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RESEARCH PARER 1

Fundamental Rights, Values and Diversity

‘The value of religious pluralism in Europe as a fundamental rights concern: the case of new religious movements’

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Fundamental Rights, Values and Diversity

‘The value of religious pluralism in Europe as a fundamental rights concern: the case of new religious movements’

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1. Introduction

Often labeled with the derogatory terms “cults”, “sects” or “heresies”, new religious movements have been the subject of numerous debates mostly overcharged with hostility and suspicion. In particular, several European states and International Organizations have expressed concerns about the status and the activities of new religious movements as sometimes they tend to operate in secrecy or not in a transparent way. In addition, several incidents involving the exploitation and manipulation of followers, acts of violence and abuse as well as economic irregularities are triggering states’ reflexes of security and public order[1].

However, those concerns tend to ignore the fact that the emergence of new religious movements is part of Europe’s new mosaic of religious diversity and pluralism as a core value of European societies. Indeed, the issue of regulating the operations of new religious movements bears several fundamental rights implications that need to be taken into account. As John Witte Jr and Andrea Pin state “*These new religious movements have reshaped the religious freedom law not only of individual European states but also of the European Court of Human Rights sitting in Strasbourg and the Court of Justice of the European Union sitting in Luxembourg. These two pan-European Courts have become new hotspots for religious freedom claimants from all over Europe”*[2].

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[1] https://www.osce.org/files/f/documents/f/0/15547.pdf.

[2] Witte J. Jr., Pin A., Faith in Strasbourg and Luxembourg? The Fresh Rise of Religious Freedom Litigation in the Pan-European Courts, *70 Emory L. J. 587*, 2021, available at: https://scholarlycommons.law.emory.edu/elj/vol70/iss3/2.

According to Barker "*The term new religious movement (NRM) is used to cover a disparate collection of organisations, most of which have emerged in their present form since 1950s, and most of which offer some kind of answer to questions of a fundamental religious, spiritual or philosophical nature*"[3]. In addition, according to Rubinstein, new religious movements "*are characterized by a number of shared traits. These religions are, by definition, "new"; they offer innovative religious responses to the conditions of the modern world, despite the fact that most NRMs represent themselves as rooted in ancient traditions. NRMs are also usually regarded as "countercultural"; that is, they are perceived (by others and by themselves) to be alternatives to the mainstream religions of Western society, especially Christianity in its normative forms. These movements are often highly eclectic, pluralistic, and syncretistic; they freely combine doctrines and practices from diverse sources within their belief systems. The new movement is usually founded by a charismatic and sometimes highly authoritarian leader who is thought to have extraordinary powers or insights. Many NRMs are tightly organized. In light of their often self-proclaimed "alternative" or "outsider" status, these groups often make great demands on the loyalty and commitment of their followers and sometimes establish themselves as substitutes for the family and other conventional social groupings. NRMs have arisen to address specific needs that many people cannot satisfy through more traditional religious organizations or through modern secularism. They are also products of and responses to modernity, pluralism, and the scientific worldview*"[4].

The proliferation of new religious movements in Europe, particularly though the 80s and 90s, had a considerable impact on the European public order altering the religious demography of Europe and bringing religion at the forefront of the European Jurisprudence[5].

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[3] Barker E., *New Religious Movements: A Practical Introduction*, Rose of Sharon Press, 1989, p. 9, as mentioned in Zand J., New Religious Movements and Freedom of Thought, Conscience and Religion in the European Convention on Human Rights, *Ankara Bar Review* 2013/2, pp. 85-110.

[4] Rubinstein M., new religious movement, Encyclopedia Britannica, available at: https://www.britannica.com/topic/new-religious-movement.

[5] Witte J. Jr., Pin A., opt. cit., p. 596.

1. The framework of the Council of Europe and the European Convention of Human Rights

The Council of Europe has always promoted a culture of "living together" and the Assembly has spoken out on several occasions in favour of freedom of thought, conscience and religion, as well as in favour of minority religious groups, including those which have recently appeared in Europe, in particular in Recommendation 1396 (1999) on religion and democracy and Recommendation 1804 (2007) on State, religion, secularity and human rights and in Resolution 1846 (2011) and Recommendation 1987 (2011) on combating all forms of discrimination based on religion. The Assembly also, however, addressed the illegal activities of sects and certain new religious movements in Recommendation 1178 (1992) on sects and new religious movements and in Recommendation 1412 (1999) on illegal activities of sects[6].

Through the Parliamentary Assembly Recommendations 1178 (1992) on sects and new religious movements and 1412 (1999) on illegal activities of sects and the reply by the Committee of Ministers (2001)[7], the Council of Europe has put forward ideas and lines of action for tackling a problem it regards as serious and worrying in a manner compatible with our societies' democratic principles. In Recommendation 1178, the Parliamentary Assembly recommended that the Committee of Ministers take measures to inform and educate young people and the general public and requested that corporate status be granted to all sects and new religious movements which had been registered. The Recommendation 1412 clearly stresses the need to preserve freedom of conscience and religion, advocates state neutrality and equal protection before the law and calls upon state authorities to refrain from taking measures based on value judgments concerning beliefs. In Recommendation 1412, the Parliamentary Assembly also underlines that it attaches great importance to protecting those most vulnerable, and particularly the children in religious groups, in case of ill-treatment, rape, neglect or brainwashing[8].

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[6] See webpage https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20544&lang=en.
[7] See webpage https://pace.coe.int/en/files/16713.
[8] See webpage https://pace.coe.int/en/files/15212.

Regarding the status and the functioning of New Religious Movements, Article 9 of the European Convention of Human rights is of particular relevance. According to Article 9 "*1.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. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are 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*".

Whilst Article 9 of the Convention concerns freedom of religion in particular, the protection afforded by this provision is much broader and applies to all personal, political, philosophical, moral and, of course, religious convictions. It extends to ideas, philosophical convictions of all kinds, with the express mention of a person's religious beliefs, and their own way of apprehending their personal and social life. For example, as a philosophy, pacifism falls within the scope of application of Article 9 of the Convention, since the attitude of a pacifist can be regarded as a "*belief*"[9]. Thus, religious beliefs cannot be limited to the "*main"* religions. The issue is more delicate regarding minority religions and new religious groups that are sometimes called "*sects*" at national level. According to the Court's current case-law, all religious groups and their members enjoy equal protection under the Convention[10].

It is at this point that doctrine of the "margin of appreciation" comes into play. The rationale for the 'margin of appreciation' was set out in the case of *Handyside v. the United Kingdom* in the following terms "*By reason of their direct and continuous contact with the vital forces or their countries, state authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the 'necessity' of a 'restriction' or 'penalty' intended to meet them*"[11]. The Court has also stressed that "*it is not possible to discern*

[9] ECHR, *Arrowsmith v. United Kingdom*, Application No. 7050/75, Comm. Rep. 1978.
[10] See webpage https://www.echr.coe.int/documents/guide_art_9_eng.pdf.
[11] ECHR, *Handyside v. The United Kingdom*, Application *No.* 5493/72, 7 December 1976.

throughout Europe a uniform conception of the significance of religion in society: even within a single country such conceptions may vary"[12].

1.1. The case law of the European Court of Human Rights

The European Court of Human Rights had applied Article 9 in several case that concerned new religious movements, for example[13]: Aumism of Mandarom[14], the Bhagwan Shree Rajneesh movement, known as Osho movement[15], the Reverend Sun Myung Moon's Unification Church[16], Mormonism, or the Church of Jesus Christ of Latter-Day Saints[17], the Raëlian Movement[18], Neo-Paganism[19], the "Santo Daime" religion, whose rituals include the use of a hallucinogenic substance known as "ayahuasca"[20] and the Jehovah's Witnesses[21].

Freedom of religious conscience includes the freedom to choose, maintain, change or abandon a specific religion, as well as to choose or abandon religion in general, non-religion or atheism, without the occurrence of any adverse consequences. Religious freedom in this form is inadmissible of restrictions. This does not preclude that certain conditions must be met, determined by the internal law of the relevant religion, for admission, abandonment, accepting another religion or ascribing to no religion at all,

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[12] ECHR, *Leyla Şahin v. Turkey*, Application no. 44774/98, 10 November 2005.
[13] See webpage https://www.echr.coe.int/documents/guide_art_9_eng.pdf.
[14] Association des Chevaliers du Lotus d'Or v. France.
[15] Leela Förderkreis e.V. and Others v. Germany, Mockutė v. Lithuania.
[16] ECHR, *Nolan and K. v. Russia*, Application no. 2512/04, ECHR, *Boychev and Others v. Bulgaria*, Application No 77185/01.
[17] ECHR, *The Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*, Application no. 7552/09.
[18] ECHR, *F.L. v. France*, Application no. 22612/15.
[19] ECHR, *Ásatrúarfélagið v. Iceland*, Application No 22897/08.
[20] ECHR, *Fränklin-Beentjes and CEFLU-Luz da Floresta v. the Netherlands*, Application no. 28167/07.
[21] ECHR, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, Application no. 40825/98; ECHR, *Jehovah's Witnesses of Moscow and Others v. Russia*, Application no. 302/02.

without intervention from the state[22]. This point of view, of the non-intervention of the state in the procedures of admission or expulsion of members from a religious community, is also adopted by the European Court of Human Rights[23].

The same applies to the prohibition of prosyletism. Primarily, it should be pointed out that since the choice of religion or belief is part of the *forum internum,* which does not allow for restrictions, a general prohibition of prosyletism or change of faith by the state is in conflict with the norms of international human rights law. A state also has a positive obligation to ensure that freedom of religion or belief of individuals within its territory and under its jurisdiction[24]. Specifically, the *Kokkinakis v. Greece*[25] case is considered one of the most fundamental in the entire jurisprudence history of the Court. The applicant was a Jehovah's Witness from Sitia (Crete). He and his wife visited in March 1986 the home of a Christian woman and engaged in a discussion with her regarding religious beliefs. Her husband, who is also a cantor of the Orthodox Church, called the police who arrested them. Kokkinakis was convicted of proselytizing according to the Greek law. The applicant appealed to the European Court, alleging a violation of Article 9. The Court agreed with the applicant that his

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[22] Troyanos S., *Freedom of Religious Conscience and Prevailing Religion* (in Greek), available at: http://www.myriobiblos.gr/texts/greek/troianos_eleftheria.html. The view is also supported that, in reference to cultural, non-religious groups, the conditions in question for the admission or abandonment of a minority culture should not discriminate on the basis of gender, religion, or family ties. See, *Sandra Lovelace v. Canada,* Communication No. 24/1977: Canada 30/07/81, UN Doc. CCPR / C /13/ D /24/1977.

[23] ECHR, *Svyato - Mykhaylivska Parafiya v. Ukraine*, Application No. 77703/01, 14 June 2007.

[24] In cases where non-state actors interfere with an individual's right to "have or adopt" a religion or belief of his choice, the requirements of Article 18 of the International Covenant on Civil and Political Rights and other relevant international instruments also imply a positive obligation on the state to protect persons from such interference. States must ensure that persons within their territory and persons under their jurisdiction, including members of religious minorities, practice the religion or belief of their choice without coercion or fear. If non-state actors interfere with this freedom, and in particular with the individual's freedom to change or maintain an individual's religion, the state is obliged to take appropriate measures to investigate, bring the perpetrators to justice and compensate the victims. General Assembly, A/60/399, Report of the Special Rapporteur of the Commission on Human Rights on freedom of religion or belief, Asma Jahangir, 30 September 2005, par . 52-53.

[25] ECHR, *Kokkinakis v. Greece,* Application no. 14307/88, 25 May 1993. Naskou Perraki P., Religious Freedom, in Naskou-Perraki P., Kistakis G. (ed.), *Greek Affairs in Strasbourg* , Volume I, 1991-2001, Ant. N. Sakkoulas, Thessaloniki Athens 2006, pp. 321-353, pp. 321-325 (in Greek).

conviction for the offense of proselytizing undoubtedly infringed his right to freedom of manifestation of his religion. The Court pointed out that a "*distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. The latter represents a corruption or deformation of it. It may, according to the same report, take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others*". Thus, the Court observed that the Greek courts did not sufficiently identify the unfair means used to influence the cantor's wife, in violation of Article 9[26].

The European Court of Human Rights distinguishes between the right to disseminate and teach religious beliefs and unlawful prosyletism. The first case is part of the freedom of manifestation of religion that can be exercised publicly, and within the circle of those who share the faith but also individually in a private space and includes the right to try to convince others. The second case can take the form activities that offer materials or social advantages for the purpose of acquisition of new members, the exercise inappropriate pressure to people who are at risk or in need, the use of violence or brainwash. Therefore, it is not a compatible practice with the respect for freedom of thought, consciousness and religion[27]. Thus, in 1998 in the *Larrisis and Others v. Greece* case, air force officers and followers of the Pentecostal Church, the three applicants were convicted by Greek courts, in judgments which became final in 1992, of proselytism after trying to convert a number of people to their faith,

[26] Papapolychroniou S., Interpretative pluralism as a condition for inclusion of minority values in law: the example of religious minorities in Greece and the "dominant" religion, Christopoulos D. (ed.), *The* unrecognized *issue of minorities in the Greek legal order* , Minority Groups Research Center, Kritiki Publications 2008, pp. 89-126, p. 97 (in Greek). *Kastanas H., Article 9, in Sisilianos L.A. (ed.), European Convention on Human Rights, Interpretation by Article, Nomiki Vivliothiki, Athens 2013, pp. 363-393 (in Greek). See also, Evans M., The Freedom of Religion or Belief in the ECHR since Kokkinakis: Or Quoting Kokkinakis, Religion & Human Rights: An International Journal, 2017, 12(2-3), pp. 83-98.*

[27] Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir - Missionto Sri Lanka, E/CN.4/2006/5/Add.3, par. 70-78.

including three airmen who were their subordinates. The Court held that there had been no violation of Article 9 of the Convention with regard to the measures taken against the applicants for the proselytising of air force service personnel, as it was necessary for the State to protect junior airmen from being put under undue pressure by senior personnel. However, the Court did find a violation of Article 9 of the Convention with regard to the measures taken against two of the applicants for the proselytising of civilians, as they were not subject to pressure and constraints as the airmen[28].

1.2. The principle of neutrality

The principle of neutrality, in the jurisprudence of the European Court of Human Rights, means respect for different beliefs as a primary obligation of the state, which cannot make value judgments regarding religious beliefs or the means of expression. The European Court of Human Rights ruled that a state cannot depict a religious group in a derogatory or defamatory manner[29]. However, one state may characterize a religion as "heresy", even if this definition involves pejorative importance, when it seeks to provide when it seeks to provide evidence to contribute to the dialogue of a democratic society and to draw attention to the risks arising from the groups usually referred to as sects[30]. In addition, the principle of neutrality does not imply that a religious practice or a religious community completely escapes the control of the state or judicial authorities. For example, in the case *Raëlien Suisse v Switzerland*, the European Court of Human Rights found in particular that the State did not violate the freedom of expression and religious freedom of the applicant through banning posters of his organization, which was probably expressing beliefs apologetic pedophilia[31]. Similarly, the European Court of Human Rights declared that it was accepted for a state to run an information campaign which highlighted the dangers to young people

[28] ECHR, *Larrisis and Others v. Greece,* Application No s. 23372/94; 26377/94; 26378/94, 24 February 1998.
[29] ECHR, *Leela Förderkreis EV and Others v. Germany,* Application no. 58911/00, November 6, 2008.
[30] Gatti M., Autonomy of Religious Organisations in the European Convention of Human Rights and European Union Law, in Rossi L.S., Di Federico G. (eds), *Fundamental Rights in Europe and China. Regional Identities and Universalism*, Editoriale Scientifica, Napoli 2013, pp. 132-153, p. 142.
[31] ECHR, *Raëlien Suisse v. Switzerland,* Application no. 16354/06, 13 July 2012.

of becoming associated with a particular religious movement[32]. As Evans notes "*Whilst such information might be considered merely 'informational', not 'coercive'- and it is of course well established that a state may not seek to coerce a person into changing their religion or belief-, the idea that the state cannot have views concerning various forms of belief, and act on them, is, then, simply not true*"[33].

On several occasions, the European Court of Human Rights has dealt with national regulations regarding the registration of religious entities. The Court has recognized that states have the right to verify if a movement or association of persons exercises, for the pursuit of religious purposes, activities which are harmful to the followers[34]. However, when registration is required, the law must determine the substantive criteria which will determine whether a religious movement or organization will be registered. The absence of specific criteria, calls into question the "prescribed by law" refusal required by Article 9 of the Convention. In addition, procedural guarantees must be foreseen, to avoid any arbitrary exercise of power[35].

The European Court of Human Rights ruled that the imposition of a ten-year waiting period for the recognition of a "religious society" (Religionsgesellschaft) and the consequent provision of a series of privileges, such as the right to teach religion to public schools constituted a violation of Article 9 of the Convention by the authorities. The Court decided that Article 9 imposes the obligation of the state authorities to remain neutral during the exercise of their duties and therefore when a state establishes a framework for the award of legal personality to religious groups, all religious groups must have a fair one opportunity to apply and the established criteria must be applied without discrimination[36].

Similarly, in the case *Savezcrkava "Riječ života" and Others v. Croatia, t*he applicants were three Reformist churches which are registered as religious communities under Croatian law. Having been entered in the register of religious

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[32] ECHR, *Leela Förderkreis e.V. and Others v. Germany*, Application No. 58911/00, 6 November 2008.
[33] Evans M., *opt. cit., p*. 90.
[34] ECHR, *Manoussakis a.o. v. Greece,* Application no. 18748/91, 26 September 1996.
[35] ECHR, *Hasan and Chaush v. Bulgaria*, Application no. 30985/96, 26 October 2000, *Metropolitan Church Of Bessarabia And Others v. Moldova,* Application no. 45701/99, 27 February 2002.
[36] ECHR, *Religionsgemeinschaft der Zeugen Jehovahs and Others v. Austria,* Application no. 40825/98, 31 July 2008.

communities in Croatia in 2003, the applicants twice submitted requests to the Government's Commission for Relations with Religious Communities, in 2004 and 2005, in order to conclude an agreement with the Government of Croatia which would regulate their relations with the State and allow them certain privileges, including the ability to (i) provide religious education in public schools and nurseries, (ii) provide pastoral care to their members in medical and social-welfare institutions, and prisons and penitentiaries, and (iii) perform religious marriages with the effects of a civil marriage. On both occasions, these requests were refused on the basis that the applicants did not satisfy the criteria set out in the Instruction issued by the Government in December 2004 as they had not been present in Croatia since 6 April 1941, and the number of their adherents did not exceed 6000. The Government also claimed that pursuant to the 2004 Health Care Act and the 1999 Enforcement of Prison Sentences Act, members of the Applicants' churches still had the right to receive pastoral care in medical and social-welfare institutions as well as in prisons and penitentiaries. The Court reiterated that the imposition of criteria which a religious community that already had legal personality had to satisfy in order to obtain special privileges raised delicate questions, "*as the State had a duty to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom and in its relations with different religions, denominations and beliefs*". As the Government of Croatia had been unable to provide any meaningful explanation as to why some religious communities satisfied the criteria of belonging to "the European cultural circle" whereas others, including the Applicants, did not, the Court found that such distinction was without "objective and reasonable justification" and, as such, a violation of Article 14 taken in conjunction with Article 9 was found [37].

In another case, the applicants alleged that, as members of the Evangelical Baptist Church and unlike Spaniards of the Catholic faith, they were unable when completing their income-tax returns to allocate part of their income tax directly for the financial support of their own Church. They considered that difference in treatment to constitute discrimination contrary to Articles 14 and 9 of the Convention. The Court declared their application inadmissible, and noted that "*the conclusion of agreements between the State and a particular Church establishing a special tax regime in favour*

[37] ECHR, *Savezcrkava "Riječživota" and Others v. Croatia,* Application no. 7798/08, 9 December 2010. See also, ECHR, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, Application no. 40825/98, 31 July 2008.

of the latter does not, in principle, contravene the requirements of Articles 9 and 14 of the Convention, provided that there is an objective and reasonable justification for the difference in treatment and that similar agreements may be entered into by other churches wishing to do so"[38].

Finally, the state must not take action which obstructs the normal operation of a religious community. Consequently, an excessive tax could seriously disturb the internal organization and function of a religious community, constitutes an intervention in the exercise of the rights that derive from the Article 9 and may be a violation, if the Court deems it to be disproportionate[39]. Sajó and Uitz comment that "*State authorities insisting on architectural specifications tailored for traditional religions appear as though they abuse their regulatory powers over unwanted religious minorities*"[40].

2. The framework of the European Union

In May 1984, the European Parliament adopted a resolution calling for "a common approach by the Member States of the European Community towards various infringements of the law by new organizations operating under the protection afforded to religious bodies". The resolution expressed concern about some of the practices of the new religions, and listed a number of "criteria [that should] be applied in investigating, reviewing and assessing the activity of the … organizations". The supporters of the resolution were in favor of instituting a voluntary code of practices to be followed by the movements; several of the movements responded that not only did they follow most of the code's rules anyway, but that any such code ought to apply to all religions, not just to the "new" ones (which were, furthermore, notoriously difficult to define). Further reports commissioned by the European Parliament (1992

[38] ECHR, *Alujer Fernández and Caballero García v. Spain*, Application no. 53072/99, 14 June 2001.
[39] ECHR, *Association Les Témoins de Jéhovah v. France*, Application no. 8916/05, 30 June 2011. See also, Garay A., Association les Témoins de Jéhovah versus France The Jurisprudence of the European Court of Human Rights on Religious Activities and Taxation Issues, *Religion & Human Rights*, Volume 3: Issue 2, 2008, pp. 185–190, available at: https://brill.com/view/journals/rhrs/3/2/Article-p185_4.xml.
[40] Sajó A., Uitz R., Individual religious freedom under the European Convention of Human Rights, in Mancini S. (ed.), *Constitutions and Religion*, Edward Elgar Publishing, 2020, pp. 286–306, p. 303.

and 1998) again warned of the need to be alert to the dangers NRMs might pose, but no action was taken[41]. According to the Parliament "*some cults operating through a cross-frontier network within the European Union are engaging in activities of an illicit or criminal nature and in violations of human rights, such as maltreatment, sexual abuse, unlawful detention, slavery, the encouragement of aggressive behaviour or propagation of racist ideologies, tax fraud, illegal transfers of funds, trafficking in arms or drugs, violation of labour laws, the illegal practice of medicine, and so on*"[42].

2.1. Article 17 of the Treaty of the Functioning of the European Union

Article 17 on the Status of Churches provides for the first time, a legal basis for an open, transparent and regular dialogue between the EU institutions and churches, religious associations, and philosophical and non-confessional organisations. It states, "*The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. The Union equally respects the status under national law of philosophical and non-confessional organisations. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.*

Article 17 specifically recognizes the equal status of new religious movements, which have received little protection in other areas of EU law. The neutral approach adopted by the Commission highlights a) the reluctance of the Union to grant recognition to, or associate itself officially with, any individual religious denomination and b) the commitment to balancing religious and humanist perspectives seen in the Union's public morality[43].

2.2. The case law of the Court of the European Union

[41]See webpage https://www.encyclopedia.com/environment/encyclopedias-almanacs-transcripts-and-maps/new-religious-movements-new-religious-movements-europe.
[42] See https://www.europarl.europa.eu/workingpapers/cito/w10/annex1_en.htm.
[43] McCrea R., The Recognition of Religion within the Constitutional and Political Order of the European Union, September 1, 2009, LEQS Paper No. 10, available at: https://ssrn.com/abstract=1550914.

Van Duyn v Home Office, was a case of the European Court of Justice concerning the free movement of workers between member states. Van Duyn, a Dutch national, claimed the British Government, through the Home Secretary, infringed TFEU article 45(3) (then TEEC art 48(3)) by denying her an entry permit to work at the Church of Scientology. The Free Movement of Workers Directive 64/221/EC article 3(1) also set out that a public policy provision had to be 'based exclusively on the personal conduct of the individual concerned'. The UK had not done anything to expressly implement this element of the Directive. The government had believed Scientology to be harmful to mental health, and discouraged it but did not make it illegal. The Home Office argued the provision was not directly effective, because it left the Government the discretion to apply exceptions to free movement. The Court held that van Duyn could be denied entry if it was for reasons related to her personal conduct. According to the Court "*a Member State, in imposing restrictions justified on grounds of public policy, is entitled to take into account as a matter of personal conduct of the individual concerned, the fact that the individual is associated with some body or organization the activities of which the member state considers socially harmful but which are not unlawful in that state, despite the fact that no restriction is placed upon nationals of the said Member State who wish to take similar employment with the same body or organization*"[44].

In the Case 196/87, a German plumber working in the Netherlands joined the Bhagwan Community, a religious group who provided for each other's material needs through commercial activity. He participated in the community by doing plumbing, household duties and other activities. The community would provide for people irrespective of the activities they undertook. He applied for residence to pursue the activity but was refused. The Court held that remuneration may be indirect “quid pro quo” rather than strict consideration for work i.e. work does not need to be paid for in money as long as the worker agrees to receive something else in return.

“*11 As regards the activities in question in this case, it appears from the documents before the Court that they consist of work carried out within and on behalf of the Bhagwan Community in connection with the Bhagwan Community' s commercial activities. It appears that such work plays a relatively important role in the way of life*

[44] Judgment of the Court of 4 December 1974, *Yvonne van Duyn v Home Office*, Case 41-74, ECLI:EU:C:1974:133.

of the Bhagwan Community and that only in special circumstances can the members of the community avoid taking part therein. In turn, the Bhagwan Community provides for the material needs of its members, including pocket-money, irrespective of the nature and the extent of the work which they do.

12. In a case such as the one before the national court it is impossible to rule out a priori the possibility that work carried out by members of the community in question constitutes an economic activity within the meaning of Article 2 of the Treaty. In so far as the work, which aims to ensure a measure of self-sufficiency for the Bhagwan Community, constitutes an essential part of participation in that community, the services which the latter provides to its members may be regarded as being an indirect quid pro quo for their work.

13 However, it must be observed, as the Court held in its judgment of 23 March 1982 in Case 53/81 Levin v Staatssecretaris van Justitie (1982) ECR 1035, that the work must be genuine and effective and not such as to be regarded as purely marginal and ancillary. In this case the national court has held that the work was genuine and effective"[45].

The Case C-54/99 concerned restrictions to international financial transactions carried out by Church of Scientology. The Court ruled that "*The prohibition on restricting the movement of capitals between Member States of the European Union, as well as between Member States and third countries, does not affect the right of Member States to take measures justified on grounds of public policy or public security. However, this does not allow a completely generic and indeterminate regime of prior authorization for foreign direct investments, limited to defining the investments concerned as harmful to public order and public security. These vagueness and indeterminacy imply that the interested parties are not able to know the specific circumstances under which the prior authorization is required: these conflicts with the principle of legal certainty*". Such derogation from the fundamental principle of the free movement of capital can, according to the Court, be justified only by requirements of public policy or public security. Those grounds must be strictly construed and must be made subject to review by the Community institutions. The

[45] Judgment of the Court (Sixth Chamber) of 5 October 1988, *Udo Steymann v Staatssecretaris van Justitie*, Case 196/87, ECLI:EU:C:1988:475.

threat must therefore be genuine and sufficiently serious and must be directed against a fundamental interest of society. Persons affected must have access to legal redress[46].

In all cases the Court decided without any reference to freedom of religion.

3. Concluding remarks

The notion of pluralism in a democratic society is a key feature regarding the place of new religious movements in the European Constitutional place. In this respect, the fundamental rights of new religious movements and their followers shall be taken into account when a well established public suspicion formulates a State's stance vis-à-vis new religious movements as religious liberty is a vital aspect of human integrity and autonomy.

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[46] Judgment of the Court of 14 March 2000, *Association Eglise de scientologie de Paris and Scientology International Reserves Trust v The Prime Minister*, Case C-54/99, ECLI:EU:C:2000:124.