The state's duty of neutrality and freedom of religious association

Case law of the European Court of Human Rights

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Abstract

This article begins by examining the European Court of Human Rights' judgement in a case originating from Moldova, where a particular denomination in the Orthodox tradition was denied government recognition. The decision is compared with other Court decisions as well as several declarations and international treaties on the matter. The article concludes that the state's duty of neutrality is incompatible with any role in assessing the legitimacy of religious convictions or their forms of manifestation. Moreover, mere government tolerance of a religious group cannot be considered an adequate substitute for official recognition. Therefore, refusal to recognise the legal personality of a religious community is a severe constraint on its ability to practise its faith, as secured by Article 9 of the European Convention on Human Rights.

Keywords religious freedom, duty of neutrality, Moldova Orthodox Church, religious organisation, freedom of association, European Court of Human Rights, Metropolitan Church of Bessarabia.

1. Summary of the case

The Metropolitan Church of Bessarabia is an autonomous Orthodox Church that functions under the authority of the Patriarchate of Bucharest (the Romanian Orthodox Church). To obtain official recognition in Moldova, in October 1992 it applied for registration in compliance with local law (the Religious Denominations Act, Law 979-XII of 24 March 1992), which requires that religious entities active in the country be recognised by government decision. However, no response to this request was received.

In 1995, following several reiterations of the request, the country's Religious Affairs Department denied the request for registration. In response, the Metropolitan

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Church of Bessarabia filed a lawsuit seeking to overturn the administrative decision. The local court upheld the request, ordering the recognition of the church.

The public prosecutor appealed to the Supreme Court of Justice, which reversed the local court decision, on the grounds that the courts have no jurisdiction to consider an applicant church's application for recognition.

Subsequently, the Metropolitan Church of Bessarabia resubmitted its administrative application for registration, receiving another rejection and once again appealing to the court. In the Court of Appeal, the government alleged that the case concerned an ecclesiastical conflict within the Orthodox Church in Moldova (the Metropolitan Church of Moldova), which could only be resolved between the Romanian and Russian Orthodox Churches. It was further argued that any recognition of the Metropolitan Church of Bessarabia would provoke conflicts in the Orthodox community.

However, the Court of Appeal dismissed these allegations and upheld the church's appeal on the grounds that paragraphs 1 and 2 of Article 31 of the Moldovan Constitution guarantee freedom of conscience, and that this freedom must be exercised with a spirit of tolerance and respect for all religious entities. Besides, the court noted that the different religions are free to organise themselves according to their own statutes, as long as they do not contravene the country's laws.

The government then appealed to the Supreme Court, which decided to set aside the judgement of the Court of Appeal, declaring that the church's appeal had been untimely. The Supreme Court further affirmed that, in any event, the refusal of the church's request did not violate its religious freedom; since the faithful could freely manifest their beliefs and gain access to the churches, no obstacle was posed to the practice of their religion.

Finally, the Supreme Court held that the case was simply an administrative dispute within a single church, which could be resolved only by the Moldovan Metropolitan Church, as any state intrusion into the matter could aggravate the situation. It also affirmed that the state's refusal to intervene in this conflict was compatible with Article 9(2) of the European Convention on Human Rights (ECHR).

In March 1999, the Metropolitan Church of Bessarabia again applied to the government for recognition. The Prime Minister refused the request on the grounds that the applicant church was not a religious denomination in the legal sense but merely a schismatic group within the Moldovan Metropolitan Church. The recognition of the applicant church, therefore, would represent state interference in the Metropolitan Church of Moldova and would thereby further aggravate the delicate situation of the church.

From the Metropolitan Church of Bessarabia's perspective, the claim that the denial of registration reflected no imposition on religious freedom was patently

false. On the contrary, various incidents across the country had infringed upon their free expression of their beliefs, including the arrest of some members and the destruction of their property. Accordingly, the Metropolitan Church of Bessarabia and twelve individual Moldovan believers filed a complaint with the European Court of Human Rights (ECtHR). They alleged that the Moldovan authorities' refusal to recognise the Metropolitan Church of Bessarabia violated their right to religious freedom and association, given that only religious denominations recognised by the government could function legally in Moldova.

The complainants further stated that the freedom to collectively manifest their religion was thwarted by the fact that they were prohibited from congregating for religious purposes, and also by the total absence of judicial protection of their assets.

In its defence, the Moldovan government argued that the applicant church, as a part of the Orthodox Church, was not a new denomination, since Orthodox Christianity was recognised in Moldova in February 1993, at the same time as the Moldovan Metropolitan Church. In the government's view, there was absolutely no religious difference between the applicant church and the Moldovan Metropolitan Church.

The government affirmed that the creation of the applicant church was, in fact, an attempt to create a new administrative body within the Metropolitan Church of Moldova and that the state could not intrude in an internal church conflict without violating its duty of neutrality in religious matters.

The government also noted that this seemingly administrative conflict concealed a political conflict between Romania and Russia. Accordingly, intervening and recognising the applicant church – which some view as a schismatic group – could have detrimental consequences for the independence and territorial integrity of the young Republic of Moldova.[2]

The ECtHR ruled unanimously that Article 9 of the ECHR had been violated. It observed that although state interference was prescribed by law for pursuit of a legitimate objective – namely the protection of order and public security – such interference was not proportionate and did not correspond to a pressing social need.

The ECtHR further noted that it is incompatible with the state's duty of neutrality to assess the legitimacy of religious beliefs. It would be up to the state, in such

[2] The Soviet Socialist Republic of Moldova had just declared its independence from the Soviet Union in 1991, during the process of dissolution of the USSR. For further discussion of historical, ethnic, religious and geopolitical issues in Moldova, see Lucian Turcescu and Lavinia Stan, 'Church-State Conflict in Moldova: the Bessarabian Metropolitanate', *Communist and Post-Communist Studies* 36, no. 4 (December 2003): 443-465.

cases, to ensure that conflicting groups tolerated each other, even if they came from the same organisation.

2. The state's duty of neutrality

In my opinion, the ECtHR has ruled properly, since the Moldovan government, by denying the registration of the applicant church on the basis that it was only a schismatic group within the Orthodox Church, failed to observe its duty of neutrality.

In a secular state such as Moldova, the refusal to recognise a particular religious confession and the requirement that it instead meet under unified leadership, against its aspirations, undoubtedly constitutes arbitrary interference with the religious freedom of its members.[3]

Although the government has the power to regulate the various religions in its territory – and although it may even impose certain restrictions on the exercise of religious freedom, as we shall see below – it must remain neutral concerning the *merit* of religious beliefs.

In other words, the right to freedom of religion, as guaranteed under the ECHR, removes from the state any discretionary power to define whether particular religious beliefs are correct. As the ECtHR appropriately emphasised in *Lautsi v. Italy*, the state's duty of neutrality is incompatible with any action that serves to assess the legitimacy of religious convictions and their forms of manifestation.[4] Otherwise, the government could function as an arbiter of religious dogmas.

In the case at hand, when the registration was refused, the local authorities made a value judgement about the merit of the religious doctrine itself, when in fact they should have been focusing only on analysing the fulfilment of the legal requirements.

In a similar judgement that concerned the state's duty of neutrality regarding the administrative registration of religious communities, the ECtHR stated that in democratic societies the state should not require that divided religious entities all be submitted to the direction of the same oversight body.[5]

Therefore, the role of the authorities in these circumstances is not to eliminate the cause of tension by suppressing religious pluralism. The state must, in all its spheres, take measures that promote tolerance, peaceful coexistence and effective respect among the various religious organisations.

In this sense, the Declaration of Principles on Tolerance[6] states, "Tolerance at the State level requires just and impartial legislation, law enforcement and judicial

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3 *Hasan and Chaush v. Bulgaria,* ECtHR, App. No. 30.985/96, § 78.

4 *Lautsi v. Italy,* ECtHR, App. No. 30.814/06, § 47.

5 *Hasan and Chaush v. Bulgaria,* § 78.

6 Approved by the UNESCO General Conference at its 28th meeting, 16 November 1995.

and administrative process" (Article 2.1). In the present case, both the Moldovan executive branch and its judiciary failed to respect religious diversity by denying the registration of the Metropolitan Church of Bessarabia.[7]

The acceptance of different religious beliefs is not just a relevant principle or an ethical duty but a political and legal necessity, indispensable for the consolidation of peace and the economic and social progress of all peoples.[8] Indeed, the harmonious interaction between people and groups with varying identities is essential to achieve social cohesion.[9]

One crucial foundation of religious freedom is the guarantee that people can follow their religion, even if it is different from predominant or prevailing practices. It is precisely the accommodation of minority beliefs that distinguishes a democracy from a totalitarian state.[10]

To effectively respect pluriconfessionality, the state shall not determine what does or does not constitute a religion or belief, as the ECtHR noted in another significant judgement on the subject.[11]

It should be noted that the right to religious freedom protects only the sincere practices of religion. Any religious manifestation being protected under the cloak of religious freedom must correspond to a sincere feeling. In other words, the beliefs for which one seeks protection must be honestly held. Although this is a delicate matter,[12] the court is responsible for ensuring that the stated belief is held in good faith and does not serve as a device to enable non-compliance with the law.[13]

Moreover, for a given personal or collective conviction to avail itself of the right to freedom of thought, conscience and religion as guaranteed by the ECHR, it must achieve a certain level of seriousness, cogency, cohesion and importance.[14] Pro-

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7 This duty also derives from the provisions of Article 22 of the Charter of Fundamental Rights of the European Union (CFREU).

8 See the preamble and paragraph 1 of the Declaration of Principles on Tolerance.

9 *Moscow Branch of the Salvation Army v. Russia,* ECtHR, App. No. 72.881/01, § 61.

10 Roger Trigg, *Equality, Freedom, and Religion* (Oxford: Oxford University Press, 2012), 146.

11 *Moscow Branch of the Salvation Army v. Russia,* §§ 57-58.

12 On the difficulties involved in assessing sincerity and the possibility of discrimination against minority beliefs, see Jónatas Eduardo Mendes Machado, *Liberdade religiosa numa comunidade constitucional inclusiva: dos direitos da verdade aos direitos dos cidadãos* (Coimbra: Coimbra Editora, 1996), 215.

13 As the Canadian Supreme Court has ruled, the assessment of the sincerity of a belief is a matter of fact that can be based on such criteria as the credibility of the statement and the consistency of the alleged belief with other religious practices. See *Syndicat Northcrest v. Amselem,* 2004 SCC 47, [2004] 2 SCR 577.

14 In New Zealand, the Church of the Flying Spaghetti Monster, or Pastafarianism, is officially recognized as religion. See *In New Zealand, the Church of the Flying Spaghetti Monster is an approved religion now. Here's its first wedding.* Available at: https://wapo.st/3lRLSs7. In my opinion, however, the claim for official recognition should have been rejected, given the entity's clearly satirical origin.

vided that these conditions are met, the state's duty of neutrality is incompatible with any assessment of the legitimacy of particular religious beliefs or how they are expressed.[15]

Similarly, it follows from the protection granted by ECHR Article 9[16] that the state is prohibited from interfering with the doctrines professed by religious groups.[17] Religious convictions are essentially personal and subjective. Thus, it is not a state responsibility, lest the state breaches its duty of neutrality, to impose, directly or indirectly, its interpretation or judgement on the doctrinal precepts adopted, even if they are contrary to a dominant understanding. Indeed, a commitment to neutrality renders the state incompetent to make any statements concerning the truth or falsity of religious tenets or dogmas.[18]

This conclusion stems from the principle of separation of religious confessions from the state, which, among other objectives, aims to "protect the majority and minority religious confessions from State interference in their reserve of self-definition, self-determination and self-organisation."[19]

A secular state, therefore, is prevented from passing judgement on the theological understandings adopted by a religious institution, or from branding them as heretical or in disagreement with the canons of a traditional religion.

Otherwise, we would be regressing to the age of the Inquisition, when states placed unacceptable controls on ecclesiastical interpretations and suppressed understandings that differed from those established by the dominant church. The right to religious freedom, which is so necessary for the preservation of human dignity, would be undermined by the return of an inquisitorial State. This issue becomes even more sensitive – and therefore deserves greater attention – when religious minorities are involved, as they are particularly vulnerable to state abuse.[20]

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[15] *Eweida and others v. United Kingdom,* ECtHR, App. No. 48.420/10, 59.842/10, 51.671/10 and 36.516/10, § 81; *Manoussakis and others v. Greece,* ECtHR, App. No. 18.748/91, § 47.

[16] The right provided in Article 9 of the ECHR corresponds to Article 10 of the Charter of Fundamental Rights of the European Union, including its scope and meaning, as expressly provided for in Article 52(3) of the Charter.

[17] Of course, this does not include demonstrations that include propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, as stipulated by Article 20 of the International Covenant on Civil and Political Rights.

[18] Javier Martínez-Torrón, 'Freedom of Religion in the European Convention on Human Rights under the Influence of Different European Traditions', in *Universal Rights in a World of Diversity: The Case of Religious Freedom,* (Pontifical Academy of Social Sciences, 2012): 334. In the same vein, the Supreme Court of United States has stated, "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." *United States v. Ballard,* 322 U.S. 78 (1944) (quoting Watson v. Jones, 80 U.S. (13 Wall.) 679, 728 (1872).

[19] Jonatas E. M. Machado, 'A liberdade religiosa na perspectiva dos direitos fundamentais', *Revista Portuguesa de Ciência das Religiões* 1 (2002): 151.

[20] The International Covenant on Civil and Political Rights contains a special guarantee to religious mi-

For this reason, a public agency cannot deny the registration of a religious organisation based on a misunderstanding of its teachings, even under the justification of verifying the congruence and verisimilitude of the professed doctrine.

Accordingly, respect for the principle of secularism – from which the principles of state neutrality, self-determination and doctrinal self-understanding of religious confessions arise – it is not lawful for the state to engage in substantive considerations of any group's proclaimed religious teachings, or to deem it incompatible with or in disagreement with conventional understandings that are treated as the only legitimate and acceptable ones. For instance, the rejection of an application for registration by a minority religious confession, on the grounds that it is not possible to claim to be Christian and also profess the existence of reincarnation, constitutes a flagrant violation of the principle of state neutrality, as well as an offence against freedom of self-understanding and doctrinal and institutional self-definition.[21]

In fact, by inspecting the canonicity of interpretations given by religious confessions, even if they are contrary to a majority understanding, the state doubtless violates its duty of neutrality. After all, any form of coercion, as would be implied by an effort to determine the orthodoxy of the professed doctrine of faith, is the death of religious freedom.[22] Furthermore, as pointed out by Professor Jónatas Machado, the "truth" of a religious doctrine is irrelevant, from a constitutional law perspective.[23]

Consequently, the state cannot fail to safeguard a particular religious confession or deny its recognition by considering it theologically incorrect, false or unacceptable.[24] In fact, the right to define and interpret one's doctrine principles is unquestionably within the sphere of religious faith. This is a fundamental element of religious conviction. It constitutes a true *absolute domain of religious confession*, functioning as a norm that limits the competencies of the state.[25]

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norities against State interference: "Article 27: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities *shall not be denied the right,* in community with the other members of their group, to enjoy their own culture, *to profess and practise their own religion,* or to use their own language" (emphasis added).

[21] Even though Portuguese legislation expressly affirms that the state "does not comment on religious issues" (Article 4, paragraph 1 of the Religious Freedom Law), the Portuguese National Registry of Collective Persons (RNPC) denied recognition of the religious denomination called Beneficent Spiritist Center União do Vegetal, under the argument that the reincarnationist doctrine adopted by this religious confession "is absolutely contrary to Christian tradition." Opinion No. 16/2012, adopted by the Committee on Religious Freedom, in plenary session on 21 May 2012.

[22] Trigg, *Equality, Freedom, and Religion,* 71.

[23] Jónatas E. M. Machado, 'Freedom of Religion: A View from Europe', *Roger Williams University Law Review* 10, no. 2 (2005): 479.

[24] Pieter van Dojk et al, *Theory and Practice of the European Convention on Human Rights,* 4th ed. (Intersentia: Antwerpen-Oxford, 2006), 760.

[25] Machado, *Liberdade religiosa numa comunidade,* 247.

As the state is not, and should not be, in the position of arbiter of religious dogmas,[26] establishing an understanding as to what is theologically right clearly infringes its duty of neutrality imposed by the principle of separation, and consequently violates the right to freedom of religion, as occurs when there is any state imposition on the rituals by which belief manifests itself.[27]

3. Necessary restrictions in a democratic society

In explaining the grounds of its judgement, the ECtHR reinforced its understanding that freedom of thought, conscience and religion is one of the foundations of a democratic society. This is one of the most vital elements of the identity not only of religious believers and their conceptions of life, but also of atheists, agnostics, sceptics and the unconcerned. Thus, pluralism, as it has been established over the centuries, is inseparable from a democratic society.[28]

Article 9 of the ECHR states that a restriction on religious freedom is authorised only when it is "necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The state does have the power to verify whether an entity, under the cloak of its apparent religious purposes, is engaged in activities that are detrimental to the population or that may endanger public safety. Indeed, one cannot rule out *a priori* the possibility that an organisation's program may conceal unlawful goals and intentions different from which it proclaims.[29]

For example, the ECtHR has considered that a religious entity's unwillingness to provide the authorities with a description of its fundamental precepts may be sufficient grounds for refusal of membership, as it may pose a risk to a democratic society and the fundamental interests enumerated in Article 9(2) of the ECHR.[30]

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[26] *Syndicat Northcrest v. Amselem,* cited above.

[27] One implication of the affirmation of the republican principle is the establishment of a separation between the state and the churches, with the consecration of a non-denominational state and a regime of religious freedom. See José Joaquim Gomes Canotilho and Vital Moreira, *Constituição da República Portuguesa Anotada,* 4th ed., vol. 1 (Coimbra: Coimbra, 2007), 201.

[28] *Kokkinakis v. Greece,* ECtHR, App. No. 14.307/88, § 31. In this regard, Robert Audi points out that where there is freedom, there must be room for pluralism. In societies where sociocultural life is complex, freedom practically safeguards pluralism. Audi, "Natural Reason, Religious Conviction," in Lorenzo Zucca and Camil Ungureanu (eds.), *Law, State and Religion in the New Europe: Debates and Dilemmas* (Cambridge: Cambridge University Press, 2012), 66.

[29] *Manoussakis and others v. Greece,* ECtHR, § 40; *Stankov and the Macedonian-United Organization Ilinden v. Bulgaria,* ECtHR, App. No. 29.221/95 and 29.225/95, § 84; *Sidiropoulos and others v. Greece,* ECtHR, App. No. 26.695/95, § 46.

[30] *Cârmuirea Spirituală a Musulmanilor of the Republic of Moldova v. Moldavia,* ECtHR, App. No. 12.282/02; *Moscow Church of Scientology v. Russia,* ECtHR, App. No. 18.147/02, § 93; *Lajda and others v. Czech Republic,* App. No. 20.984/05, § 2.3.

The court has also pointed out that in a democratic society in which different religions co-exist, restrictions on religious freedom may be necessary to reconcile the interests of the various groups and to ensure that all beliefs are respected. However, oversight of activities and restrictions on religious freedom should be applied sparingly and in a manner consistent with the obligations imposed by the ECHR.[31]

While acknowledging these possible exceptions to the general rule, state power must be narrowly interpreted, such that the justifications for limiting people's fundamental rights to freedom of religion and association must be precisely indicated in an exhaustive list and the definition of them must be necessarily restrictive.[32] Only compelling and persuasive reasons can justify such limitations. Any intervention must correspond to a "pressing social need" and must be "proportionate to the legitimate aim pursued." Therefore, the characterisation of what is "necessary" cannot contain vague and flexible notions such as "useful" or "desirable."[33]

In addition to being consistent with the law and serving a legitimate purpose, state interference must satisfy the requirement of proportionality. In situations such as this one, proportionality is closely linked with the need to maintain the genuine religious pluralism inherent in the concept of a democratic society. Since no measure restricting the exercise of a right should be allowed if it is not aimed at promoting another right or general interest,[34] the decision by the Moldovan government could not be sustained. Attempting to resolve existing conflicts between religious organisations by preventing the registration of one of them is clearly disproportionate and contrary to the notion of a democratic society, in which the pluralism of ideas and beliefs is accepted.

Another point that deserves attention is the government's argument that the request of the applicant church was undermining the territorial integrity and social stability of the country. Contrary to this claim by the government, the preamble of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities[35] rightly states that "the promotion and protection of the rights of persons belonging to national or ethnic, *religious* and linguistic *minorities contribute to the political and social stability* of States in which they live" (emphasis added).

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[31] *Jehovah's Witnesses from Moscow and others v. Russia,* ECtHR, App. No. 302/02, § 100.

[32] *Sidiropoulos and others v. Greece,* § 38.

[33] *Moscow Branch of the Salvation Army v. Russia,* § 62; *Gorzelik et al. v. Poland,* ECtHR, App. No. 44.158/98, § 95.

[34] Suzana Tavares da Silva, *Direitos fundamentais na arena global,* 2nd ed. (Coimbra: Imprensa da Universidade de Coimbra, 2014), 53.

[35] This declaration was adopted by the United Nations General Assembly in its resolution 47/135 of 18 December 1992.

Indeed, the existence of a peaceful and democratic society is possible only in the presence of pluriconfessionality, in which individuals can freely practice their faith.[36] A democratic society is always a plural society, and the diversity of religions and beliefs is as necessary for humanity as biodiversity is for nature.[37]

In view of this consideration, although it is legitimate for the state to act in defence of order and national security, in the present case such concerns were manifestly unfounded since no element in the proceedings showed that the applicant church performed any activities other than those provided for in its by-laws, or that it was engaged in any activity unlawful or contrary to public policy.

As a result, believers' right to freedom of religion as guaranteed by the ECHR also encompasses the expectation that a religious community will be allowed to function peacefully and profess its convictions without any unjustified state intervention (including that by a national department of religious affairs or the judiciary, evidently).[38]

4. Freedom of religious association

Although the ECtHR has indicated that it was unnecessary to determine in this case whether a violation of Article 11 of the ECHR – which guarantees freedom of assembly and association – had occurred, the judgement raises relevant issues about the right to register a religious entity.

In its defence, the government argued that the refusal of registration did not violate the applicants' right to religious freedom, since, as Orthodox Christians, they could manifest their beliefs within another state-recognised Orthodox denomination, namely the Metropolitan Church of Moldova.

However, as noted by the ECtHR, the problem with the Moldova case was not only that the state has no competency to assess the legitimacy of this religious organisation. In addition, local law allowed only those religions recognised by government decision to be practised in Moldova. Therefore, refusal to register the applicant Church was equivalent to a prohibition from operating, either as a liturgical body or as an association.

That is to say, without legal recognition, the exercise of the activities of the Church applicant was impracticable, as its priests could not celebrate services and

[36] Roger Trigg, academic director at the Centre for the Study of Religion in Public Life, Kellogg College, Oxford, notes that the question of freedom of conscience and freedom of religion arises in its most intense form when "unpopular, or unfashionable, minority positions are in question. Freedom is safeguarded only when the majority allows the beliefs to be manifested of which it disapproves," Trigg, *Equality, Freedom, and Religion,* 8.

[37] This sentence paraphrases the provision in Article 1 of the Universal Declaration on Cultural Diversity.

[38] See *Moscow Branch of the Salvation Army v. Russia,* § 71; *Hasan and Chaush v. Bulgaria,* § 62.

its members were prevented from meeting to express their faith. Besides, not having legal personality, the entity had no right to judicial protection of its assets or status to defend itself against acts of intimidation.

Although religious belief is essentially personal and subjective, its manifestation is traditionally carried out together through organised structures. This is why Article 9(1) of the ECHR guarantees the right to manifest religion collectively within religious communities. Therefore, the refusal to recognise the legal personality of a religious society or grant it such personality constitutes an interference with the exercise of the rights guaranteed by Article 9, in their external and collective dimension, regarding not only the religious society itself but also its members.[39]

Along this line, ECtHR case law has established that refusal to grant the status of a legal entity to a particular religious organisation represents a severe constraint on its ability to practice religion, even where the absence of legal personality may be partly offset by the creation of auxiliary associations. Thus, even if there is no demonstration of prejudice or harm to the religious community – an issue that is relevant only in the context of Article 41 of the ECHR – blocking its registration constitutes unjustified discrimination.[40]

Indeed, the tolerance allegedly shown by the government towards the faithful cannot be considered a substitute for the recognition of their religious institution, which alone is capable of ensuring the transmission of its doctrine to future generations. This position has influenced several other judgements by the ECtHR, such as in *Izzettin Doğan and others v. Turkey*.[41]

Thus, the right to official recognition of a church is a logical corollary of respect for religious freedom. After all, this right not only covers freedom of conscience and belief but also protects institutions.[42] It is a natural development, an integral facet of the right to freedom of religion, that broad recognition of this right must be accompanied by equally broad recognition of association and religious associations.[43]

Thus, in its collective dimension, religious freedom comprises the right of each community to gather, express their faith and associate with others in accordance with their convictions on religious matters. As observed, the denial of a church's registration leads, in practice, to stripping – significantly or even entirely – the content of the law under analysis. Indeed, guaranteeing the liberty of association

[39] *Religious Community of Jehovah's Witnesses and others v. Austria,* ECtHR, App. No. 40.825/98, § 62; *Kimlya and others v. Russia,* ECtHR, App. Nos. 76.836/01 and 32.782/03, § 84.

[40] *Religious Community of Jehovah's Witnesses and others v. Austria,* § 67.

[41] *Izzettin Doğan and others v. Turkey,* ECtHR, App. No. 62.649/10, § 127.

[42] Trigg, *Equality, Freedom, and Religion,* 44.

[43] Machado, *Liberdade religiosa numa comunidade,* 236.

for religious purposes "has become a necessary guaranty against the tyranny of the majority".[44]

Accordingly, General Comment No. 18 (Non-Discrimination) on the International Covenant on Civil and Political Rights and the Article 2(2) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief clarify that intolerance and discrimination based on religion or belief, *inter alia*, take place whenever measures are adopted that have as its *purpose* or *effect* the suppression or limitation of the recognition or exercise of all rights and freedoms on an equal basis, i.e. when the restriction on the freedom to assemble for religious purposes is as much a goal as a consequence of the governmental act.

Moreover, Article 11 of the ECHR ensures that citizens must be able to form a legal person[45] and that they can then act collectively in a field of mutual interest – including, of course, religious purposes – without arbitrary state interference. Otherwise, such a right would be devoid of any significance.[46]

Last but not least, it should be noted that although the applicant church had access to national courts, the appeals were not effective as the final decision of Moldova's Supreme Court failed to respond to its main claims, namely the desire to practise its religion in its own organisation, as well as to gain judicial protection of its assets. In addition, local law did not provide any means to settle disputes over the registration procedure, which is why the ECtHR found a violation of Article 13 of the ECHR.[47]

We can conclude that the ECHR was very successful in addressing the issue since the refusal to register the Metropolitan Church of Bessarabia, based on mere assumptions of danger to public order and national security, is unjustified and therefore constitutes a violation of the right to freedom of religion as enshrined in Article 9 of the ECHR.

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[44] Lance S. Lehnhof, 'Freedom of Religious Association: The Right of Religious Organizations to Obtain Legal Entity Status under the European Convention', *Brigham Young University Law Review* 2002, no. 2 (2002): 561.

[45] Such a guarantee is also provided by Article 20(1) of the Universal Declaration of Human Rights; Article 22(1) of the International Covenant on Civil and Political Rights; Article 2(4) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; and Article 6(b) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

[46] *Moscow Branch of the Salvation Army v. Russia,* §§ 58-59.

[47] Article 13, 'Right to an Effective Remedy', states that 'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.'