed - and the methods used by the Strasbourg authorities often lead to contradictory conclusions. Conventional organs also used to avoid any deeper justification of judgments, which resulted in the doctrine of the margin of appreciation being extremely successful in matters affecting the spheres of religion.

The third chapter is a continuation of the above reflection, as it concerns the Second Paragraph of Article 9 ECHR, containing a limitation clause. The construction of the chapter corresponds to the test used to verify the restrictions on the exercise of religious freedom applied by the state: it must be provided for by law, must be necessary in a democratic society and must serve one of the legitimate aims indicated in Article 9 of the Convention. As part of the third chapter, a detailed analysis of the doctrine of the margin of appreciation was considered, due to its significant importance for the abovementioned test by the Strasbourg authorities.

The fourth chapter is devoted to the right to conscientious objection in the context of the principle of equality and non-discrimination. It is a critical reflection on the way convention bodies deal with matters concerning conscientious objection. The conducted analysis serves to verify the thesis of a narrow scope of protection of religious freedom within the meaning of Article 9 of the Convention in its internal aspect (*forum internum*). Reflection on this subject has been made in the context of the principle of equality and non-discrimination, which makes it possible to emphasize two additional theses - firstly, the lack of a guarantee of the possibility to express conscientious objection against the universally binding law can be treated as indirect discrimination. Secondly, in a situation of conflict of freedom of conscience with the principle of equality and non-discrimination, freedom of conscience is

essentially *a priori* treated as a hierarchically lower law, although it possesses the same status of a fundamental human right.

The fifth chapter contains an analysis of the presence of religious symbols in public sphere - as one of the most controversial forms of religious freedom manifestation (*forum externum*). This reflection was carried out in the context of the principle of the neutrality of the state, which is nowadays a key principle governing the relations between the state and the sphere of religion and beliefs. This, in turn, allows to check the legitimacy of the thesis about the equation of the principle of neutrality by a significant part of European countries with the principle of secularism.

The last chapter deals with the problem of parents' right to bring up children in accordance with their own convictions within the meaning of Article 2 of Protocol No. 1 to the Convention. Both in the text of Article 2 of Protocol No. 1 to the Convention and during its interpretation by the ECHR over the years, it was necessary to balance the child's right to receive education, the right of parents to choose what - and in what way - their children are to be taught and to take into account the state's competence to shape a coherent education system. Some framework for resolving potential conflicts on this background was to provide the principle of neutrality of the state. However, also in this case, determining the scope of the meaning of the principle of neutrality was a significant challenge for the European Court of Human Rights. The clash of religious freedom with the principle of neutrality in the field of education shows the difficulties with an unambiguous evaluation of the ideological commitment of teaching programs (including ethics/religion, sexual education), home education or corporal punishment.

Within concluding remarks, the basic assumption of a narrow and insufficient scope of protection of religious freedom in the ECHR system was confirmed.