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In this lecture I will discuss the topic of International Agreements on Religious Freedom and their Implementation in Europe. There are two main treaties that safeguard freedom of conscience and religion: the European Convention on Human Rights, Article 9, and the International Covenant on Civil and Political Rights, Article 18. Both have the same historical base, Article 18 of the Universal Declaration. Their legal scope is more or less the same, so we will concentrate only on one of them, Article 9 of the European Convention, specifically because of the interesting case law of the European Commission and the European Court of Human Rights concerning the meaning of this article.

The first section Article 9 of the Convention reads as follows:

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in worship, teaching, practice and observance.

I will discuss first the right to freedom of thought and conscience, then the right to manifest religion or belief. Then, I will move on to the second section, the limitation clause of this freedom to manifest one's religion or belief, and finally I will make some concluding remarks.

The right to freedom of thought and conscience, according to my point of view, only protects the inviolability of the forum internum, the inner world, the inner mind. Restrictions of freedom are possible only with respect to the external expressions of thought, conscience, and religion. So, the inner mind, the inner sphere, the freedom of thought and conscience, is absolute. This absolute freedom to entertain any thoughts, moral convictions, or religious conscience is not entirely, without practical importance. It is true that thoughts and views, as long as they have not

been expressed, are intangible, and that convictions are really valuable for the person concerned only if he can express them. Merely the freedom to think what one wants is not of much practical use if one has not also the possibility to express them, and to exchange these values and these thoughts.

Nevertheless, this guarantee is not entirely useless, in that it also guarantees that one cannot be subjected to a treatment intended to change the process of thinking-brainwashing and so on. It forbids any form of compulsion to express thoughts, to change an opinion or to divulge a religious conviction. It also means that no sanction may be imposed, either on the holding of any view whatever, or on the change of religion or conviction. It protects against indoctrination by the state.

The freedom to act, the freedom to express one's thoughts, to express one's conscience, to express one's religion is only guaranteed by Article 9, in as far as it may regarded as an objective, direct manifestation of this religion or belief. What does this imply? It implies that the freedom to act according to one's subjective opinions, conscience, thoughts or moral feelings is, as such, not protected by Article 9. I think it should be ruled out on logical grounds that it could be guaranteed by such a general provision as Article 9. While every type of action may have a conscientious or religious motive as its motivational base, every legal obligation may function as a restriction of the external freedom of conscience—the right to act according to conscience. It is clear that such freedom cannot be unlimited. It is logically impossible. The "boundlessness" of conscience excludes that the limitations of the freedom of conscience and thought are laid down in a general, strictly formulated restriction clause. Other human rights, such as the freedom of speech, the freedom to perform religious acts, etc., are concerned with certain specifiable areas of actions. They are connected with social institutions, and they have to do with foreseeable patterns of behavior. This makes it possible to define their restriction clauses in general terms. Since the external freedom of (subjective) conscience lacks such an identifiable object, it is not possible to frame a satisfactory and workable provision containing the necessary restriction clause. Therefore, on logical grounds, it must be assumed that Article 9 cannot be held to guarantee the external freedom of (subjective) conscience, but only the internal freedom of conscience, the forum internum.

My next point has to do with the second part in this article, the freedom to manifest one's religion or belief. Article 9 of the Convention protects the freedom to manifest one's religion or belief. It does not refer to the freedom of expression in general, which is protected in Article 10. Nevertheless, the European Commission, one of the international organizations that judges appeals on Article 9, appears to be prepared to put a broad interpretation on the word "religion" or "belief." It does not only cover the traditional religions and non-religious beliefs, but also all kinds of other minority views. For instance pacifism, and probably communism, is regarded as a belief falling within the meaning of Article 9. Even veganism, strict vegetarianism, may fall within

the scope of this article.

This does not mean, however, that every individual opinion or preference is a religion or belief. The concept of religion or belief is more akin to the concept of religious and philosophical convictions that appear in Article 2 of the First Protocol of this Convention. For instance, the preference for a certain language is not a belief in the sense of Article 9, and the magic wishes of a Wicca practitioner were rightly rejected because the applicant failed to specify the content or the distinctness of a Wicca religion. The same reasoning was followed with regards to the complaint of a “Lichtambeter” some kind of sun worshipper. In a more harsh case concerning a soldier who had stated at a private party that the Holocaust was a lie of the Zionists, the commission rightly concluded that these remarks did not reflect a belief within the meaning of Article 9 of the Convention.

So much for my first remarks concerning the meaning of religion or belief. My second point will have to do with what the term “manifestation” means. What does it cover, and what does it not cover? With regard to the terms “manifest,” and “practicing of religion,” the commission has followed a restrictive interpretation. This was explicitly formulated for the first time in the Pat Arrowsmith case. Miss Arrowsmith had claimed that she was entitled to distribute leaflets to troops in a British Army camp, in which she advocated a view that they should not serve in Northern Ireland. She argued that Article 9 gave her the right to express her pacifist belief in this practice. The commission, however, argued that the strictly subjective criterion would not do. In their judgment they held that “The term ‘practice,’ as employed in Article 9.1, does not cover each act which is motivated or influenced by a religion or belief.” The commission applied an objective standard, “When the actions of individuals do not actually express the belief concerned, they cannot be considered as such protected by Article 9, even when they are motivated by it.”

This line of argument has been consistently followed in later decisions. The terms “manifestation” and “practice” do not cover each act which is motivated by a religion or belief. Actions that do not actually express a belief cannot be considered to be protected by Article 9. For instance, the commission decided that the wish to be buried in a certain place does not fall within the scope of Article 9, because it is not a manifestation of any belief in the sense that some coherent view on fundamental problems can be seen as being expressed thereby. A choice of a particular doctor does not in itself express a belief. Some cases like these were dismissed because the commission said that, from an objective point of view—the point of view of an outsider—they could not be recognized as involving a religion.

This restrictive interpretation says, in effect, that only that which has a similarity to religious acts

of the main known religions, counts as a religion. It may be that this restrictive interpretation is, in general, unavoidable. A legal system consisting of general, binding rules cannot afford to leave the answer to the question of whether a person manifests his religion or belief, and can appeal to Article 9 to the subjective convictions of this person. It should answer this question itself based on objective criteria, primarily related not to the subjective sight, but to the outward appearance of the expression.

As noted earlier in this conference, this holds danger for less known minorities, who are not linked up with one of the world religions or ideologies. The risk is that the behavior of these minorities will only be considered the expression of a belief when a sufficient resemblance can be found with the known patterns of familiar spiritual movements. I think this problem may be mitigated by sometimes giving an applicant of a minority group, who claims that a certain type of behavior is an expression of his religion or belief, the benefit of the doubt.

The freedom to manifest one’s religion or belief does not, in general, imply the right to be exempted from criticism or ridicule by others; such criticism and ridicule cannot generally be regarded as an interference with this freedom. Only in extreme cases, where the effect of particular methods of opposing or denying religious, or other beliefs, can be such as to inhibit those who hold these beliefs from exercising their freedom to hold and express them, may the state be obliged to repress certain forms of conduct in order to guarantee the right in the Article 9 to the holders of these beliefs.

In the case of the Otto Preminger Institute vs. Austria, the European Human Rights Court unfortunately held otherwise. The court ruled that the right to respect for the religious feelings of believers, as guaranteed by Article 9, could legitimately be thought to have been violated by Das Liebeskonzil (Council in Heaven), a film considered blasphemous in the eyes of the Roman Catholic majority. For this reason, it decided that the seizure of the film was justified under Article 10, Section 2, the clause restricting freedom of expression. This was justified as a necessary protection of the right of this majority to freedom of religion. I submit that this decision is wrong.

I will move on to the third issue that I want to address: the issue of the meaning of the restriction clause. The freedom to manifest one’s beliefs, religious or otherwise, can only be restricted through such limitations as are prescribed by law. Furthermore such limitations must be necessary in a democratic society in the interest of public safety, the protection of public health or morals, and for the protection of the rights or freedom of others. The essence of the test by the international judges is always whether this restriction necessary. Is it proportional to one of these goals, as mentioned in Article 9, Section 2? Therefore, it is a test of proportionality.

In three recent cases, the European Court of Human Rights has concluded that, according to its proportionality test, Greece had violated Article 9. In the Kokkinakis case, already mentioned before, the court decided that the conviction of a Jehovah's Witness for proselytization was not in conformity with article 9 because it was not shown that the applicant's conviction was justified in the circumstances of the case by a pressing social need (the protection of the rights and freedoms of others). The Greek court had established his liability by merely reproducing the relevant section of the law without specifying in what way he had attempted to convince his neighbor by improper means. Therefore, the measure taken did not appear to be proportionate to the aim of the protection of the rights and freedoms of others. The European Court ruled likewise in its later judgment in Larissis vs. Greece.

In another judgement, the Manoussakis case, the Court had to rule on the proportionality of a conviction against the Jehovah's Witnesses, for having set up and operated a place of worship without authorization of the minister of education and religious affairs. According to the Court, the right to freedom of religion excludes any discretion on the part of the state to determine whether religious belief or the means used to express such beliefs are legitimate. The authorization requirement was consistent with Article 9, only in so far as it was intended to allow the minister to verify whether formal conditions laid down in the relevant enactment were satisfied. The Court observed that the state tended to use this requirement to impose rigid or, indeed, prohibitive conditions on practice of religious beliefs by certain non-orthodox movements.

Finally, I would like to mention a few upcoming cases that will be of immense importance and which probably will, in time, be discussed and decided by the European Court. One is the problem in Turkey. At the moment, we have something like an underground civil war going on between fundamentalist Muslims and the secular state, backed by the army. There are now a lot of cases coming to the court, which concern Muslim fundamentalists who hold positions within the state, for instance, the judiciary or military. The question is to what extent is the secular state allowed to dismiss these Muslims from their positions. Is this not a kind of limitation of freedom of religion?

An even more important issue that what will be dealt with in the coming years involves the so-called lists of major religions and "sects." It has already been remarked that in several European countries, as well as in Russia, the state has enacted lists in which there is a top category of preferred churches, a middle category, and, at the lowest level, the sects which, in effect, are not legal. I presume that in time many of these regulations, especially those in Austria and Russia, will be found incompatible with the freedom of religion in conjunction with the principle of equality.

There is already one precedent for this kind of reasoning: the judgment of the European Court of December 1997 in the Catholic Church vs. Greece. In this judgment, the court ruled that the provisions that withheld legal personality from the Catholic Church were regarded as being inconsistent with the equality principle, because the Greek Orthodox Church was awarded legal personality without having to go through the same procedure as the Catholic Church. These provisions were thus found inconsistent with the European Convention. If we extend this reasoning to lists systems such as those in Austria and Russia, I think that in time the Court will find them inconsistent with the European Convention.