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Religion and Human Rights:

Between the Protection of Secularism and the Promotion of Religious Rights, in the case study of France

LIST OF ABBREVIATIONS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AEC	African Economic Community
AfCHPR	African Court on Human Rights and Peoples' Rights
ASEAN	Association of the Southeast Asian Nations
AU	African Union
AUABC	Au Advisory Board on Corruption
AUCIL	Au Commission on International Law
CAT	Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CAT-OP	Optional Protocol of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CCPR	International Covenant on Civil and Political Rights
CCPR-OP2-DP	Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty
CED	Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEN-SAD	Community for Sahel-Saharan States
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CFR	Charter of Fundamental Rights of the European Union
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CoE	Council of Europe
COMESA	Common Market for Eastern and Southern Africa
CRC	Convention on the Rights of the Child
CRC-OP-AC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
CRC-OP-SC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
CRPD	Convention of the Rights of Persons with Disabilities
EAC	East African Community
ECCAS	Economic Community of Central African States
ECHR	European Commission on Human Rights
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	Economic and Social Council
ECOWAS	Economic of West African States
EU	European Union
HCR	Human Rights Committee
HRC	Human Rights Centre
ICCPR	International Covenant on Civil and Political Rights
ICED	Convention on Enforced Disappearances
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGAD	Intergovernmental Authority on Development

ILO	International Labour Organization
ISTAT	Istituto Nazionale di Statistica
LAS	League of Arab States
MEAE	Ministry for Europe and Foreign Affairs
OAS	Organization of American States
OAU	Organization of African Unity
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIC	Organization of the Islamic Conference
PACE	Parliamentary Assembly of the Council of Europe
RECs	Regional Economic Communities
SADC	Southern African Development Community
SVP	Swiss People's Party
TEU	Treaty of European Union
TFEU	Treaty of the Functioning of the European Union
the Court	European Court of Human Rights / Strasbourg Court
TPI	Third Party Intervention
UDHR	Universal Declaration of Human Rights
UMA	Arab Maghreb Union
UN	United Nations
UPR	Universal Periodic Review

TABLE OF CONTENTS

ABSTRACT

Religion has always played a crucial role in society. The first signs of spiritualism date back 35,000 years but many circumstances have been altered since then. Democracy in Western countries, the State-church division, and the possibility of being an atheist are topics taken for granted today, but it has not always been the case, and for this reason tools have been introduced over time to protect them. Secularism nowadays is highly protected, but when do the limits of protection fail in the safeguard and become potentially harming to the expression of religion?

The purpose of this final dissertation is to investigate the limits between religious rights and the protection of secularism, particularly in the French case study. The analysis aims to answer the following questions: "How the Court of Strasbourg menages the balance between the promotion of rationalism with the right to freely live religiosity, through the challenges posed by the international context?", "What were the compromises found by the European Court of Human Rights in solving cases concerning the coexistence of religious freedom and misbelief?", "How much do the opinions of the countries of the world differ towards the same religious topics?", and finally: "Which were and still are the most complex challenges that France has found itself facing in its rigorous interpretation of the concept of *laïcité*?".

The master thesis entitled: "Religion and Human Rights: Between the Protection of Secularism and the Promotion of Religious Rights, in the case study of France" intends to explore the theme from a legal point of view, through the analysis of international conventions and the examination of judgments of the Court of Strasbourg, comparing the variety of international ideas on the theme, with a particular focus on the French scenario. The final aim of this study appears to outline an ideal balance between the two needs of secularism and religious freedom, answering the question: "Is a universal path possible?". Through a comparison in the global panorama, the following dissertation goal seems also to question the reader on whether that archetypal equilibrium could always be possible, despite the context in which it is applied.

KEYWORDS

France; Democracy; European Court of Human Rights; Strasbourg Court; Human Rights; Religious Freedom; Religious Symbols; Secularism; SAS v. France; Judgments.

INTRODUCTION

The following master's dissertation derives from the need and the academic curiosity to investigate the fine line between the protection of democracy, secularism and atheism, and the preservation of religious rights. Through a careful analysis of the topic, results noticeable how the two topics are often interconnected and how an advancement of protection in one area can lead to the erosion of protection in the other. Religious rights also raise questions about different applications of the same right in different international contexts. The cases that will be discussed later are a *manifesto* of how many different nuances rights can embody, resulting in different interpretations of States in their application.

"*Religion and Human Rights: Between the Protection of Secularism and the Promotion of Religious Rights, in the case study of France*" aims to answer questions as: "How the Court of Strasbourg menage the balance between the promotion of rationalism and the right to freely manifest religious symbols?", "What were the compromises found by the European Court of Human Rights in solving cases concerning an ideal coexistence of religious freedom and secularism?", "How different are the positions on the same religious issue?", "Which were and still are the most complex challenges that France has found itself facing in its rigorous interpretation of the concept of *laïcité*?" and finally "Is a universal path possible?".

The analysis that follows results to be contemporary due to the centrality assumed by the theme of religion in history and life. The controversial and divisive power of religion has been evident ever since the crusades from XI to XIII century, current wars of religion, modern States with political systems based on religious beliefs, the Western calendar, and political choices affecting masses. The subject of religious rights is incredibly vast and due the abundance of literature, the risk of dissatisfying the reader with a limited narration is possible. Not all topics related to the field will be included in the dissertation. Although very interesting, not everything on the topic has found coherence in the narrative of this study. Together with the necessity to obtain an accurate study suitable to be a master's thesis, and for this reason, also limited in length, some bibliography choices were required necessary to achieve these objectives. The cut chosen is that of an in-depth investigation on religious rights and their occasional sacrifice to protect secularism. The analysis is controversial and there is not a unique institutional and legal direction, to pursue a perfect balance. This thesis intends to analyze the most important cases, in a comparative perspective, to highlight the different trends on the subject and then focus on the specific case of France.

Chapter 1. will analyze the development and the historical-juridical premises of human and religious rights. In 1.1 the historical and judicial evolution of human rights will be explored. The paragraph will research the rise and the metamorphosis of human rights through a comparison between the major historical events of the 20th century and the development of legal

instruments to safeguard human identity. Here it will be studied the central role invested by the main tools and agreements developed in these years, and how their use results still extremely effective and necessary in modern times, deepening their structure and functioning. In 1.2 the theme of religious rights will be evolved, introducing it with a digression on the importance of the protection of religious rights and their evolution in the Italian case study. This will be followed by a detailed analysis of power relations and how the State-church division has been developed until today, after years of struggling, through conventions and pacts of fundamental importance for the international scenario. The chapter will continue by reviewing the most important treaties drafted on the subject, with a focus on UN, to finally move on to a more regional scenario, with a focus on Europe, Africa, and Latin America, but also recalling the agreements signed by ASEAN and by the League of Arab States. This part will face not only the legal instruments composed by different unions, but it will contextualize these tools by placing them into their specific scenarios, linking the characteristics of each of them with the different instruments developed. In 1.3 will be introduced the theme of limits of religious rights, based on the principles of public order, health, morals, and interference with national legal order. Here each of these principles will be defined and enriched by connected case studies, that allow the reader to understand their practical application. Overall, the chapter deals with delimiting a broad subject through the key points that characterize it. Only through a first part of study and in-depth analysis, it can become intuitive what are the main difficulties encountered in international cases concerning religious rights, addressed in the Chapter 2.

Chapter 2. will deal with an analysis concerning the juridical institutes with the main theme of religious freedom. Through the comparison between countries on the same theme, similarities and differences will be highlighted, understanding the diversity of countries. How is the dichotomy democracy versus religion managed? After having distinguished the difference between religious freedom and religious tolerance, 2.1 will reflect on the broad definition of religious freedom, suggesting judgments that addressed the generic topic from multiple perspectives. Among the judgements recalled there are the cases of *Kimlya and Others v. Russia*[1], *Church of Scientology Moscow v. Russia*[2], *order no. 4137 of the Court of Cassation of Rome*[3], *Leela Förderkreis e V. and Others v. Germany*[4] and *Otto-Premiger-Institut v. Austria*[5]. 2.2 will focus on the freedom to change religion,

[1] Judgment of the European Court of Human Rights no. 76836/01,32782/03, 1 October 2009, *Kimlya and Others v. Russia*, and the comment of SCHABAS (2017: 412-444).
[2] Judgment of the European Court of Human Rights, 5 April 2007, no. 18147/02, *Church of Scientology Moscow v. Russia*.
[3] Judgment of the Court of Cassation of Rome, 10 February 2023, order no. 4137.
[4] Judgment of the European Court of Human Rights, 6 November 2009, no. 58911/00, *Leela Förderkreis e V. and Others v. Germany*.
[5] Judgment of the European Court of Human Rights, 20 September 1995, no. 13470/87, *Otto-Premiger-Institut v. Austria*.

through the investigation of the judgments of: *Kokkinakis v. Greece*[6], *Neagu v. Romania*[7], *Saran v. Romania*[8] *and Jokóbski v. Poland*[9]. In 2.3 will be faced the theme of religion, dress codes and symbol through the judgments of: *Leyla Sahin v. Turkey*[10] and *Missaoui and Akhandaf v. Belgium*[11]. 2.4 will deal with the theme of places of worship. Here will be develop a comparison between the judgments of: *Skugar and Others v. Russia*[12] *and Barankevich v. Russia*[13] tgether with the situation of minaretz in Switzerland. Finally 2.5 will develop around the right to manifest belief through the judgments of: *Knudsen v. Norway*[14], *Konttinen v. Finland*[15] *and Francesco Sessa v. Italy*[16].

Chapter 3. will analyze the French case study. The first part will explore an historical-legal analysis of the religious-demographic changes in France from 1789 to today, through a study on French multiethnicism, divided into the two period of: 1789-1980 and 1980-today. Subsequently, the concept of *laïcité* will be explained, enriched with its meaning and its statutory rationale. The Chapter will then move on to an accurate investigation of the legal bases of religious limitations, through the review of the main international covenants signed by France, deepening the French cases of the Court of Strasbourg on religious rights and pointing out the regional laws interfering with religious freedom. Finally, the theme of the state of emergency will be analyzed, discussing both to the terrorist period of 2015-2017, following the terrorist events in France and the state emergency of 2020-2022, with the health crisis of Covid-19. It will be fundamental to understand how the laws have adapted to the periods and how these rules are suitable with the general idea of protection of human rights.

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[6] Judgment of the European Court of Human Rights, 25 May 1993, no.14307788, *Kokkinakis v. Greece*.
[7] Judgment of the European Court of Human Rights, 10 November 2020, no. 21969/15, *Neagu v. Romania*.
[8] Judgment of the European Court of Human Rights, 10 November 2020, no 65993/16, *Saran v. Romania.*
[9] Judgment of the European Court of Human Rights, 7 December 2010, no. 18429/06, *Jakobski v. Poland*.
[10] Judgment of the European Court of Human Rights, 10 November 2005, no. 44774/98, *Leyla Sahin v. Turkey*.
[11] Judgment of the European Court of Human Rights, 22 October 2022, no. 54795/21, *Missaoui and Akhandaf v. Belgium*.
[12] Judgment of the European Court of Human Rights, 3 December 2009, no. 40010/04, *Skugar and Others v. Russia*.
[13] Judgment of the Case of European Court of Human Rights, 26 July 2007, no. 10519/03, *Barankevich v. Russia*.
[14] Judgment of the European Court of Human Rights no. 11045/84, 8 March 1985, Knudsen *v. Norway*.
[15] Judgment of the European Court of Human Rights no. 24949/94, 3 December 1996, *Konttinen v. Finland*.
[16] Judgment of the European Court of Human Rights, 3 April 2012, no. 28790/08, *Francesco Sessa v. Italy*.

CHAPTER 1. HUMAN AND RELIGIOUS RIGHTS: COMPREHENSION OF A FRAGILE EQUILIBRIUM

Religious rights are inevitably and inextricably part of the broader category of *human rights*. This master's thesis will begin, for this reason, with the definition of the category, understanding its rationale and its historical basis, to then develop an in-depth analysis of the specific category of religious rights and the limits it brings with it. It is known that the Universal Declaration of Human Rights[17] reserves Article 18 for the promotion of freedom of belief and thought, including religion among the protected categories. Other specific instruments for the protection of religious freedom include Article 9 of the European Convention on Human Rights[18] ('ECHoR'), together with more regional and diversified mechanisms, which will be better explored in the next paragraphs. What are the challenges in balancing the rights? Is this topic still relevant? What happens in controversial cases positioned halfway between promotion of religious freedom and the protection of secularism?

The following dissertation will surpass an in-depth clarification on the meaning of *human right*, taking for granted a general knowledge on the subject. However, human rights could briefly be identified as an inherent liberty that arises from the mere existence of an individual as a living being. Consequently, neither any governing authority nor any individual possesses the authority to withhold any of these rights. As René Cassin stated[19]: "Human rights are what no one can take away from you".

1.1 A GENERAL HISTORICAL-JURIDICAL EVOLUTION OF THE PROTECTION OF HUMAN RIGHTS.

This study begins with a comprehensive analysis of the historical-juridical evolution of the protection of human rights, to outline the roots in which religious rights have developed. To understand the importance of the law, appears necessary to comprehend the intimate reasons that have allowed the development of human law in general. The need to start here lies in a precise narrative choice. Through this storytelling the reader will discover the complexity of human rights within a long journey of challenges and conquests, that still lasts today, and that probably will never be said to be definitively concluded. This is testified by the latest developments in the field of law, such as the development of space law or the very recent development of agreements that regulate artificial intelligence. The fulfillment of human

[17] Declaration of the General Assembly of the United Nations, 10 December 1948, no. 217 A (III), A/RES/3/217 A, *Universal Declaration of Human Rights*.
[18] Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[19] BRANDER, DE WITTE, GHANEA, GOMES, KEEN, NIKITINA, PINKEVICIUTE (2020:384).

rights will not probably be ever finished, nonetheless appears indispensable to know its origins, in order to realize in the future laws coherent with the past.

1.1.1 HISTORICAL BASIS: RISE, PREMISES AND TYPES OF HUMAN RIGHTS

> "This is a moment to stand on the right side of history. A moment to stand up for the human rights of everyone, everywhere. We must revitalize the Universal Declaration and ensure its full implementation to face the new challenges of today and tomorrow"[20].

The paragraph is a quote of part of the discourse delivered by Antonio Guterres during the 52nd session of the Human Council in Geneva, on 27 February 2023, addressing the events surrounding the Russian invasion of Ukraine[21]. The concrete evidence that certain regions of the world do not safeguard human rights is deemed intolerable, especially from a Western perspective. It is even more difficult to accept that the Universal Declaration of Human Rights, adopted 75 years ago, remains somewhere a relatively new concept. Whilst contemporary society is privileged to be inherently endowed with such rights, it can be imaginative and misleading to believe it has always been like this. Taking these rights for granted is not only dangerous but also inaccurate due to the relative novelty they represent, in the West as in the rest of the world. The roots of the Declaration of Human Rights can be traced back to the French Revolution in 1789, even if no comparable measures to the declaration had been implemented at that time. This means that only 200 years have passed since the first formulation of the concept of human rights, so the subject remains quite new. According to Viljoen[22], Director of the center for Human Rights of the University of Pretoria, in South Africa, the term "human rights" could be adopted both as a representation of a distinct set of ethical assertions accessible to all individuals and as a protective instrument to ensure governmental accountability within domestic legal systems. In this paragraph an examination will be conducted on the genesis of human rights as an inherent right of humanity. The next paragraph will then deal with the field of human rights and their development through history and States.

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[20] UNITED NATIONS INDIA (2023).

[21] UNITED NATIONS INDIA (2023).
During the 52nd session of the Human Rights Council in Geneva, Antonio Guterres urged the assembly not to take human rights for granted, especially in places that suffer from deprivation and abuse in this historical moment. Guterres retraced the history of the development of human rights, recalling all the tools that the UN makes available for continuous protection and implementation such as the Universal Periodic Review, the Special Procedures and the Treaty Monitoring Bodies and the Office of the High Commissioner, are central to creating momentum for progress.

[22] VILJOEN (2012: 1-6).

Amnesty International[23] outlines a specific framework of the steps that led human rights to reveal their current characteristics. The first period in which human rights seemed to appear for the first time, can be traced back to *ancient history*, precisely before 200 BC, with the birth of the Jewish faith, Confucianism and Daoism in China, Hinduism and Buddhism in India, and the humanistic philosophy of Athens. The first ideas of human dignity date back to that period, especially in reference to concepts such as the impossibility of using violence, lie, steal, or break contracts in an arbitrary way. An additional crucial milestone is found in the *3rd century BC*, when the concept of equality was developed, elaborated in the Greek philosophy of the Stoics. They were the first to espouse the notion of gender equality, believing that men and women possessed equal status. They underlined the importance of recognizing women and children as beings to be respected, cultivating compassion and tolerance for others, and integrating individuals considered *barbarians* into the larger human community. Some adherents of Stoicism even extended this egalitarian perspective to include slaves, granting them comparable status and rights. The *13th century* embodied a first approach to the representation of citizens in governments, through the creation of small parliaments in Scotland, Poland, the kingdom of León and Paris, and particularly with the establishment of the English *Magna Carta* of 1215. Another fundamental step was taken during the *18th century* with the adoption of the American Declaration of Independence[24] (1776) and the French Declaration of the Rights of Man and of the Citizen[25] (1789). Those measures are considered today still, a starting point to the rights of individual freedom. The *19th century* determined a significant advancement in *socio-economic rights* and the *abolition of slavery*, owing to England and under the pressure of the Trade Union. This movement was a forerunner of what happened decades later throughout the rest of the world. It is then necessary to recall the importance of the early *20th Century*, standing as a pivotal period characterized by the pursuit of gender equality. Notably, the advent of women's suffrage originated in New Zealand in 1893, followed in quick

[23] AMNESTY INTERNATIONAL (2019). The article by Amnesty International (A Brief History of Human Rights) elucidates a precise and rigorous analysis, characterized by a comprehensive examination and scrupulous evaluation of the history of human rights. This formal approach entails the systematic application of methodological principles, meticulous data collection, and the judicious utilization of objective criteria for interpretation. The primary objective is to furnish an objective and reliable assessment, rooted in verifiable evidence, logical inference, and robust analytical frameworks. By adhering to rigorous standards of objectivity and scholarly integrity, this formal mode of analysis engenders valid and insightful conclusions.

[24] The *United States Declaration of Independence* is deemed to have played a significant role in the development of human rights. The nature of the agreement appears essential in the first-time declaration of the equality of men and the rights of people to dissolve political associations became oppressive.

Declaration of the United States of America, 4 July 1776, *United States Declaration of Independence.*

[25] The French Declaration of Human Rights and Citizen was adopted on 26August 1789, revolutionizing completely the history of the human rights, defining individual and collective rights during the turbulent period of the French Revolution.

succession by countries such as the Netherlands and Russia in 1917, the United States in 1920, and the United Kingdom in 1928, culminating in an early achievement of parity, as widely acknowledged. However, the true revolution started in 1948, when a transformative milestone was reached with the establishment of universal standards through the Universal Declaration of Human Rights ('UDHR')[26]. This decisive year marked the genesis of an enduring trajectory, witnessing the emergence of a continuous series of international human rights conventions, declarations, and monitoring institutions. The idea behind the UDHR was to elaborate a document that led to the enduring preservation of a set of timeless and inherent values, which had never been formally articulated. Consequently, a series of agreements emerged, continually evolving to expand the realm of rights and ensure inclusivity for all, thereby safeguarding against any forms of exclusion. The historical progression of human rights was propelled by mechanisms such as the willingness of some categories of society requesting more freedom and emancipation.

In conformity with the "Manual for human rights education with young people" by the Council of Europe[27] the most efficient way to classify human rights is revealed to divide them into generations. The *first-generation rights* are the civil and political ones, developed during the eighteenth and nineteenth centuries. Today they are embodied in instruments such as the International Covenant on Civil and Political Rights[28] ('ICCPR'), adopted in 1966 and the European Convention for the Protection of Human Rights and Fundamental Freedoms[29] ('ECPHRFF'), opened for signatures in Rome on 4 November 1950 but entered into force on 3 September 1953. These rights emerged in response to the numerous infringements perpetrated by the Soviet bloc during the Cold War, directly replying to the need of liberty from authoritarian oppression, freedom of speech, association, religion and right to vote[30]. The *second-generation rights* are identified in social, economic, and

[26] The Universal Declaration of Human Rights was adopted by the UN General Assembly in Paris on 10 December 1948 during the 183rd plenary meeting, marking a one of the most significant days in the history of human rights.
Declaration of the General Assembly of the United Nations, 10 December 1948, no. 217 A (III), A/RES/3/217 A, *Universal Declaration of Human Rights*.

[27] As delineated by BRANDER, DE WITTE, GHANEA, GOMES, KEEN, NIKITINA, PINKEVICIUTE (2020:397-402) in the Manual for human rights education with young people, proposed by the Council of Europe to educate students on the subject. In the referring part the evolution of human rights is comprehensively elucidated.

[28] Covenant of the United Nations, 16 December 1966, adopted by the General Assembly resolution 2200A (XXI), *International Covenant on Economic, Social and Cultural Rights*.
According to the Equality and Human Rights Commission, the International Covenant on Civil and Political Rights enabled the freedom from torture and degrading treatment, fair trial rights, freedom of thought, religion and expression, right to privacy, home and family life and equality and non-discrimination.

[29] The Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights* marked the first instrument to give practical effect to the Universal Declaration of Human Rights, making the provisions, written in the agreement, finally binding.

[30] As underlined by VILJOEN (2012:1).

cultural liberties and derive their *raison d'être* by the growing industrialization pertaining to the era in question, focusing on the coexistence and collaboration of individuals, as well as the fundamental requisites for sustenance and employment. They are for the most included in the International Covenant on Economic, Social and Cultural Rights[31] ('ICESCR') and in the European Social Charter of the Council of Europe[32]. Quoting the already mentioned Manual for human rights education with young people[33], social, economic, and cultural rights could be defined as:

> "*Social rights* are those that are necessary for full participation in the life of society. They include at least the right to education and the right to found and maintain a family but also many of the rights often regarded as "civil" rights: for example, the rights to recreation, health care, privacy, and freedom from discrimination. *Economic rights* are normally thought to include the right to work, to an adequate standard of living, to housing and the right to a pension if you are old or disabled. The economic rights reflect the fact that a certain minimal level of material security is necessary for human dignity, and also the fact that, for example, a lack of meaningful employment or housing can be psychologically demeaning. *Cultural Rights* refer to a community's cultural "way of life" and are often given less attention than many of the other types of rights. They include the right to participate freely in the cultural life of the community and, possibly, also the right to education. However, many other rights, not officially classed as "cultural" will be essential for minority communities within a society to preserve their distinctive culture: for example, the right to non-discrimination and equal protection of the law."[34]

Finally, *third-generation rights* are embodied by the so-called "solidarity rights", identified by the Council of Europe as "the rights to development to peace, to a healthy environment, to share in the exploitation of the common heritage of mankind, to communication and humanitarian assistance"[35]. These measures aim to shield not only all societies but particularly those nations lagging; among others, the developing and third-world countries. Furthermore, the scope of third generation rights is identified in humanitarian aid, protection against natural calamities, and the common heritage of humanity. The main feature of this set of rights is represented by the presence of a starting point but not an ending point, or of their intrinsic characteristic of being by nature evolvable based on the historical period in which they are set. The continuous evolution is given by the fact that issues such as peace,

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[31] Covenant of the United Nations*,* 16 December 1966, adopted by the General Assembly resolution 2200A (XXI), *International Covenant on Economic, Social and Cultural Rights*.
The International Covenant on Economic, Social and Cultural Rights (1966) ensured a fair level of education, right conditions of work, adequate standard of living, standards of health and social security.

[32] Treaty of the Council of Europe, 26 February 1965, ETS no. 035, *European Social Charter*.
The European Social Charter of the Council of Europe (1996) guarantees a fair level of social and economic rights.

[33] BRANDER, DE WITTE, GHANEA, GOMES, KEEN, NIKITINA, PINKEVICIUTE (2020:397-402).

[34] *Ibidem*, emphasis added.

[35] See also BRANDER, DE WITTE, GHANEA, GOMES, KEEN, NIKITINA, PINKEVICIUTE (2020:397-402) to deepen the argument.

heritage and humanitarian assistance are subjects so broad and complex as to require periodic updating in step with the evolution of human sensitivity towards these issues. These rights are destined to evolve together with human evolution and sensitivity, in accordance with the specific period and place where they are developed.

1.1.2 LEGAL INSTRUMENTS PROTECTING HUMAN RIGHTS

It is recognized that the most effective instrument in the field of human rights is international cooperation: this includes agreements, covenants, reports, and technical instruments, which will be explored later in the paragraph. Just as it happens for classical international law, human rights are also subject to the limitations inherent of supra-State law, in the sense that, even if the laws in question can be both formally binding the application of the law is subject of customary law and as such cannot, by its nature, be totally compulsory. International Law turns out to be on a theoretical basis a right to all effects, and as such with rules to be respected. The limit of the International Law lies in the inability to have stringent deterrents such as detention[36], which causes several gaps in the ability to enforce the rules by all states, due to the fragile limit between not violating the principle of non-interference and making everyone contribute to a perfect harmony. Human rights can be classified per type depending on their geographical origin, rights referring to a specific group of people or rights categorized for their specific aim[37]. To develop a systematic work, the legal instruments for the protection of human rights will be studied, taking a cue from the model provided by Brander, De Witte, Ghanea, Gomes, Keen, Nikitina, Pinkeviciute[38], approaching firstly the methods of the United Nations ('UN'), then moving to Europe, after onto regional instruments and finally onto NGOs.

The first form of an actual international treaty protecting human rights has its roots in *1919 in the International Labour Organization* ('ILO')[39] with the goal of protecting the rights of the workers. This tendency tried to be reinforced by the *League of Nations*, after the First World War. The first powerful measure in the field of human rights can be recognized in the *1948 Universal Declaration of Human Rights* ('UDHR')[40], born to effectively put an end to the atrocities committed during the Third Reich and prevent the

[36] It should be noted that deterrence instruments such as the Hague Tribunal or ad hoc instruments are still present, but that the nature of international law discourages such practices. International law is based on the sovereignty of states and therefore it would be counterintuitive to initiate proceedings against the states themselves.
[37] BRANDER, DE WITTE, GHANEA, GOMES, KEEN, NIKITINA, PINKEVICIUTE (2020:405).
[38] BRANDER, DE WITTE, GHANEA, GOMES, KEEN, NIKITINA, PINKEVICIUTE (2020:405-425).
[39] The organization was an inherent part of the Peace Treaty of Versailles, VILJOE (2012:1).
[40] Declaration of the General Assembly of the United Nations, 10 December 1948, no. 217 A (III), A/RES/3/217 A, *Universal Declaration of Human Rights*.

possibility that such scenarios could recur in the future[41]. As recalled in the Manual for Human Rights Education with Young People[42], the character of the declaration was in a first moment non-binding, a tactic used to get as many States as possible to ratify the document immediately. The declaration has obtained a so wide acceptance from the international community, that its initial non-binding character has altered and is now frequently referred to as a binding document, according to customary international law. The UDHR appears to be an extremely organic and complete document regarding the protection of human rights. The UDHR together with International Covenant on Civil and Political Rights ('ICCPR'), the International Covenant on Economic, Social and Cultural Rights ('ICESCR')[43], and their respective Optional Protocols, form the *International Bill of Human Rights*. The aim of these covenants is to make States respect, protect and fulfill those rights through their ratification. The safeguard of the Covenants is implemented by the Human Rights Committee, as regards the ICCPR, and by the Committee on Economic, Social and Cultural Rights as regards the ICESCR. Along with this, the UN has taken proactive measures by adopting an additional set of seven treaties specifically designed to address and safeguard the rights of specific groups or individuals who may be vulnerable or marginalized within the global community. The seven covenants were developed later than the ICCPR and ICESCR with the intention of filling the lacunas of the preceding articles, and include:

- The *International Convention on the Elimination of all forms of Racial Discrimination*, 1965
- The *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979 ('CEDAW')
- The *Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment*, 1984
- The *Convention on the Rights of the Child*, 1989
- The *Convention on the Protection of the Rights of Migrant Workers and members of their Families*, 1990
- The *Convention on the Rights of Persons with Disabilities*, 2006
- The *Convention on Enforced Disappearances*, 2006 ('ICED')

[41] A dutiful clarification is that because of the deep need for human rights to be applied by as many countries as possible, States could ratify the treaty and partially make 'amendments' of the parts they did not want to accept, according to the *1969 Vienna Convention on the Law of Treaties*: this was a smart move to get most States to enter in the treaties. BRANDER, DE WITTE, GHANEA, GOMES, KEEN, NIKITINA, PINKEVICIUTE (2020:404).

[42] *Ibidem*.

[43] It is emphasized that the creation of the two covenants has its foundations in the desire to transform the UDHR into an agreement legally binding, through a treaty. Both covenants were ratified by a large majority of the States: respectively 166 for the ICCPR and 160 ratifications for the ICESCR.
BRANDER, DE WITTE, GHANEA, GOMES, KEEN, NIKITINA, PINKEVICIUTE (2020:404).

As reported by Viljoen[44], and to give a deeper understanding of the processes of UN, the functioning of the protection of human rights is based on the two mechanisms of the "Charter-based system" and the "treaty-based system". The *Charter-based system* implies the automatic legal binding effect on all 192 UN Member States, was developed under the UN Economic and Social Council and is based upon the work of the Commission on Human Rights, made up of 54 government representatives chosen by the ECOSOC Council that elaborated the UDHR, the ICCPR and the ICESCR. From the very beginning, the Commission dealt with a series of complaints and the emerging of two different mechanisms: the '*1235' procedure,* ECOSOC resolution 1235 (XLII) of 1959[45], that implies a public discussion and constituted the basis for the establishment of the future *Special Procedure* and the '*1503' procedure*, for dealing with allegations of human rights violations, that has a confidential characterization (now simply called 'complaint procedure'), with the adoption by the Commission in 1975 of resolution 8 (XXXI) that established *an Ad Hoc Working Group* on the situation of human rights in Chile. Notably, to enhance the system opposing abuses, measures were enriched with *special rapporteurs* and *procedures*, such as country-specific mandates and thematic mandates. The Commission on Human Rights became the current Human Rights Council in 2006, with resolution 60/251[46], replacing the former organ and including new functions. The previous body functioned in fact as a mere functional body, while the Council is a permanent organ, meets regularly and introduced the Universal Peer Review ('UPR'). The Council also has a smaller number of members (47 States) that can be nominated only for two consecutive three-years terms, elected with an absolute majority of the Assembly (97 states). The *treaty-based system* includes most possible mechanisms to bring complaints of violations of the provisions of the human rights. The first treaty adopted dates to the 1948 with the *Convention on the Prevention and Punishment of the Crime of Genocide*, as a direct consequence to the atrocities of the Nazist Holocaust. After the Genocide Convention was adopted the International Convention on the *Elimination of All Forms of Racial Discrimination* ('CERD'), followed by the *International Covenant on Civil and Political Rights* ('ICCPR') and the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR') in 1966, and the other conventions already mentioned in this paragraph, as *CEDAW*. It is important to recall that the adoption of an Optional Protocol to ICESCR in 2008 allowed the individual complaints regarding alleged violations of socio-economic rights and made the UN treaty system a system that embodies the principle of justifiability of all rights. There are three main procedures, concerning the

[44] VILJOEN (2012:1-4).

[45] "Commission's general and permanent prerogative to deal with human rights violations asked ECOSOC (in resolution 9 (XXIII)) to include 'the power to recommend and adopt general and specific measures to deal with violation of human rights' in its terms of reference. This request was significant because it led to ECOSOC resolution 1235 (XLII), which constituted the legal basis for the establishment of future Special Procedures." LIMON, POWER (2014).

[46] Resolution of the General Assembly of United Nations. 3 April 2006, no. 60/251.

treaty-based system, to bring complaints of violations of the relevant provisions: the individual communications, State-to-State complaints and inquiries. The *individual communication* can be examined by the Human Rights Committee ('HRC') relating to States included in the First Optional Protocol to the ICCPR, by the CEDAW to States part of the Optional Protocol to CEDAW, by the Committee Against Torture, relating to States parties who have made the declaration under article 22 of CAT and by the Committee on the Elimination of Racial Discrimination for those State who have made the declaration under article 14 of CERD, also potentially by the Convention on Migrant Workers when ten Members of the Convention will make the declaration under article 77. *State-to-State complaints* or *inter-State complaints* contemplate the possibility of one State (part of the convention) complaining about another State (also part of the convention) that allegedly has committed violations of the treaty. To sum up the possibilities could be suggested the following scheme[47]:

- CAT and CMW: article 21 CAT and article 74 CMW establish a process whereby the appropriate Committee can examine grievances raised by one State party that believes another State party is failing to implement the regulations outlined in the Convention.
- CERD and CCPR: articles 11-13 ICERD and articles 41-43 ICCPR outline a detailed process to address conflicts among States parties regarding a State's compliance with its duties under the applicable Convention/Covenant, utilizing a specialized Conciliation Commission established specifically for this purpose. While the procedure typically encompasses all States parties to ICERD, it solely applies to States parties to the ICCPR that have issued a declaration accepting the Committee's authority in such matters.
- CEDAW, CAT and CMW: article 29 CEDAW, article 30 CAT and article 92 CMW include provisions for addressing disagreements between States parties regarding the interpretation or implementation of the Convention, requiring initial attempts at negotiation and, if unsuccessful, resorting to arbitration. If the parties are unable to agree on arbitration terms within six months, one of the States involved has the option to refer the dispute to the International Court of Justice. However, States parties could opt out of this procedure by issuing a declaration at the time of ratification or accession, which, based on the principle of reciprocity, prevents them from starting cases against other State parties.

[47] The scheme is a re-elaboration of the article available online by UNITED NATIONS HUMAN RIGHTS (2013).

Inquiries can be brought by the CAT and the CEDAW both based on their own initiative and if they receive reliable information containing dependable data that includes solid evidence of grave or consistent breaches of the convention within a state party.

A further distinction of protection could be identified in *regional instruments*. These instruments were set after the Second World War and can be distinct broadly into: the Council of Europe ('CoE'), the Organization of American States ('OAS') and the African Union ('AU'). The advantage of these tools stands in a the more selective nature of the organs, meaning that the effects are certainly more efficient and widespread compared to universal and generalized tools, which often do not consider the differences of individual societies.

The *Council of Europe or CoE* was founded in 1949 by 10 Western European States due to the fear of a new fall into totalitarianism, with the aim of promoting liberty, peace, and security. The founding fathers of the CoE are identified in: former prime Minister of the United Kingdom *Winston Churchill*, former Chancellor and Minister for Foreign Affairs of the Federal Republic of Germany *Konrad Adenauer*, former French Republic Minister for Foreign Affairs *Robert Schuman*, former Prime Minister and Foreign Minister of Belgium in the 40s and 50s *Paul-Henri Spaak*, former Prime Minister of the Republic of Italy *Alcide de Gasperi* and former United Kingdom Secretary of State for Foreign Affairs *Ernest Bevin*. The structure of the CoE includes the two statutory bodies of the *Committee of Minsters* and the *Parliamentary Assembly of the Council of Europe* ('PACE'). The representatives of the Committee are the heads of State of each member of the CoE while the Parliamentary Assembly is composed by members of the national parliaments of each member state. The Committee of Ministers is the decision-making body of the Council while the parliamentary Assembly of the Council of Europe function as the parliament organ of the organization. Other important figures of the CoE include the *Commissioner for Human Rights* with the aim to promote awareness and respect of Human Rights and the *Secretary General* that presides over the secretariat of the organization. In 1950 the CoE adopted the *Convention for the Protection of Human Rights and Fundamental Freedoms* or better known as the European Convention on Human Rights ('ECHR'), representing the main human rights instrument of the organization. The Convention received the ratification of all the 47 members of the CoE and included mainly civil and political rights. The principal instruments of protection of human right, adopted by the Council of Europe, are summarized in the brief overview presented in Figure 1.1.2.1[48], that includes a precise list

[48] Figure 1.1.2.1 in BRANDER, DE WITTE, GHANEA, GOMES, KEEN, NIKITINA, PINKEVICIUTE (2020:412).

of Conventions, their head court or committee, the measures it can take and any other subsequent committees and recommendations, visits, etc.

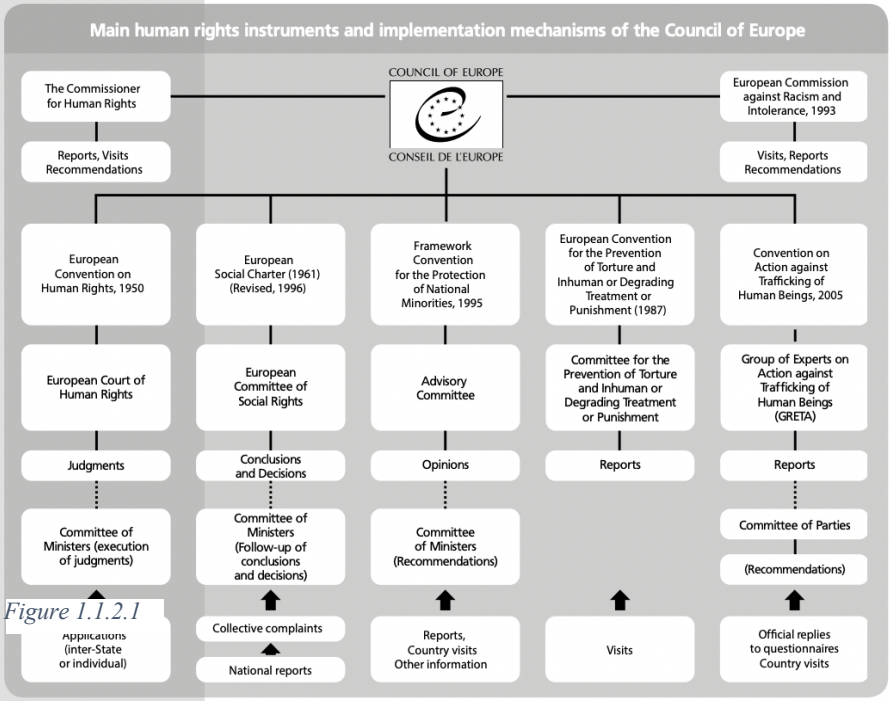

Figure 1.1.2.1

The *Organization of American States* or *OAS* has an ancient history. The first form of association of the American States can be traced back to the 1889, when they decided to meet periodically and to institute a shared system of norms and institutions. The First International Conference of American States was held in Washington, D.C., October 1889 to April 1890 to which took part eighteen American States. During the Conference there was a general accordance to constitute the *International Union of American Republics* for the prompt collection and distribution of commercial information, with its headquarters in Washington. Later the organ become the "Pan American Union" and with that change also expanded its functions, for example with the creation of the today's General Secretariat of the OAS. The founding Charter of the OAS was signed in Bogota in 1948 and entered into force in December 1951. The Charter was subsequently amended by the *Protocol of Buenos Aires*[49] signed in 1967, which entered into force in 1970,

[49] Protocol of Amendment to the Charter of the Organization of American States, 12 March 1970, B-31, Buenos Aires.

and by the *Protocol of Cartagena de Indias*[50], signed in 1985, which entered into force in November 1988. In 1992 and in 1993 were respectively signed the *Protocol of Washington*[51] and the *Protocol of Managua*[52]. These two instruments will enter into force upon ratification by two-thirds of the Member States. The OAS currently has 35 Member States. In addition, the Organization has granted Permanent Observer status to 30 States, as well as the European Union. The OAS accomplishes its purposes through the following organs: the General Assembly; the Meeting of Consultation of Ministers of Foreign Affairs; the Councils (the Permanent Council, the Inter-American Economic and Social Council and the Inter-American Council for Education, Science, and Culture); the Inter-American Juridical Committee; the Inter-American Commission on Human Rights; the General Secretariat; the Specialized Conferences; the Specialized Organizations and other entities established by the General Assembly. Its first Convention on the theme of human rights is identified in the *American Convention on Human Rights* [53]in 1969, with a ratification of 24 states, including civil, political, and socio-economic rights, and entered into force on 18 July 1978, pursuant to Article 74(2) of the Convention. According to the article 5, the Convention guarantees the rights to respect for physical, mental, and moral integrity and freedom from torture and cruel, inhuman, or degrading punishment or treatment. In the article 19 affirms the importance of protection of children in accordance with their condition as minors by their families, societies, and the state, also guaranteeing the rights of all people to equal protection in law with article 24 and to judicial protection against the violation of fundamental rights recognized by the Convention or by the constitution or laws of the state concerned with article 25. The *Inter-American Court of Human Rights* it is the body attributed as guarantor of this document, which is responsible for applying and interpreting the American Convention on Human Rights.

The first form of association of the African States is identified in the *Organization of African Unity* ('OAU') created in 1963 during a meeting of 32 heads of independent States in Addis Ababa, in Ethiopia with the sign of the Charter creating Africa's first post-independence continental institution, the *OAU Charter*[54]. The reasons of the founding fathers in the creation of this charter are to put in writing the freedom, equality, justice, and dignity of the African continent, as a basis for a bright future. The OAU was the manifestation of the pan-African vision for an Africa that was united, free and in control of its own destiny and this was solemnized in. The principal aim of

[50] Protocol of Amendment to the Charter of the Organization of American States, 12 May 1985, A-50, Cartagena de Indias.
[51] Protocol of Amendments to the Charter of the Organization of American States, 25 September 1997, A-56, Washington D.C.
[52] Protocol of Amendments to the Charter of the American States, 29 January 1996, Managua.
[53] Convention of the Organization of American States, 16 November 1999, San Salvador, *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*.
[54] Charter of the African Union, 25 May 1963, Addis Ababa, *OAU Charter*.

the OAU were to get rid of the plague of the apartheid and to promote fraternity and unity among the African States. The Charter mentions goals as: the promotion the unity and solidarity of the African States, the need to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa, the rights to defend their sovereignty, their territorial integrity and independence and the necessity to eradicate all forms of colonialism from Africa. Also urges the desire to promote international cooperation, according with the Charter of the United Nations and the Universal Declaration of Human Rights. The *African Union* or 'AU' was officially launched in July 2002 in Durban, South Africa, following a decision in September 1999 by its predecessor, the OAU to create a new continental organization to build on its work. The decision to re-launch Africa's pan-African organization was the outcome of a consensus by African leaders to foster Africa's potential and get rid the continent of apartheid. The *Constitutive Act of the African Union*[55] and the *Protocol on Amendments to the Constitutive Act of the African Union*[56] lay out the aims of the AU which are: unity and solidarity between African countries and their the people, sovereignty, territorial integrity and independence of its Member States, acceleration of political and socio-economic integration of the continent, promotion issues of interest to the continent and its peoples, international cooperation, peace, security, and stability on the continent, democratic principles and institutions, popular participation and good governance, protection of human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments, play its rightful role in the global economy and in international negotiations, sustainable development at the economic, social and cultural levels as well as the integration of African economies, advance the development of the continent by promoting research in all fields, in particular in science and technology, promotion of good health on the continent. Ensure the effective participation of women in decision-making, particularly in the political, economic, and socio-cultural areas, develop and promote common policies on trade, defense, and foreign relations to ensure the defense of the Continent and the strengthening of its negotiating positions, invite and encourage the full participation of the African Diaspora as an important part of our Continent, in the building of the African Union. The leading organs of the Union are: African Commission on Human and Peoples' Rights ('ACHPR'), African Court on Human and Peoples' Rights ('AfCHPR'), AU Commission on International Law ('AUCIL'), AU Advisory Board on Corruption ('AUABC') and the African Committee of Experts on the Rights and Welfare of the Child ('ACERWC'). The AU is also working towards the establishment of continental financial institutions (The African Central Bank, The African Investment Bank and the African Monetary Fund). Other key

[55] Act of the African Union, 26 May 2001, no. CAB/LEG/23.15, *Constitutive Act of the African Union.*

[56] Protocol of the African Union, 11 July 2001, last signature on 19 March 2018, *Protocol of the Amendments to the Constitutive act of the African Union*.

bodies are identified in: Regional Economic Communities ('RECs') and the African Peer Review Mechanism are also key bodies that that constitute the structure of the African Union.

Another discourse should be made for what concerns the *League of Arab States* ('LAS') and the *Organization of the Islamic Conference* ('OIC'). an early version of the league was created in 1945 with the Charter of the Arab League[57], to then arrive at today's constitution of the League in 1969 which has 56 members, with the principle aim to guarantee the sovereignty of single members and to create a strong bond between the states. The principal chart of the organization is the Cairo Declaration on Human Rights in Islam adopted in Cairo in 1990 with only a declaratory nature. In 2004 OIC adopted the Covenant on the Rights of the Child in Islam a binding instrument, open for ratification, that will eventually enter into force after 20 OIC member States would ratify it.; however, the League did not ensure any right in the human rights view, speaking in Western-classical terms. The League bases most of its belief on the Koran which serves as the main law of the members[58]. Nonetheless, it must be considered that the issue of human rights has in any case been touched on in some historical moments of the League. It can be recalled the Teheran World Conference in 1968 that stressed the matter of human rights, especially with reference to situation of beats by Israel in 1967.

The Asian region remains without a real organization for the protection of human rights, above all due to the absence of a more generic association organization of Eastern countries. The only form of association of the Asian countries is represented by the Association of the Southeast Asian Nations ('ASEAN') that was established on 8 August 1967 in Bangkok with the signing of the ASEAN Declaration[59] by Indonesia, Malaysia, Philippines, Singapore and Thailand. Today the organization counts ten Member States with the addition of: Brunei Darussalam joined ASEAN on 7 January 1984, followed by Viet Nam on 28 July 1995, Lao PDR and Myanmar on 23 July 1997, and Cambodia on 30 April 1999. The ASEAN Charter[60] entered into force on 15 December 2008 at the presence of ASEAN Foreign Ministers at the ASEAN Secretariat in Jakarta, creating a legally binding agreement among the 10 ASEAN Member States. Despite the association of countries, however, the principles that regulate its functioning and birth do not provide for principles of democracy and the protection of human rights. The ASEAN itself insist on the importance of the renewal of the organization in terms of economy, policy and international assets, but not on the pursuit of human rights and freedom.

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[57] Charter of the League of Arab States, 22 March 1945, *Charter of the Arab League.*

[58] This theme will be better explained in the following paragraphs, understanding how religion in those countries plays a fundamental role both in a legal and a personal way.

[59] Declaration of the Association of South-East Asian Nations, 8 August 1967, Bangkok, *ASEAN Declaration*.

[60] Charter of the Association of South-East Asian Nations, 20 November 2007, entered into force on 15 December 2008, Singapore, *Charter of ASEAN*.

Viljoen explored the theme of the practical implementation of the protection of human rights, both internationally and regionally speaking. In his own words:

> "The way in which the principal treaty is implemented or enforced differs in each region. In an evolution spanning many decades, the European system of implementation, operating out of Strasbourg, France, developed from a system where a Commission and a Court co-existed to form a single judicial institution. The European Court of Human Rights deals with individual cases. A dual model is in place in the Americas, consisting of the Inter-American Commission, based in Washington, D.C., and the Inter-American Court of Human Rights, based in San José, Costa Rica. Individual complainants have to submit their grievances to the Inter-American Commission first; thereafter, the case may proceed to the Inter-American Court of Human Rights. The Commission also has the function of conducting on-site visits. After some recent institutional reforms, the African system now resembles the Inter-American system."[61]

The last grade worth to mention is the *subregional level*. The most important example of this must be associated with the African geographical area, which, needing to implement the economic efficiency of some specific regions in a widespread manner, has begun a division into *Regional Economic Communities* ('RECs'). RECs are regional grouping of the African States, a division created under the auspices of the *1980 Lagos Plan of Action for the Development of Africa*[62] and the *1991 Abuja Treaty*[63], with the aim of implement the African integration. Each with their own role and structure, the RECs aim to facilitate regional economic integration between members of the region and through the wider African Economic Community ('AEC'), established under the Abuja Treaty. They are increasingly involved in coordinating African Union Member States' interests in wider areas such as

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[61] VILJOEN (2012:1-4).

[62] Plan of the African Unity, 1980-2000, Addis Ababa, *Lagos Plan of Action for the Development of Africa*.
The *1980 Lagos Plan of Action for the Development of Africa* was developed to increase the self-sufficiency of Africa. The plan blamed Africa's economic crisis on the Structural Adjustment Programs of the World Bank and International Monetary Fund and the vulnerability of African economies to worldwide economic shocks, such as the 1973 oil crisis. It has been characterized as the collective response of African states to the growing reliance of Western economies on the ideology of neoliberalism, which was summed up perfectly in the World Bank's 1981 Berg report, which replaced the LPA as the guiding economic document for Africa in the 1980s. To deepen the argument see also the documents published by the Organization of African Union on the topic.

[63] Treaty of the African Economic Community, 3 June 1991, entered into force on 12 May 1994, Abuja, *Abuja Treaty*.
The *Abuja Treaty* was signed on 3 June 1991 in Abuja and came into force in May 1994, establishing the African Economic Community (AEC). It was aimed at fostering the social, economic, and cultural development of the African continent through the integration of the economies of the various countries. Director of the National Planning Commission of Nigeria, the author of the treaty, outlines the historical background to the Treaty and summarizes the objectives of the AEC, the modalities for its establishment, the Community's main organs, achievements to date, and constraints.

peace and security, development, and governance. It is evident that although the RECs are born with an economic purpose, they are also inextricably linked to a social aspect. The African Union recognizes eight RECs: the Economic Community of West African States ('ECOWAS'), the Common Market for Eastern and Southern Africa ('COMESA'), the Arab Maghreb Union ('UMA'), the Community of Sahel–Saharan States ('CEN–SAD'), the Economic Community of Central African States ('ECCAS'), the Southern African Development Community ('SADC'), the Intergovernmental Authority on Development ('IGAD'), and the East African Community ('EAC').

> "Two decisions of subregional courts illustrate the growing significance of RECs to human rights protection. In a case brought against Uganda, it was contended that Uganda violated the EAC Treaty when it re-arrested 14 accused persons after they had been granted bail.3 The Court, in 2007, held that Uganda had violated the rule of law doctrine, as enshrined among the fundamental principles governing EAC.
>
> In its first decision on the merits of a case, delivered in November 2008,4 the SADC Tribunal held that it had jurisdiction, on the basis of the SADC Treaty, to deal with the acquisition of agricultural land by the Zimbabwean Government, carried out under an amendment to the Constitution (Amendment 17). The Tribunal further found that, as it targeted white farmers, the Zimbabwean land reform programme violated article 6(2) of the SADC Treaty, which outlaws discrimination on the grounds of race, among other factors. As to the remedial order, the Tribunal directed Zimbabwe to protect the possession, occupation and ownership of lands belonging to applicants and pay fair compensation to those whose land had already been expropriated."[64]

An honorary mention should be made to the *NGOs*: although they do not legally constitute a real level of protection, above all due to the non-binding nature of international law and the practice obtained in recent decades, it can be stated that they have contributed greatly to the creation of basic tools. We recall, among many others, the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity is a case in point. Adopted in November 2006 by 29 experts from only 25 countries, the 29 principles contained in the document, as a non-binding instrument but which today constitutes a real bulwark and example of protection of the rights of the LGBTQ+ community, providing a reliable model for agreements and covenants and becoming an efficient tool to all intents and purposes.

The main mechanisms of protection both on an international and national level remain *complaints*, *court cases* and *reporting procedures*. *Complaints* are classified as a quasi-judicial process where a commission is expected to deal with hearing the grievances and take a decision, at the same time countries are expected to comply with it, although the absence of a binding mechanism. The Human Rights Committee (also known as the

[64] *Ibidem*.

ICCPR Committee), the Committee on the Elimination of Racial Discrimination (within the United Nations system), and the Inter-American Commission on Human Rights (within the Organization of American States) are examples of entities that handle such complaints. *Court cases* are carried out (regionally speaking) by the three permanent regional courts existing today: the European Court of Human Rights, the Inter-American Court of Human Rights and the African Court of Justice and Human Rights ('ACJHR'). In reference to an international panorama, the ratification of the Rome Statute in 2002 determined the creation of the International Criminal Court ('ICC'), that today counts cases only in Northern Uganda, Democratic Republic of the Congo, the Central African Republic, Sudan (Darfur), and Kenya. The particularity of the court stands in the capacity to prosecute individuals who are accused of crimes against humanity, genocide, and war crimes, only when national courts demonstrate unwillingness or inability to investigate or prosecute these offenses. The principal judicial organ of UN is the International Court of Justice ('ICJ'), that does not permit to bring claims but developed and interpreted human rights and principles. The European Court of Human Rights in Strasbourg persists to be the most efficient instrument of judgment. One of the primary benefits is the system of compulsory jurisdiction, whereby a State automatically comes under the jurisdiction of the European Court as soon as it ratifies or accedes to the ECHR. This enables human rights cases to be filed against the State Party immediately upon ratification. Another contributing factor to its success is the binding nature of the Court's judgments, which require states to comply with the final rulings. Compliance is monitored by the Committee of Ministers of the Council of Europe. Additionally, in every case brought before the European Court, the procedure includes the possibility of pursuing a friendly settlement through mediation between the involved parties. The last instrument is identified in *reports* and *reviews*, a sort of summary and targeted analysis achieved by a commission, focused on a certain theme, in each period and territory, which ensures that the standards of the states, that accepted to be reviewed, are adequate. After a review period, the commission draws up a report in which it suggests possible improvements that the state should adopt to reach better levels. The limits of this tool lie precisely in the possibility of the state refusing to be analyzed: this element eliminates a priori all those countries which do not enjoy adequate standards of democracy, and which therefore would need more of the tool.

1.2 RELIGION AS EXPRESSION OF FUNDAMENTAL RIGHTS

Engaging with the topic of religion entails anticipating numerous controversial perspectives and recognizing that while some parts of the world may embrace atheism and have minimal religious influence, other countries have laws deeply intertwined with religious principles. This contrast becomes even more apparent when it is analyzed a country that embodies a profound

diversity in the country itself, from a region to another of the same State. It is the example of Italy, that according to the 2021 data on religious practices provided by ISTAT[65], appears profoundly diverse internally. Statistics showed that the percentage of individuals attending a place of worship at least once a week throughout the year was merely 11.9% in the autonomous province of Bolzano (in the north) but arose up to 24% in the region of Sicily (in the south). This disparity underscores the importance of approaching the subject with sensitivity, considering the significant differences it encompasses.

Religion holds significant importance as expression of fundamental rights because of its multifaceted impact on individuals and societies. It involves freedom of belief, individual autonomy, cultural and social identity, pluralism, tolerance, and aligns with the broader framework of human rights. Understanding and appreciating the role of religion is crucial to promote an inclusive, and harmonious society. *Freedom of belief* lies at the core of religious expression. Religion represents a deeply personal and integral aspect of many individuals' lives. It personifies their beliefs, values, and moral framework. Recognizing and protecting the freedom of belief allows individuals to choose, to practice, and to express their religious convictions without interference from the government or other entities. This freedom empowers individuals to explore their spirituality, connect with the divine, and find meaning in their lives. Respecting an individual's religious beliefs and practices is essential for upholding their autonomy. Individuals should have the right to make decisions about their spiritual and religious life, free from coercion or discrimination. This recognition of autonomy recognizes the inherent dignity and worth of everyone, emphasizing their right to shape their religious journey according to their own conscience. Religion also plays a vital role in *shaping cultural and social identities*. It provides a sense of belonging, community, and shared values. People often find support and a sense of purpose within religious communities. Protecting religious expression allows individuals to connect with their cultural heritage, traditions, and fellow believers, contributing to social cohesion and diversity. By recognizing the importance of religious identity, societies can foster an environment that values cultural pluralism and celebrates the richness of diverse religious beliefs and practices. Moreover, recognizing religious freedom encourages an environment of pluralism and tolerance. It promotes societies to embrace and respect diverse religious beliefs and practices, cultivating dialogue, understanding, and peaceful coexistence among different faith communities. By allowing individuals to freely express and practice their religion, societies can transcend intolerance and discrimination, creating a more harmonious and inclusive social fabric. Religion is encompassed within the broader framework of human rights. It is recognized as an inherent aspect of human dignity and is protected under international and national laws.

[65] The sample considers people aged 6 and over for attendance at a place of worship in the last 12 months of 2021. ISTAT (2021).

Upholding religious freedom demonstrates a commitment to the principles of equality, non-discrimination, and the inherent worth of every individual. By safeguarding religious rights, societies send a powerful message that all individuals, regardless of their religious affiliation, deserve equal respect, protection, and opportunities. To better understand the complexity of the topic, the analysis will go into an in-depth study of the importance of the protection of religious rights in the next paragraph.

1.2.1 PROTECTING RELIGIOUS RIGHTS: THE ITALIAN CASE OF EVOLUTION.

Cuius regio eius religio, literally: "whose [is] the region, of him [is] the religion". Accordingly, with Treccani[66], the formula belongs to the end of the 16th century, and with it was designated the obligation of the citizens of Europe, between XVI and XVII to follow the religious confession of their prince, provided by the peace of Augusta of 1555. This way of thinking was very relevant during the Protestant reform era and indicated the non-possibility of choice by the citizens of their own confession and the absence of rights that protected other expression of faith or the will not to believe at all. Today many steps have been taken towards the protection of religious rights together with the develop of specific instruments, that will be explored starting from the next paragraph. What is interesting to consider here is the rationale of the relevance of the topic, from an analytical point of view and the elemental motives that make the protection of religious rights important. The relevance of the question brings with it the idea of sensitivity and empathy. The concept of the rights of religion, as for example that of women's rights or the LGBTQ+ community freedom or even the protection of ethnicity, retains the crucial factors of sectorial, marginality and specificity, and for this logic the understanding of the theme must be associated with a wide open-mindedness. This discourse can be applied to many of the categories that are included today in the broad group of human rights, due to their general character, but it still seems particularly fitting and in this specific context. It is easy and understandable by most if issues politically correct are discussed and it is argued that they need support. These rights are generally associated with a civilized life such as the protection of children's rights, the absence of violence, the denial of torture and everyone agree that they are necessary for an adequate civilization. The same discourse is made more complicated when it comes of guaranteeing the use of the hijab, provide non-medical interference for Jehovah's Witnesses or the possibility of not attending religion lessons in schools. The importance of the theme lies in the ability to overcome an element that some categories carry with them: the stigma. The protection of religious rights, as well as of the other classes mentioned above, is at the same time necessary and difficult because of its association with the difficulty of

[66] TRECCANI (2023).

making it understandable to the rest of the privileged categories. The protection of religious rights is necessary to ensure that everyone has an equal opportunity to be respected and to not be discriminated for their religious beliefs, for their cult, for their way of showing their beliefs to the outside world through symbols or through one's own will not to believe at all and still be respected.

The scholar Michele Madonna introduced the theme of religious importance in the article entitled "Breve storia della libertà religiosa in Italia. Aspetti giuridici e problemi pratici"[67], addressing the issue from a *purely Italian* point of view, investigating the evolution of religious freedom in the peninsula. The author decides to start the analysis on the theme from the *Albertine Statute* of 1848. In compliance with the Article 1 of the Statute, fundamental law of the Kingdom of Italy until 1948, the apostolic and Roman Catholic religion was defined as "the sole religion of the State", attributing to other cults the qualification of "tolerated in accordance with the laws". One of the first opponents of that law appeared to be the *Count Camillo Benso of Cavour* who believed that the constitutional recognition of full freedom of worship should be fundamental in a people that declares itself civil. With the *Legge Sineo*[68] of June the 19th 1848, it was established that the difference of cult did not form an exception to the enjoyment of civil and political rights and to the admissibility to civil and military offices. In 1859 with the *Casati law*[69] the organic dependence of the ecclesiastical authorities was removed from the scholastic institutes, maintaining however the characteristic obligation of teaching of the Catholic religion, which partially comes with the *Coppino law*[70] of 1877. In 1865 civil marriage was introduced, in 1867 the institution of the oath was laicized, in 1890 the 'deconfessionalization' of charitable institutions was obtained. Other important passages towards Italian religious freedom are identified in the *Legge delle Guerentigie*[71] ('Law of the Guarantees') of 1871 arriving at a substantial freedom of discussion in religious matters and in the Zanardelli code, regulated in Book II, Title II, the "crimes against the freedom of religions", eliminating the favorable treatment

[67] Translation of the title: "Brief history of religious freedom in Italy. Legal aspects and practical problems". MADONNA (2011).

[68] Cat of the Kingdom of Italy, 19 June 1948*, Legge Sineo*.
In the *Legge Sineo* was stated general principle of equality according to which differences of cult could not constitute an impediment to the enjoyment of civil and political rights as well as to eligibility for the civilian and military offices.

[69] Act of the Kingdom of Sardinia, 13 November 1861,no. 3725, adopted by the Kingdom of Italt with the Royal Decree no. 347 of 28 November 1861, *Legge Casati.*

[70] Act of the Kingdom of Italy, 15 July 1877, act no. 3961, *Legge Coppino.*

[71] Act of the Kingdom of Italy, 18 May 1871, *Legge delle Guerrentigie*.
The Legge delle Guerrentigie (Guarantees Act) was promulgated on 13 May 1871 and is a legislative provision of the Kingdom of Italy which regulated relations between the Italian State and the Holy See until 1929, when the Lateran Pacts were concluded.

towards the Catholic religion. The law of *24 June 1929* no. 1159[72], which regulates the provisions on the exercise of accepted cults and on marriage, was approved without modifications or discussions, obtaining broad support from the non-Catholic confessions. Although until now the evolution seems to continue rather linearly and with a spirit of greater expansion, article 4 of the law of 24 June 1929 no. 1159, makes it understandable how we arrived at the dramatic implications of the racial laws under Benito Mussolini. This law postulates the government's ability to revise the existing legislative norms governing non-Catholic religions, the first of many specific provisions for the different confessions, to finally arrive at the Special Legislation directed to the Jewish communities, with the Royal Ordinance of *30 October 1930* no. 1731[73]. The implementing rules of the law on permitted cults, which were established through the issuance of the Royal Decree of 28th February 1930[74] (no. 28953), introduce a series of provisions that significantly limited religious freedom. These regulations impose various limitations and controls on non-Catholic confessions, subjecting them to a stringent system of inspections, authorizations, and oversight by government authorities. One notable provision is Article 14[75], which grants the government the power to conduct inspections and appoint a government commissioner to oversee the activities of religious entities. This provision serves as a means of exerting control over non-Catholic groups and ensuring their compliance with the prescribed regulations. Additionally, the law introduced requirements for the approval of

[72] Act of the Kingdom of Italy, 24 June 1929, act no. 1159, entered into force on 31 July 1929. The law of *24 June 1929* n. 1159 of Italy entered into force on 31 July 1929, with the exception of articles 7, 8, 9, 10, 11 and 12 which will enter into force on 14 September 1929.

[73]Royal decree of the Kingdom of Italy, 30 October 1930, act no. 1731, *Legge Falco*.
The Royal Decree of the *30 October 1930* n. 1731 or Legge Falco sanctioned the "Regulations on the Jewish communities and on the Union of the same communities", issued in application of the law "Provisions on the exercise of cults admitted in the State and on marriage celebrated in front of the ministers of religion themselves" (no. 1159, 24 June 1929), launched as part of the general reorganization of the state by the fascist government. On the one hand, this provision has the objective of unifying the juridical condition of the Jewish communities. Among the salient points of this law are the constitution of Jewish communities (and no longer Jewish universities) in moral bodies, to which belong "all the Israelites who have residence in its territory" (art. 4); the discipline of internal organization, administration, and spiritual direction; the establishment of the Union of Italian Jewish Communities based in Rome. Subsequently, the 1930 legislation was modified by some congresses of the Union of Jewish Communities (1961 and 1968) and in 1989 it was definitively repealed with Law 101, issued based on the Agreement between the Italian Republic and the U.C.I.I. (February 27, 1987).

[74] It is noticeable and impressive, how "easy" was the path to the elimination of rights and its slow and inexorable path towards a totalitarianism that does not consider rights as fundamental. It is important to reflect on this to implement the protection of rights in a long-term view, developing instruments precisely due of the ease with which they were abolished in the past. Recalling the past appears essential to keep alive the motivations that lead to talk about these issues nowadays.

[75] Article 14 of the Royal Decree of the Kingdom of Italy, 28 February 1930, act no. 289.
The article rules on the implementation of the law of 24 June 1929, n. 1159, on the cults admitted in the State and for its coordination with the other laws of the State.

the appointment of ministers of worship, as stipulated in Articles 20-22[76]. Perhaps one of the most restrictive aspects of the regulations is the stringent conditions imposed on the opening of a "temple or oratory", as outlined in Article 1[77]. According to this provision, non-Catholic groups seeking to establish a place of worship must submit a special request endorsed by an approved religious minister. Moreover, they are required to provide evidence that the proposed place of worship is necessary to meet the genuine needs of substantial groups of worshippers. These stringent requirements make it exceedingly difficult for non-Catholic denominations to establish physical spaces for communal worship. It is worth noting that in 1932, the responsibility for religious matters shifted from the Ministry of Justice to the Ministry of the Interior. This transfer of authority further exacerbated the situation for non-Catholic religious groups. The change in jurisdiction contributed to the adoption of a more police-oriented mentality and practice towards non-Catholics. This approach was influenced not only by the implementing regulations but also by the consolidated law on public security of 1931, which provided a legal framework that favored a more controlling and restrictive stance towards religious minorities. A return from the darkest period of Italian history, is obtained in the consequences of the war of Liberation in 1946, sanctioning through Article 19[78] of the new Italian Constitution the freedom to practice religious cult. The Protestants advocate for complete autonomy of the Churches from governmental influence, as well as the freedom of all religions to operate within the boundaries of the legal system, in accordance with their longstanding separatist ideology. Despite the ample guarantees for religious freedom provided for in the Constitution, until the second half of the 1950s, there were significant limitations on the free exercise of non-Catholic religions, in particular Protestants, with an application of the legislation on the subject substantially similar to that of the Fascist period. It is remembered with respect to cults such as the Pentecostal one, which will be defined as dangerous until 1956, when the Constitutional Court came into operation. The turning point of our days is obtained with the *Vatican Council of 1963*, in which Pope Giovanni XXIII declares, in the encyclical Pacem in terries, that every human being has the right to "freedom

[76] The Articles 20-22 of the Royal Decree of the Kingdom of Italy, 28 February 1930, act no. 289.
The article rules on the implementation of the law of 24 June 1929, n. 1159, on the cults admitted in the State and for its coordination with the other laws of the State. These provisions outline the criteria and conditions that must be met before an individual can be officially recognized as a worship minister. Consequently, this places significant restrictions on non-Catholic religious denominations, making it more challenging for them to establish and maintain their religious leaders.
[77] Article 1 of the Royal Decree of the Kingdom of Italy, 28 February 1930, act no. 289. (The article rules on the implementation of the law of 24 June 1929, n. 1159, on the cults admitted in the State and for its coordination with the other laws of the State.
[78] Article 19 the Royal Decree of the Kingdom of Italy, 28 February 1930, act no. 289.
The article rules on the implementation of the law of 24 June 1929, n. 1159, on the cults admitted in the State and for its coordination with the other laws of the State.

in the search for the truth", thus declaring a recognition of the universal freedom of conscience and a new sensitivity of the Catholic world towards the values of religious freedom. In the second half of the sixties, a decisive modification of the previous *Patti Lateranensi*[79] was obtained with the agreement of Villa Madama of 18 February 1984, which released Rome from identification with the Catholic religion, attributing it only a mere meaning in its history, the regulation of marriage by concordat (art. 8)[80], and the foundations are laid for an overall reform of the matter of ecclesiastical bodies (art. 7)[81]. On 29 December 1986, agreements were signed with the Seventh-day Adventist Churches, and with the Assemblies of God in Italy, 1987 an agreement was obtained with the Union of Jewish Communities. In 1993 the agreement with the Evangelical Baptist Christian Union in Italy and the one with the Evangelical Lutheran Church in Italy were stipulated and after the advent of the second republic, other agreements were signed, with Buddhists and Jehovah's Witnesses, for the first time in 2000 and 2007, with the Apostolic Church of Italy, with the Hindus, the Mormons, the Orthodox, in 2007, but with the absence of an approval law Madonna concludes his article with the following specification:

> "Precisely recalling the principle of secularism, starting from the nineties, the Constitutional Court, with various interventions (sentences 18 October 1995 n. 440, 14 November 1997 n. 329, 13 November 2000 n. 508, 9 July 2002 n. 327, 18 April 2005 n.168), declares the privileged protection in favor of the Catholic Church, originally foreseen illegitimate in the Rocco code. In the path of this jurisprudence, the matter was fully reformed by the legislator in 2006, placing all religious denominations on an equal level. The Court also remedied some discrimination to the detriment of confessions without agreement provided for in the regional legislation on urban planning (laws of the Abruzzo Region of 1988 and of the Lombardy Region of 1992), which made the granting of benefits subject to the stipulation of an understood. The constitutional judges ratify the illegitimacy of these favorable norms, in implementation of the principle of equal freedom of all confessions (sentence n. 195 of 19 April 1993 and n. 346 of 8 July 2002)."[82]

The author concludes his essay with the following sentence, particularly effective to understand the complexity of the theme:

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[79] Bilateral pact of the Kingdom of Italy and the Holy See, 11 February 1929, *Patti Lateranensi*. The Patti Lateranensi or *Lateran Agreements* were signed on 11 February 1929 by the Kingdom of Italy and the Holy See, regulating the relationship between the two through a convention, a treaty, and a concordat. They still today regulate the relations between the two powers.

[80] Article 8 of the Italian Constitution, 9 Januray 1928.
The article establishes the equality and freedom of all religious confessions before the law.

[81] Article 8 of the Italian Constitution, 9 January 1928
Article 7 of the Italian Constitution recalls the independence of both Italy and the Holy See, attributing to the Patti Lateranensi the relationship between the two. They can be modified by mutual agreement between the parties or through the constitutional review procedure pursuant to art. 138 Constitution.

[82] MADONNA (2011), translation added.

> "However, looking at the history of our country, we must always remember that the law is only a part of the complex reality, and that religious freedom, as Scoppola acutely observed, certainly needs legal guarantees, but above all draws its "foundation" in a broad and deep-rooted conviction of its value, without which "no rule [...] can exorcise the dark and profound evil of intolerance". Freedom, Jemolo recalled, "cannot reach everything, it cannot take the place of love, the strength that nothing can replace", while significantly adding that "love does not reach its fullness, it does not obtain its dignity, it is not a plant that expands, except when it is free"[83].

Italy is just an example of a much more complex reality regarding religious rights, but which lets the reader understand how necessary it is to dedicate the right importance to a topic that has been taken for granted on many occasions.

1.2.2 INTERNATIONALLY SPEAKING: RELIGION AND UN

On the 14th of April 2023, *United Nations Headquarters* in New York and UN Secretary-General *António Guterres* hosted leaders from multiple faiths. The chiefs attended the *Interfaith Moment of Prayer for Peace* and included *Rev. Deoyeon Park*, Won Buddhist to represent Buddhism, *Rev. Chloe Breyer*, episcopal priest as a representative of Christianity, *Mr. Ramaswamy Mohan*, Hindu representative, *Imam Musa Kabba*, Islamic representative; Rabbi Joshua Stanton, Jewish representative, *Dr. Simran Jeet Singh*, to represent the Sikh creed, *Ms. Jayathma Wickramanayake* to include people of secular backgrounds and *Mr. Miguel Ángel Moratinos*, UN Under-Secretary-General and High Representative for the United Nations Alliance of Civilizations ('UNAOC'), with the aim of renewal across faiths, united in the name of peace, recalling the worldwide devastation due to poverty, hunger and climate change. The moment chosen for the ceremony is even more symbolic as it occurs on the last Friday of Ramadan, while Christians celebrate Passover, Jews mark the end of Passover and Sikhs enjoy the Vaisakhi festival, as stated by Guterres during his speech in New York[84]. The message that UN wants to highlight in this context is the need for unity between faiths to achieve a greater good: harmony between peoples. This is not the first time the organization has intended to put religion as a priority for nations.

The first form of modern legal formulation of religious rights can be identified in the *UDHR* (already cited in this thesis) of 1948. *Article 2*[85] of

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[83] *Ibidem*.
[84] UN NEWS (2023).
[85] Article 2 of the Declaration of the General Assembly of the United Nations, 10 December 1948, no. 217 A (III), A/RES/3/217 A, *Universal Declaration of Human Rights*.

UDHR establishes the validity of rights for everyone despite any difference of race, color, sex, religion, political opinion national or social origin, property, birth or other status. Article 18[86] appears particularly fitting, enriching religious rights by including the possibility to change belief and to freely manifest it in the forms of teaching, practice, worship, and observance[87]. As also noted by Di Fabio:

> "Article 18, read in conjunction with article 1, represents the "sacred section" of the UDHR. It applies to all human beings, believers, non-believers, atheists and agnostics. The three fundamental freedoms provided for in this article (thought, conscience, religion) are indivisible, interdependent and interrelated with all other human rights. In article 18, thought, conscience and religion constitute a vital triangle of values of special moral importance for the human being. This structure defines the original juridical subjectivity of the human person, grounded on an integral vision of men and women, made of soul and body, spirit and matter."[88]

The progress made in the initial stages of that trajectory has been enhanced through further advancements with the *ICCPR* of 1966, that reinforced for everyone the right to freedom of thought, conscience, and religion and to manifest it, both individually and in groups, both in public and in private and the impossibility of coercion which in any way prevents the freedom to have or to adopt a religion or belief. Articles 2[89] and 26[90] provide the equal treatment of all persons before the law and prohibit discrimination based, inter alia, on religion. The only limits set by the Convention are the ones envisaged by law and relating to public safety, order, health or morals, or the fundamental rights and freedoms of others. It adds and underlines the due commitment of the States parties to the Covenant to respect the freedom of parents and, where applicable, legal guardians to ensure the religious and moral education of their children in accordance with their beliefs. Accordingly with Di Fabio[91], during the 48th session of 1993, in the General Comment no. 22 on "The right to freedom of thought, conscience and religion" is address the same protection to believers and not believers and the impossibility to derogate the rights even in time of public emergency[92].

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[86] Article 18 of the Declaration of the General Assembly of the United Nations, 10 December 1948, no. 217 A (III), A/RES/3/217 A, *Universal Declaration of Human Rights*.
[87] Declaration of the General Assembly of the United Nations, 10 December 1948, no. 217 A (III), A/RES/3/217 A, *Universal Declaration of Human Rights*.
[88] DI FABIO (2016).
[89] Article 2 of the Covenant of the United Nations, 16 December 1966, adopted by the General Assembly resolution 2200A (XXI), *International Covenant on Economic, Social and Cultural Rights*.
[90] Article 26 of the Covenant of the United Nations, 16 December 1966, adopted by the General Assembly resolution 2200A (XXI), *International Covenant on Economic, Social and Cultural Rights*.
[91] *Ibidem*.
[92] As stated in article 4.2 of the Covenant, DI FABIO (2016).

In 1981 the *UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*, was elaborated by the Commission as a binding instrument and providing three out of eighth articles to distinct religious rights. The declaration functions as a 'manifesto' to the principles of tolerance and non-discrimination towards human beings based on their religion or belief.

Another form of security is established by the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, approved on the 18th of December 1992, providing to the religious rights its broadest articulation. Quoting with the author of "Religion and the International Human Rights Standards":

> "The Minorities Declaration provides the fullest expression of the international right to self-determination of peoples. It affords a religious community the right to practice its religion, an ethnic community the right to promote its culture, and a linguistic community to speak its language without undue state interference or legal restrictions. The right to self-determination provides religious groups some of the same strong protections afforded to religious individuals. This right has both an individual and collective dimension. As for the individual dimension, members of the group are entitled to profess and practice their religion without undue constraints imposed on that entitlement by the political powers that be. As for the collective dimension, the religious community has a right to self-determination that involves more than a mere accommodating State disposition toward particular sectional beliefs and practices. In fact, in virtue of this right, governments are required to secure, through their respective constitutional and legal systems, the interests of distinct sections of the population that constitute a religious minority. The Declaration further provides that "States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards" (art. 4)."[93]

The success of UN to ensure a wide range of agreements to protect the category, still do not led the international community to a perfect equilibrium in which the danger of mis-protection and discrimination is completely defeated. This matter of facts showed the need of additional instruments, that embodied into the *Special Rapporteurs*. The first rapporteur dates to the violations committed internationally between 1981 and 1983 and the person commissioned to conduct the study was Mrs Odio Benito, a former Minister of Justice in Costa Rica. During that period the UN received so many notices of possible violations up to 1981 that in 1983 the General Assembly, via the Commission on Human Rights, requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to study the current dimensions of the problems of intolerance and discrimination on grounds of religion or belief. The data provided by this first document were so concerning

[93] *Ibidem*.

to authorize a new series of analysis by Angelo Vidal d'Almeida Riberio of Portugal who was supposed to submit seven reports to the annual session of the Commission. The first of them was presented by his successor Abdelfattah Amor in 1994, serving allegedly religious discrimination in Afghanistan, Albania, Iran and Pakistan[94].

The *Special Rapporteur on freedom of religion or belief* was originally established in the resolution 1986/20 "Special Rapporteur on religious intolerance". The current name must be traced back to 2000 with a decision of the Commission on Human Rights, then approved by ECOSOC decision 2000/261 and welcomed by General Assembly resolution 55/97. The last extension of the mandate was on 31 March 2022, that through the resolution A/HRC/RES/49/5, provided the rapporteur for additional three years[95]. The mandate holder toady is Ms. Nazila Ghanea, a professor of International Human Rights Law and Director of the MSc in International Human Rights Law at the University of Oxford, who assumed the mandate on 1 August 2022. The main goals of the Special Rapporteur are delineated in the resolution 6/37 of the Human Rights Council, that stresses:

1. The promotion and protection of the right to freedom of religion or belief with the adoption of appropriate measures at an international, national and regional level.
2. The importance of identifying and overcoming, existing and emerging obstacles to the fullest expression of religious freedom.
3. The severe attention to possible defections of states from the Declaration of All Forms of Intolerance and of Discrimination Based on Religion or Belief and other UN agreement on the topic, and consequent recommendations on how to remedy.
4. The application of a gender perspective, to identify possible gender-based discriminations.[96]

The Rapporteur works effectively as it follows:

- Conveys *communications* to States regarding instances that involve violations or obstacles to the exercise of the right to freedom of religion and belief.
- Conducts *country visits*, gathers relevant information, and compiles and presents comprehensive reports based on these visits.
- Submits and delivers *annual reports* to the Human Rights Council and General Assembly, providing insights into its activities, emerging trends, issues, and approaches of work.

It is worth to urge how important results to integrate within the Special Rapporteur all the most relevant aspects of the matter and meet the

[94] See DICKSON (1995).
[95] OHCHR (2023).
[96] In accordance with OHCHR (2023).

international standards. As claimed by the United Nations[97]itself, the Freedom of religion or belief and the Rapporteur are protected and guided by:

- The article 18 of the *Universal Declaration of Human Rights*
- The Article 18 of the *International Covenant on Civil and Political Rights*.
- The *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.*
- Relevant articles of the *International Covenant on Economic, Social and Cultural Rights.*
- Significant passages of the *International Convention on the Elimination of All Forms of Racial Discrimination.*
- The *Convention on the Rights of the Child.*
- The *Convention on the Elimination of All Forms of Discrimination against Women.*
- The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Crime of Genocide.*
- The *Convention relating to the Status of Refugees.*
- Pertinent *resolutions* of the Human Rights Council, the General Assembly and other organs of the United Nations
- Relevant jurisprudence of the treaty bodies and provisions of *international humanitarian law*
- Related instruments and jurisprudence at the *regional level*

Seems powerful to report some of the categories protected in terms of freedom of religion or belief by United Nations, based on the analysis projected by OHCHR[98]. In the OHCHR analysis all the articles that protect religious rights are reported, divided by categories. In this study only some of these articles will be reported, those that seems to be more relevant to the research[99]. Freedom to adopt, change or renounce a religion or belief is protected by: UDHR, *ICCPR*: Art. 18 (1)[100], the *1981 Declaration of the General Assembly*[101] and the *Human Rights Committee general comment 22*[102].

[97] See also OHCHR (2023).
[98] The scheme that follows is reported from OHCHR (2023).
[99] For the detailed list of all the articles, it is advisable to visit the source in the bibliography, OHCHR (2023).
[100]"Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice [...]."
[101] Art. 1 (1): "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice [...]."
[102] Para. 3: "Article 18 does not permit any limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief of one's choice;" "Article 18 does not permit any limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief of one's choice;". Para. 5: "The Committee observes that the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or

The right to manifest religion or belief is mentioned in: ICCPR article 18(1)[103] and 18(3) [104], the *1981 Declaration of the General Assembly* article 1(1) and 1(3) and the Human Rights general comment 22, paragraph 4[105]. Freedom to worship appears in: the *1981 Declaration of the General Assembly* article 6(a)[106] and article 6(c)[107], in the *Commission on Human Rights resolution 2005/40 (paragraph 4 (d)), Human Rights Council resolution 6/37 (paragraph 9(g)) and General Assembly resolution 65/211 (paragraph 12 (g))*, in the *Human Rights general comment 22*, paragraph 4[108], and paragraph 9 (g)[109] and in the *Human Rights general comment 22*, paragraph 4[110].

belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief."

[103] "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

[104] "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

[105] "The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae, and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language, customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications".

[106] The right to freedom of thought, conscience, religion or belief includes the freedom, "To worship or assemble in connection with a religion or belief [...];".

[107] The right to freedom of thought, conscience, religion or belief includes the freedom, "To make, acquire and use the necessary articles and materials related to the rites or customs of a religion or belief;".

[108] "The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including [...] the use of ritual formulae, and objects [...]".

[109] The Human Rights Council urges States, "To ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes [...];".

[110] "The concept of worship extends to [...] the building of places of worship.".

The use of religious symbols is then protected by *1981 Declaration of the General Assembly*, Art. 6 (c)[111], the *Commission on Human Rights resolution 2005/40*: 4 (b)[112] and the *Human Rights general comment 22* paragraph. 4[113].

Discrimination based on religion or belief/inter-religious discrimination/tolerance is defend by the ICCPR article 2(1)[114], article 5(1)[115], article 26[116] and article 27[117], by ICERD article 5[118], by *ICESCR*: Art. 2 (2)[119], *CRC*: Art. 30[120], *1981 Declaration of the General Assembly* article 2 (1), article 3, article 4 (1) and article 4 (2), by the *Commission on Human Rights resolution 205/40*: 4 (g), 7, 8, 9, 10 and *Human Rights Committee general comment 22*: paragraph 2[121].

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[111] The right to freedom of thought, conscience, religion or belief includes the freedom, "To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;".

[112] The Commission on Human Rights urges States, "To exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights law, to ensure that religious places, sites, shrines and religious expressions are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction;".

[113] "The concept of worship extends to [...] the display of symbols". and "The observance and practice of religion or belief may include not only ceremonial acts but also such customs as [...] the wearing of distinctive clothing or head coverings [...].".

[114] "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as [...] religion [...].".

[115] "Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.".

[116] "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as [...] religion [...]".

[117] "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 practice their own religion, or to use their own language".

[118] "[...] States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] (d) Other civil rights, in particular: [...] (vii) The right to freedom of thought, conscience and religion".

[119] "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind such as [...] religion [...]".

[120] "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language".

[121] "The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community".

Religious discrimination is protected by the *Human Rights general comment 22*: paragraph 9[122] and paragraph 10[123]. Minorities by *ICCPR*: article 27[124], *CRC* article 30[125] and in the *General Assembly Declaration 47/135*[126].

Finally prohibition on torture and other cruel, inhuman or degrading treatment or punishment is mentioned in: *ICCPR* Article 7[127], *Convention against*

[122] "The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise most of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers. Certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26. The measures contemplated by article 20, paragraph 2, of the Covenant constitute important safeguards against infringement of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed towards those groups. The Committee wishes to be informed of measures taken by States parties concerned to protect the practices of all religions or beliefs from infringement and to protect their followers from discrimination. Similarly, information as to respect for the rights of religious minorities under article 27 is necessary for the Committee to assess the extent to which the right to freedom of thought, conscience, religion and belief has been implemented by States parties. States parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous".

[123] "If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it".

[124] 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.

[125] "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language".

[126] Art. 1 (1): "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity." And Art. 2 (1): "Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination".

[127] "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Torture[128], *CEDAW* in article 5 (a)[129], *Commission on Human Rights resolution 2005/40*: 4.f[130], *Commission on Human Rights resolution 2005/39:* 7[131], *Commission on Human Rights resolution 2003/32:* 5[132], *General Assembly Declaration 48/104, a*rticle 4 (c)[133] and *Human Rights general comment 20* paragraph 5[134].

Freedom of Religion or Belief is also remembered every 22 of August by United States thanks to the "International Day Commemorating the Victims of Acts of Violence Based on Religion or Belief"[135].

1.2.3 RELIGIOUS RIGHTS AND UNIONS

The following paragraph will analyze the situation of religious freedom and protection through the International Unions. The protection of religious rights will be deeply studied in the systems of the European Union and CoE, African Union, and America. It is important to underline that the system of religious rights in Europe is an integrated system between the European Union and the Council of Europe since the European Court of

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[128] Art. 1: " For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as [...] punishing him for an act he or a third person has committed or is suspected of having committed, [...] or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." and Art. 16: "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

[129] States Parties shall take all appropriate measures, "To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women".

[130] "To ensure that no one within their jurisdiction is deprived of the right to life, liberty, or security of person because of religion or belief and that no one is subjected to torture or arbitrary arrest or detention on that account, and to bring to justice all perpetrators of violations of these rights".

[131] The Commission on Human Rights, "Reminds Governments that corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture".

[132] The Commission on Human Rights, "Reminds Governments that corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture".

[133] States should, "Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons".

[134] "In the Committee's view, moreover, the prohibition [of torture] must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure".

[135] UNITED NATIONS (2023).

Human Rights derives from the CoE, the main body for the European treatment of these rights.

Beginning with *European Union* there are a multitude of questions that require extensive discussion. The Union operates on the principle of "conferral power", meaning that it can legislate only within the limits defined by the Member States in the Treaties. It is evident from the outset that the Union does not have the authority to determine the relationship between member States, churches, and religious organizations. For example, it cannot dictate whether a member State should enter a concordat with the Roman Catholic Church, which it is separate from a former State church, or adhere to a strict secularist principle. However, it is argued here that the Court of Justice has addressed religious issues in the context of EU law, considering them as part of the distinctive legal order of the European Union. Consequently, it is concluded that, even if the European Union does not have the power to legislate on the relationship between Member States and religious organizations, it nevertheless exercises an influence on this relationship. Religious affairs are argued to fall within the scope of EU law if EU law is applicable. Consequently, religious matters are not excluded from the scope of EU law simply because of their religious nature. This principle was sanctioned by the Court of Justice in the *Steymann case*[136] in the 1980s and has since been reaffirmed in subsequent jurisprudence and the nation must legislate in accordance with the principles of the Union. The roots of the European Union are founded by the *Charter of Fundamental Rights of the European Union* ('CFR')[137]. Religious rights are protected by the *Article 10*[138] of the Charter, prescribing the freedom of thought, conscience, and religion, and by the *Article 52(1)* CFR[139]. According to Ahlm,[140] the 2018 *Egenberger*

[136] Judgment of the European Court of Justice, 5 October 1988, case no. 196/87, *Udo Steymann v. Staatssecretaris van Justitie.*.

[137] Charter of the European Union*,* 7 December 2000, 2000/C 364/01, *Charter of the Fundamental Rights of the European Union*.

The *Charter of Fundamental Rights of the European Union* was declared in 2000 and came into force in December 2009 along with the Treaty of Lisbon. It is on the base of the principal aims and goals of the EU, bringing with it the most important freedoms and rights of the Union.

[138] Article 10 of Charter of the European Union*,* 7 December 2000, 2000/C 364/01, *Charter of the Fundamental Rights of the European Union*.

"1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. 2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right".

[139]Article 52(1) of the Charter of the European Union*,* 7 December 2000, 2000/C 364/01, *Charter of the Fundamental Rights of the European Union*.

"Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others".

[140] AHLM (2021).

case underlined the mandatory effect of religious equality in Article 21 CFR, serving as a general principle of EU law, adding that:

> "Although equality is laid down through Article 14 of the European Convention on Human Rights, that article is not self-standing and holds a weaker position in the Convention framework, compared to Article 21 of the Charter in the Union framework. Thus, it is submitted that the Union principle of religious equality, rather than the right to religious freedom, has the potential to affect the Member States beyond the impact of the Convention on Human Rights. This is so, since they cannot uphold traditional prerogatives for majority faiths and religious organizations when such are to the detriment of others, particularly those with no faith at all."[141]

The support of the *European Union* towards religious rights is articulated through different tools. In addition to Article 10 CFR, the EU protects the subject with: Treaty on European Union (Article 6)[142], Treaty on the Functioning of the European Union (Article 11 and Article 17)[143], 2000 Charter of Fundamental Rights of the European Union Article 10[144] (freedom of thought, conscience and religion) Article 14 [145] (right to education), Article 21[146] (non-discrimination), Article 22[147] (cultural, religious and linguistic diversity), 2006 EU Equal Treatment Directive[148], 2008 EU Framework decision on combating racism and xenophobia[149], 2009 Council Conclusions on freedom of religion or belief[150], 2011 Council Conclusions on intolerance, discrimination and violence on the basis of religion or belief[151], 2011 Council Conclusions on Conflict Prevention[152], 2009 EU Concept on strengthening EU mediation and dialogue capacities[153], 2009 Freedom of Religion or Belief –

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[141] *Ibidem*.
[142] Article 6 of the Treaty on European Union ('TEU'), 7 February 1992, Maastricht, entered into force on 1 November 1993.
[143] Article 11 of the Treaty of the Functioning of the European Union ('TFEU'), 25 March 1957, Rome, effective from 1 January 1958.
[144] Article 10 of the Charter of the European Union, 7 December 2000, 2000/C 364/01, *Charter of the Fundamental Rights of the European Union*..
[145] Article 14 of the Charter of the European Union, 7 December 2000, 2000/C 364/01, *Charter of the Fundamental Rights of the European Union*..
[146] Article 21 of the Charter of the European Union, 7 December 2000, 2000/C 364/01, *Charter of the Fundamental Rights of the European Union*..
[147] Article 22 of the Charter of the European Union, 7 December 2000, 2000/C 364/01, *Charter of the Fundamental Rights of the European Union*..
[148] Directive of the European Parliament and of the Council, 5 July 2006, no. 2006/54/EC, *on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation*.
[149] Decision of the Council of the European Union, 28 November 2008, no. 2008/913/JHA, *on combating racism and xenophobia.*
[150] Conclusions of the Council of the European Union, 16 November 2009, *on freedom of religion or belief.*
[151] Conclusions of the Council of the European Union, 25 January 2011, *on intolerance, discrimination, and violence on the basis of religion or belief.*
[152] Conclusions of the Council of the European Union, 20 June 2011, *on conflict prevention*.
[153] Conclusions of the European Union, 10 November 2009, EU Concept on strengthening EU mediation and dialogue capacities.

how the FCO can help promote respect for this human right[154] (UK toolkit on freedom of religion or belief)[155]. It seems of undoubted importance to recall that since 2013 there has been the adoption of *EU Guidelines on the promotion and protection of freedom of religion or belief*, and the will of the organization for external actions was made manifest which would contribute to making this matter increasingly free, including through its financial instruments[156]. The guidelines of the Union are multiple and multifaceted including in the basic principles of action the universal character of freedom of religion or belief, freedom of religion or belief is an individual right which can be exercised in community with others, the primary role of States in ensuring freedom of religion or belief and the connection with the defense of other human rights and with other EU guidelines on human rights. These priorities are protected through diplomatic tools, reports, political dialogue, visits, information campaigns on the subject, external financial instruments, and training[157].

The authentic core and center for protection, when speaking of protection of human rights in the European context is represented by the *Council of Europe*. The functioning of the *CoE* was already explored in paragraph 1.1.2 regarding the international legal instruments protecting human rights, so that this part will focus only on the specific protection of religious rights. Instruments in the protection of religious right are identified in: the *Article 9(2) ECHR*[158] the limits that define it, *1952 Protocol n°11* in Article 14[159] (*prohibition of discrimination*) and Article 2[160] (*right to education*), *2000 Protocol n°12* Article 1[161] (*general prohibition of discrimination*), *1995 Framework Convention for the Protection of National Minorities*[162] (Articles 4.1, 5, 6, 7, 8, 12, 17), *2006 Commentary on education, 1997 European Convention on Nationality* Article 5[163] (non-discrimination), *2006 Council of Europe Convention on the Avoidance of Statelessness in*

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[154] Freedom of Religion or Belief – how the FCO can help promote respect for this human right, of the Foreign & Commonwealth Office 2009.
[155] *Ibidem*.
[156] PRPIC (2018).
[157] COUNCIL OF THE EUROPEAN UNION (2013).
[158] Article 9(2) of the convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
"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.".
[159] Article 14 of the Protocol of the Council of Europe, 20 February 1952, no. 11, to the Convention for the Protection of Human Rights.
[160] Article 2 of the Protocol of the Council of Europe, 20 February 1952, no. 11, to the Convention for the Protection of Human Rights and Fundamental Freedoms.
[161] Article 1 of the Protocol of the Council of Europe, 4 November 2000, no. 12, to the Convention for the Protection of Human Rights and Fundamental Freedoms.
[162] Convention of the Council of Europe, 10 November 1994, entered into force on 1 February 1998, *Framework Convention for the Protection of National Minorities.*
[163] Article 5 of the Convention of the Council of Europe, 6 November 1997, no. 166, *European Convention on Nationality*.

relation to State Succession[164] (article 4), *2011 Council of Europe Convention on preventing and combating violence against women and domestic violence*[165] (articles 4, 12, 32, 37, 38, 42), *2000 ECRI General Policy Recommendation n°5: Combating intolerance and discrimination against Muslims*[166], *2002 ECRI General Policy Recommendation n°7: National legislation to combat racism and racial discrimination*[167], *2004 ECRI General Policy Recommendation n°9: The fight against anti-Semitism 2004*[168], Council of Europe Venice Commission / *OSCE "Guidelines for Review of Legislation Pertaining to Religion or Belief"*[169].

The discourse of protection changes when it comes to the *African Union* ('AU'). The African Union established the 1969 *Convention Governing the Specific Aspects of Refugee Problems in Africa*[170], particularly significant for the article IV on 'non-discrimination'. Also instituted the 1981 *African Charter on Human and Peoples' Rights*[171], in this case significant for articles 2, 8. It joined the 1990 *African Charter on the Rights and Welfare of the Child*[172], notable for article 1 on obligation of State Parties, article 3 about 'non-discrimination', article 9 on 'freedom of thought, conscience and religion', article 11 on education, article 25 concerning the 'separation from parents' and also article 26 on the 'protection against discrimination'. Despite the adherence to a multiplicity of agreements that would testify to a single direction, the theme of religiosity remains a controversial topic. The discourse for African States is rather complicated, since the profound diversification within the continent does not allow for a univocal and exhaustive discourse, valid for all countries. José Carlos Rodríguez Soto, author, and consultant in United Nations, writes a complete evaluation on religious freedom in Africa[173]. According to the scholar Most countries recognize a basic religious freedom, in which this right is protected in a context of tolerance. Most

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[164] Convention of the Council of Europe, 19 May 2006, no. 19.V.2006, Strasbourg, *Convention on the Avoidance of Statelessness in relation to State Succession.*

[165] Convention of the Council of Europe, 7 April 2011, no. 210, Istanbul, entered into force on 1 August 2012, *on preventing and combating violence against women and domestic violence.*

[166] Recommendation of the Council of Europe, 16 March 2000, no. 5, Strasbourg, revised on 8 December 2021, *ECRI General Policy Recommendation n°5: Combating intolerance and discrimination against Muslims*.

[167] Recommendation of the Council of Europe, 13 December 2002, no. 7, Strasbourg, revised on 7 December 2017, *ECRI General Policy Recommendation n°7: National legislation to combat racism and racial discrimination.*

[168] Recommendation of the Council of Europe, 25 June 2004, no. 9, Strasbourg, revised on 1 July 2021, *ECRI General Policy Recommendation n°9: The fight against anti-Semitism 2004*.

[169] Guidelines of the Council of Europe Venice Commission, 13-14 June 2014, 99th Plenary Session, Venice, *OSCE Guidelines for Review of Legislation Pertaining to Religion or Belief.*

[170] Convention of the Organization of African Unity, 10 September 1969, Addis Ababa, entered into force on 20 June 1974, *Convention Governing the Specific Aspects of Refugee Problems in Africa.*

[171] Charter of the Organization of African Unity, 1 June 1981, no. 26363, Nairobi, entered into force 21 October 1986, *African Charter on Human and Peoples' Rights,*

[172] Charter of the Organization of African Unity, 11 July 1990, Addis Ababa, entered into force on 29 November 1999, *African Charter on the Rights and Welfare of the Child.*

[173] RODRÍGUEZ SOTO (2014).

Constitutions recognize character Secular State, including those of some Muslim-majority nations such as Senegal, Niger and Guinea-Conakry. In countries like Benin, Burkina Faso, Ghana, Sierra Leone, the tradition of religious freedom is exemplary. In others, such as Ethiopia and Gabon, this right is protected by specific legislation which penalizes discrimination and attacks for religious reasons. Nonetheless, the traditional climate of harmony and peaceful coexistence between members of different religions has deteriorated in recent years, in some African countries. In Kenya for example, Muslims complain about be victims of discriminatory treatment because of the association made between Islam and terrorism. In Tanzania, too, extremists are undermining the national tradition of peaceful coexistence between Christians and Muslims, especially on the island of Zanzibar. In countries like Algeria, Morocco, Djibouti, Comoros, Sudan, Tunisia and Mauritania, Islam is the State religion. In some, such as Sudan and Mauritania, conversion to a religion other than Islam is equivalent to apostasy, a crime that can be punished severely and in other Islamic countries, this possibility is limited, although not punished with serious measures, as in Morocco and Algeria. Libya is a case apart, because although converting from Islam is not prohibited by existing laws, those who do so risk serious consequences, including arrest and imprisonment. Another detail not to be overlooked is that in some countries, although the Constitution recognizes the right to religious freedom, in practice the exercise of this fundamental freedom is severely restricted. This is the case of Eritrea whose government obliges all religious to perform long military service and to practice strict controls on different religious groups through the appointment, for example, of the Grand Mufti of the Muslim community and Patriarch of the Orthodox Church. In Eritrea and Rwanda, the entry into the country of foreign missionaries is also hindered, for which visas are usually forbidden, since the Catholics have expressed their opposition to such practices, in the second time sometimes arrests or fines have been resorted to for priests who showed themselves in opposition to the guidelines of the regime. In other countries the law obliges groups religious to have a certain number of members to register, preventing some evangelical and Pentecostal groups from exercising freedom of worship. In other cases, it has come to extreme situations, such as an official ban of Islam in Angola imposed by the authorities at the end of 2013. Rodríguez Soto ends his analysis with the following observations[174]:

> "In the last two years, in the area of religious freedom, the following trends have emerged:
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> 1. Islamic fundamentalism is constantly growing and this under the impulse of some violent radical groups such as Al Qaeda in the Islamic Maghreb (in West Africa), Boko Haram (in Nigeria and neighboring countries) and Al Shabaab which, starting from its stronghold in Somalia has become a serious threat to other East African countries. The answer of the Countries interested in the

[174] *Ibidem*.

jihadist threat is essentially of a military nature (often given with the help of foreign powers), but it is an approach that proves insufficient, if not complemented by policies that favor development, religious dialogue and trust in government institutions in regions where Islamists find support;
2. Cases of religious intolerance have increased in a number of countries and, in particularly, in Egypt, Libya and Sudan. The case of Meriam Ibrahim, a Sudanese woman of Christian religion sentenced to death for apostasy and then released, has aroused a considerable international interest, but there are other less known cases. For example, that of Nadia Abdel, an Egyptian woman sentenced to 15 years in prison in January 2014 for having reconverted to the Christian faith after the death of her Muslim husband; in Libya and Egypt, the Christian communities, especially the Coptic churches, have suffered numerous attacks. It is necessary to dwell in particular on the Republic Central African. In 2012 and 2013, following the campaign of violent attacks against the Christians by the Muslim Seleka rebels, the so-called "anti-Balaka" militias have responded with reprisals against the Muslim minority, including destruction systematic mosques and a harsh campaign of religious purge. The conflict has thus assumed a dangerous aspect of hatred and political intolerance;
3. In interpreting the statistical data it must be borne in mind that many Africans do not hesitate to simultaneously integrate the beliefs of more than one religious group into their practices religious. It should be added that in some countries a part of the population, often in indifference, he is beginning to identify with atheism or agnosticism;
4. The existence of inter-religious platforms for dialogue and social action in favor of peace and human rights, is a promising trend that continues to progress so durable. Inter-faith groups, to varying degrees, exist in several countries, including Cameroon, Nigeria, Central African Republic, Uganda, Zambia, South Africa and Kenya."[175]

In the *United States of America,* the roots of religious freedom sink into a background in which religion played a major role in the national history, for example during the American Revolution by offering a moral sanction for opposition to the British. It is not the first time that religion was also used for war purposes, similarly to what happened in Europe between 1095 and 1291 with the crusades promoted by the Church of Rome, continued even in modern times with the advent of religious terrorist groups, such as that of Boko Haram. The Organization of American States ('OAS') introduced the *American Convention on Human Rights*[176] (or 'Pact of San Jose', Costa Rica) in 1969. This appears extremely significant for the purpose of the thesis especially in article 1 (obligation to respect rights), article 12 (freedom of conscience and religion), article 13 (punishment of advocacy of religious hatred), article 16 (freedom of association) and article 22 (freedom of movement and residence). In 1988 it joined the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*[177] (Protocol of San Salvador), with the article 3 (obligation of non-

[175] RODRÍGUEZ SOTO (2014), translation added.
[176] Convention of the Organization of American States, 22 November 1969, no. 17955, San José, Costa Rica, entered into force on 18 July 1978, *American Convention on Human Rights*.
[177] Convention of the Organization of American States, 16 November 1999, San Salvador, *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*.

discrimination). OAS entered then in 1994 in the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women[178] ('Convention of Belém Do Para'). Casalini[179] specifies that compatibility between civil citizenship and religious affiliation functions according to the two principles of guarantee of the autonomy of the respective areas e of the recognition of the churches as voluntary associations, founded on the consent and not on ascriptive criteria. The main basis is to maintain the clear division between State and religion: to ensure that the State protects religion and to ensure that religious laws do not oppose civil law, as required by the *First Amendment*[180]. The *Establishment Clause*[181] of the First Amendment prohibits government from sustain in any sense a particular religion: this includes economic subsidy or public support. To stick to this provision, in 1971 the Supreme Court ruled on the *case Lemon v. Kurtzman*[182] establishing a test to guarantee the impartiality of the State or of a policy towards a religion. The so-called 'Lemon test' prove the neutrality if:

1. The State of the policy has a non-religious purpose.
2. Do not promote any religion respect another.
3. Do not interfere with religion with laws or political tools.
4. The *Free Exercise Clause*[183] also provides the rights to worship or not the impartiality of the State or of a policy towards a religion.

The analysis of the protection of religious rights ends with *Latin America*. According to Eyzaguirre[184], the 33 countries that make it are mostly democracies and about 60% Catholic, but the condition of some of the countries in socio-economic crisis, in addition to other problems such as the partial absence of the State, does not allow us to settle a stable climate, also in reference to the security of rights. The presence of Christianity as the dominant religion in Latin America and the Caribbean does not automatically ensure the preservation of religious freedom. In the period being examined, Afro-Brazilian religious leaders have exposed instances of religious

[178] Convention of the Organization of American States, 9 June 1994, Belém do Pará, entered into force on 5 March 1995, *the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*.
[179] CASALINI (2007).
[180] Constitution of the United States of America, 17 September 1787, Philadelphia, ratified in 1788, operating since 1789, *First Amendment of the Constitution of the United States of America*.
[181] Constitution of the United States of America, 17 September 1787, Philadelphia, ratified in 1788, operating since 1789, *Establishment Clause* of the First Amendment establishes the separation between State and Church.
[182] Judgment of the Eastern District Court of Pennsylvania, 28 June 1971, no. 403 U.S. 602, *Lemon v. Kurtzman,* established a tripartite test to determine violations of the First Amendment establishment clause.
[183] Constitution of the United States of America, 17 September 1787, Philadelphia, ratified in 1788, operating since 1789.
The *Free Exercise Clause* of the First Amendment establishes the protection of citizens' right to practice their religion.
[184] EYZAGUIRRE (2021).

intolerance, while the Jewish community in Argentina has been subjected to acts of intolerance and persecution. Despite this, it is the Christian majority that continues to experience the highest number of hate crimes. These attacks are prompted not only by opposition to the oppressed defended by Christianity but also by public expressions that oppose or criticize the actions of both State and non-State actors. The basis of this uncertainty stands in the absence of a single law valid for every country part of Latin America. It's known that all the Latin American States have in their constitution a clause guaranteeing religious freedom, but without a clear statement on the difference between religious freedom and religious tolerance[185]. Church-State division first occurred in Mexico in 1857 through the Constitutional Reform followed by Brazil in 1890. For the rest of the countries the arrival of numerous non-Catholic European immigrants forced the States to adopt a greater tolerance. The situation is not homogeneous: there are confessional countries such as Argentina, Bolivia, Colombia, Costa Rica, Panama, Paraguay, Peru, Dominican Republic, and Venezuela who adhere to the Roman Catholic cult, lay non-confessional States such as Chile and Uruguay, neutral States such as Brazil and hostile States such as Mexico and Cuba. Despite the inclusion of provisions for religious freedom in all the constitutions of the republican nations across the continent, and the guarantee of freedom of conscience and worship, the reality is that in many countries, religious toleration is the prevailing norm, either explicitly or implicitly. Alongside the articles that declare these liberties, there are additional provisions that endorse the union of Church and State, allow discrimination based on religious beliefs, and provide special protection or recognition to a specific religion, particularly Roman Catholicism, which is acknowledged as the primary religion of the majority, granting it privileges. It also must be recalled the conventions stipulated by other unions which, due to their marginality in the protection of religious rights and the lack of literature on the subject, will be limited to being mentioned: 2012 ASEAN Human Rights Declaration especially for article 22[186] and the League of Arab States 2004 Arab Charter on Human Rights especially for articles 3, 4, 25, 30, 34[187].

1.3 DEEPENING THE STRUCTURAL LIMITS OF RELIGIOUS RIGHTS.

To gradually approach the themes that will be explored in Chapters 2 and 3, in this section will be analyzed the limits set out by the international laws about religious freedom deepening the functioning and the conditions of the

[185] DEIROS (1991).
[186] Addressing the right to freedom of thought, conscience and religion and the awareness on intolerance about discrimination and hatred religious based.
[187] The articles quoted concern the guarantee of the state parties to ensure freedom, the derogation during public emergencies that cannot interfere with basic human laws, protection of minorities, freedom of thought, belief and religion but with the limitation prescribed by law, right to work regardless of one's religious beliefs.

article 9 of the European Convention on Human Rights. Understanding how freedom of religion can be restricted exposes the gray areas that allow Strasbourg court cases to arise, later addressed in Chapter 2. The following two paragraphs will focus on the point 2 of article 9 of the ECHR, which regulates the limits to freedom of worship, reciting:

> "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"[188]

Article 9 is not the solely provision that rule limitations on religious rights. Article 14 CRC[189] addresses the limits of freedom in: "public safety, health and morals", and the same categories are listed in Article 18 (3) of ICCPR[190], Migrant Workers Convention[191]: Art. 12 (3), Commission on Human Rights resolution 2005/40[192] (paragraph 12) and Human Rights Council resolution 6/37 (paragraph 14), and Human Rights general comment 22, paragraph 8[193]. ICCPR also adds in article 14 (1-2) that in time of public emergency the States Parties may take measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situation. The following paragraphs will therefore reflect on what specifically are the limits that the law sets, and how they can be reconciled with the absolute freedom of religion and manifestation.

1.3.1 PUBLIC SAFETY, HEALTH, AND MORALS

The exceptions to the religious freedom begin with the definition of *public safety*. The category of public safety or national security refers to those practices which, once implemented, could represent a threat to the status quo and the democratic order. One of the most significant cases in this sense is identified in the practice of espionage in defense of national security, but which at the same time violates the right to respect private and family life, home, and correspondence. In similar cases the *Strasbourg bodies* have recognized that secret surveillance constitutes an interference with Article 8

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[188] Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[189] Convention of the United Nations, 20 November 1989, adopted by the General Assembly resolution 44/25, Article 14 of the *Convention on the Rights of the Child*.
[190] Covenant of the United Nations, 16 December 1996, adopted by the General Assembly resolution 2200A (XXI), Article 18 (3) of *International Covenant on Civil and Political Rights*.
[191] Convention of the United Nations, 18 December 1990, adopted by the General Assembly resolution 45/158, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.
[192] Convention of the United Nations, 19 April 2005, adopted by the General Assembly resolution E/CN.4/RES/2005/40, on *Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*.
[193] OHCHR (2023).

but adding that such practices can be justified as long as they are "strictly necessary to safeguard democratic institutions". In both the German cases *Klass* and *Vogt*[194], and the Swedish *Leander* case[195] as well, the court found that a balance had been struck between the rights of the individual and the needs of a democratic society, but since the conditions for which intervention was deemed necessary were met, it appeared that there was no wrongdoing on the part of the government in none of the cases, although the individuals involved had, in two of the three cases, experienced personal injury from such practice. The vital importance of guaranteeing public safety has caused damage to individuals on more than one occasion and for this reason the Strasbourg bodies adopt less rigid approach to eligibility that also allows for 'potential victims'. It was therefore necessary to implement controls that better protect the individual and guarantee the impossibility of doing otherwise if there is damage. Returning to the connotation identified in Article 9, it refers to the connotation of *prevention of disorder or crime*. The Court and the Commission have made few systematic attempts to define the general characteristics of this exception and in fact, if we carefully analyze the cases that have relapsed into this meaning, they are extremely varied and often fall or do not fall into the category at the pure discretion of the examining commission or the court. Examples include cases of:

> "[..] the regulation of various aspects of prison life,compulsory psychiatric examination,the secret surveillance of criminal suspects,searches for evidence of crime,prohibition on consensual homosexual conduct within the armed forces,the recording of journalists' telephone conversations with a lawyer suspected of involvement in terrorism,the regulation of broadcasting,the arrest and brief detention of two protesters at a military parade in Vienna,the compulsory disclosure of medical evidence that the applicant was HIV-positive in criminal proceedings against her husband for manslaughter arising out of an alleged rape,and the deportation of aliens convicted of serious crime.It was rejected as a justification for: the interception of a letter from a lawyer to a remand prisoner in which the client was advised not to make a statement,the search of a lawyer's office in Germany where the procedural safeguards were deemed inadequate,the banning of a military magazine critical of army life,the expulsion and exclusion of a German MEP from French Polynesia (and her exclusion from New Caledonia) following her participation in pro-independence and antinuclear protests,the imprisonment and fining of Greek Jehovah's Witnesses following delays in their application to obtain permission to use private premises for religious purposes,and as a ground for preventing a Swiss electronics company from receiving Soviet television broadcasts via a Soviet satellite in order to demonstrate the technical prowess of one of its products, a home satellite dish aerial"[196].

The right of religious freedom can also be restricted for reasons concerning the protection of *health* and *morals*. Covid-19 it is perhaps the most modern example of limitations on rights in relation to public safety and citizens'

[194] Judgment of the European Court of Human Rights, 6 September 1978, no. 5029/71, Klass *and Others v. Germany*.
[195] Judgment of the European Court of Human Rights, 17 May 1985, application no. 9248/81, *Torsten LEANDER v. Sweden*.
[196] GREER (2002).

health. The reason for limiting moments of aggregation for religious practices during the pandemic must be found in the fear that those places would become hotbeds and contribute to the spread of the virus. In 74 countries out of 198, was experienced some sort of limit imposed for the outbreaking of the pandemic, that included: restrictions on religious moments of association, public blame of the religious groups for the spread of the coronavirus or violence and bullying towards religious groups due to the belief of their responsibility in the advance of the virus. In 46 countries was experienced a violent ban from the government on religious gatherings in 2020, as arrests, assaults, and physical force. This included the detention of Shiite worshippers in Azerbaijan who had gathered to celebrate the Ashura during the ban, 15 people were arrested in New Jersey who celebrated a funeral while restrictive laws to prevent assembly were in effect and in India an enforced quarantine was imposed on 900 participants of a gathering of the Islamic group Tablighi Jamaat who would later be found guilty of transmitting the first cases of coronavirus in New Delhi. According to the 2022 report on how COVID-19 affected religious freedom[197] by Samirah Majumdar, it resulted that:

- In a quarter of countries authorities used at least one type of force against religious groups to enforce COVID-19 public health measures in 2020, including: detentions, physical assault, property damage, confiscation or raids, displacements, deaths;

- In 18 countries authorities linked pandemic to specific religious groups or gathering in 2020;

- Private actors linked religious group, event to COVID-19 in 17 European countries in 2020;

- Private actors used force against religious groups or events in 2020 for coronavirus-related reasons in 4 countries;

- Religious groups said they were unfairly targeted by COVID-19 measures in 40% of countries in the Middle East-North Africa region in 2020;

- In three-in-ten or more countries in each region, religious groups defied COVID-19 health measures;

- Religious groups and governments cooperated to promote pandemic health measures in half countries in sub-Saharan Africa in 2020;

- Religious leaders or groups promoted pandemic health measures in 94 countries in 2020.

The *moral* limit encounters more difficulty in being outlined: the meaning is in fact extremely personal and subjective, and for this reason, it is difficult to give a single interpretation to the ban. By many, the moral limit is represented as a "prohibition of rites contrary to morality, which are those rites that strongly offend sexual modesty, sexual freedom and moral sentiment".

[197] MAJUMDAR (2022).

But in such a diversified international context, in which individual national traditions and sentiments appear so varied, what are the practices that could potentially offend the public and what could be categorized as universally contrary to morality? This definition brings with it a series of questions, together with both the discretion of the judge and the context in which an act is perpetrated. In this context appears notable to recall the sentence no. 1763/2010 of the Appellate Court of Venice which saw an Italian citizen as the subject of a dispute against the Foundation of the Venice Biennale so that it could be ascertained a) whether the participation in the 2007 Dance Festival of the ballet Messiah Game had taken place upon invitation or at the request of the relative author/ producer; b) that this spectacle was gravely offensive to the common feeling of the Catholic citizen; c) that this programming constituted a violation of the right guaranteed by Article 19 of the Constitution (religious freedom); d) that the same performance also violated the right of the actor, as a Catholic citizen, to have his religious sentiments respected. According to the citizen, in fact, during the Institution's "International Review" a show was staged that would have profoundly harmed Catholic Christian sensibilities. The institution had invited the fundamental Christian truths to put on a heavily mocking show and intense protests had followed. This had led the Board of Directors to verify, in an extraordinary session, the opportunity to keep that show scheduled but concluding in a press release that it had in any case decided to keep the show scheduled. It was also specified that the show had no intention of harming religious sensitivity in any way, but this had not stopped the protests, leading to litigation. The action proposed by the citizen was rejected with sentence no. 1763/2010 and subsequently the verdict was confirmed by the Court of Appeal of Venice with the sentence of 20 March 2014 no. 641[198], which declared that despite the Italian Constitution protecting religious sentiments, the proposed action went against the principle of secularism of the State and the principle of free expression of thought, and therefore to be rejected[199]. It is clear from this case that the line between offending morality and freedom of expression and religion is rather blurred.

1.3.2 INTERFERENCE WITH NATIONAL LEGAL ORDER

The last the last limit imposed on freedom of religion is represented by the *interference with the national legal order*. What does it mean? The interference of the legal order can be summarized with practices that would oppose the national laws that govern a State. To put it more simply: if a religious practice carries out acts that turn out to be in opposition with what is prescribed by a given State, then they cannot be implemented. This limit appears to protect all those countries that do not recognize religious freedoms

[198] Judgment of the European Parliament, 20 March 2014, no. T-43/13, *Beniamino Donnici v. European Parliament.*
[199] See also the comment of CACCIAVILLANI (2014).

in their founding amendments. On the one hand, however, it can also be interpreted as a discourage to those practices which would lead the individual to be arrested or detained, in a State in which such practices would not be permitted, but at the same time protecting all those regimes which do not are in favor of the complete liberalization of religious rights and its manifestations.

On 10 February 2023, the Court of Cassation of Rome issued orders no. 4137[200] and no. 4223[201] accepting the appeals of two applicants' Chinese citizens, requesting international protection for reasons of religious persecution in the country of origin, i.e. China. The first ordinance no. 4137/2023 concerned the acceptance by the Supreme Court of the appeal against the rejection sentence of the Court of Appeal of Rome which had excluded the persecution against the appellant. The cult of belonging of the Chinese citizen with whom he said he was being persecuted is the evangelical Christian religious movement called "Quan Neng Shen" or "the Almighty God", considered by the Chinese State among those completely illegal and therefore defined as "malignant cults" and prohibited by the Chinese Penal Code. Since this cult is prohibited by the national legal order, and that the practice of this religion is substantially carried out outside the national law and in secret, the court of appeal ruled out the existence in China of acts of persecution for religious reasons. At the same time it was pointed out by the Supreme Court that the trial judge must concretely evaluate whether the interference by the State of origin in the applicant's freedom to manifest one's religion is provided for by law, is aimed at pursuing at least one legitimate aim according to the articles 9, par. 2, ECHR, and 19 of the Constitution and if it constitutes a necessary and proportionate measure for the pursuit of this aim. Therefore, it was assumed that:

- In application of this principle it has been affirmed that the State repression of the freedom to freely profess one's religion, even in an associated form, cannot be justified by the mere fact of being aimed at prohibiting associations of a secret nature;
- the contested sentence is not consistent with the aforementioned principle, having excluded the possibility that the limits on freedom of worship established by the Chinese legal system may lack a justification compatible with the protection of human rights;
- the possession of a passport and departure from the country of origin are not relevant in order to exclude the condition of persecution recognized as worthy of protection against the need deriving from the State treatment of the cult in question to operate

[200] Judgment of the Court of Cassation of Rome, 10 February 2023, order no. 4137.
[201] Judgment of the Court of Cassation of Rome, 10 February 2023, order no. 4223.

in secrecy precisely to avoid the consequences of the aforementioned treatment" [202].

The second order, no. 4223/2023, instead anticipated the acceptance by the Supreme Court of the appeal presented by the applicant Chinese citizen who challenged the rejection sentence of the Civil Court of Appeal of Rome. The contested sentence excluded any form of protection for the appellant, mistakenly thinking that he was of the Catholic religion. During the sentence he had in fact reaffirmed the current relations of tolerance towards this religion sanctioned even recently by an agreement with the Holy See, failing to consider that the appellant declared that he belongs to an evangelical church called "Yin Xin Chen Yi", not part of this protection by the Chinese State and the pacts established between China and the Holy See. The Supreme Court argued that the Court of Appeal had erroneously held that the appellant professed the Catholic religion by focusing the exclusion of the right to recognition of international protection under the dual profile of persecution or exposure to a repressive regime pursuant to Article 14 letter b) legislative decree n. 251 of 2007 on this assumption, also with regard to the preliminary investigations carried out. However, it appears that since it is not disputed in the contested provision that the Yin Xin Cheng Yi church is among the house churches of evangelical and non-Catholic religion; the argumentative structure adopted by the Court is justifiably affected by the objection made. It follows that the lack of exposure of the appellant to the risk of suffering religious persecution, or inhuman or degrading treatment by the State authorities is based on wholly erroneous assumptions that require a punctual assessment.

On 22 August 2022 UN experts requested the Iranian authorities to stop persecution and harassment of religious minorities and end the use of religion to curtail the exercise of fundamental rights. The demand derived from the concerning of UN about the increasing arbitrary arrests, of the enforced disappearances of members of the Baha'i faith and the devastation of their properties. The UN experts stressed that the acts were not isolated but formed part of a broader policy to target any dissenting belief or religious practice, including Christian converts, Gonabadi dervishes and atheists. The organization also addressed the common iranian practices of the use of espionage to silence religious minorities, through their remotion from their homes and forcing them into internal displacement. The Baha'i community is among the most severely persecuted religious minorities in Iran, reaching over 1000 individuals awaiting to be imprisoned by April 2022 and during the year over 90 Baha'i students were barred from enrolling in the country's universities. In a communication to Iranian authorities in February 2021, the experts raised concerns about the systematic violations of property and housing rights of the Baha'i minority, accusing them of being involved in espionage, propagating Baha'i teachings and infiltrating educational

[202] Read more in HASABELLIU (2023).

institutions. The experts demanded for the immediate and unconditional release of all individuals detained on the basis of their religious affiliation, and accountability for the systematic persecution of religious minorities by authorities.[203]

It is also noted that in the last years tools to increase the protection of religious rights is developing more and more, through legal tools. For example, must be remembered the *Article 2(2)* of *ICCPR*[204] which provides that where it is not already expressly manifested in the existing legislature, each State that adopts the covenant should adopt all necessary instruments to ensure that the ICCPR can be adequately protected and applied. The *ICESCR* in *Article 2(1)*[205] encourages the States parties to its covenant to use all their economic and non-economic means, to ensure that the laws listed in the ICESCR can be maximized and implemented to the best of possibilities. The *article 3* of the *CEDAW* says that:

> "States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men"[206].

The *1981 Declaration of the General Assembly* remembers in article 4(2) that all the States should implement every tool in their possibilities to discourage any form of discrimination. It adds *in article 7*:

> "The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice"[207].

Finally, the *Commission on Human* Rights specifically in *resolution 2005/40 (paragraph 4 (a))*[208] and *Human Rights Council, resolution 6/37 (paragraph 9 (a))* urges States, to guarantee equal and durable protection of freedom of thought, conscience, religion, and belief for all individuals without discrimination, one of the essential steps is to establish effective mechanisms that offer appropriate remedies when these rights are infringed. This includes ensuring the right to freedom of thought, conscience, religion, or belief, as well as the freedom to practice one's religion without restrictions, including the right to switch religions or beliefs

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[203] See also the article of Iran by UNITED NATIONS (2022).
[204] Article 2(2) of the Covenant of the United Nations, 16 December 1996, , adopted by the General Assembly resolution 2200A (XXI), Article 18 (3) of *International Covenant on Civil and Political Rights*.
[205] Article 2(1) of the Covenant of the United Nations, 16 December 1966, adopted by the General Assembly resolution 2200A (XXI), *International Covenant on Economic, Social and Cultural Rights*.
[206] OHCHR (2023).
[207] *Ibidem*.
[208] Resolution of the United Nations Commission on Human Rights, 19 April 2005, no 2005/40, *on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*.

CHAPTER 2. RELIGIOUS RIGHTS: A COMPARATIVE ANALYSIS BETWEEN JURIDICAL INSTITUTIONS.

This second chapter will focus on the comparison of different juridical institutions on a series of topics, to understand the different attitudes of governments towards similar cases. The chapter will be structured as it follows: the paragraphs will analyze different judicial decisions on the same subject. This comparative approach will develop a deep study on how governments responded to cases regarding the same issue. Religious freedom, liberty to manifest religious symbols and worship, are only a few of a variety of categories which have been disputed in different countries, resulting in different outcomes, and that will be discussed in the chapter. The following paragraphs will show how religious freedom is subject to limitations. Religious freedom is constituted by a series of gray areas which facilitate different interpretations on the same complaint. The questions that arise spontaneously by this premise are: what is the right way to resolve these conflicts? In which direction is the international jurisprudence going? It is plausible to think of a future in which the resolution of cases is increasingly like one another or is it adequate to differentiate the resolutions based on the places where the litigations occur? The paragraphs will deal with litigation from all over the world, with a focus on the cases of the Strasbourg Court, to slowly understand the tendencies that will then be explored in Chapter 3 with the case study of France.

The premise of Ferrari n *Religion in Public Spaces: A European Perspective*[209] is that in Europe there are *three patterns* of relations between States and religions. This scheme anticipates the trends that will be analyzed in the cases further on in the text. The *first* tendency is the one of the major Catholic and Orthodox countries and has to do with the central role attributed to religion in the national cohesion. One of the most important examples is identified in Italy where the debate on the crucifix in public places and schools has turned out to be of great interest and importance in recent years, generating legal cases[210]. The *second* pattern provides an alternative solution to the same problem. It is based on the belief that traditional religions, which are no longer strong enough to act as a unifying force, are no longer able to provide national identity and social cohesion. Only a set of secular ideals, such as liberty, equality, and tolerance, that every person and organization must uphold regardless of their background, preferences, or creed, can serve as the foundation for a common citizenship. One of the most important cases is the one of France, where regulations prohibit full-face veils in all public settings and the wearing of religious symbols at school. The French case will be the

[209] FERRARI and PASTORELLI (2016).
[210] See: Judgment of the European Court of Human Rights, 18 March 2011, no. 30814/06, *Lautsi and Others v. Italy*.

core of the third chapter of the thesis. The United Kingdom, which is arguably one of the most accomplished European nations in the pursuit of a comprehensive multicultural organization of society, serves as the best example of the *third* pattern. The United Kingdom is a *common-law* nation where, as in many other nations of this type, the courts and their rulings play the primary role in determining the legal system. The courts are guided by the respect for fundamental human rights in their efforts to strike a balance between the various ethnic, religious, and cultural groups coexisting in British society. But occasionally, how human rights are understood and applied might result in restrictions on one of those rights: freedom of religion. The author[211] recalls the case of the British Supreme Court on the Jewish Free School[212]. A student born to a non-Jewish mother who converted to Judaism through the rites of a non-Orthodox branch was excluded from the school because of its admission policy, which gave preference to Jewish students and, more specifically, students born to Jewish mothers in accordance with Orthodox Jewish principles. The Supreme Court ruled that the *Race Relations Act of 1976*[213], which prohibits any discrimination on this basis, had been been violated by since the school admissions policy, which focused on the student's maternal descent, was not based on religion but rather ethnicity.

2.1 RELIGIOUS FREEDOM: A BROAD DEFINITION

What is meant by *religious freedom*? This title includes several definitions: from freedom to adopt a religion or belief, to freedom to change or renounce a religion or belief, freedom from coercion, freedom to display religious symbols and even more. In this section will be provided a series of cases referring to religious freedom in their broadest interpretation. Religious freedom in its widest sense, stands in the indulgence to accept every belief and the capability to choose, sustain and practice a religion. In *Latin America* the problem with religious freedom precisely arises from the distinction between *religious freedom* and *religious toleration*. The historical background of the evolution of religious rights in Latin America can be set at the end of the last century, when the liberal tendencies were increased and led various States to take anticlerical measures, including separation between Church and State. Mexico was the first country to apply this separation through the Constitutional Reform of 1857. Brazil did the same in 1890. In other cases, the arrival of numerous non-Catholic European immigrants, who were needed for carrying out the liberal projects of colonization and progress, forced the states to adopt a greater tolerance. Great Britain and United States exerted severe pressure with political and economic tools, but the present situation is still not homogeneous. There are confessional states, which are committed to

[211] FERRARI (2016).
[212] Judgment of the Supreme Court of the United Kingdom, 14 December 2009, *R(E) v. Governing Body of JFS*.
[213] Act of the United Kingdom, 22 November 1976, no. 1976c. 74, *Race Relations Act*.

a particular church or religious confession, states that assume an abstentionist attitude to any religion (lay states), or states that result to be neutral, or hostile, or mixed, in religious matters. Even though *religious freedom* is stated in all the republican constitutions of the nations of the continent, formally guaranteeing religious rights, according to Pablo Deiros[214], the reality is that either explicitly or implicitly, in most of the countries there is nothing more than *religious toleration*. According to the scholar in South American countries, mostly composed of peoples of Christian Catholic belief, the open-mindedness towards other religions is rare and some factors indicates even religious coercion. The difference between religious liberty and religious tolerance is subtle but substantial. Religious freedom is an inalienable right of all citizens and is intrinsic to human nature itself. All states must ensure that. On the other hand, religious tolerance is a virtue of the social approach of the country which is granted by the State or by the competent institution. Religious tolerance includes the characters of respect, consideration, and indulgence toward the ways of thinking, behaving, and feeling of others in religious matters, even though they may be different from one's own. In the specific case that will be treated, the lack of religious tolerance has to do with the intolerance of the Roman Catholic Church that dominated the territory. The example worthy of mentioning and just anticipated stands in the case of *Argentina,* that provides an exemplificative window on the present situation in the Latin American. This part of the paragraph is based on the excellent work done in *Religious Freedom in Latin America*[215]. At the time of its writing (1991), the Argentine state showed some violations and arbitrariness on religious rights, despite his formal religious freedom. In April 1980, during the Inter-American Committee on Human Rights carried out a Report on Human Rights on the country and Argentina was found responsible for limitations on religious freedom, especially in reference to Jehovah's Witnesses and the Jews. Another element that underlined the low level of religious toleration was supplied by the willingness, at that time, to introduce Catholic institutions within education, even at high levels, to shape the identity of the child through Catholic values. The general belief was that Catholicism constituted a fundamental part of Argentine culture, and therefore it was necessary to be taught in schools to obtain full nationalist identity. Places of worship other than the ones of Catholic faith were strongly hindered. Even during the Falklands' War[216] in the South Atlantic the only chaplains were the

[214] See DEIROS (1991).
[215] DEIROS (1991).
[216] *Falklands' War* or *Guerra de las Malvinas* (in Spanish) was fought between the 2 April 1982 and 14 June 1982, by Argentina and the United Kingdom, for the control and possession of the Falkland Islands and South Georgia and the South Sandwich Islands. On the eve of the war, Argentina was during a devastating economic crisis and a large-scale civil uprising against the military junta that ruled the country. The government pressed on nationalistic sentiment by launching what it considered a quick and easy war to reclaim the Falklands, over which Argentina (which calls them Malvinas, Malvinas) claimed sovereignty. Although taken by surprise by the attack, the United Kingdom organized a naval task force to push back the

Roman Catholic ones, banning places of worship for all other faiths. The National Reorganization Process, a military dictatorship that lasted from 1976 to 1983 supported by the United States, established, among other things, extraordinary laws preventing evangelical churches and other religious' groups from proclaiming their faith through meetings and other events. These unfavorable attitudes towards religions other than Catholicism were justified by the Argentine constitution itself. The National Constitution states: "The Federal Government supports the Roman Apostolic Catholic cult" (Art. 2)[217]. It therefore appears that the Catholic Church, its structures, and its officials are the only ones to benefit from subsidies from the government and becoming *de facto* privileged although it is never defined in the Constitution as a favored institution. Article 2 justifies in the Constitution itself, the basis of adverse attitude against cults other than Catholicism: although there is religious freedom, the support to a single creed by the government, discourages other cults (together with the other series of practices implemented by the State, listed above). As the scholar affirms:

> "The Preamble of the Constitution is generous in purposing to "assure the benefits of freedom, to us, to our posterity, and to all the men of the world that want to inhabit the Argentine land". This spirit is reiterated in Article 20, which says that foreigners enjoy all the civil rights of the citizen in the Argentine territory, among them the one "to freely exercise their religion". But these lucid affirmations lack value because it is necessary "to belong to the Roman Apostolic Catholic communion" to be able to fill the office of the Presidency or Vice- Presidency of the Nation (Ait.76). Notice that in this case it is not a matter of a mere oath, but the charge to belong to the official church. The oath which the highest authorities have to take before they perform their responsibilities has a statement of clear religious content (Art.80). All this means that Argentines are not equal before the law. The same could be said with regard to the possibilities of entering the Armed Forces as a career. Some high positions in the government are also reserved exclusively for Roman Catholics. Whether it is admitted or not, there is an official religion in Argentina. It is not that the State merely "supports" economically the Roman Church while guaranteeing religious freedom to other churches. It is more a case of the State proclaiming Roman Catholicism as the official religion of the country. This is the situation, not only in Argentina, but also in several other countries in the continent. A colonial, Constantinian, authoritative and privileged Roman Catholic Church continues to be one of the factors that prevents an authentic religious pluralism and equal opportunities for everybody regardless of their religious conviction. A very wide religious toleration seems to be prevailing throughout Latin America. But the experience of full religious freedom is a concept which is still being worked out."[218]

According to the *2022 Report on Religious Freedom in Argentina* religious freedom is today better protected than in the past, however there are still

Argentine forces that had occupied the archipelagos. After heavy fighting, the British prevailed and the islands reverted to British control.

[217] Article 2 of the National Constitution of Argentina, 1853, *Constitution of the Argentine Nation*.

[218] See DEIROS (1991).

several elements of discontent. Among these appears the need for several religious groups to register at the government as both civil associations and religious groups to benefit from rights that the Catholic Church gained without any registration. The Report also noted:

> "The constitution and laws provide for freedom of religion and the right to profess freely one's faith. The constitution grants the Roman Catholic Church preferential legal status, but there is no official state religion.
>
> Representatives of many religious groups, including Muslim, Christian and Jewish communities, reported the government generally supported and respected religious freedom. Several religious groups, however, continued to express frustration that the government required them to register as both civil associations and religious groups to be eligible for benefits that the Catholic Church received without registration. In March, the Argentinian Council for Religious Freedom (CALIR) expressed concern that some local governments requested an additional registration for religious groups at the municipal level. In July, the National Institute against Discrimination, Xenophobia, and Racism (INADI), together with representatives of different religious entities and organizations, created a 2022-23 Working Group for the Prevention of Discrimination based on Religion. On the 28th anniversary of the bombing of the Argentine Israelite Mutual Association (AMIA) community center, President Alberto Fernandez reaffirmed the government's commitment to achieve justice for the attack and fight antisemitism. In February, Salta provincial police dispersed a group of Muslim women who tried to celebrate World Hijab Day, even though they had municipal permission for the event.
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> During the year, media, government authorities, and civil society organizations reported individuals in the country experienced incidents of discrimination based on religion in the forms of violence, hate speech, and misinformation. The Delegation of Argentine Jewish Associations (DAIA) cited 490 incidents of antisemitism in its annual report for 2021, released in September, or 3 percent less than in 2020. DAIA's report also noted an increase in the number of cases reaching the justice system. There were also threats and antisemitic comments in social media. According to media reports and the Islam for Peace Institute, during the year, members of the Muslim community experienced incidents of religious discrimination. Interreligious groups such as the Interreligious Committee for Peace in Argentina, whose members include Catholic, Protestant, evangelical Christian, Jewish, Muslim, Baha'i, as well as Indigenous religious groups and CALIR, continued work to promote tolerance and increase opportunities for interreligious action on common societal challenges.
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> U.S. embassy officials met with senior government officials, including the Ministry of Foreign Affairs and Worship's (MFA) Secretariat of Worship and human rights office, to discuss ways to promote respect for religious minorities and counteract religious discrimination. The Ambassador promoted the importance of religious tolerance with a diverse, high-profile group of religious and nonreligious leaders when he hosted the embassy's first iftar in April. On July 18, the Ambassador, the U.S. Special Envoy to Monitor and Combat Antisemitism, and other embassy officials attended the annual commemoration to mourn the victims of the 1994 terrorist attack on the AMIA. The Ambassador also held multiple meetings with AMIA, DAIA, and other religious groups throughout the year. Embassy officials supported interfaith cooperation and

> universal respect for freedom of religion through public statements and social media postings as well as in meetings with religious groups." [219]

The issue of religious freedom is controversial not only in Latin America but also in many of the countries that are part of the Council of Europe. As previously indicated, the founding law of religious freedom, speaking of CoE, is identified in Article 9 of the ECHR. This article brings with it limitations and exceptions, and the different applications by different governments have led to the emergence of some controversies. William Schabas reviews Article 9 of the ECHR in the Oxford commentary on international law entitled: *The European Convention on Human Rights*. The author poses an essential problem: the ECHR protects religion, but what can effectively be defined as "belief"[220]? The problem of what can effectively be defined as belief does not concern traditional religions. Traditional religions and their schisms are in fact defined as such thanks to the credibility they have obtained over the years, their persistence over the centuries, and their massive presence on the territory. Schabas' question arises for all those religions that operate outside the ordinary for reasons such as their late birth, the limited presence of followers, the absence or minimal presence of physical places of worship. The questions that arise are: how can a religion be discerned from a non-religious group? Can everyone enjoy the status of religion? What are the characteristics that identify a belief? The problem of defining what a belief is results necessary due to the attitude of some to pretend that status to obtain legal privileges. The controversies that will be analyzed deal with this issue.

One of the most preeminent cases, in this sense, is identified by the several controversies connected to the *Church of Scientology*. The object of the dispute relies on the possibility or not to identify Scientology as a religion. In the case *Kimlya and Others v. Russia*[221] the two applicants Mr Yevgeniy Nikolayavich Kimlya and Mr Aidar Rustemovich Sultanov and the Church of Scientology of Nizhnekamsk, a Russian religious group, complained about the domestic authorities' decisions that refused State registration of the religious groups of the applicants as legal entities. According to the objections such practices would have violated a series of laws both at a national and international level. In general, national legislation which attributes to religious groups such a limited status that it does not allow members of this group to enjoy in practice their right to religious freedom, making this right illusory and theoretical rather than concrete and effective, constitutes a violation of the Convention[222]. In 1994 a cell of the Church of Scientology opened in Surgut and was registered under the name of 'Surgut Humanitarian Dianetics Centre'. In 1995 a new Russian law on non-governmental associations prescribed that

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[219] Report of the United States of America, 15 May 2023, *2022 Report on Religious Freedom in Argentina by U.S. Government*.
[220] SCHABAS (2017:412-444).
[221] See also: Judgment of the European Court of Human Rights no. 76836/01,32782/03, 1 October 2009, *Kimlya and Others v. Russia*, and the comment of SCHABAS (2017: 412-444).
[222] Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.

those associations that were recorded before that act, to re-register before 1 July 1999. The Centre applied as a non-commercial partnership, but the deputy mayor of Surgut Town Council rejected the application, referring to the religious purposes of the Centre. This happened again with a second attempt in 2000, when the request was rejected due to the lack of documents testifying to the presence of religion in the territory for at least 15 years. After a series of reviews which yielded the same result, in 2004 the Khanty-Mansi Town Court held that the refusal to register the Surgut Church had been unlawful because in the absence of a certificate showing its fifteen-year presence in the region, the Khanty-Mansi Justice Department should have left the application for registration "unexamined". It was ordered to the Khanty-Mansi Justice Department to register the Surgut Church. The second applicant was the victim of a similar treatment. On 23 December 1999 the applicant church applied to the State Registration Chamber of the Republic of Tatarstan but later 7 September 2001 a deputy chairperson informed the requesting person that the registration had been rejected. The second applicant appealed to a national court against the refusal of the registration and on 21 December 2001 the Nizhnekamsk Town Court of the Republic of Tatarstan dismissed the claim, arguing that there was no actual dispute as the authorities had yet to carry out the religious expert examination and the application for registration had yet to be examined on the merits. On 21 January 2002 the Supreme Court of the Republic of Tatarstan remitted the claim to the Town Court for another examination, but the verdict on 7 March 2002 was still the same, until 18 April 2002 the Supreme Court quashed the judgment and remitted the matter to the Town Court, founding that the absence of a religious expert examination was not a valid reason to refuse the registration. The Town Court verdict was the unlawfulness of the judgment. The conclusion of the judgment was that the previous judgment was unlawful due to the occurrence of a violation of Article 9 of the Convention read in the light of Article 11, and considering Scientology as a religion, relying on the previous similar case of the *Church of Scientology Moscow v. Russia*[223]. The conclusion of both cases was also the identification of the Church of Scientology as a religion, and as such treated with its accessory privileges, rights, and duties.

A similar case is the example of the recent *order no. 4137 of the Court of Cassation of Rome*[224], already mentioned in the previous chapter[225] and regarding the rejection of requesting international protection from China due a presumed religious persecution. As already reported, the request was refused precisely because of the definition given to the movement to which the

[223] See also Judgment of the European Court of Human Rights, 5 April 2007, no. 18147/02, *Church of Scientology Moscow v. Russia*, a similar case in which Scientology was considered a religion and created a precedent of custom to be considered as such in the case treated in the paragraph. It is noted that It is noted that in the Church of Scientology Moscow and Others v. Russia, in which the Court had found a violation of Article 11 in the light of Article 9 of the Convention, while in *Kimlya and Others v. Russia* has found a violation of Article 9 in light of Article 11.

[224] Judgment of the Court of Cassation of Rome, 10 February 2023, order no. 4137.

[225] See also paragraph 1.3.2.

appellant was a member. The cult of *Quan Neng Shen* was considered by the court to not to have the classic characteristics of a traditional religion, as operating outside the law and in secret. It follows that if a movement cannot be considered a religion, the individual cannot apply for the connected benefit that derives from the religious rights such as political asylum.

Religious freedom can also be defined as the ability to freely express one's beliefs without denigration by the State in which it is performed. The following case explores the fine line between freedom of religion and the protection of the citizen's interest when it comes to defamation. The German case of *Leela Förderkreis e V. and Others v. Germany*[226], identified an allegedly denigration by the Government on a religious movement, that it classified as sects. The facts concerned three associations, religious or mediation groups, belonging to the Osho movement and registered under German law. The movement was formerly called as *Shree Rajneesh* or *Bhagwan movement* and emerged in Germany during the 1960s. The core of the case stands in the position, openly in conflict, carried out by the German government. During 1979, Germany publicly advanced opposition campaigns that made citizens aware of the mystifying, sectarian and manipulative danger represented by the movement. In these manifestos the Osho movement was also referred to as "pseudo-religion", "psycho-sects" and "youth religion" denoting a slanderous character towards religion, arriving at the situation where the applicant associations brought proceedings before the administrative courts. There they requested the end of campaigns harmful to their religion by the Government, but their claim was rejected, and the movement was forced to proceed with a constitutional appeal. In 2002, the Federal Constitutional Court ruled that the terms "destructive" and "pseudo-religious", and the concern that members of the movement would be manipulated by the organization, violated the requirement of neutrality in matters of religious and philosophical beliefs, as well as the principle of proportionality. Despite these premises, however, the final judgment of this appeal resulted in 'non-violation'. What were the premises challenged by the Court for the government to ultimately be found not guilty of denigrating the religious movement? According to the Court, the campaign had not effectively prohibited the association or formation of such groups but had only warned citizens of the danger that such movements could represent. Defining a movement as "psycho-sect" or "manipulative" appears to be in the view of the constitutional court, a legitimate way of providing information, despite the terms used having a pejorative purpose. The Government has a responsibility to protect its state, providing information on topics of public interest, and therefore such actions pursued "legitimate purposes" for the protection of public safety and public order and the protection of the rights and freedoms of others. The Government's information campaign had aimed to consistently warn citizens of the positive obligations of the Contracting Parties under

[226] Judgment of the European Court of Human Rights, 6 November 2009, no. 58911/00, *Leela Förderkreis e V. and Others v. Germany*.

Article 1 of the Convention[227]. The Constitutional Court had also set some limits by authorizing some statements such as "cults", "juvenile cults" and "psychopathic cults", and prohibiting others which, even if somewhat pejorative, had been used at the time in a completely indiscriminate way for any non-traditional kind of religion. Furthermore, the Government had refrained from further using the term "cult" in its information campaign following an expert recommendation issued in 1998. Moreover, after receiving expert advice in 1998, the Government chose to refrain from using the term "cult" in its information campaign. As a result, the statements made by the Government, as defined by the Constitutional Court at that time, did not exceed what could be deemed in the public interest for a democratic state. Considering the leeway given to national authorities and their responsibility to consider the overall interests of society within their jurisdiction, the interference with the applicant associations' right to express their religious beliefs can be justified and deemed proportionate to the objective being pursued.

A case regarding the freedom of expression is identified in the *Otto-Premiger-Institut v. Austria*[228], a case with a mixed outcome occurred on 20 September 1995 and which elaborates on the limitations of Article 9 together with Article 10 of the ECHR in point 10.2, which gives a margin of discretion to the State. The *Otto-Preminger-Institut für audiovisuelle Mediengestaltung*

[227] Article 1 of the European Court of Human Rights considers the Obligation to respect Human Rights, postulating: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

[228] Judgment of the European Court of Human Rights, 20 September 1995, no. 13470/87, *Otto-Premiger-Institut v. Austria*.
The decision established a binding or persuasive precedent within its jurisdiction in the cases of: Judgment of the European Court of Human Rights, 10 November 2005, no. 44774/98, *Leyla Sahin v. Turkey*; Judgment of the European Court of Human Rights, 28 October 2014, no. 49327/11, *Gough v. United Kingdom*; Judgment of the Inter-American Court of Human Rights, 2 July 2004, ser. C no. 107, *Herrera-Ulloa v. Costa Rica*; Judgment of the European Court of Human Rights, 10 July 2003, no. 44179/98, *Murphy v. Ireland*; Judgment of the European Court of Human Rights, 13 September 2005, no. 42571/98, *İ.A. v. Turkey*; Judgment of the European Court of Human Rights, 14 June 2004, no. 35071/97, *Gunduz v. Turkey*; Judgment of the European Court of Human Rights, 25 November 1996, no. 17419/90, *Wingrove v. United Kingdom*; Judgment of the Inter-American Court of Human Rights, 5 February 2001, Serie C 73,*'The Last Temptation of Christ' v. Chile*; Judgment of the Inter-American Court of Human Rights, 6 February 2001, Serie C 74, *Ivcher Bronstein v. Peru*; Judgment of the Inter-American Court of Human Rights, 31 August 2004, Serie C no. 111, *Ricardo Canese v. Paraguay*; Judgment of the European Court of Human Rights, 30 January 2018, no. 69317/14, *Sekmadienis v. Lithuania*; Judgment of the European Court of Human Rights, 25 October 2018, no. 38450/12*, E.S. v. Austria*; Judgment of the First Instance Court, 10 May 2019, Misc. Cause no. 313 of 2017, *Kyagulanyi v. Kampala Metropolitan Police Commander*; Judgment of the European Court of Human Rights, 5 December 2019, no. 13274/08, *Tagiyev and Huseynov v. Azerbaijan*; Judgement of the European Court of Human Rights, 22 November 2012, no. 39315/06, *Telegraaf Media Nederland Landelijke Media v. the Netherlands*; Judgment of the European Court of Human Rights, 16 March 2000, no. 23144/93, *Özgür Gündem v. Turkey*; Judgment of the European Court of Human Rights, 4 February 2019, nos. 1413/08 and 28621/11, *Ibragim Ibgragimov and Others v. Russia*; Judgment of the European Court of Human Rights, 30 April 2006, no. 64016/00, *Giniewski v France*.

(OPI), was a private association, working in the field of the audio-visual media, promoting creativity, communication, and entertainment, with headquarters in Innsbruck, Austria. The core of the litigation refers to the violation by Austria of the screening for persons 17 and under, of the film *Council in Heaven*, of which the Otto-Preminger-Institut had announced six showings. The reasons for this censure must be attributed to the will of the Roman Catholic Church, which, demonstrating its opposition to this projection, proceeded to communicate it to the government. Soon the prosecutor started a criminal case against the manager of OPI, Mr. Dietmar Zingl on 10 May 1985. He was charged with "denigration of religious doctrines", prohibited by section 188 of the penal code[229]. What made the content unsuitable for minors was the unorthodox content towards Catholicism, which, according to the government and the Church, was portrayed in a caricatured manner. The European Court of Human Rights determined that the measures adopted by the Austrian government did not violate the right to freedom of expression under Article 10 of the ECHR. The rationale behind the position of the European Court of Human Rights stands in the absence of a uniform position in Europe on the meaning of religion in society, resulting in a certain margin of appreciation by national authorities in assessing the necessity of imposing restrictions to avoid offences to religious beliefs. Point 2 of article 10[230] establishes the legitimacy of the Austrian government in the seizure of the film due to its necessity of the government's possibility to decide how to apply the law. The Court also notes that the Section 188 of the Austrian Penal Code was intended to suppress behavior that was directed against religion, and since the application of the same law in the past has had the purpose of protecting citizens from offensive language towards religion, the Court found that the law had been fully applied. The Court first held that the domestic court of Austria did not exceed their margin of discernment in concluding that there was a social need for the preservation of religious peace. The Court held that the screening of that film in a city where the Roman Catholic religion is the majority religion constituted sufficiently public expression to offend, even though public access to the film in question was subject to payment and age limits. The Court also held that, by seizing the film, the authorities acted to ensure religious peace in that region and to prevent people from feeling offended in any way in their religious beliefs. The Court then applied the same reasoning to the

[229] Section 188 of the penal code of the Austrian Criminal Code violates blasphemy, through the so-called 'Vilification of Religious Teachings'. The law establishes: "Anyone who publicly disparages a person or thing that is the object of worship of a domestic church or religious society, or a doctrine, [or other] behavior is likely to attract legitimate offense". For cases from the Court of Strasbourg and Austria on the subject, see also: Judgment of the European Court of Human Rights, 15 January 2011, no. 38450/12, *E.S. v. Austria*.

[230] Article 10 of the European Court of Human Rights protect freedom of expression and including in 10.2 the possibility for the right to be restricted due to interest of national security, territorial integrity, or public safety, for the prevention of disorder or crime, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

government's confiscation of the film. In the evaluation of the case, the reference to *Handyside v. United Kingdom*[231] was of fundamental importance. It is therefore noted that the application of the laws for the protection of religious freedom remain inextricably linked to the codes of the individual states and that therefore, there is a certain margin of discretion in the application of supra-national laws such as those examined above (ECHR, etc...). The discretion of the State is considered by authoritative bodies, such as the Court of Strasbourg, as an inalienable principle guaranteeing the ECHR itself and the sovereignty of the individual state. The ability of the state to apply the supranational laws to which it adheres in a discretionary manner, in some points, is considered by the Strasbourg court to be of fundamental importance, and therefore, also indicated in the same principles of the ECHR[232].

2.2 FREEDOM TO CHANGE RELIGION

Freedom to change one's religion is provided by *Article 18* of the Universal Declaration of Human Rights[233] and according to Schabas[234] is not subject to any interference by the State, considering Europe. The most important case is represented by *Kokkinakis v. Greece*[235], a case in which Mr. Kokkinakis was accused and arrested on charges of proselytism, by the Greek government. The circumstances of the case evolve around the 2 and 3 March 1986, when Mr. Kokkinakis and her wife, Mrs Kokkinakis were taken to the local police station of Sitia, after having engaged a call with Mrs Kyriakaki. Mr Kokkinakis had been a Jehovah's Witness since 1936 and he was arrested more than sixty times for proselytism. He was also interned and imprisoned on several occasions. On the afternoon of 2 May 1986, he and his wife had a phone call with Mrs Kyriakaki. Mrs Kyriakaki husband, Mr Kyriakaki, who was the cantor at a local Orthodox church, informed the police who proceeded to detain the two allegedly proselytes. The applicant and his wife were prosecuted under section 4 of *Law no. 1363/1938*[236] making proselytism an

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[231] In the judgment of the European Court of Human Rights, 7 December 1976, no. 5493/72, *Handyside v. United Kingdom*, it was stated that Article 10 of the Convention applies not only to information or ideas which are favorably received or deemed harmless or indifferent, but also to those which affect, offend, or disturb the State or any section of the population. To deepen the case, see also. the judgment of the European Court of Human Rights, 7 December 1976, no. 5493/72, *Handyside v. United Kingdom*,

[232] See Article 10.2 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.

[233] Article 18 of the Universal Declaration of Human Rights: "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 teaching, practice, worship and observance".

[234] SCHABAS (2017: 426).

[235] Judgment of the European Court of Human Rights, 25 May 1993, no.14307788, *Kokkinakis v. Greece*.

[236] Section 4 of the act no.1363/1938 as amended by act no. 1672/1939, provides as follows:

offense and were committed for trial at the Lasithi Criminal Court, which heard the case on 20 March 1986. After dismissing an objection that section 4 of that Law was unconstitutional, the Criminal Court heard evidence from Mr and Mrs Kyriakaki, a defense witness and the two defendants and gave judgment on the same day. The two had been accused of trying to persuade Mrs Kyriaki to change religion by explaining to her the precepts of their religion. Under Article 76 of the Criminal Code[237], it also ordered the confiscation and destruction of four booklets which they had been hoping to sell to Mrs Kyriakaki. Mr and Mrs Kokkinakis appealed against this judgment to the Crete Court of Appeal (Efetio). The Court of Appeal quashed Mrs Kokkinakis's conviction and upheld her husband's but reduced his prison sentence to three months and converted it into a pecuniary penalty of 400 drachmas per day. Mr Kokkinakis then appealed to the Court of Cassation and maintained that the provisions of *Law no. 1363/1938* contravened Article 13[238] of the Constitution. The Court of Cassation dismissed the appeal on 22 April 1988, Therefore, a distinction between the illegal act, which must be precise, and the method of committing it, which need not be, should be drawn; it being possible for the latter to be defined by case law. The applicant appealed to the Commission on 22 August 1988 for an alleged breach of the

"1. Anyone engaging in proselytism shall be liable to imprisonment and a fine of between 1,000 and 50,000 drachmas; he shall, moreover, be subject to police supervision for a period of between six months and one year to be fixed by the court when convicting the offender.
2. By 'proselytism' is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion (heterodoxies), with the aim of undermining those beliefs, either by any kind of inducement or promise of an inducement or moral support or material assistance, or by fraudulent means or by taking advantage of the other person's inexperience, trust, need, low intellect or naivety.
3. The commission of such an offence in a school or other educational establishment or philanthropic institution shall constitute a particularly aggravating circumstance".

[237] Article 76 of the Criminal Code of Greece.

[238] Article 13 of the Constitution of Greece: "1. Freedom of conscience in religious matters is inviolable. The enjoyment of personal and political rights shall not depend on an individual's religious beliefs. 2. There shall be freedom to practice any known religion; individuals shall be free to perform their rites of worship without hindrance and under the protection of the law. The performance of rites of worship must not prejudice public order or public morals. Proselytism is prohibited. 3. The ministers of all known religions shall be subject to the same supervision by the State and to the same obligations to it as those of the dominant religion. 4. No one may be exempted from discharging his obligations to the State or refuse to comply with the law by reason of his religious convictions. 5. No oath may be required other than under a law which also determines the form of it".

rights secured in Articles 7[239],9[240], 10[241] and 14[242] of the European Convention on Human Rights. The Court ruled only on the alleged violations of articles 4 and 9 of the ECHR, considering it necessary to make a separate consideration of the alleged violations of articles 10 and 14 of the ECHR. Before the Court ruled on the case, the Greek government responded to the accusations of the allegedly violation of the freedom to manifest express one's religion, with the need to protect the dominant Greek religion from proselytism. The Court was required in this context, because of the Greek government's concession regarding the prima facie violation of the Article, to consider whether the violation was justified under Article 9(2)[243], being one that was prescribed by law and necessary in a democratic society in pursuit of a legitimate aim. The Greek government justified the punitive conduct towards the Applicant as necessary to protect Mrs Kyriakakais religious beliefs based on her inexperience and feebleness of mind, but without obtaining a favorable judgment from the Court. The Court held that the violation of article 9, notably with reference to 9(2) ECHR, refers to compelling social reasons which compel the nation to conduct breaches, thus defining the nation's conduct disproportionate to the Applicant's action and to this article as incompatible with a democratic State. The final judgment of the Court is that the Greek government had violated article 9 of the European Convention on Human Rights. The case dealt also with the theme of the protection of the freedom to manifest religion, which will be explored later in paragraph 2.5.

The 2020 case of *Neagu v. Romania*[244] highlights another proceeding concerning the theme of the change of religion. The applicant claimed a breach of Article 9 while in prison, where he was required to prove his religious conversion, during detention, through a document issued by faith representatives, to change his meal plan due to religious reasons. According to the narrative of the event, the applicant belonged to Orthodox Christian faith in 2009, time of his pre-trial detention. The controversy arose in 2012 when he declared he had converted to Islam and requested to have pork-free meals, according to his faith. The request was denied to him and not only on that occasion. Over the years he was transferred several times and submitted

[239] Article 7 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*, regarding freedom from retroactive criminal prosecution.
[240] Article 9 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*, about freedom of thought, conscience and religion.
[241] Article 10 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*, concerning freedom of expression.
[242] Article of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*, addressing the prohibition of discrimination.
[243] Article 9 (2) of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[244] Judgment of the European Court of Human Rights, 10 November 2020, no. 21969/15, *Neagu v. Romania*.

the same request, arriving in 2016 to request meals compatible with the Adventist faith, always with a negative result from the detention authorities. The explanation for these refusals was to be found in the prisoner's failure to produce documents testifying to his conversion by a religious authority. The premises of the Court on the case were that, accordingly with the case of *Dyagilev v. Russia* no. 49972/16[245], dealing with exemption from military service, it is not excessive to require proof of conversion or of genuine belief and it the proves do not fulfill the necessary standards, it is not illicit to give negative feedback. However, in this context the Court ruled on the manifest discrepancy between the initial declaration of religion, which the prisoner could make freely and without formalities when he or she was admitted to prison, and a change of religion during detention, which the prisoner had to prove by means of a document issued by representatives of his or her new faith. This would have represented an obligation to provide evidence that goes beyond the level of substantiation of genuine belief that could be required. This was especially true in situations where, as in the present case, prisoners were initially free to declare their religion without furnishing any proof. In the case of Neagu, both the judge reviewing the detention and the first-instance court had dismissed the applicant's appeal without examining the factual background to his request, on the grounds that he had not furnished the written proof required by the regulations. Likewise, they had not ascertained whether the applicant had a genuine opportunity to obtain written proof or some other confirmation that he was a follower of the faith in question, particularly bearing in mind the restrictions to which he was subject as a prisoner. The practice denotes that, save in very exceptional cases, the right to freedom of religion was incompatible with any power on the State's part to discuss the legitimacy of religious beliefs or the ways in which those beliefs were expressed. Considering the importance of ensuring that a religious conversion was serious and sincere, the need for non-intervention by the state did not preclude the national authorities' duty to examine the factual aspects of the manifestation of a person's religion. According to the Government, the obligations arising out of the order in question were designed to prevent an abuse of rights and to protect religions. Nevertheless, the domestic courts which had examined the applicant's request to receive meals compatible with the precepts of the Adventist faith, following his second change of religion, had not deemed the request to amount to an abuse on his part. The outcome of the case was a violation of Article 9 of the ECHR and was deemed the request to not constitute an abuse on his part.

A very similar case was the one of *Saran v. Romania*[246] judged in the same context and on the same date of the previous one. The dynamics of the case appeared very similar to the ones of *Neagu v. Romania*. Saran served his prison sentence in several penitentiaries. According to the applicant his

[245] See also the judgment of the European Court of Human Rights, 10 March 2020, no. 49972/16, *Dyagilev v. Russia*.
[246] Judgment of the European Court of Human Rights, 10 November 2020, no 65993/16, *Saran v. Romania.*

Muslim belief was declared at that moment of his imprisonment while the government stated that he professed himself as an Orthodox, at that time. Although there are controversies over the time of announcement of his religion, the complaint stands in the circumstance of a meal plan not compatible with his Muslim belief in one of the prisons he stayed. The first-instance court had dismissed the applicant's appeal on the grounds that he had declared at the time of his admission to prison that he was an Orthodox Christian and had not subsequently proved that he was an adherent of Islam, but as we have also seen in the previous case, this usually does not represent a problem for the prison system. This position is supported by the fact that the applicant had received a change of meal plan in the other detention institutions where he had previously been, highlighting that the Russian system was able to supply a situation of this kind of situation. Moreover, the applicant had received meals compatible with the precepts of Islam in the first prison where he had been held, and the educational and psychosocial support records of two other prisons had also stated that he was a Muslim. There was no indication that the court had attempted to check the factual data recorded by the prison management regarding the applicant's religious affiliation. Furthermore, the Government had not explained the discrepancies as to the applicant's religious affiliation between the various documents issued by the national authorities. According to the Court, the State had failed to respect the rights provided by Article 9 of the ECHR, in this case too.

Another case of violation of Article 9 in the context of the change of meals in prison was also found in *Jokóbski v. Poland*[247]. In this proceeding the applicant was detained at the time of the case in Nowogród Prison where he was serving his eight-year long prison sentence imposed by the Poznan Regional Court. During his staying, he requested several times to have free meat meals, due to his status of Mahayana Buddhist, but also reinforced by the medical advice of the dermatologist of the prison that suggested those dietary options for health reasons, on 19 January 2006. On 20 April 2006 a doctor who examined the applicant considered that there were no medical grounds to continue granting the PK diet (a diet without pork) to the applicant. Consequently, the diet was discontinued. The applicant objected and threatened to go on a hunger strike. On 27 April 2006 the applicant asked the District Prosecutor to institute criminal proceedings against the employees of Goleniów Prison due to their indifference in complying with his requests of religious nature. The applicant claimed that despite having requested on several occasions to be provided with a meat-free diet, he was receiving meals containing meat products, even though in the same prison there were six other prisoners who had a PK diet. It followed that the applicant had to ask his family for food or was forced to accept the meals and then throw them away. The refusal to accept them would have been regarded as a decision to start a hunger strike and would have entailed disciplinary punishment. On 13 June

[247] Judgment of the European Court of Human Rights, 7 December 2010, no. 18429/06, *Jakobski v. Poland*.

2006 the Goleniów District Prosecutor discontinued the criminal proceedings in respect of the applicant's allegations. Later in July 2006 the Buddhist Mission in Poland sent a letter to the prison authorities supporting the applicant's request for a meat-free diet, explaining the moral reasons of eating meat for their religion. According to the rules, a Mahayana Buddhist should avoid eating meat to cultivate compassion for all living beings. They further asked the authorities simply to eliminate meat products from the applicant's meals. The applicant requested again free meat meals on 17 July 2006 the applicant, but the request was refused with the absence of reasons. On 21 August 2006 and 31 August 2006, the applicant asked the Goleniów District Prosecutor to institute criminal proceedings against the prison guards. He alleged that there had been an interference with his religious convictions, as the guards had referred to the Buddhist Mission in Poland as 'a sect'. They had also thrown religious publications belonging to the applicant into a toilet. On 19 August 2006, after receiving a family visit, he was ordered to undergo a body search. The applicant took off his clothes except for his underwear, and a prison guard allegedly touched his private parts. He was further ordered to squat and other prison guards ridiculed him, but the institute criminal proceedings were again refused. After a series of complaints by the applicant, finally on 20 November 2006 the prosecutor upheld that the applicant had initially accepted the so-called PK diet, the one also available to the other Muslims of the prison, and that it did not provide for the total absence of meat but only that of pork, repeating that it was the only different diet available in that prison. On 25 June 2007 the Buddhist Mission in Poland sent a letter to the Director of Goleniów Prison asking him to provide the applicant with a meat-free diet. In a complaint lodged with the Szczecin Regional Court on 3 September 2007 the applicant argued that the diet he had been granted in Goleniów Prison did not consider his religious beliefs. The Regional Court dismissed the applicant's complaint on 3 December 2007. The applicant has been given a special diet since 18 July 2006, the court determined. It further stated that it was not possible to serve each prisoner personally food that complied with his or her religious dietary requirements due to the technical issues in the prison kitchen, the transportation of meals, and the lack of workers in the kitchen. The court also attested to the preparation of meals free of pork. Jokóbski was moved to Nowogród Prison in March 2009. On 13 May 2009, the applicant's request was turned down. The applicant claimed that the prison administration had violated his right to exhibit his religion by observance of the Buddhist religion, which is guaranteed by Article 9 of the Convention, by refusing to supply him with a vegetarian meal in accordance with his religious precepts. The Government testified that while the applicant claimed to follow the stringent Mahayana school, vegetarianism could not be regarded as an essential component of the applicant's religious practice in the current instance because it was merely encouraged, not mandated. The Court points out that Article 9 of the Convention outlines the different ways that one's religion or belief can be expressed, including through worship, teaching, practice, and observance. The obligation of the State to be neutral and

impartial, as outlined in the Court's case law, is incompatible with any authority on the part of the State to judge the veracity of religious ideas. Additionally, it has previously ruled that adhering to dietary restrictions might be seen as a clear manifestation of beliefs in action in the sense of Article 9 of the ECHR[248]. For these reasons the Court found a violation of Article 9.

2.3 RELIGION, DRESS CODES AND SYMBOLS

The following paragraph will deepen the problematic relationship between public spaces and the issues that can arise from the manifestation of religious clothing, especially concerning working places. The problems in the manifestation of religious dress code often arise in work positions that include a contact with the public. The cases involving religious clothing in the workplace reflects the multifaceted nature and distinction between front-office positions (with direct public visibility and interaction) and back-office positions (with little to no public contact). This division plays a significant, even if occasionally unwitting, role in how religious dress is handled. The author of thesis acknowledges the contribution of *Religion in Public Spaces: A European Perspective*[249] in the formulation of the following paragraph, which represents a complete and authoritative source in the analysis of the topic.

The case of *Leyla Sahin v. Turkey*[250] embodies very well the Turkey position about religious dressing. The wearing of religious clothing, in particular the turban, is still a hotly contested topic in Turkey with a strongly divided public opinion. The legal framework of Turkey surrounding clothing is so extensive that a single case cannot cover all the concerns that underlie it. The applicant Leyla Sahin was born in 1973 and has lived in Vienna since 1999, when she left Istanbul due to university studies. She was a practicing Muslim and considered important the wearing of the traditional Islamic headscarf important. For this reason, she wore the veil during the first four years at the University of Bursa. Something changed when she enrolled at the Cerrahpaşa Faculty of Medicine at Istanbul University, where the Vice-Chancellor issued a circular in which it was forbidden for students who had their heads covered or had beards, to attend lessons and be admitted to the classrooms. The reasons were to be researched, according with the circular, in the "Constitution, the law and regulations and in accordance with the case-law of the Supreme Administrative Court and the European Commission of Human Rights and the resolutions adopted by the university administrative

[248] See also: Judgment of the European Court of Human Rights, 9 June 2020, no. 23735/16-23740/16, *Erlich and Kastro v. Romania*. and Judgment of European Court of Human Rights, 3 April 2012, no. 28790/08, *Francesco Sessa v. Italy*.
[249] FERRARI and PASTORELLI (2012).
[250] Judgment of the European Court of Human Rights, 10 November 2005, no. 44774/98, *Leyla Sahin v. Turkey*.

boards"[251]. On 12 March 1998, when the applicant was refused entry by examiners to a written exam on oncology because of the wearing of an Islamic headscarf, the contents of the circular were put into action for the first time. The second episode occurred with the secretary of the orthopedic traumatology chair that denied her enrollment on 20 March 1998, because of her wearing of a hijab. She was denied entry to lectures on neurology on 16 April 1998 and public health written exams on 10 June 1998, both for the same motives. The applicant filed a request for an order to cancel the 23 February 1998 circular on 29 July 1998. She claimed in her written pleadings that the circular's execution had violated the rights protected by Protocol No. 1' of Article 2[252] and the Convention's Articles 8, 9, and 14[253] because there was no legal justification for the circular and the Vice-Chancellor's Office lacked the authority to regulate in that area. The Istanbul Administrative Court dismissed the application in a decision dated 19 March 1999, finding that a university vice-chancellor, as the executive organ of the university, had the authority to regulate students' attire to maintain order under section *13(b) of the Higher Education Act*[254]. This regulatory authority was to be used in line with applicable laws, Constitutional Court rulings, and Supreme Administrative Court rulings. The Administrative Court ruled that neither the in-question regulations nor the actions taken against the applicant could be viewed as illegal, citing the established case law of those courts. On 19 April 2001, the Supreme Administrative Court rejected the applicant's appeal based on legal arguments. Due to the applicant's disregard for the dress code, disciplinary action was taken against her in May 1998 under paragraph 6(a) of the Students Disciplinary Procedure Rules[255]. On 26 May 1998, the dean of the faculty ruled that the applicant's attitude and disregard for the dress code were unbecoming of a student because she had made it clear via her conduct that she intended to continue wearing the headscarf during lectures and/or exams. On 15 February 1999, a demonstration against the dress code took place outside the deanery of the Cerrahpaşa Faculty of Medicine. The dean of the faculty started disciplinary actions against several students, including the applicant, for participating in the gathering on 26 February 1999. He suspended her from the university for a semester on 13 April 1999, in accordance with Article 9(j) of the Students Disciplinary Procedure Rules[256], after hearing her arguments. On 10 June 1999, the petitioner filed a request with the Istanbul Administrative Court asking for an order for the suspension

[251] Judgment of the European Court of Human Rights, 10 November 2005, no. 44774/98, Leyla *Sahin v. Turkey*.
[252] Protocol no. 1 of Article 2 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[253] Articles 8, 9 and 14 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[254] Act of the of the Council of Higher Education of Turkey, March 2000, no. 2547, *the Law on Higher Education*.
[255] Paragraph 6(a) of the Students Disciplinary Procedure Rules.
[256] Article 9(j) of the Students Disciplinary Procedure Rules.

complaint. The application was denied by the Istanbul Administrative Court on 30 November 1999, on the grounds that the contested measure could not be viewed as unconstitutional given the evidence in the case file and the established case law on the issue. The applicant was granted an amnesty that released her from all the penalties that had been imposed on her and the resulting disabilities after Law no. 4584[257] entered into force on 28 June 2000. The Supreme Administrative Court ruled on 28 September 2000, that Law no. 4584 rendered it superfluous to consider the merits of the applicant's appeal on legal points against the decision of 30 November 1999. Meanwhile, on 16 September 1999, the applicant gave up her studies in Turkey and enrolled at Vienna University to finish her undergraduate degree. According to the applicant, the prohibition on wearing the Islamic headscarf in higher education institutions amounted to an unjustifiable interference with her right to freedom of religion, particularly her right to practice her religion openly. The Chamber determined that the applicant's freedom to exhibit her religion had been interfered with by the Istanbul University rules banning the wearing of the Islamic headscarf and the actions taken as a result. It continued by concluding that the interference was legal and served one of the reasonable goals outlined in Article 9's second paragraph. It might be viewed as having been necessary in a democratic society since it was justified in principle and proportionate to the aims pursued. The rationale of the case has roots in the historical background of Turkey on the subject. The idea that the State should be secular (laik) was the cornerstone of the Turkish Republic. The public and religious spheres were separated prior to and following the proclamation of the Republic on 29 October 1923, through a series of revolutionary reforms, including the repeal of the caliphate on 3 March 1923, the elimination of the constitutional clause designating Islam as the State religion on 10 April 1928, and, most recently, the establishment of the principle of secularism on 5 February 1937. The evolution of Ottoman society between the nineteenth century and the Republic's proclamation served as the inspiration for the secularism ideal. In the Ottoman discussions of the nineteenth century, the idea of establishing a contemporary public society in which equality was guaranteed to all citizens without distinction on grounds of religion, denomination, or sex had previously been raised. During this time, significant strides were made in women's rights (equal treatment in education, the outlawing of polygamy in 1914, and the transfer of matrimonial cases to secular courts established in the nineteenth century). The presence of women in public life and their active engagement in society served as the defining characteristic of the Republican ideal. Thus, the notions that society should be modernized and that women should be liberated from religious restrictions shared a similar ancestor. To ensure that both sexes might enjoy their civic rights equally, the Civil Code was adopted on 17 February 1926. This included

[257] Act of the Supreme Administrative Court, no. 4584 provided for students to be given an amnesty in respect of penalties imposed for disciplinary offences and for any resulting disability to be annulled.

provisions for divorce and succession. Women eventually gained equal political rights to men through a constitutional amendment on 5 December 1934 (Article 10 of the 1924 Constitution[258]). The "Headgear Act" of 28 November 1925 (Law no. 671[259]) was the first piece of clothing-related legislation, and it addressed apparel as a modernity issue. Like this, the Dress (Regulations) Act of 3 December 1934 (Law no. 2596[260]) prohibited wearing religious attire anywhere other than at places of worship or at religious rituals, regardless of the faith or belief involved. The presence of women in public life and their active engagement in society served as the defining characteristic of the Republican ideal. Thus, the notions that society should be modernized and that women should be liberated from religious restrictions shared a similar ancestor. To ensure that both sexes might enjoy their civic rights equally, the Civil Code was adopted on 17 February 1926. This included provisions for divorce and succession. Women eventually gained equal political rights to men through a constitutional amendment on 6 December 1934 (Article 10 of the 1924 Constitution). According to *Law no. 671 on the Adoption of the Hat*[261], the entire Turkish populace must wear hats as "the general headgear", not just civil personnel. Since it replaces the previously worn "fez", which is recognized as an attribute of the Muslim portions of the Ottoman Empire, the imposition of the Western headgear by legislative action carries a highly symbolic importance. Contrarily, only non-Muslim members of the public and foreign visitors or residents wore the Western cap throughout the Empire era. As a result, Law no. 671's adoption of a special legal emphasis has a conspicuously secularist and modernist (in the sense of Westernization) undertone. The arguments in the Parliament prior to the law's adoption demonstrate historically that the selection of the hat was seen as a vital matter, with the main objective of demonstrating that the new Turkish Republic was adopting the customary costume of the "civilized nations". The Turkish Criminal Code has a sanction system that supports this widespread obligation for the entire populace and provides for imprisonment of up to six months for infractions. Up to the 1960s, Law no. 671 was strictly enforced, primarily in the public service and in education. But even if it is still in effect, it is now in total obscurity. The Headgear Act of 28 November 1925 (Law no. 671) was the first piece of clothing-related legislation, and it addressed apparel as a modernity issue. Like this, the Dress (Regulations) Act of 3 December 1934 or involved *Law no. 2596 on the Prohibition of Certain Attires*[262], (prohibited wearing religious attire anywhere other than at places of worship or at

[258] Article 10 of the Constitution of Turkey, 7 November 1982, *Constitution of the Republic of Türkiye*.
[259] Act of the Republic of Turkey, 25 November 1925, no. 671, adopted by the Assembly of Turkey and entered into force on 28 November 1925, *Hat Reform*.
[260] Act of the Republic of Turkey, 3 December 1934, no. 2596, *prohibition of the wearing of certain garments.*
[261] Act of the Republic of Turkey, 25 November 1925, no. 671, adopted by the Assembly of Turkey and entered into force on 28 November 1925, *Hat Reform*.
[262] Act of the Republic of Turkey, 3 December 1934, no. 2596, *prohibition of the wearing of certain garments.*

religious rituals, regardless of the faith or belief involved. Additionally, it stipulates in article 2 that organizations like scouting, sporting, and other associations, as well as schools, may adopt distinctive apparel so long as it complies with set rules. The Law's Article 3 further outlaws the wearing of clothing and insignia from foreign political and military entities by Turkish citizens and foreigners who reside in Turkey. The emergence of Italian and German paramilitary units served as the initial inspiration for these latter clauses; nowadays, any uniform with a religious symbol would be subject to their reach. For instance, if private educational institutions started requiring their pupils to wear religious attire, there would be a problem under this rule. Although it has been reported that private Koran students have received punishment for appearing in public while dressed religiously the execution of such punishments coincides with sociopolitical upheavals in Turkey. Currently, limitations on wearing religious garb and symbols in public are infrequently, if ever, put into effect. This is consistent with the rise in female wearers of the Islamic hijab in Turkey during the past ten years. The *Law no. 430*[263] regulated the fact that religious schools were required to close as part of the Education Services (Merger) and all schools were placed under the Ministry of Education's management. Article 174 of the Turkish Constitution[264] protects the Act as one of the legislations with constitutional status. The practice of wearing an Islamic headscarf to school and universities in Turkey is a relatively new one that only started to gain traction in the 1980s. The topic has been extensively discussed and there is still a lot of passionate conversation about it in Turkish society. The headscarf is supported by those who view wearing it as a religious obligation or form of expression. The Islamic headscarf, in contrast, is viewed as a representation of a political Islam by secularists who make a distinction between the başörtüsü (a traditional Anatolian headscarf worn loosely) and the türban (a tight, knotted headscarf obscuring the hair and throat). The dispute has developed significant political connotations because of the 28 June 1996 election of a coalition government made up of the Islamist Refah Partisi and the center right Doru Yol Partisi.

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[263] Act of the Republic of Turkey, 3 March 1924, no. 430.

[264] Article 174 of the Turkish Constitution: "No provision of the Constitution shall be construed or interpreted as rendering unconstitutional the Reform Laws indicated below, which aim to raise Turkish society above the level of contemporary civilization and to safeguard the secular character of the Republic, and which were in force on the date of the adoption by referendum of the Constitution of Turkey. 1. Act No. 430 of 3 March 1340 (1924) on the Unification of the Educational System; 2. Act No. 671 of 25 November 1341 (1925) on the Wearing of Hats; 3. Act No. 677 of 30 November 1341 (1925) on the Closure of Dervish Convents and Tombs, the Abolition of the Office of Keeper of Tombs and the Abolition and Prohibition of Certain Titles; 4. The principle of civil marriage according to which the marriage act shall be concluded in the presence of the competent official, adopted with the Turkish Civil Code No. 743 of 17 February 1926, and Article 110 of the Code; 5. Act No. 1288 of 20 May 1928 on the Adoption of International Numerals; 6. Act No. 1353 of 1 November 1928 on the Adoption and Application of the Turkish Alphabet; 7. Act No. 2590 of 26 November 1934 on the Abolition of Titles and Appellations such as Efendi, Bey or Pasa; 8. Act No. 2596 of 3 December 1934 on the Prohibition of the Wearing of Certain Garments."

The recent case of *Missaoui and Akhandaf v. Belgium*[265] result to be as well very suitable for a reasoning on the topic of religious rights in the context of religious symbols and dress. After receiving permission to intervene from the President of the Court's Third Section, the Human Rights Centre ('HRC') of Ghent University (Belgium) presented a third-party intervention ('TPI') before the European Court of Human in the communicated case of Missaoui and Akhandaf v. Belgium on 12 September 2022. In the case, the court must decide whether the ban on body-conforming swimwear at an Antwerp public pool violates the European Convention on Human Rights' prohibition against indirect discrimination based on religion. Based on the subject-matter knowledge on the case, there are highlighted pertinent aspects of the Belgian legal and societal background in the submission to the Court as well as potential avenues for the development of the Court's reasoning. At the time of writing the thesis (July 2023), the Council of Europe has not yet released the official document of the conclusion of this case, therefore the author makes use of the authoritative source of Cathérine Van de Graaf[266] in deepening the dispute. The Court is asked, during this case, to provide a decision regarding the body-covering swimsuit ban enforced in accordance with the city of Antwerp's (Belgium) police regulations. The applicants are two Muslim ladies who attempted to enter a city pool to swim but were turned away. They initially filed an application for a stop to the rule before the president of the Antwerp Court of First Instance on 22 September 2017. The motion was based on the Law of the 10 May 2007[267] to combat some forms of discrimination and the Decree of the 10 July 2008[268] based on the Flemish policy of equal opportunities and treatment. A court decision on 18 December 2018, dismissed their request. The Antwerp Court of Appeal then denied the applicants' appeal against this decision on 23 November 2020. The possibility of an appeal against the Court of Appeal's decision was finally dismissed by a lawyer at the Court of Cassation on 22 April 2021. The domestic remedies were therefore exhausted by the applications, and on 22 October 2022, the case was presented to the Court. The applicants claim that indirect discrimination based on religion has

[265] Judgment of the European Court of Human Rights, 22 October 2022, no. 54795/21, *Missaoui and Akhandaf v. Belgium*.
[266] VAN DE GRAAF (2022).
[267] Act of Belgium, 10 May 2007, *Anti-discrimination* law, bans discrimination based on various factors, including sexual orientation (as opposed to gender-based discrimination, which is covered by the Gender Law). According to the Gender Law, distinctions and affirmative action are only permitted under tight guidelines and if they are supported by a worthy objective. Victims may file a lawsuit, as well as the Centre for Equal Opportunities and Combating Discrimination and Racism, which was established by the act of 15 February 1993. The defendant has the burden of proof to show that there was no discrimination if the plaintiff presents facts that suggest there has been discrimination.
[268] Act of the Flemish Parliament, 10 July 2008, provided equal opportunities and equal treatment throughout a student's academic career.

occurred, citing Article 14 and Article 9 of the Convention[269] in support of their claim. In the third-party intervention, it must be first emphasized several pertinent aspects of the case's legal and sociological backdrop that the Court may not be aware of. This includes the circumstance surrounding Belgian swimming pool bans on body-covering swimwear, the broader context of other bans on religious symbols and attire in Belgium, the broader context of Islamophobia in Belgian society, and how restrictions on religious symbols and attire are handled under international human rights law. According to Cathérine Van de Graaf[270], that refers to a study from 2017 focused on Flanders, in public pools, rules requiring the wearing of body-covering swimsuits were already popular. Only 30 of the 128 pools whose information could be retrieved said they permitted or would permit body-covering swimwear. Interviewees were questioned why 'burkinis' were prohibited in the 76 swimming pools. The recommendation claims that a prohibition on body-covering swimwear is biased towards people who wear such swimwear out of respect for their religion and that it has an impact on religious liberty. Three local "burkini bans" have been contested in court thus far. Such a ban violates the law's prohibition against discrimination based on religion, the Court of First Instance of Ghent ruled in two judgements from July 2018. When appealed before the Ghent Court of Appeal, one of these decisions was upheld; the other was never contested. The Court of First Instance of Antwerp, however, determined in a December 2018 decision that an implicit "burkini" ban in a public swimming pool in the city of Antwerp did not constitute indirect religious discrimination. This conflicting case law from the Ghent and Antwerp courts presents legal confusion to municipal governments, as will be further explained below. Bans on wearing veils are "spreading like an oil spill" throughout Belgian culture, according to some, and are the go-to response when faced with any form of Islamic veiling. In this sense, veiling whether it takes the shape of a headscarf, or a swimsuit is inadvertently rendered abnormal and almost immediately problematized. An example of a particularly alarming trend where Muslims who wear the hijab are refused access to services and facilities that other people can enjoy without any barriers is the ban on body-covering swimwear case. There are incidents where women have been denied entry to a variety of public locations because they were dressed in religious attire. Personal attitudes can easily come into play in local decision-making processes since there are frequently few people involved, as this study's findings demonstrate. The United Nations Office of the High Commissioner for Human Rights expressed its support for the French Conseil d'État's decision to overturn the ban on body-covering swimsuits in one of those municipalities in 2016 when multiple French municipalities banned them on their beaches. Bans on body-covering swimwear are still uncommon globally. Only three European nations (France,

[269] Article 14 and Article 9 of the of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[270] VAN DE GRAAF (2022).

the Netherlands, and Belgium) have them nearly exclusively, and even there, a small minority of swimming pools and towns only use them sometimes. Additionally, it is argued that prohibitions against body-covering swimsuits are in violation of both Article 9 and Article 14 of the European Convention on Human Rights (explicit and implied, respectively). The Court has ruled numerous times that only a standard expressed precisely enough precisely to allow a person to control their behavior qualifies as a "law". Vague provisions are typical in the current setting, and as the present example also illustrates, it is frequently left to the individual working at the ticket counter to interpret or apply them to a specific scenario. The author[271] sustains while some dress code laws for swimming pools only contain a more broadly stated dress code, from which a prohibition on body-covering swimwear is afterwards inferred, other dress code regulations for swimming pools expressly identify body-covering swimwear, or even "burkinis", as being prohibited. The latter is the situation in the current application. Because of this, even though Muslim women are not specifically forbidden access to swimming pools based on their religion, the rules for these facilities do set them apart due to the harm they cause. The fact that Muslim women (who wear body-covering swimwear) are a minority group that is currently "suffering from widespread stigma and exclusion" is explained here as making them a vulnerable group.

2.4 PLACES OF WORSHIP

Another important element is represented by how worship is managed throughout governments. William Schabas[272] discussed the argument in the Oxford commentary on the European Convention on Human rights. In a State where freedom of worship is protected, man should be free to manifest his religion through symbols, gatherings, and places of faith. However, this does not mean justifying every act that is inspired by religion. This is the case of *Skugar and Others v. Russia*[273] in which the applicants Mrs Tamara Sergeyevna Skugar, Mrs Lidiya Sergeyevna Dzyuba and Mrs Aleksandra Ivanovna Gavrutenko addressed a violation of Article 9 by the Russian Government. The case's facts, according to the applicants' submissions, can be summed up as follows. The government enacted rules for the Unified State Register of Taxpayers (the "Register") on 10 March 1999. Based on the taxpayers' unique identification numbers, information about them was to be placed in the Register. The taxpayer's number was a 12-digit sequence that contained two digits for the local tax inspectorate, the sequential number of the taxpayer, and the amount of the cheque. The applicants filed requests to have their taxpayers' numbers canceled with Yamalo-Nenetskiy Region District Tax Inspectorate No. 4 on an unknown date on the grounds that the

[271] VAN DE GRAAF (2022).
[272] SCHABAS (2016).
[273] Judgment of the European Court of Human Rights, 3 December 2009, no. 40010/04, *Skugar and Others v. Russia*.

numbers "had been assigned to them through ignorance because that number is a forerunner of the mark of the Antichrist as it is said in the Apocalypse, Revelation, 13:15-13:16."[274] They asserted that they weren't refusing to pay taxes but rather were only looking for a chance to "exercise freely the rights of a Russian citizen without the taxpayer's identification number". The tax inspectorate responded to their requests of 28 January 2002, on 7 October 2003, stating that[275] an individual interacting with the tax authority is not assigned a number, but that it is assigned in a completely random way, showing only the status of a taxpayer and the taxpayer's number. The number does not take the place of the person's Christian name, and it does not reveal anything about the person's familial situation or their connections to their parents, friends, or other people. This is a crucial distinction. In any case, the taxpayer's number is just his personal account number with the tax office. The Pension Fund and the Medical and Social Security Fund introduced comparable numbers for accounting of payers. Accepting or rejecting specific numbers is in no way a matter of religion or a sinful act. There is no religious meaning to this; it is a matter of personal preference. The applicant was notified by the tax inspectorate that the Tax Ministry had created for Orthodox Christians a special questionnaire that had been approved by the Orthodox Highest Clergy Council on 13-16 August 2000, and that they were called to their offices for a discussion. It is unknown if the applicants were present for the debate or what was decided upon. The petitioners filed a complaint with the court in April 2004 asserting that the taxpayer's number had been "imposed on them in violation of their religious convictions". They argued that because their demands did not infringe upon the rights of other people and because the tax system had operated without the use of personal numbers before to 1994, it was not necessary to interfere with their exercise of their right to freedom of religion. Although accepting such a number was inconsistent with their religious views, which are protected by Article 9 of the Convention[276], the petitioners claimed that the taxpayer's numbers had been allocated to them without their will. The case was declared by The Court unanimously inadmissible.

Another case referring to Russia but with a very different outcome is the one of *Barankevich v. Russia*[277] started for an alleged violation of rights of freedom and peaceful assembly. The applicant, Mr Peter Ivanovich Barankevich, was a pastor of the *Chirst's Grace*, an Evangelical Christian Church. The applicant requested permission from the Chekhov Town Council to organize a service in the open on September 22 or 29 between 11 a.m. and

[274] The number is indicated in Revelation 13:18.
[275] The statement was made in the final report of the 7th Plenary Session of the Synodal Theological Commission of the Russian Orthodox Church, which took place in Moscow on February 19–20, 2001.
[276] Article 9 of the of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[277] Judgment of the Case of European Court of Human Rights, 26 July 2007, no. 10519/03, *Barankevich v. Russia*.

1 p.m. on 9 September 2002. The Chekhov Town Council deputy head denied approval on 20 September 2002. In particular, he claimed that the Chekhov Town Council had repeatedly advised the applicant that holding services in public spaces within the town (such as squares, streets, parks, etc.) was not permitted. The applicant was instructed to conduct religious rites and rituals in the church's registered location or on additional property owned or used by church members. The applicant's claim was rejected after being reviewed by the Chekhov Town Court of the Moscow Region on 11 October 2002. The court determined that public worship and other religious ceremonies required permission from a municipal body under domestic law. also stressing the fact that the Christ's Grace was not prevented to holding services in general, but only in public, due to a possible discontent of the people from the other majoritarian religion. The applicant appealed to the Moscow Regional Court on 4 November 2002. Mr Barankevich then claimed that he had been denied permission to conduct a religious service in the town park in violation of Articles 9 and 11 of the Convention[278]. The Court points out that, according to Russian law, public religious services were to be conducted in compliance with the rules for gatherings. The prohibition was implemented in accordance with the policies and procedures governing public gatherings and restricting the right to assemble. In this instance, it is impossible to distinguish between the freedom of belief and the freedom of assembly. The Court will approach the case primarily under Article 11 while interpreting it considering Article 9 since it believes that Article 11 takes precedence as the *lex specialis* for assemblies. The applicant also complained that he was treated differently from members of other religious denominations. To understand the outcome of the case it must be underlined that the right to freedom of assembly can be used by both the assembly's participants and its organizers, and it includes both private and public gatherings as well as static meetings and public processions. States shall refrain from taking arbitrary actions that could impede the right to peaceful assembly. Given the significance of the right to peaceful assembly and association and its direct connection to democracy, any interference with this freedom must be supported by strong arguments. Democracies do not merely entail that the majority's opinions must always be respected; rather, a balance must be struck to guarantee that minority are treated fairly and appropriately and to prevent the abuse of a dominant position. Individual interests must occasionally be surrendered to those of a group, even though this is necessary. The State has a responsibility to uphold neutrality and impartiality when exercising its regulatory authority in religion and in its interactions with the various religions, denominations, and beliefs. Preservation of plurality and proper operation of democracy are at risk in this situation. Therefore, in such situations, the goal of the authorities is not to eliminate pluralism to remove the source of friction, but rather to ensure that

[278] Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.

the opposing groups are tolerant of one another. If the exercise of rights by a minority group were made contingent on its acceptance by the majority, that would be inconsistent with the fundamental principles of the Convention. If this were the case, a minority group's rights to freedom of religion, expression, and assembly would cease to be effective and practical, as required by the Convention, and would instead become purely theoretical. For these reasons the Court hold that there has been a violation of Article 11 of the Convention interpreted in the light of the Article 9 and that within three months of the date the judgement becomes final in accordance with Article 44 2 of the Convention, the respondent State shall pay the applicant EUR 6,000 (six thousand euros) in respect of non-pecuniary damage, to be converted into Russian rubles at the exchange rate in effect at the time of settlement, plus any tax that may be applicable on that amount. Hold that simple interest will be charged on the sum from the time the three months have passed until settlement at a rate equal to the marginal lending rate of the European Central Bank throughout the default term plus three percentage points.

Since the cases in which the Court of Strasbourg has expressed its opinion regarding places of worship are limited, to give a more detailed context it seems useful to use the following Swiss case. In Chapter 17 of *Religion in Public Spaces*[279], Vincenzo Pacillo explains the troubled situation of Switzerland towards the topic of minarets. Although it is not a case dealt with by the Court of Strasbourg, it is particularly important for a broader vision of the treatment of worship in Europe. According to the author since the 1980s and 1990s, there have been significant changes to the social landscape in Switzerland, Italy, and more broadly in Europe. With their axiological baggage that does not coincide with some of the values acknowledged by the political community as founding components of the system's structure, and frequently conflicts with them, members of religions that are not traditionally present in the region have been brought into Europe by migration flows. This has prompted Sartori[280] to refer to a "new pluralism", or in his own words, a "multiculturalism of strangers", which is fundamentally incapable of serving as a foundation for a democratic society or as a means of character development for people. Instead, it is a form of multiculturalism which is opposed to pluralism because it "demands cultural secession and... results in a tribalization of culture".

> "This problem is particularly evident for immigration from Islamic countries. Indeed, according to Sartori: the Islamic view of the world is theocratic and does not admit the separation of Church and State, religion and politics, upon which contemporary western civilization is constitutionally founded. Likewise, Islamic law does not recognize human rights (of the person) as universal and unassailable individual rights; another cornerstone of liberal civilization. This is the real heart of the matter. Westerners do not see Muslims as 'infidels', while for Muslims Westerners are just that."[281]

[279] FERRARI and PASTORELLI (2016).
[280] See also SARTORI (2000) in *Pluralismo, multiculturalismo ed estranei*.
[281] PACILLO (2016).

After all, secularization and the total dissociation of law and morality are what gave rise to the notion of a law based on religious equality and capable of acting on external facts rather than interior sentiments. As a result, in open democracies, allegiance to the Republic cannot be seen as allegiance to a particular ideology but rather as a "loyalty to dialogue", or the duty to refrain from using force to impose one's own beliefs. In other words, behavior counts more than internal sentiments when it comes to the law, and intolerance towards constitutional ideals must be "tolerated", unless it encourages criminal activity, acts against the law, or even subversive behavior. Furthermore, the concept of a law that is "blind" to cultural identity does not imply that it should have no regard for faiths. In both Switzerland and Italy, secularism and religious freedom have the responsibility of directing legislation towards an *open* religious pluralism that views religion as a constructive force rather than a perilous foe that must be vanquished. Therefore, even though *foreigners* have the freedom to do so, it is the responsibility of the public powers to encourage and oversee integration to ensure that fundamental rights are upheld within religious communities as well. These claims, however, are far from being practical or able to address every legal difficulty arising from the kind of complex multiculturalism that Switzerland is currently experiencing. In fact, it is obvious that calls for intervention by minority religious groups that seek to achieve actual religious freedom with the help of the public powers are constantly put to the test of the three-in-one concept of freedom, integration, and protection of fundamental rights, particularly when such intervention conflicts with deeply ingrained societal values. One of these inquiries inquired as to whether minarets might be constructed on the grounds of various Swiss municipalities. Western European nations have long been dedicated to conserving a natural landscape that is regarded as an existential dimension and have strong linkages to a strong architectural legacy. The aspirations of minority religious groups and the identification values of the bulk of the community are put in great conflict when a minaret is built in such a setting. The Olten Türk Kültür Ocagi organization, situated in the municipality of Wangen bei Olten (Canton of Solothurn), requested permission to install a six-meter-high minaret on the top of the building holding their headquarters in 2005, which brought up the issue of building minarets in Switzerland. The plan to erect a minaret in Wangen was promptly opposed by the locals, and the Baukommission in the area rejected it as a result. The latter argued that because the new structure would be excessively tall and out of character with the suburb where the organisation had its headquarters, it would not adhere to the town-planning norms of the region. The Türk Kültür Ocagi appealed the Baukommission of Olten's decision to the Bau-und Justizdepartment of Canton of Solothurn, which rendered its judgement on 12 July 2006. The Bau-und Justizdepartment accepted the appeal in its ruling and upheld the ability of constructing houses of worship in locations often reserved for commercial operations. However, the verdict only granted the construction of the minaret, effectively forbidding

the transmission of the invitation to prayer (typical for this place of worship), even if pre-recorded. The construction of minarets poses problems not only from a logistical point of view, according to the urban plan of the city, but also from a religious and political point of view, opening or not the doors to the path of Islamization. Politicians consequently took up the cause of the social groups opposed to minaret construction in Switzerland. The first to do so was Helena Morgenthaler, a city councilwoman from Langenthal, Canton of Bern, who is a member of the Swiss People's Party ('SVP'). She made a point of speaking out against the mosque-building plan put up by the Islamic group Xhami. A petition named *Stop the Minarets* garnered 3,500 signatures in support of her description of a minaret as an *aggressive missile-shaped symbol*. Following a proposal from the Islamic community of the town of St. Gallen, a member of parliament from the Canton of St. Gallen named Lukas Reiman (also SVP) put forth a motion calling for a ban on minaret construction in the city of Wil. The preservation of the neighborhood of Heimat was a clear motivation for Reimann's motion. A few months later, in the Canton of Ticino, a general legislative proposal was made to add a prohibition against the construction of minarets to the cantonal building codes. On 19 November 2008, the Commission for Legislation rejected this proposal that was put forth by Member of Parliament Lorenzo Quadri, who is a part of the Ticino League, the second-largest party in Ticino.Greater attention should be paid to the local lawmakers' proposals, Heimatsschutz and Bauverbot für Minarette, as some of them are essential to comprehending the national debate. Firstly, it's important to note that the SVP was mostly the focal center of the political conflict against the construction of minarets. With 54 representatives in the National Council and 26.6% of the vote, this party, which was created in 1971, is the biggest in Switzerland. Its supporters have more than doubled over the past 20 years due to a variety of factors, including the general discontent with the state of the economy, the party's adamant opposition to Switzerland joining the EU, and its calls for a decrease in immigration, particularly from non-European nations. It is particularly strong in the countryside of the German-speaking cantons, a stricter asylum policy, its defense of the Christian tradition and its rejection of demands of a religious nature by non-Christian. The *Stopp Minarett* movements and the SVP have never made it clear that they oppose the construction of mosques; instead, they have and still do just advocate against the construction of minarets. The 'Islamization of society' (defined as the possibility that Swiss Muslims might impose the Shari'a on the entire population) is always mentioned in conjunction with this position, even though it would (at least in part) appear to lessen the significance of the religious element in the debate. According to to a pamphlet edited by the committee 'Gegen den Bau von Minaretten' in 2009, article 72[282], paragraph 3 of the Federal Constitution had to include a ban on the building of minarets because of the Islamic position of theocracy, expression of an anti-democratic claim in opposition with the values of the

[282] Article 72, paragraph 3 of the Federal Constitution of the Swiss Confederation.

State. As a result of this lack of distinction, and according to the general sentiment of the State minarets represent a symbol of the religious and political power of Islam and would demonstrate how Muslims are no longer content just to practice their own religion but will make more and more demands on society. This is a part of a bigger trend, the committee claims, because 'In Europe we are undoubtedly witnessing a tendency towards Islamization'. The committee's apparent opposition to minarets stems less from the fact that they would alter the traditionally Swiss environment and more from the fact that they would increase the prominence of the Islamic minority within the Confederation. Regarding "Islamization" it is obvious that the term does not relate to a sociological situation like the widespread adoption of Islamic principles by Swiss residents. Instead, it refers to a procedure that would allow Muslims to enter politics through the formation of a formal political party with the purpose of establishing a legal order based on the Shari'a or one that could at least give the regime of personal statutes some legitimacy. The 'Eurabia' theory[283]holds that the construction of minarets marks the beginning (and most symbolic) of Islamization, because they would symbolize the start of the conquering of the area and the ensuing dhimmitude of Christians. Contrary to all expectations, 57% of Swiss citizens voted in favor of the proposal to forbid the construction of minarets; it was only defeated in the cantons of Basel, Vaud, Neuchâtel, and Geneva. Thus, the Federal Constitution's newly added article 72, paragraph 3, which forbids the construction of minarets across Switzerland, went into effect. According to the axiological rule "*lex specialis derogat legi general*", the ban always prevails over the right to freedom of religion. The referendum of 29 November 2009[284] raises the question of its interpretation, i.e. whether the freedom of religion is still widely guaranteed in the Confederation despite the results of the referendum 18 or as the President of the Commission against Racism, Georg Kreis stated, if the referendum of 29 November could be just the first of a long series of initiatives aimed at impeding freedom of worship for Muslims. The revised paragraph 3 of article 72 of the Federal Constitution[285] does not entirely restrict the right to practice religion for Muslims in Switzerland, who, as Sami Aldeeb notes, "can pray anywhere, as long as it is a clean [sic] place." The establishment of mosques or even the practice of prayer is not prohibited by this effort. The 29 November vote, according to some, might be seen as a simple rejection of Islamic fundamentalism and the political ramifications that, in the eyes of Islamists, come along with the construction of minarets. While Muslim and Christian Orthodox communities increased in size (from 0.3% to 4.3% in the case of Muslims and from 0.3%

[283] The so-called 'Eurabia theory' would, over time, result in the erosion of the Christian values that form the cornerstone of Western Europe's constitutional principles and a move towards dhimmitude, or the subordination of Christianity to political Islam. This hypothesis holds that the presence of minarets marks the initial (and most symbolic) stage of Islamization since they symbolize the conquering of new land and the accompanying dhimmitude of Christians.
[284] 2009 Swiss minaret referendum.
[285] Paragraph 3 of article 72 of the Federal Constitution of Switzerland.

to 1.8% for the Orthodox), the percentage of the Swiss population who belonged to one of the three recognized national Churches in Switzerland decreased from 96% (1970) to 75% (2000). Due to the inflow of new immigrants, religious problems are now at the forefront of the multiculturalism discussion. The cultural norms upheld by the newest immigrants were also expressions of their own culture and an indispensable tool for the formation of their personalities, but as has been discussed, they are not always regarded as being consistent with federal law, which is heavily influenced by the Christian roots of the Swiss Confederation. The Switzerland adaptation to this significant intercultural transformation without experiencing too much damage, is the core of the question of Pacillo[286] to the reader. According to the author, it is undeniable that Swiss society has recently taken stances that have not always been supportive of requests from religious groups that are not historically entrenched in its territory. In addition to the construction of minarets on public property, such requests have been made over matters such as the ability of Muslim religious education teachers to wear veils or to kill animals in accordance with their religious practices. These intervention requests have been made to the public figures in charge of overseeing religious issues. They confirm the possibility of restricting the behavior that is ostensibly protected by article 15 of the Federal Constitution[287] in the name of the need to preserve values related to the material public order of the Confederation, while also opening the door to the recognition of new faculties derived from the right to freedom of religion[288] (decision 134/114 of the Federal Court). In this sense, the right to practice one's religion cannot be separated from other fundamental rights, which are prioritized, and from respect for human dignity. However, this does not mean that the legal system must be unchangeable and opposed to religious diversity because it is impossible to pressure the laws already in effect in an intercultural direction. The position of European organizations on intercultural and interreligious interaction comes first. According to the author[289], the latter is crucial to give a significant contribution to the development of a free, cohesive, and orderly society and can overcome philosophical and religious extremism, stereotypes and prejudices, ignorance and indifference, intolerance, and hostility, which have also recently been the cause of tragic conflicts and bloodshed in Europe. If the viewpoint that the theory of the clash of civilizations is the result of ideas not supported by rational knowledge and by a critical awareness of the diversity existing in the plural society is firmly adopted, Pacillo continues, it will undoubtedly be possible in the coming years to find reasonable solutions to petitions put forward by minority religious communities that do not involve forcing the moral framework of refer to.

[286] PACILLO (2016).
[287] Article 15 of the Federal Constitution of the Swiss Confederation.
[288] Decision 134/114 of the Federal Court of the Swiss Confederation.
[289] PACILLO (2016).

2.5 RIGHT TO MANIFEST BELIEF

The right to manifest belief appears fundamental when it comes to the protection of religious rights. Just as the other topic precedent explored, the limits of this right are not always clear, and States differs in the resolution of cases of the same species. An example is testified by Brazil with the Administrative Resolution no. 1/2023[290] passed by the Fundação Nacional dos Povos Indígenas, a Brazilian federal agency responsible for overseeing the well-being of indigenous populations. According to OLIRE[291] this resolution, implemented on 30 January 2023, bans partially the entrance to the Yanomami Reservation in the state of Roraima, which is close to the Venezuelan border. The explanation for starting this action is the sanitary crisis in the area, which has been made worse by claims that unlawful mining activities are occurring inside the Reservation. The resolution contains several limiting provisions. It cautions people who are allowed to enter the Reservation to avoid wearing anything that could be interpreted as pornographic, racist, or religious. It also expressly forbids wearing apparel with any symbols or emblems and participating in any religious activity with native people. This case challenges the inviolability of freedom of conscience and belief as guaranteed by Article 5, paragraph VI of the Federal Constitution and creates a precedent for future restrictions on religious freedom in other Latin American nations. Because it draws a line between Las Casas' right, which is based on the principle of self-determination, the dignity of the human person, and the freedom to freely practice religion, this case appears to be highly contentious. Las Casas was a part of a larger movement connected to the Salamanca School's neo-scholasticism. This group of thinkers created a theory of natural rights that was based on St. Thomas Aquinas' notion of natural law. Suarez and Francisco de Vitória, two prominent Salamanca School alumni, made contributions to this school of thinking as well. Their doctrines were in many ways a forerunner of subsequent natural rights theories, such as those put forth by John Locke and the French Revolutionaries. The Brazilian Congress is now debating numerous legislation that would remove portions of the Resolution that are incompatible with international principles of religious freedom. Projeto de Decreto Legislativo no. 21/23 by Congressman Milton Vieira and Projeto de Decreto Legislativo no. 37/23 by Congresswoman Franciane Bayer are two examples of these measures. Unfortunately, the Resolution's spirit does not support the Las Casas-promoted Latin American tradition of natural rights. He demonstrated that evangelizing and regard for human dignity are not incompatible.

The next case is the one of *Knudsen v. Norway*[292] regarding the applicant Børre Arnold Knudsen and the State of Norway in a controversy concerning the issue of manifesting one's own religion when it intersects with

[290] Administrative Resolution No. 1/2023 of the Fundação Naational dos Povos Indígenas.
[291] OLIRE (2023).
[292] Judgment of the European Court of Human Rights no. 11045/84, 8 March 1985, Knudsen *v. Norway*.

one's work role. The applicant, who was born in 1937, is a citizen of Norway. He lives in Norway's Balsfjord and works as a vicar. He is represented before the Commission by Mr. Johan Hjon of the Oslo, Norway legal firm Hjort, Eriksrud, Myhre and Bugge Fougner. The Act of 13 June 1975 (no. 50)[293] concerning interruption of pregnancy, or the so-called *Abortion Act*, was amended in Norway by the Act of 16 June 1978 (no. 66)[294]. The most significant change was that the 1978 amendment allowed a pregnant woman to decide whether to end her pregnancy on her own, provided the procedure was safe. Previously, a pregnant woman could only have her pregnancy terminated by decision of a medical committee in accordance with the conditions outlined by the Act. The 1978 amendment allowed the woman to make the final decision on whether to end the pregnancy if the procedure is done before the end of the twelfth week of pregnancy. This was made possible by a 1978 amendment. The applicant stated in a letter to the King on 31 May 1978, the day after the amending Act was discussed in the lower house of the Norwegian Parliament, that he believed the Act to be in manifest conflict with God's holy Commandment and the spirit and letter of the Constitution. As soon as the Act went into effect, he said, he had to consider himself relieved of both his government position and his oath of office. The applicant declared in a subsequent letter to the King that he felt released from the oath he had taken when accepting the position of vicar on the day the Act went into effect, which was 1 January 1979. A few months later, he told the parish councils that, in opposition to the new Abortion Act, he had resigned from his government post. He stopped performing the duties that, in his opinion, belonged to the State's portion of the office of vicar because of his opinion. He did not perform marriages, examine the conditions of marriage, or mediate matrimonial disputes. He objected to keeping the birth record. He rejected both the Ministry's delivery of Government mail to him and the payment of the Government's wage. He continued to carry out the duties that, in his opinion, belonged to the Church's portion of the office because he still believed that he was the parish's actual priest and that he had been appointed to that position by the Church. The Ministry of Church and Education initially restricted itself to saying that the applicant had displayed a new and undesirable perception of his office through his comments and attitude. In addition, the Ministry chose to wait for more information before taking any action against him. However, as the applicant's behavior persisted and the situation grew more challenging, the Ministry wrote to the Bishop of Nord-Helgoland on 25 September 1980, requesting that he issue the applicant an order to resume his official duties as soon as possible. Otherwise, the Ministry would consider dismissing him in accordance with Article 10 of the Criminal Code Enforcement Act (Ikrafttraedelsesloven). The applicant stuck with his choice. The Ministry of Church and Education was ordered by Royal Decree

[293] Act of Norway, 13 June 1975, no. 50, *Abortion Act*.
[294] Act of Norway, 16 June 1978, no. 66.

of the 24 October 1980[295], to file a lawsuit against the applicant to have him removed from office by judicial decree on behalf of the government. Following unsuccessful attempts at conciliation, the Attorney General initiated legal action before the Malangen District Council on 21 November 1980, requesting both the removal of the applicant from office and a declaratory judgement to determine certain specific consequences of such a removal. On 1 February 1982, the District Court issued a ruling determining that the motion against the petitioner should be denied. The Court of Appeal heard an appeal against this ruling from the government, which was represented by the Ministry of Church and Education. During the Court of Appeal's main proceedings, the Attorney General moved to dismiss the applicant or, as an alternative, to issue a declaratory judgement compelling him to accept dismissal. The parties' arguments, which were virtually the same in both the Court of Appeal and the Supreme Court, can be summed up as follows. The applicant asserted that the case merely mentioned dereliction of duty formally and in its external characteristics. It mostly had to do with the core purpose of the pastoral office. A priest was bound principally by the Word of God and the Confession of the Church because of receiving the call of God and the Church upon his ordination. Whether or not everyone in the Church agreed with the course of action he had chosen, in the applicant's opinion he was acting on behalf of the Church through his protest son. The Abortion Act of 1978 should be the source of his motivation. The applicant contended that the Act constituted the abandoning of every legal safeguard for the developing human life and involved, in theory, denying the human worth of the embryo. The Act went against fundamental Christian principles, as well as Articles 2 and 4[296] of the Norwegian Constitution, which designates the Evangelical Lutheran Church as the State's official religion. More importantly, it ran counter to unwritten constitutional principles and certain provisions of international law protecting human rights. His protest actions were meant to force the council to consider the Act's validity. The Act's constitutionality should be evaluated considering the Constitution or other authoritative legal documents. If the applicant was correct in asserting that the Act was invalid, this would impact how his action was assessed and whether he should be dismissed. Additionally, the applicant stated that an emergency component supported his activities. The Abortion Act put the Church in a situation that may be described as a confessional one, wherein the Church would lose its credibility if it did not actively engage in the fight against a denial of essential Christian and human values. He was bound by church theology as a pastor, therefore acting on behalf of the Church was not only in his right but also in his duty. He only took the appropriate action considering

[295] See also the Royal Decree of 24 October 1980.

[296] Article 2 of the Constitution of the Kingdom of Norway: "Our values will remain our Christian and humanist heritage. This Constitution shall ensure democracy, a state based on the rule of law and human rights".
Article 4 of the Constitution of the Kingdom of Norway: "The King shall at all times profess the Evangelical-Lutheran religion".

the circumstances. Finally, the applicant believed that, even if his protest actions were not appropriate, there were not any legitimate reasons to fire him. He did not dispute that Article 10 of the Criminal Code Enforcement Act[297], which provides that a government employee may be fired if he repeatedly demonstrates an inability to carry out his obligations, was in theory also relevant to an official who refuses to do so. However, the oversights in this case were so minor that they did not constitute adequate justification for a dismissal. The Government, on the other side, claimed that there were three separate grounds for dismissal through the Ministry of Church and Education. First off, the candidate had repeatedly refused to carry out tasks that were obviously within the scope of his job. Second, he no longer qualified as meeting the legally required criteria for holding that office since he had repudiated the loyalty pledge, he had taken upon taking office in accordance with Article 21[298] of the Constitution. Third, he had explicitly said that he regarded himself to have left office through written word and deed. Therefore, it should be acceptable for the government to believe him when he says he has been fired, which is exactly what he has done. Therefore, the requirements for dismissal under Article 10 of the Criminal Code Enforcement Act were met. Additionally, the government felt that the case did not warrant a review of the Abortion Act's standing in reference to other constitutional provisions, the Constitution, or international law. The Abortion Act, according to the government, had no bearing on the applicant's employment terms, and the official tasks he refused to carry out had nothing to do with the Abortion Act. Additionally, the government disputed the idea that the provisions of Articles 2 and 4[299] of the Constitution governing the Established Church imposed restrictions on legislation that did not consider the Established Church's internal affairs. If there were any such obstacles, it was questionable to what extent the courts might be able to carry out the constitutional assessment that the applicant had requested. Finally, the government argued that the applicant's actions could not be justified by emergency law. The petitioner had plenty of opportunities to argue his case against the Abortion Act without resorting to improper termination of his duties. On 26 November 1982, the Court of Appeal issued a decision in which the applicant was fired from his position in accordance with Article 10 of the Criminal Code Enforcement Act[300]. Regarding the applicant's claims that the Abortion Act breached international and constitutional law, the Court did not see the need to comment on these issues because the Abortion Act did not affect the conditions of the applicant's employment with the State. The Court found no connection between the applicant's refusal to perform official obligations and the

[297] Article 10 of the Criminal Code Enforcement Act of Norway.
[298] Article 21 of the Constitution of the Kingdom of Norway: "The King shall choose and appoint, after consultation with his Council of State, all senior civil and military officials. These officials shall have a duty of obedience and allegiance to the Constitution and the King. The Royal Princes and Princesses must not hold senior civil offices."
[299] Article 2 and 4 of the Constitution of Norway.
[300] Article 10 of the Criminal Code Enforcement Act of Norway.

Abortion Act. The applicant's employment was terminated because of this decision. The Ministry of Church and Education, to whom a Royal Decree of 15 January 1982 had delegated the authority to grant a dispensation from the loss of pastoral rights following a potential dismissal judgement, however, decided that the applicant should not forfeit these rights that follow from his ordination in a letter dated 6 September 1983. As a result, the candidate might still perform religious duties, but not any longer as an employee of the State. According to the applicant, Article 2 of the Convention[301] is violated by the Norwegian Abortion Act in its current form because of the amendment of 16 June 1978. He further asserts that the Norwegian Supreme Court reached the wrong conclusion. In this context, it is further asserted that national laws are superseded by the Convention on Human Rights as a rule of international law. Therefore, if the Commission determines that Norwegian law in this area violates the Convention, it follows that the law in Norway must be changed. The applicant feels that a determination of whether Norwegian law violates Article 2 is directly related to his legal interests. His case is allegedly different from earlier "abortion cases" brought before the Commission, in which the applicants approached the subject in their capacity as regular citizens with public interests, without being personally impacted by the national legislation they attacked. The applicant finds that his case is different: he has risked (and lost) his office on the issue of the acceptability of the Norwegian Abortion Act, i.e. in relation to the Norwegian government's decision to ban abortions. If his position regarding the Abortion Act is upheld, he will resume his duties in the Norwegian State Church. According to his interpretation of the law, he thinks that a Commission or Court ruling must logically follow that the Norwegian legislation needs to be changed. The applicant's second point of contention is that Article 9 of the Convention is violated by his termination from his position. Despite having the same beliefs as the Church about abortion, he was fired from his position. He claims that his removal went against the advice of his bishop and the wishes of the people in his parish. In this regard, it is maintained that a minister in the Church has dual obligations, with one set of duties being to the Church and the other being to the State, with the former being significantly more significant than the latter. Therefore, it is undermined that a minister cannot be removed against the will of the Church and that removing a minister merely at their request and with a court's approval violates the Convention. The Commission found the application admissible.

In the case *Konttinen v. Finland*[302] the applicant is a Finnish citizen, born in 1935 and resident in Varkaus. He was a legal practitioner up to 1990, when he went on early retirement. This is his second application to the

[301] Article 2 of the European of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*, regarding freedom from retroactive criminal prosecution.
[302] Judgment of the European Court of Human Rights no. 24949/94, 3 December 1996, *Konttinen v. Finland*.

Commission, his first (no. 18291/91) having been declared inadmissible on 13 October 1993. Following is a summary of the case's facts, as provided by the applicant. The petitioner was apprehended and arrested in 1985 on suspicion of fraud. He was fingerprinted and photographed at the Lahti Police Department in connection with the arrest. This information was added to a file about him that was held by that police department. His personal information was also added to the Central Criminal Police's National Police Register of Personal Details. The applicant was then accused of, among other things, encouraging fraud; however, in 1988, the Kouvola Court of Appeal declared the applicant not guilty. The applicant asked the police department to send him a copy of its file containing the photos and fingerprints collected in 1985 on 10 June and 13 July 1994. Additionally, he asked for actual access to the registers in which he believed his name appeared, especially the claimed Central Criminal Police-maintained Register of Professional Criminals and Recidivists. The Police Department confirmed on 14 July 1994, that the applicant's personal information had been included into the Register of Personal Details. The Department had requested the Central Criminal Police to erase the information about the applicant on that day considering his 1988 acquittal. He was anticipated to be removed from the registry by the Central Criminal Police in roughly a week. He was allowed to view the registered information at any nearby police department, and his name did not appear in any other police registers. Although it could not be delivered to him, the applicant's photo would be taken out of the Department's own archives. The petitioner exercised his right to see the Varkaus Police Department's Register of Personal Details on 29 July 1994. He was unable to see his file in person, but on August 1 of that year, the Department wrote to confirm that he was not listed in the register. The applicant claims that before going through a legal process, the police had already "registered him as a criminal". He refers to both Article 8 and Article 6 para. 2 of the Convention[303]. The Commission reminds the public that pursuant to Article 27 of the Convention[304], it is prohibited from considering any application made pursuant to Article 25 of the Convention[305] that substantially duplicates a topic it has already reviewed and that does not include any materially new information. The Commission addressed the applicant's complaint that his personal information had been recorded in 1985 in its decision of the 13 October 1993 on the admissibility of Application no. 18291/91[306]. His current complaint is essentially the same as the one he made in Application no. 18291/91, which was a case the Commission has already looked at. Furthermore, "no relevant new

[303] Article 8 and article 6 paragraph 2 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[304] Article 27 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[305] article 25 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[306] Judgment of the European Court of Human Rights, 13 October 1993, no. 18291/91, *Kinnunen v. Finland*.

information" as defined by Article 27 paragraph 1 (b) of the Convention[307] has been presented that would allow the Commission to address his current complaint. As a result, this complaint must be dismissed in accordance with Article 27 paragraph 1 (b) of the Convention. The applicant further alleges that the police continued to view him as a criminal for years after his acquittal gained legal standing. He refers to the Lahti Police Department's assurance that on 14 July 1994, he was still listed in both its own file and the Register of Personal Details. He once more refers to Article 8 and Article 6 para. 2[308]. In this instance, it appears that the applicant's personal information from 1985 was still in the Lahti Police Department file as of July 1994. Up to that point, details based on his personal information were also kept in the Central Criminal Police's Register of Personal Details. The Commission recalls that on 10 May 1990, Finland became a party to the Convention. According to commonly accepted principles of international law, it only applies to events that occurred with respect to each Contracting Party after it entered into force. The Commission additionally remembers that it dismissed a complaint of a similar nature in its decision on the admissibility of Application no. 18291/91 on 13 October 1993, concluding that the applicant had not exhausted all available domestic remedies, as required by Article 26 of the Convention[309]. It was noted that the applicant had not exercised his right to access the information that was being kept and his related right to ask for its rectification or deletion. The Commission consequently believes that the material and information the police preserved could not have negatively impacted the applicant any more than the widely known fact that he had been accused of, but then cleared of, certain offences. In these circumstances, the Commission determines that the retention in question cannot be said to constitute an infringement on the complainant's right to respect for his private life as defined by Article 8. In his final complaint, the applicant claims that he was not provided with an adequate remedy within the meaning of Article 13 of the Convention. He claims that the Central Criminal Police's removal of information relating to him was not supported by a written decision that could be appealed. The Commission points out that an applicant who is determined to have no "arguable claim" that another Convention provision has been broken is not entitled to a remedy under Article 13 according to the European Court of Human Rights. As a result, this complaint must likewise be dismissed as being clearly unfounded in accordance with Article 27 paragraph 2 of the

[307] Article 27 paragraph 1(b) of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[308] Article 8 and article 6 paragraph 2 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[309] Article 26 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.

Convention[310]. Due to these factors, the Commission unanimously annuls the application.

In the case of *Francesco Sessa v. Italy*[311] the applicant was an Italian Jewish and lawyer by profession. In his capacity as the representative of one of the two complainants in criminal proceedings against multiple banks, he appeared before the "giudice istruttore"[312] of Forli on 7 June 2005, at a hearing regarding a request for the immediate production of evidence (*incidente probatorio*). The case's investigating judge was unable to hold a hearing, so his replacement gave the parties the option of choosing between two dates for the adjourned hearing: 13 October 2005, or 18 October 2005. The applicant indicated that he would not be able to attend the postponed hearing due to his religious duties because both dates fell on Jewish holy days (Yom Kippur and Sukkot, respectively). The hearing date was scheduled by the investigating judge on 13 October 2005. On the same day, the applicant filed a request with the investigative judge overseeing the case to postpone the hearing. After reviewing the application, the judge decided to add it to the case file on 20 June 2005 without deciding. The applicant filed a criminal complaint on 11 July 2005, saying that the investigating judge in charge of the case and his replacement had violated Law no. 101 of 1989's section 2[313]. He reported the complaint to the Supreme Council of the Judiciary on the same day. The investigating judge noticed that the applicant missed the hearing on 13 October due to personal reasons. The investigating judge rejected the request for an adjournment in a decision made that day. He began by noting that only the prosecution and the defendant's attorney were needed to be present at hearings concerning the immediate production of evidence under Article 401 of the Code of Criminal Procedure[314]; the presence of the complainant's attorney was just voluntary. He continued by noting that the Code of Criminal Procedure did not require the judge to postpone a hearing when the complainant's attorney had good cause to be absent. The Supreme Council of the Judiciary advised the applicant on 23 January 2006, that it lacked the authority to investigate the matter because the applicant's objections related to the performance of judicial duties. In the interim, the Ancona public prosecutor's office had asked that no further action be taken regarding the

[310] Article 26 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[311] Judgment of the European Court of Human Rights, 3 April 2012, no. 28790/08, *Francesco Sessa v. Italy*.
[312] The "giudice istruttore" is responsible for dealing with the relevant questions in fact and in law and for acquiring the elements of evidence suitable to base the decision. He exercises powers of direction and control of the cause without particular formalisms.
[313] Law No. 101 of 8 March 1989 of Italy contains clauses regulating interactions between the State and the Union of Jewish communities in Italy. The right to freely practice and manifest the Jewish religion is acknowledged in Section 2. In accordance with section 4 of the law, Jews who request the right may observe the Sabbath in the context of flexible work schedules and without interfering with the requirements of the vital services covered by the state legal framework.
[314] Article 401 of the Code of Criminal Procedure of Italy.

applicant's complaint (as of 9 January 2006). On 28 January 2006, the petitioner opposed this to this request. On 21 September 2006, the Ancona investigating judge issued an order ending the investigation into the applicant's complaint, noting that the applicant had not objected to the public prosecutor's office's proposal for no further action. The petitioner filed an appeal on legal issues on 19 January 2007, claiming that the investigating judge had ignored his 28 January 2006 objection. The order from 21 September 2006 was overturned by the Court of Cassation after noting that the applicant's objection had likely been overlooked due to a registry error. The case was therefore sent back to the Ancona District Court. The applicant and the prosecution showed up for a hearing before the Ancona investigating judge on 12 February 2008. The latter issued an order to end the proceedings on 15 February 2008. Nothing in the case file, he remarked, indicated that the investigative judge in charge of the case or the judge who took his place at the hearing on 7 June 2005, had any desire to impede the applicant's ability to freely practice his Jewish faith or by interfering with the applicant's free exercise of his Jewish faith as the complainant's agent and had violated his right to publicly express his religion. He cited paragraphs 1 and 2 of Article 9 of the Convention[315]. The Court is not persuaded that the applicant's freedom to exercise his religion freely was restricted by scheduling the case for hearing on a day that fell on a Jewish holiday and refusing to move it to a later date considering the circumstances of the current case. The parties agree that the applicant was able to fulfil his religious obligations. As a result of the current statutory restrictions, he may have anticipated that his request for an adjournment would be denied and could have made plans to be replaced at the hearing in question to uphold his professional obligations. Finally, the Court observes that the applicant did not provide evidence of pressure being applied to him to cause him to change his religious beliefs or to restrict him from expressing them. In any case, the Court believes that the interference with the applicant's rights under Article 9.1 was required by law, was justified by the need to protect the rights and freedoms of others, particularly the public's right to an efficient administration of justice and the rule that cases should be heard in a reasonable amount of time and that it complied with a reasonable relationship of proportionality between the competing interests. For these reasons the court held that has not been a violation of Article 9 of the Convention[316].

[315] Article 9 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[316] Article 9 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.

CHAPTER 3. MANAGING THE RELIGIOUS-SECULAR BALANCE, IN THE FRENCH CASE STUDY

France represents one of the most extreme examples in Europe concerning the theme of religious rights, according to its radical definition of *laïcité* and the historical background that carries with it. For several years France was known as having one of the most divisive approaches about religion. Some of the measures adopted included vetoes, bans on religious symbols, and the prohibition of the use of religious clothing that covered the face. Over time the State's position has changed and with it its laws, but for some time this attitude has allowed several controversial speeches against it. This Chapter will face the fundamental steps of the French change regarding the concept of secularism and its related laws. Understanding the rationale, both before and after the switch, means to begin from a historical overview of the demographical changes of the State, focusing on the most important stages. This part will be divided into the two periods of 1789-1980 and 1980-today. After this, it will be analyzed in depth the concept of *laïcité* together with its features and elements. Comprehending the concept will be key to understanding the patterns that derives from it. The narrative will then move on to the analysis of the covenants adopted by France with respect to the protection of religious rights, to the review of the most important French cases of the Strasbourg Court concerning freedom of religion and to the analysis of the regional laws concerning this issue. Finally, the theme of the state of emergency will be explored, addressing the limits of the two recent French states of emergency of 2015-2017 and 2020-2022. The examination of the two will highlight any similarities and differences.

3.1 HISTORICAL-RELIGIOUS METAMORPHOSIS OF FRENCH MULTI-ETHNICISM.

> "Although France is de facto a multicultural society, historically this interpretation has been very much contested by the Jacobin tradition which has been opposed to the right to be different, pluralism and group rights. Recent presidential elections and the rise of the National Front appear to confirm this reading. However, ideological multiculturalism has begun to make inroads into the French model of citizenship through the political accommodation of migrant groups, especially at the local level. Ideological multiculturalism is the only way to maintain a strong and vibrant French identity, open to the new challenges of globalization, migration flows, diversity of religions and plural allegiances to nations and states. In France, like most democracies, the rise of claims for difference means that the republican model of integration has no other choice but to negotiate with multiculturalism. "[317]

[317] WIHTOL DE WENDEN (2003).

This is the incipit of the article of Catherine Wihtol de Wenden entitled *Multiculturalism in France*. The discussion on the evolution of multi-ethnicism in France in the following paragraph owes much to this source, which presents a precise analysis on the subject. The approach to the topic is direct and hides a veiled criticism: France seems to be struggling to embrace multi-ethnicity. Before reaching hasty conclusions dictated solely by stereotypes, it is necessary to rely on historical facts. According to Wihtol de Wenden, before the Revolution of 1789, the nation had been divided into provinces, each of which had its own culture, language, parliament, and system of measurements. This system was profoundly dividing, creating a society in which there were micro-societies instead of a unite State. The French language was however used for all administrative and judicial procedures, contributing to the protection and unification of the idiom. A philosophical and political definition of national cohesion, centered on the nation and the citizens, free and equal in their rights, had a first attempt made during the French Revolution, redigining the French community from an accumulation of cultures and institutions that made up the state through the *Déclaration des Droits de l'Homme et du Citoyen,* 1789[318]. The references to Republican values, embodied by an evolving citizenship, during the Republican periods of the nineteenth century (First, Second, and Third Republics), as well as the emergence of ideologies cancelling particularistic belongings, blurred the boundaries of communities and gradually built France on the myth of national homogeneity. During the presidential campaign in May 2002, republican values and national unity were emphasized under the National Front party. Under the pressure of immigration, Europe, and globalization, as well as from the need to affirm the weight of local cultures in the inheritance of national culture, multiculturalism in France gained credibility. Many French people were hesitant to acknowledge this and contrast it with the exclusivity of Jacobin principles, such as secularism, formal equality, legal freedom, civic values of coexistence, and an exclusive adherence to the Nation-State republican model (patriotism), which they believe to be superior. The freedom to be unique, the diversity of allegiances, the relations between cultures, and the expression of minorities as alluding to a France of minorities are still controversial topics. These ideals are perceived as being in opposition to social cohesion and integration for communal living. The ambiguities surrounding the freedom of associations and the recognition of regionalism in France serve as an example of this: during the French Revolution of 1789, corporations were outlawed, and the freedom of associations was only achieved in 1901, while regionalism had to wait for two centuries before being reinstated in state institutions in 1982. Since the French Revolution some aspects of multiculturalism have finally gotten through to France. Prior to being challenged by immigration and Europe, which brought

[318] Declaration approved by the French National Constituent Assembly, 26 August 1789, *Déclaration des Droits de l'Homme et du Citoyen.*

new values like anti-discrimination, citizenship of residence, including plural citizenship, and expression of ethnic and religious affiliation, it was first confronted by the class struggle and then by the right to gender equality. A multiculturalism *à la française*, incorporated in a citizenship that is the consequence of a constant compromise with communitarianism in a neocolonial management of diversity, is one of the new elements of citizenship that belong to this generation. To understand which demographic phenomena have changed France, it is first necessary to divide it into two periods: 1870-1980 and 1980-today.

3.1.1 DEMOGRAPHIC CHANGES IN THE FRENCH POPULATION: 1789-1980

As explained by Wihtol de Wenden[319], the early French union and the variety of its provinces were still compatible before the Revolution of 1789. There was a distinction between the "five big farms" (Normandy, Ile-de-France, Picardie, Anjou, Maine, Champagne, Bourgogne, Bourbonnais, Berry, Poitou), which had internal customs and freedom of circulation for goods, and the "*provinces réputées étrangères*" (provinces deemed foreign) and "*provinces à l'instar del'étranger effectif*," (provinces like the effective foreigner) which included Alsace, Lorraine, and Brittany. Three districts existed at the time: Brittany, Bearn, and Provence, which had feudal ties to the King of France; Navarre, a minor kingdom; and Artois, a province that desired to be governed by its own citizens. Provence and Brittany both declared their independence. These territories had their own taxes, tribunals, parliaments, and metric systems in addition to speaking their own languages made up of several *Langues d'ol* in the north and *Langues d'oc* in the south. Due to this diversity, there were some inconsistencies in the use of royal authority on the eve of the revolution, in regional parliaments' unwillingness to uphold the law, in the population's difficulty understanding, and in the barriers to trade brought on by various customary rights. The French situation seemed to be an aggregate of people who shared nothing, not even the language, representing the birth of *the State before* that of *the Nation*[320]. The Girondins expressed the federalist pluralist trend during the French Revolution by defending local identities from the centralized, autocratic, and Jacobin rule of Paris. However, the Girondins were unable to defeat the Jacobins, and Napoleon I strengthened the State's centralization and unification. France's civil and criminal codes were created, the laws were harmonized, and the government was centralized. Napoleon III continued his efforts, while Auguste Comte or Frédéric Le Play continued to advocate for regional autonomy throughout the nineteenth century as a rightist perspective.

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[319] WIHTOL DE WENDEN (2003)

[320] This means that the institutions were born first and then the citizen idea of being a united and culturally aggregated people.

After the loss of Alsace Lorraine in 1871, a sense of a nation-based French identity started to emerge. A fundamental role in this process was played by religion. The Republic was dedicated to secularism and tried to maintain both religion and politics separate. During this time, laws secularized education, eliminated religious symbols from public places, and attempted to establish a neutral ground for citizens of all faiths. Anticlerical attitude also contributed to the Church's influence on society standards declining and marked the beginning of the dechristianization process. De-Christianization, then transformed over time into the less extreme concept of *laïcité*. This was a result of several separate policies devised by various French governments between 1789[321] and the Concordat of 1801[322].

Alberto M. Piedra explores the theme of Dechristianization in the article "The Dechristianization of France during the French Revolution" [323]. He began his study with a reflection on the revolutionary government's intentions between 1793 and 1794, that included everything from the public seizing of the enormous amount of territory, authority, and wealth held by the Church in France to the cessation of religious practice and elimination of religion itself. The French Catholic Church was immediately subordinated to the French government because of a statute passed on 12 July 1790, known as *La Constitution Civile du Clergé*[324] (The Civil Constitution of the Clergy). It turned out to be one of the French Revolution's worst-advised, divisive, and destructive regulations. The National Convention's attempt to reform the Church devolved into obvious hostility towards Catholicism and religion in general. The Cult of the Supreme Being, a deist State religion, took the role of religious practice once it was made illegal. Followed the approval of the *Loi des Suspects*, also known as the Law of 17 September 1793[325], that intensified the dechristianization campaign against the Christian population of France. The law aimed to carry out more aggressively some actions towards Christians, as: the immediate execution of all priests and anybody guarding them, the forced destruction of all crosses, bells, and other external symbols of religion, the demolition of statues, plaques, and religious iconography. Other elements of the law regarded the establishment of the commemorations of Liberty and of the Supreme Being established in 1793, and the substitution of the Christian calendar with one that began on the day of the Revolution. The violence associated with anti-clericalism peaked during the two-year Reign of Terror. The Festival of Reason, which was celebrated on 10 November 1793, in Paris' Notre Dame Cathedral, is one particularly noteworthy event that occurred during France's dechristianization movement. A temporary mountain with a Greek temple dedicated to philosophy and

[321] Beginning of the French revolution.
[322] The Concordat of the 1801 was an agreement between Napoleon Bonaparte and Pope Pius VII, signed on 15 July 1801 in Paris.
[323] M. PIEDRA (2018).
[324] Statute of the French Republic, 12 July 1790, *La Constitution Civile du Clergé.*
[325] Law of the French National Convention, 17 September 1793, *Loi des Suspects* (Law of Suspects).

ornamented with busts of philosophers was constructed on the main nave. A flame of Truth was situated at the mountain's base. With Phrygian bonnets on their heads, a few homeless girls used the occasion to celebrate the Goddess Reasonp's cult at the main memorial. The tremendous price France paid for a revolution that wrecked the country and resulted in thousands of murders is evident in recently discovered material on the cruel Reign of Terror that swept over France in 1793–1794, embodied by Robespierre and the Angel of Terror, Saint Just. On 21 January 1793, King Louis XVI was executed at the Place de la Revolution, which is today known as La Place de la Concorde. Sixteen members of the Carmel of Compiègne were executed on 17 July 1794, during the last days of Robespierre's government during the French Revolution. Eleven Discalced Carmelite nuns had their fingers chopped off with the guillotine for refusing to take the promise known as the Civil Constitution of the Clergy. They were interred in a shared grave where more than a thousand guillotine victims stayed, today marked by a single cross. It is said that they sang "Salve Regina" or "Veni Creator Spiritus" before passing away. Others think "Psalm 117, Laudate Domium" was the song. The nuns of Compiègne were given this bliss by Pope Leo XIII as a preliminary step towards holiness. The author Wihtol de Wenden[326] affirms how through the institution of mandatory, secularized, and free education in primary schools, the Third Republic offered the French people a sense of solidarity that was supported by universalistic and republican ideas blended with patriotism. In addition to the construction of sculptures, municipal halls, and schools in every town and village, the celebration of republican values also included the introduction of an annual public holiday in 1889 on 14 July, which was meant to honor the Revolution of 1789. However, there was a resurgence of regionalist movements and feelings of nostalgia for bygone eras, as seen in Frédéric Mistral's initiative in Provence to preserve the culture and langues d'oc regions. He founded the Félibrige movement in 1854, which influenced Charles Maurras and later Maurice Barrès, who brought their distinctive identities to Lorraine.

In France, nationality has a legal definition in the Civil Code, whereas citizenship has a philosophical definition defined in the Déclaration des Droits de l'Homme et du Citoyen of 1789[327], primarily motivated by universalistic values of freedom, legal equality, and property. The concept of citizenship is evolving. Initially restricted to well-off men with financial "capacities" (censor annual dues, with active and passive citizens), it was later extended to include all men ("suffrage universel masculine" in 1848), women (1944), and younger people (from 21 to 18 in 1974). Some groups, such as prisoners (la "grande muette" during the Third Republic) and colonies (the second college for indigenous voting rights in Algeria, a French department, survived until 1960), were forbidden from exercising citizenship. Thus, a person could have

[326] WIHTOL DE WENDEN (2003).
[327] Declaration of the France's National Constituent Assembly, 26 August 1789, *Déclaration des Droits de l'Homme et du Citoyen*.

nationality without being a full citizen. On the other hand, some people have been citizens without having nationality. Prior to the Revolution of 1789, citizenship and nationality were not connected. The priests who supported the monarchist regime (known as the *prêtres réfractaires*) were among those who did not uphold the revolutionary ideals and were viewed as traitors to the new principles. The Constitution of 1793[328], which outlines the many forms of civic activism allowing access to citizenship, established this acceptance of citizenship for civic activism regardless of the holder's French nationality. The Third Republic (1875), which combined fraternal civic principles with sole commitment to national identity (patriotism), completely sealed the relationship between nationality and citizenship. It is clear how religion played a fundamental role in this scenario: anything that conceived religion was to be eliminated, during this period. This situation remained almost unchanged until 1980.

3.1.2 DE-SECULARIZATION: 1980-today

The Vichy regime, during which Philippe Petain tried to play regionalism and plurality against the leftist and unifying values embodied by Paris, the Parliament, and more broadly, the political milieu of the dying Third Republic (1940), and the Second World War, represented two very different periods that gave real legitimacy to the expression of cultural diversity in France. In regions with a history of autonomy, including Brittany, Alsace, and Provence, some echoes were identified. However, after the Second World War, when the Fourth and Fifth Republics fought against all remaining values and attempted to unite the French around the Resistance and generally around the *Trente Glorieuses* years (1945–1974), an era of economic growth over which the class struggle also blurred some other attachments, this rightist and traditionalist trend failed.

The *1980s* were primarily the turning point for how multiculturalism was expressed in relation to migration and religion. The declaration of the right to be different ("*droit à la différence*") by SOS Racisme[329], founded in 1984, was made possible by the freedom of associative rights for foreigners in 1981 and the emergence of the "*beurs*" (Arabs in slang), as explained by Wihtol de Wenden[330]. The Council of Europe already required more intercultural education for immigrant children a few years prior, and French public schools started implementing special courses that were added to the required ones. The publication of "*L'identité française*"[331] (1985), by the

[328] Constitution of the French Republic, 24 June 1793, *Acte constitutionnel du 24 juin 1793*, or *Constitution of the Year I* or *Montagnard Constitution*.
[329] SOS Rascime is a NGO that describes itself as being anti-racist. In addition to having parallels in various other European nations or areas, SOS Racisme's oldest chapter was established in France in 1984.
[330] WIHTOL DE WENDEN (2003).
[331] L'identité française is a book published by the National Front in 1985.

National Front pressure to impose its version of French identity, is an example of how the left's return to power sparked public debates on a new definition of French identity. The "affairs" (the foulard or headscarf affair in 1989, the nationality code reform debate from 1987 to 1993, and the Gulf War in 1991) put more emphasis on a multicultural definition of French identity by referencing the plurality of allegiances, the legitimacy of collective identities within the republican framework, and the dissociation between nationality and citizenship around the topic of the new citizenship proposed by civic organizations. While most political leaders, with few exceptions on the right and left, emphasized French identity, citizenship, secularization, and the social contract while attempting to conduct public policies of integration, many civic associations founded in 1983 with the emergence of the "*Marche des Beurs movement*"[332] were fusing these republican values at the local level with communitarian forms of governance, particularly in inner cities. They battled racial prejudice and social exclusion while working to recognize ethnic and even religious identities, which occasionally undermined their arguments for universalist values and equal rights. Secularism, rights and duties, registration, and eligibility for electoral lists for second-generation immigrants with French citizenship were all stressed by some civic associations, such as the very legitimist France Plus. They also emphasized the right to indifference and respect for republican and assimilation values.

In terms of citizenship nationalist movements like Charles Maurras' *Action Française*, founded in 1899, and the extreme rightist leagues between the two World Wars quickly turned anti-republican and eliminated citizenship from national references. 1968 saw the introduction of numerous deviations to the ostensibly assimilationist, centralized French paradigm of Jacobinism. First, in Corsica and Brittany, public schools and colleges were permitted to teach regional languages. The Basques continue to speak their language, as do the Catalan speakers (in the Perpignan region, all village, road, street, and town names are in French and Catalan). Alsace, which never lost its German dialect, also uses German in local administration and religious celebrations. Because Alsace and Lorraine-Metz did not depend on France when the separation between the State and the Church was decided in 1905, the three departments of Haut Rhin, Bas Rhin, and Moselle that were owned by Germany after the defeat of 1870 and until 1918 are governed by an agreement between the state and the three faiths of Roman Catholic, Protestant, and Jewish (the "Concordat" of 1801). The TOMS (*Térritoires d'Outre Mer*) and other autonomous territories (approval of polygamy, for example) are two places where more recent, specialized treatments of views can be found. Decentralization, which started in 1982, has given regional administration a great deal of autonomy and some subsidiarity is seen in the centralized administrative system: a debate pitting the hard-line republicans of the left and

[332] The March for Equality and Against Racism, or Marche pour l'égalité et contre le racisme, was a protest racism and immigration that took place in France in 1983 from October 15 to December 3. It was also known by the French media as the March of the Arabs (*Marche des beurs;* "*beur*" is slang for arabe).

right against the liberal ones of the left and right. Jean-Pierre Chevènement resigned as a result of the unique Parliamentary Assembly of Corsica being granted by the socialist administration in 2001.Regarding immigrants, the real debate, which started as soon as an integration policy was put into place in 1974 (we were then talking about intercultural policies), was actually set up in the middle of the 1980s when Islam became more visible in cities, industry, and schools (with the foulard affair of 1989), raising the issue of the dubious allegiances of French people who hold dual citizenship. "How can one be French and Muslim?" This question, related to Montesquieu's, is frequently brought up in political discussions, even if the majority of Muslims in France do not sense an Arab or ethnic vote or penetration. For all minority religions, the regulation differs. Protestants and Jews have a long history of coexisting with French monarchical and republican institutions, and today's revival of Jewish Sephardim identity is thought to be compatible with them. Boys are permitted to wear kippahs in public schools, Muslims are permitted to be absent on Saturdays or to close their businesses on Saturdays and reopen them on Sundays, and Protestants and Jews have long lived alongside these institutions. At the time of the writing of the work of Wihtol De Wenden (2004) [333], they were reported to be suffering, because of growing concern over their existence and primarily because of their visibility in France as the representatives of the underprivileged, former colonial, and immigrant populations from developing nations. This was made worse by the fact that older people, who practice their religion the most and call for the recognition of Islam in public life (demands for larger prayer rooms, designated Muslim grave sites, and organization of the *hallal* meat market and buthering), were denied the right to vote. The assimilationist French model was being isolated by policies of the European Union in contrast to nations that are much more tolerant of variety and multiculturalism. The Maastricht Treaty's definition of *European citizenship* in Article 8[334] suggests an alternative to traditional citizenship that is less exclusive than the national one, compatible with other affiliations (including dual citizenship and plural allegiances), enriched with novel ideas (such as citizenship of residence), and inclusive of multiculturalism. Since new immigrants have access to French nationality, they can negotiate their differences in exchange for their vote, keeping their international networks and ethnic or religious identities while reaffirming their devotion to the French nation-state. With the assistance of civic and religious mediators (who articulated communitarian identities while supporting republican norms and granted social harmony), France has long managed its minorities in the colonial past. This local management, which had previously been used in Algeria, was later adapted to immigrant neighborhoods in worker collective housing and in French suburbs. At the start of the 1990s, associative leaders and local elites were chosen to serve as

[333] WIHTOL DE WENDEN (2003).
[334] Article 8 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.

cultural mediators, a very contemporary role for *frontiers men* that expressed both civic universalist and ethnic group principles. Civic virtues were required to access public assistance from local governments and federal social financing (mostly from the *Fonds d'Action Sociale*). However, the author reported that, associations' activities could lean towards broader communal identities and incorporate religious content (like learning Arabic). Often, ethnicization came from the representations and incentives of municipalities, political parties, and public powers rather than from associational leaders or local elected young elites themselves. Because Maghrebians, primarily Algerians, were the main actors in this game, it frequently alludes to the values of the French state and was still quite assimilationist in France. They had been fully assimilated into the French administration culture and republican norms, which they were skilled at manipulating. Today the situation is different and the pressure made by the European Union and the other States part of it, made France relatively more progressive, although some elements listed above still persist.

3.2 THE "LAÏCITÉ" CONCEPT.

The concept of *laïcité*, often translated as secularism, represents a fundamental principle in the governance and societal structure of many nations. Rooted in the historical and philosophical context of France, *laïcité* encapsulates the idea of separating religious institutions and beliefs from the affairs of the state, thereby ensuring a neutral and unbiased environment. Rooted in historical, philosophical, and cultural contexts, it embodies the principles of secularism and the separation of religious institutions from governmental affairs. Its existence in France is a testament to the nation's complex history, multifaceted identity, and its commitment to fostering a harmonious and inclusive society. While *laïcité* was conceived to foster religious freedom, social cohesion, and equal treatment of all citizens, its implementation and interpretation have been the subject of considerable controversy and contestation. Although the principles of concept appear straightforward, their application has been far from be universally accepted. As already mentioned, the first emergence of *laïcité* can be traced back to the tumultuous times of the French Revolution in the late 18th century. Before that time, the Catholic Church had a tremendous impact on politics and frequently dictated social norms and governmental legislation. The goal of the Revolution was to depose these long-standing structures and create a new society based on the ideals of liberty, equality, and fraternity. In this period, secularism began to take grip as the Church's power progressively waned and the State sought to assert its independence from religious authority. As already depicted in the previous paragraph, the historical background of France, is characterized by the coexistence of various religious groups, including Catholics, Protestants, Jews, Muslims, and others. The *laïcité* concept was thus formulated to create a neutral public space where individuals of diverse

beliefs could interact on equal terms. This separation between religion and the state aims to prevent one faith from dominating societal norms and to establish a sense of unity that transcends religious affiliations. *Laïcité* is also intricately connected to France's Republican values. In a country that values individual liberty, equality, and the common good, the principle of *laïcité* acts as a safeguard against potential conflicts arising from religious differences. By maintaining a clear boundary between religious practices and state functions, France seeks to ensure that its governance remains impartial, and that all citizens are treated equitably, regardless of their religious backgrounds.

The contestation surrounding *laïcité* largely stems from varying interpretations and the clash between cultural, religious, and political dynamics. One primary area of dispute is the extent to which the State should intervene in religious matters. For instance, some argue that banning religious symbols in public spaces, such as schools or government buildings, is a necessary step to ensure the impartiality of the state[335]. Other's opinions regard those bans as infringements on individual freedoms and as an unnecessary secular imposition. Another contentious issue is the treatment of religious minorities, particularly in nations with diverse populations. Critics of *laïcité* argue that it can inadvertently lead to discrimination against minority groups, as the dominant cultural or religious norms are often favored. This can be seen in cases where certain religious practices are prohibited in public spaces, disproportionately affecting members of certain communities. Furthermore, there's a fine line between the state's duty to protect religious freedom and its responsibility to prevent religious extremism. Some also argue that the aim of *laïcité*, to separate religion from state affairs, can create a void where extremist ideologies can origin. Striking the right balance between safeguarding religious rights and maintaining social cohesion is a complex challenge that contributes to the contested nature of *laïcité*.

3.2.1 MEANING AND PRESUMPTIONS

Portier and Willaime[336]explain the meaning of the term *laïcité* in "*Religion and Secularism in France Today*". The authors affirm that the French polity's adherence to the secularism ideal (laïcité) is frequently seen as exceptional abroad. Since the French Revolution of 1789, and especially ever since the Law separating Church and State was enacted in December 1905[337], an anticlericalism ethos and a particular approach to controlling the religious sector have been an essential component of the French character. Other European nations have various Church-State arrangements and frequently have formal alliances with religious organizations. France, on the

[335] See: Judgment of the European Court of Human Rights, 18 March 2011, no. 30814/06, *Lautsi and Others v. Italy*.
[336] PORTIER and WILLAIME (2022).
[337] Loi of the French Republic, 9 December 1905, *concernent la separation des Églises et de l'État.*

other hand, is thought to have systematically restricted religious belief to the confines of private life and exiled it from the public sphere. Over the years, France's political debates have centered on the issue of religion; Catholics and secularists engaged in a persistent conflict that is still apparent today. Those on the right of the political spectrum have backed the demands of secularists, while those on the left have maintained the rights and worldview of Catholics. Conflict centered on shifting issues that changed over time: in the nineteenth century, it was primarily about press freedom; from the 1880s to the 1910s, it was about the separation of Church and State; and from the 1920s to the 1970s, it was about the legal status of Catholic schools. Despite the secularization of French society, debates on abortion, biomedical research, and, since the 1990s, homosexual marriage, nevertheless feature a conflict between Catholics and secularists. The judicial system is also characterized by French particularism. Most European Nations kept various kinds of cooperation between the state and religious communities as they transitioned into the modern era. Things went differently in France. The Third Republic, which took office in 1905, built a separatist model that forbade any formal cooperation between the government and the church in response to the electoral success of the Republic's proponents, who gained power at the end of the 1870s[338]. The Concordat[339], which was created after the Revolution, at first made religion a fundamental component of the State. To illustrate, the government annually established a religious budget to pay for the operating expenses of "recognized" religions. This was modified by the law of 1905[340], which is still in force today: churches are now only recognized under private law, and they must, in theory, fund themselves. It would be incorrect to believe that this political culture is disproportionately present in French society, but it was not fully eradicated and is still perceptible to some level. The social, cultural, religious, and political upheavals that have swept across France since the end of World War II have changed the Republic's basic objectives.

Portier and Willaime report the position of Jean Baubérot[341]. The scholar affirms the French State was structured on the heteronomy principle prior to the Revolution of 1789. The monarch held the power to determine the *common good* and claimed that his election was by divine right. Rejecting the Roman pontiff's temporal primacy, he had the authority to establish the nation's legal system on the principles of natural and divine law to guarantee not only social order but also the protection of his subjects. Except for the three to four decades that followed the Edict of Nantes' proclamation (in 1598), when Protestant and Catholic religious warfare had ended, this view of political existence drove the state to organize society as a religious institution. This is demonstrated by the fact that after the Edict of Nantes was annulled in 1685 and the motto "One faith, one king, one law" granted Catholicism the

[338] PORTIER and WILLAIME (2022).
[339] "The Concordat" was signed on 15 July 1801 by Napoleon Bonaparte and Pope Pius VII.
[340]Loi of the French Republic, 9 December 1905, *concernent la separation des Églises et de l'État.*
[341] PORTIER and WILLAIME (2022).

exclusive right to practice its religion, the absolute monarchy regime outlawed the exercise of public conscience and adopted a strategy that suppressed heterodoxy until the first half of the eighteenth century. According to Jean Baubérot, this government was overthrown when the Revolution of 1789 enshrined freedom of speech in Article 10[342] of the 26 August 1789 the Declaration of the Rights of Man and of the Citizen. As already mentioned, the Declaration was followed by Napoleon's Concordat[343] and the consequent system was based on it. The French government and the Holy See signed the Concordat in 1801, together with the Organic Articles, that the French State adopted in 1802 and which resolved the Protestantism issue and set forth the requirements for practicing the Catholic faith. Also laid the foundations for the decrees of 1808 which governed the Jewish religion. This system persisted until the statute of separation of 1905 and was based on three values. First, political sovereignty, or the substitution of the heteronomy principle with the immanence principle, which bases human government on the autonomy of its subjects. Second, there is a diversity of viewpoints, meaning that all citizens share the same civil and political rights and are no longer distinguished based on their religious membership. Finally, there is a relationship between recognized religions and political regulation since, up until the Republic's supporters gained power in the 1880s, it was thought that societal values had to be admittedly founded, under official supervision, on the teachings of recognized religions. Indian-born people should be aware that this system did not recognize legal diversity and did not let religious communities to authoritatively impose their standards on their members.

In her chapter, Claire de Galembert[344] addresses the subject of Islam. She explains that French society has gone through a dual phenomenon from the 1970s and 1980s. With the surge of immigrant populations settling in France and the implementation of a proactive family reunification program, the proportion of Muslims has significantly expanded in terms of quantity. Currently, Muslims make up about 7% of the population. To make up for their social and economic marginalization during the economic crisis of the past three decades, several of these immigrant communities have started to reinforce their cultural and religious identities. This reaffirmation has been supported by a mobilization to secure more rights and accommodations regarding funeral arrangements, employment opportunities, and funding for houses of worship. The legal field has frequently also been affected by this mobilization. A general mistrust of Muslims has arisen because of the shock surrounding the fatwas issued against Salman Rushdie and the rising number of terrorist attacks in Paris, New York, London, and Madrid. These events have also increased the influence of the media and their consistent and stereotypical discourse about the community. The following figure reflects this sentiment: The percentage of people who think Muslims "are not

[342] Article 10, 26 August 1789, Declaration of the Rights of Man and of the Citizen.
[343] Concordat between Napoleon Bonaparte and Pope Pius VII (1801).
[344] GALEMBERT (2022) in PORTIER and WILLAIME (ed. 2022).

integrated in French society" is around 70%, according to an IFOP survey dated October 2012. How did the political establishment respond to this dual trend? According to Claire de Galembert, governmental authorities *have replaced a laïcité of ignorance* with that of recognition about Islam. This trend is illustrated by several factors. The French Council of the Muslim Faith (CFCM) was established in 2003 as a formal intermediary with the French government to reflect Muslim objectives and make a case for accommodating their concerns. This effort was first conceptualized at the end of the 1980s. Then a local government proposal to develop a policy supporting mosque construction appeared. Muslims have been compelled to perform obvious basement Islam for a very long time. Since the 1990s, local governments have been more accommodating to requests from Muslim organizations to build places of worship. They have not only granted building permits with a lot less resistance than in the past but have also made low-rent properties available to them and even offered direct subsidies, sometimes in direct violation of how the Law of 9 December 1905[345] is typically interpreted. Except for the far right, the French political establishment has advocated for convergence through the accommodation of Islam at the "table of the Republic" in the name of equality. This does not, however, imply an opening with no limitations. A *laïcité* of recognition was born out of a few developments. It is the outcome of changes in the French political system, which, since the 1970s, has largely distanced itself from its legal emphasis inspired by Jacobin thought to become more receptive to the dynamics of the rule of law. In response to a certain material and symbolic weakness, nations have attempted to reestablish themselves by utilizing the resources provided by religious organizations in terms of emotional attachments and a feeling of purpose. This can also be ascribed to the political crises in Western societies. Unquestionably, Catholicism's evolution can be somewhat credited for this change in *laïcité*. The intricacy of the French principle of *laïcité* is becoming more and more apparent because of the growing religious diversity in France and the process of Europeanization. Built as an alternative to Catholicism, *laïcité* eventually managed to adapt to a diversity of religions that was difficult to reduce to a plurality of faiths with a shared worldview (as if various religions could be easily assimilated into the religious form of the Roman Catholic Church). The French Indian comparison only supports this point of view regarding *laïcité*, namely that there are only exceptions due to each nation's deeply ingrained political, religious, and current religious landscape histories, as well as the ways in which these histories have been intertwined. It is vital to include the political aspects of political culture, such as notions of state governance in each nation, to these historical, social, and theological considerations.

While Greece eliminated the indication of religious affiliation from identity cards, traditionally monotheistic nations like Norway and Sweden moved towards a separation of Church and State in 2012 and 2000,

[345]Loi of the French Republic, 9 December 1905, *concernent la separation des Églises et de l'État.*

respectively. In addition to this sociological Europeanization, there is a legal debate for Europeanization through the judgements of the European Court of Human Rights (ECHR), which guarantees respect for the right to individual religious freedom in any nation that is a signatory to this convention under Article 9 of the European Convention of Human Rights[346]. The Strasbourg-based ECHR defends not only freedom of expression (Article 10)[347], but also the impartiality of the state and public institutions towards religion to defend those who have been the victims of religious discrimination by denouncing states that have violated the Convention. The following principles can be used to sum up the European conception of *laïcité* that comes from the ECHR jurisprudence: (1) freedom of conscience, thought, and religion, including the freedom to change one's religion or not have one; (2) equality of rights and obligations; (3) the respective autonomy of the political and religious spheres without forbidding cooperation between the two. However, acknowledging the various national varieties of *laïcité* up front in no way implies that there are not some distinct general traits that supersede national setups. Although, in the opinion of some politicians and intellectuals, this frequently causes conflict, one may argue that Europeanization is advantageous to the French principle of *laïcité*. To account for the actual religious diversity of the French population, Europeanization is beneficial because it forces the principle of *laïcité* to be more thorough and radical. More thorough means that it is compelled to permanently free itself from the implicit regime of recognized religions and from the remnants of a Catholic secularity (*Catho-laïcité*); more radical means that it is compelled to more boldly free itself from any anti-religious tendencies and urges it to respect all religions.

3.2.2 STATUTORY RATIONALE OF LAÏCITÉ.

In this chapter the juridical bases for which it was possible to affirm the trend of secularism in France will be examined in detail, while the contents of these laws will be delimited in paragraph 3.3.3 ("Regional Laws Interfering with Religious Freedom"). Philippe Portier examines the application of the laïcité principle in the modern era in his book [348] . The Third Republic (1875–1940) introduced a second barrier of laicization after the Concordat. The Concordat regime had made it feasible for Catholicism to find a central place in the political order, according to the political age that took power in 1879. The Church was seen as being increasingly anti-modern throughout the nineteenth century, which made this situation seem even more troublesome. A shift in the system, specifically a separation of the institutions, was necessary to remain true to the French Enlightenment's emancipatory ethos.

[346] Article 9 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[347] Article 10 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*, concerning freedom of expression.
[348] PORTIER (2022) in PORTIER and WILLAIME (ed. 2022).

The separation of the Church and the educational establishments dominated the 1880s. The government took the lead in laicizing public education by banning clergy members from teaching and removing religious instruction from their professional positions. It also aimed to restrain, but not forbid, the growth of private Catholic schools in the same vein. The "great separation" between the Church and State defined the 1900s. The Concordat system was abolished by a Law approved on 9 December 1905[349] and already explored in detail previously in this thesis. The Republic did not acknowledge or support any religion after that. It is crucial to remember, however, that the legislation of privatization was also a law of liberalization: even though the churches had previously been subject to State regulation, they now had more latitude in terms of how they were organized internally and how they chose to engage with the outside world. This *laïcité* of separation has become increasingly receptive of the recognition principle since the 1960s and 1970s. The Fifth Republic, which was created in 1958, maintained the 1905 law while introducing new norms and practices that upended the preexisting distinctions between the public and private realms. The government started funding religions, and soon after, it started consulting with them before making certain public policy decisions. In 1989, the socialist government permitted students to wear religious symbols in public institutions like schools and workplaces. However, the government stressed the significance of uniting French society around shared norms between 1990 and 2000 in response to rising public anxiety over the threat posed by Islam, without renouncing the spirit of recognition that had predominated in the years just before this. To achieve this, several legal documents were created. Some laws tended to be restrictive, such as the Law of 10 October 2010[350] that outlawed any form of "full face covering" (wearing the complete veil) in any public settings and the Law of 15 March 2004[351] that forbade the "wearing of ostentatious" religious symbols in public schools, both will be better explored in the next paragraphs. Other policies, such as the Ministry of Education's regulations, which reinstated the teaching of secular morals in the school curriculum in 2011 and 2013 were more beneficial. The Law of 24 August 2021[352], which increases state control over the formation and operation of religious organizations, should also be highlighted in relation to this securitization movement.

[349]Loi of the French Republic, 9 December 1905, concernant la séparation des Églises et de l'État.
[350]Loi of the French Republic, 10 October 2010, no. 2010-1192, interdisant la dissimulation du visage dans l'espace public.
[351]Loi of the French Republic, 15 March 2004, no. 2004-228, encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics.
[352]Loi of the French Republic, 24 August 2021, no 2021-1109, confortant le respect des principes de la République.

3.3 LEGAL REASONING OF RELIGIOUS LIMITATIONS.

As understood in the previous chapters, limitations to religious rights are compatible with the concept of religious freedom. The rationale behind this is represented by the fact that every State agrees to a series of treaties and stipulates laws to protect it, but in the end, although the agreements may be equal, the way of applying them is subjective, however, an in-depth study is necessary on this. In the previous chapters we explored how States, all belonging to the same agreement (e.g., European Convention on Human Rights) the interpretation of the same principle can differ precisely because of the differences in sensitivity of the same verse to a certain issue. Consider the two case examples of Kokkinakis v. Greece[353] and Neagu v. Romania[354] in reference to the right to freely change religion. Although both countries adhere to the European Convention on Human Rights both have been the subject of dispute before the Court of Human Rights in Strasbourg as they had violated Article 9 of the ECHR[355], for different reasons[356]. From this it follows that the limitations to religious rights may derive both from an erroneous application by the State of a certain principle, and therefore subject to dispute, or which may instead form part of that gray area that the law leaves to the State for the application of the laws, which concerns their interpretation in the feeling of the country and according to one's needs. The religious limitations therefore appear to be compatible with the law and if they exceed these shaded areas, they are subject to trial.

The discussion that scholars have assumed regarding France concerns specifically these areas of uncertainty in which the State can dispute the methods in which to apply the laws. "Is the concept of *laïcité* legitimate or discriminatory?". This is the driving question behind the next paragraph. Despite the desire to protect the secularism it conceals, the implementation of *laïcité* has not been without its controversies. Critics argue that in practice, *laïcité* can inadvertently discriminate against minority religious groups, particularly Muslims, by limiting their ability to express their faith in public spaces. For example, restrictions on wearing religious symbols such as headscarves or turbans in schools or government institutions have been criticized for disproportionately affecting Muslim individuals. This has led to accusations that *laïcité* can perpetuate Islamophobia and marginalize specific communities. Moreover, the enforcement of *laïcité* can sometimes overlook the cultural and historical significance of religious symbols for certain groups. For instance, for many Sikh men, wearing a turban is not just a religious requirement but also a symbol of identity and dignity. Banning such practices

[353] Judgment of the European Court of Human Rights, 25 May 1993, no.14307788, *Kokkinakis v. Greece*.
[354] Judgment of the European Court of Human Rights, 10 November 2020, no. 21969/15, *Neagu v. Romania*..
[355] Article 9 of the Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[356] See Chapter 2 of this thesis.

in the name of secularism could be seen as a form of cultural insensitivity that fails to recognize the complex interplay between religion, culture, and personal expression. Through the analysis of the international covenants signed by France, the review of the trials of the Strasbourg Court against the French State on religious freedom and the analysis of the regional laws that refer to the limitation of religious freedoms in France, it will be reached a scientific answer on the subject. The following analysis will highlight the positions of the Strasbourg Court together with the international and national laws that regulate the issue of religious freedom.

3.3.1 INTERNATIONAL COVENANTS SIGNED BY FRANCE

From the point of view of international agreements, France falls totally within a framework in line with other European countries and the countries most integrated with religious freedom in the world. According to the "United Nations Treaty Body Database"[357], France adheres to several international treaties. The French State has ratified:

- CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment[358].
- CAT-OP - Optional Protocol of the Convention against Torture[359].
- CCPR - International Covenant on Civil and Political Rights[360].
- CCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty[361].
- CED - Convention for the Protection of All Persons from Enforced Disappearance[362].
- CEDAW - Convention on the Elimination of All Forms of Discrimination against Women[363].

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[357] UNITED NATIONS (2023).

[358] Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 10 December 1984, signed by France on 4 February 1985, ratification of France on 18 February 1986.

[359] Optional Protocol of the Convention against Torture, 18 December 2002, signed by France on 16 September 2005, ratification of France on 11 November 2008.

[360] International Covenant on Civil and Political Rights, 16 December 1966, ratification of France on 4 November 1980.

[361] Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty, 15 December 1989, ratification of France on 2 October 2007.

[362] Convention for the Protection of All Persons from Enforced Disappearance, 23 December 2010, signed by France on 6 February 2007, ratification of France on 23 September 2008.

[363] Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, signed by France on 17 July 1980, ratification of France on 14 December 1983.

- CERD - International Convention on the Elimination of All Forms of Racial Discrimination[364].
- CESCR - International Covenant on Economic, Social and Cultural Rights[365].
- CRC - Convention on the Rights of the Child[366].
- CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict[367].
- CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography[368].
- CRPD - Convention on the Rights of Persons with Disabilities[369].

On a European Level France has also ratified different European agreements. These agreements aim to uphold the principles of religious freedom, tolerance, and non-discrimination, while also respecting the country's commitment to *laïcité* or secularism. Here are a few notable European agreements that France has signed that include provisions related to religious rights:

- European Convention on Human Rights (ECHR)[370]: France is a member of the Council of Europe and a signatory to the ECHR, which is one of the foundational human rights treaties in Europe. The ECHR, through its Article 9, guarantees the right to freedom of thought, conscience, and religion. This includes the right to manifest one's religion or belief in worship, observance, practice, and teaching, as long as it is in accordance with the law and necessary in a democratic society.
- Framework Convention for the Protection of National Minorities[371]: France has ratified this Council of Europe convention, which recognizes the rights of national minorities to preserve and develop their culture, religion, and traditions. This convention includes provisions to ensure that minorities have the

[364] International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, ratification of France on 28 July 1971.
[365] International Covenant on Economic, Social and Cultural Rights, 16 December 1966, *r*atification of France on 4 November 1980.
[366] Convention on the Rights of the Child, 20 November 1989, signed by France on 26 January 1990, ratification of France on 7 August 1990.
[367] Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 25 May 2000, signed by France on 6 September 2000, ratification of France on 5 February 2003.
[368] Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography, 25 May 2000, signed by France on 6 September 2000, ratification of France on 5 February 2003.
[369] *Convention on the Rights of Persons with Disabilities*, 12 December 2006, signed by France on 30 March 2007, ratification of France on 18 February 2010.
[370] Convention of the Council of Europe, 4 November 1950, no. 4. XI..950, Rome, effective from 3 September 1953, *European Convention on Human Rights*.
[371] Convention of the Council of Europe, 1 February 1998, *Framework Convention for the Protection of National Minorities*.

right to freely practice their religion and maintain their religious institutions.

- European Social Charter[372]: France is a signatory to this charter, which encompasses a range of social and economic rights. Article 11 of the charter addresses the right to protection of health, including the right to access medical and hospital services, in accordance with the country's laws and regulations.
- European Charter for Regional or Minority Languages[373]: while not directly dealing with religious rights, this charter promotes the protection and promotion of regional or minority languages. The preservation of these languages can also be intertwined with certain religious practices and traditions.
- Charter of Fundamental Rights of the European Union[374]: Though the EU Charter is not a treaty, it has legal value and significance within the EU. It includes provisions on freedom of thought, conscience, and religion (Article 10), ensuring that everyone has the right to manifest their religion or beliefs in worship, teaching, practice, and observance.

It is important to note that the interpretation and application of these agreements can vary. In the case of France, the principle of *laïcité* often influences the way these provisions are implemented. The French government aims to strike a balance between respecting religious freedom and maintaining a secular public sphere. As a result, there can be instances where tensions arise between the protection of religious rights and the maintenance of secular norms, leading to debates and legal challenges.

It is important to recall the Ministry for Europe's reply[375] to a written question in the Senate on 30 September 2021 about religious freedom in France. MEAE declared that in accordance with Article 18 of the Universal Declaration of Human Rights[376], Article 18 of the International Covenant on Civil and Political Rights[377], and Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[378], France can be seen as a persistent defender of freedom of religion and belief throughout the world. The nation is depicted by MEAE as consistently devoted to upholding

[372] Charter of the Council of Europe, 26 February 1965, ETS no. 065, *European Social Charter*.
[373] Charter of the Council of Europe, 1 March 1998, ETS no. 148*, European Charter for Regional or Minority Languages*.
[374] Charter of the European Union*,* 7 December 2000, 2000/C 364/01, *Charter of the Fundamental Rights of the European Union*.
[375] FRENCH EMBASSY IN LONDON (2021), *France reiterates its commitment to freedom of religion*, available online.
[376] Declaration of the General Assembly of the United Nations, 10 December 1948, no. 217 A (III), A/RES/3/217 A, *Universal Declaration of Human Rights*.
[377] Resolution of the General Assembly, 16 December 1966, 2200A (XXI), International Covenant on Civil and Political Rights.
[378] Convention of the Council of Europe, 3 September 1953, European Convention for the Protection of Human Rights and Fundamental Freedoms.

this fundamental right, paying close attention to instances of its violation around the world, which affect many people, including Christians. In keeping with this, the Ministry for Europe and Foreign Affairs ('MEAE') regularly consults with groups that gather data on these violations. Examples include the non-governmental organizations Open Doors, which annually publishes a global index of Christian persecution, and Aid to the Church in Need, which every two years publishes a report on religious freedom around the world. The MEAE extensively scrutinizes these documents. Both internationally and domestically, France is firmly committed to promoting and upholding the right to practice any religion or philosophy as one chooses. It advocates for an undivided, universalist approach to the struggle against discrimination and rejects all forms of violence and persecution of people because of their religion or political convictions. France's support for the current legal framework and the escalation of international cooperation under specific mechanisms, including the Human Rights Council, the Special Rapporteur on Freedom of Religion or Belief of the United Nations, the High Commissioner for Human Rights, and the Universal Periodic Review ('UPR'), attests to this commitment within the UN. France regularly takes measures to ensure that the UN General Assembly and Human Rights Council denounce all forms of discrimination and violence, including those committed against members of religious minorities. The International Contact Group on Freedom of Religion or Belief[379], which strives to exchange information and best practices in this area and promote freedom of religion and belief, includes France as one of its 27 participant States. France takes advantage of possibilities to meet with officials in the countries in question on a bilateral level to strongly denounce human rights abuses that target members of certain religious minorities and to discuss the most troubling specific situations. It exhorts nations that have not already done so to ratify all international human rights treaties, including the International Covenant on Civil and Political Rights, which guarantees the freedom of religion or belief, and to make sure that their domestic laws are in line with these obligations. France continues to back nations that are more prone to persecuting religious minorities in their fight against terrorism and religious extremism. The European Union ('EU') Guidelines on Freedom of Religion or Belief[380] were adopted with France's support in 2013. These serve as a framework for EU action on this matter and, among other things, call for the tracking of violations of this freedom around the globe, discussion of those violations during appropriate high-level contacts, and use of diplomatic initiatives and public statements as needed, both as a deterrent to violations and as a response to them. France endorsed the selection of the first EU Special Envoy for the advancement of freedom of religion or belief in May 2016. Through its assistance of those who are victims of racial and religious violence in the Middle East, notably Eastern Christians, it has distinguished

[379] International Group of the Government of Canada, June 2015, *International Contact Group on Freedom of Religion or Belief*.
[380] Council of the European Union, 24 June 2013, EU Guidelines on Freedom of Religion or Belief.

itself. France and Jordan organized an international conference[381] in September 2015 for the protection of victims of racial or religious violence. This conference brought together about 60 States and 11 international organizations and resulted in the adoption of an action plan outlining the priorities to be implemented in the political, humanitarian, and judicial spheres. France has taken strong initiatives to mobilize the international community. A national fund has also been established in France to aid those who have been harmed because of their faith or ethnicity in the Middle East. 40 initiatives totaling about €11 million out of the approximately 100 projects financed in Iraq, Lebanon, Jordan, and Syria by this fund between 2015 and 2020 directly helped Eastern Christians. The French President also announced the establishment of a fund to aid French-speaking Christian schools in the Middle East on 23 January 2020. This fund, which is now in operation and is jointly funded with L'Oeuvre d'Orient, provides funding for numerous schools, mostly in Lebanon but also in the Palestinian Territories, Jordan, and Egypt.

3.3.2 QUESTIONING EUROPE: CASES OF FRANCE

To understand how France applies religious rights and manages to include the concept of *laïcité*, it is important to analyze most of the judgments that involved the State in cases regarding religious rights.

The case of *Pichon and Sajous v. France*[382] had as its object the conscientious objection to sell contraceptive pills motivated by the pharmacists' religious beliefs. The core of the case regarder the co-proprietors of a pharmacy in Salleboeuf, that denied three ladies the purchase of contraceptives, that had been prescribed to each of them by their doctors, on 9 June 2001, at the same time. The three ladies filed a complaint against the applicants on the same day, alleging that they had violated Article 33, Paragraph 1 of Decree no. 86-1309 of 29 December 1986[383], and Article L 122-1 of the Consumer Code[384] by refusing to sell contraceptives on a doctor's prescription. They filed a civil-party claim in which an organization joined

[381] International Conference, 22 September 2015, International Conference on Multilateral Efforts to Promote Freedom of Religion or Belief.

[382] Judgment of the European Court of Human Rights, 2 October 2001, no. 49853/99, *Pichon and Sajous v. France*.

[383] Article 33, Paragraph 1 of Decree No. 86-1309 of 29 December 1986, Amended by Decree no. 97-298 of 27 March 1999, Article 5, Official Gazette of the French Republic (JORF), 3 April 1997: "The offer for sale of products or provision of services in breach of the provisions of Article 37 of Ordinance no. 86-1243 of 1 December 1986 shall be punishable by the fines applicable to minor offences (contraventions) of the fifth class. If the offence is repeated, the fines imposed for repeated minor offences of the fifth class shall be applicable."

[384] Article L 122-1 of the Consumer Code: "It is prohibited to refuse to sell a product or provide a service to a customer for no legitimate reason, to make the sale of a product conditional on the purchase of a compulsory quantity or the concomitant purchase of another product or payment for another service or to make the provision of a service conditional on the provision of another service or the purchase of a product. This provision shall apply to all the activities contemplated in the last paragraph of Article L 113-2."

them. Before the Bordeaux Police Court, the petitioners contended that the refusal to sell, of which they were accused, was not valid on the grounds that no statutory provision required chemists to provide contraceptives or abortifacients. They referred to Public Health Code Article L 645[385], which stated that chemists were exempt from providing single or compound preparations based on estrogens. The Bordeaux Police Court found the petitioners guilty of the offences they had been charged with in a decision dated 16 November 1995. According to the Police Court:

> "Article L 645, on which the defendants rely, does not in any way concern contraceptive medicines but only abortifacients"; the products that the applicants had refused to supply were contraceptive medicines "which [could] not be regarded as the equivalents of abortifacients." "Ethical or religious principles are not valid reasons to refuse to sell a contraceptive",[386]

the Police Court continued.

Contrary to the laws governing doctors,and nurses regarding pregnancy termination (Article L 602-8 of the Public Health Code), there is no law that permits chemists to refuse to offer contraceptives. The Police Court's ruling was summarized as follows: "Therefore, moral grounds cannot absolve anyone from the obligation to sell imposed on all traders by the law as long as the chemist is not expected to play an active part in manufacturing the product"[387]. The applicants were given a fine of 5,000 French francs (FRF) apiece and told to pay the three complainants FRF 1,000 in damages jointly and severally. The applicants filed an appeal against that decision. The Bordeaux Court of Appeal upheld the Police Court's ruling in a judgement on 14 January 1997. It was observed that the applicants had never denied that they had committed the alleged crimes and had claimed that their actions had been motivated by religious principles. It also noted that the defendants' refusal to sell offences were not motivated by a practical inability to satisfy their customers, but rather were committed out of a sense of religious conviction, which cannot be justified in accordance with Article L 122-1 of the Consumer Code. The defendants' pharmacy being the only one in Salleboeuf, the Court of Appeal also stated. It upheld the Police Court's determination that Article L 645 of the Public Health Code did not apply to

[385]Article L 645 of the Public Health Code: "It is prohibited for any person in any way whatsoever to display, offer, cause to be offered, sell, put on sale, distribute or cause to be distributed the medicines or substances, intra-uterine probes or other similar objects capable of causing or facilitating abortion listed in a decree issued after consultation of the Conseil d'Etat. Pharmacists may, however, sell the medicines, substances and objects specified above but only on a medical prescription which must be transcribed into a numbered register initialled by the mayor or the police superintendent. ..."

[386] Judgment of the European Court of Human Rights, 2 October 2001, no. 49853/99, *Pichon and Sajous v. France*.

[387] Judgment of the European Court of Human Rights, 2 October 2001, no. 49853/99, *Pichon and Sajous v. France*.

the goods that the applicants had refused to sell. The applicants filed an appeal against that ruling on legal grounds. They specifically cited Article 9 of the Convention[388], arguing that suggested that a chemist had the right not to stock contraceptives whose usage amounted to an infringement on their religious convictions. The applicants claimed that their right to religious freedom had been violated by the domestic courts in violation of Article 9 of the Convention. The Court would draw attention to the fact that personal convictions and religious beliefs, often referred to as questions of individual conscience, are the primary areas covered by Article 9's protections. Additionally, it defends behaviors that are directly related to these issues, such as acts of adoration or devotion that are part of a widely practiced religion or belief. The Court further affirmed that Article 9 includes several ways that one's religion or belief can be expressed, including through worship, teaching, practice, and observance. Article 9 of the Convention does protect this private sphere, but it does not always ensure the freedom to conduct oneself in public as dictated by that conviction. Article 9 Section 1's usage of the word practice does not refer to each act or manner of conduct that is motivated by or inspired by a religion or a belief. The Court observes that in the present instance, the applicants, who are co-owners of a pharmacy, claimed that their reluctance to offer contraceptive tablets at their dispensary was justified by their religious convictions. It holds that applicants cannot prioritize their religious beliefs and impose them on others as a justification for their refusal to sell such products, given that they can manifest those beliefs in many ways outside the professional sphere if the sale of contraceptives is legal and occurs on medical prescription anywhere other than in a pharmacy. The conviction of the petitioners for refusing to sell therefore had no effect on their ability to exercise their rights under Article 9 of the Convention, and the application is clearly unfounded under the terms of Article 35.3 of the Convention[389]. For these grounds, the court rules that the application was not accepted.

Another case is the one of *Cha'are Shalom Ve Tsedek v. France*[390] whether read alone or in conjunction with Article 14[391], refusing to grant permission for access to French butchers opposed to an ultra-orthodox Jewish organization for the practice of ritual killing did not violate article 9 of the ECHR. The case began with an application (no. 27417/95) against the French Republic, submitted to the Commission, under the Convention's previous Article 25 by the Jewish liturgical society Cha'are Shalom Ve Tsedek, a group registered under French law. The applicant association claimed a violation

[388] Article 9 of the Convention of the Council of Europe, 3 September 1953, European Convention for the Protection of Human Rights and Fundamental Freedoms.
[389] Article 35.3 of the Convention of the Council of Europe, 3 September 1953, European Convention for the Protection of Human Rights and Fundamental Freedoms..
[390] Judgment of the European Court of Human Rights, 27 June 2000, no. 27417/95, *Cha'are Shalom Ve Tsedek v. France*.
[391] Article 14 of the Convention of the Council of Europe, 3 September 1953, European Convention for the Protection of Human Rights and Fundamental Freedoms.

occurred when ritual killing was carried out in accordance with the members' ultra-orthodox religious tenets. Furthermore, it claimed that the approval in question was obtained only by the Jewish Consistorial Association of Paris, which the vast majority of Jews in France are members of, in contravention of Article 14 of the Convention. On 7 April 1997, the Commission declared the application to be admissible. By fourteen votes to three, it stated in its report from 20 October 1998 (old Article 31 of the Convention), that Article 9[392] considered in conjunction with Article 14 had been violated, and by fifteen votes to two, it stated that no distinct issue had arisen under Article 9 taken alone. According to Rule 100.1 of the Rules of Court[393], a panel of the Grand Chamber concluded on 31 March 1999, that the matter should be reviewed by the Grand Chamber. On 8 December 1999, an inquiry was held in the Human Rights Building in Strasbourg. All Jewish dietary laws about which foods are permitted for consumption and how to prepare them are collectively referred to as *Kashrut*. The Torah, the holy book that includes the first five books of the Bible (the Pentateuch), Genesis, Exodus, Leviticus, Numbers, and Deuteronomy, contains the main rules governing kosher cuisine. The Torah absolutely forbids the consumption of blood, the consumption of animals that have died of disease or been killed by another animal or on which signs of disease are visible, may only be eaten that are both cloven-hoofed and ruminants among quadrupeds. Among aquatic species, only fishes with both fins and scales may be eaten, but not crustaceans or shellfish. Among flying creatures, only non-carnivorous birds, such as grain-eating, farmyard fowls and some types of game may be eaten. Insects and reptiles are totally forbidden. Following the guidelines for eating meat calls for specific slaughter procedures. Jews are not allowed to consume any blood, so after being blessed, animals for slaughter must have their throats slit. They must be killed with just one stroke of a very sharp knife in such a way that the jugular veins, carotid arteries, trachea, and other vital organs are all immediately, cleanly, and deeply cut, allowing the most blood to flow. The meat must then be salted and soaked in water to remove any remaining blood traces. It is necessary to remove further components, such as the sciatic nerve, blood vessels, or fat surrounding the critical organs. The meat must also be deemed unfit to be eaten if there is even the smallest doubt that the animal was slaughtered without any evidence of disease or abnormality. The ritual slaughter required by Jews and Muslims for religious reasons conflicts with the rule that an animal to be slaughtered must first be stunned, that is, put into a state of unconsciousness and kept there until death intervenes, to spare it any suffering. This is true of France as it is of many other European nations. However, the European Directive of 22 December 1993[394], the Council of Europe Convention for the Protection of Animals for killing, and French

[392] Article 9 of the Convention of the Council of Europe, 3 September 1953, European Convention for the Protection of Human Rights and Fundamental Freedoms.
[393] Rule 100.1 of the Rules of Court.
[394] Directive of the Council of European Union, 22 December 1993, 93/119/EC, on the protection of animals at the time of slaughter or killing.

legislation all permit ritual killing. The Decree no. 80-791 of 1 October 1980[395], which was issued to implement Article 276 of the Countryside Code[396], as revised by Decree no. 81-606 of 18 May 1981[397], regulates ritual slaughter in French law. Article 10 of the decree provides:

> "It is forbidden to perform ritual slaughter save in a slaughterhouse. Subject to the provisions of the fourth paragraph of this Article, ritual slaughter may be performed only by slaughterers authorized for the purpose by religious bodies which have been approved by the Minister of Agriculture, on a proposal from the Minister of the Interior. Slaughterers must be able to show documentary proof of such authorization The approved bodies mentioned in the previous paragraph must inform the Minister of Agriculture of the names of authorized persons and those from whom authorization has been withdrawn. If no religious body has been approved, the prefect of the department in which the slaughterhouse used for ritual slaughter is situated may grant individual authorizations."[398]

The applicant association certified the meat sold in the butcher shops of its members as being "glatt" kosher between the years of 1984 and 1985, when it was only registered as a cultural (rather than liturgical) association. This meat was not certified by the Paris Beth Din since it was either imported from Belgium or came from animals that were killed in France in accordance with local religious laws. The ACIP filed civil lawsuits against it on the grounds that it had misrepresented the items it was offering for sale by falsely identifying the meat it was selling as kosher. The applicant association requested the Interior Minister's authority to engage in ritual killing on 11 February 1987. A decision from 7 May 1987 rejected this application on the grounds that the association did not sufficiently represent the French Jewish community and did not qualify as a religious organization under Part IV of the Act of 9 December 1905[399] on the separation of Church and State. The applicant association filed an appeal with the Paris Administrative Court, alleging a violation of the right to freedom of religion, which is protected by both Article 9 of the European Convention on Human Rights and Section 1 of the Act of 9 December 1905[400], on the separation of Churches and State. In addition to its request for approval as a religious organization on 11 February 1987, the applicant association also submitted a request for three ritual slaughterers who were members of the association and authorized by it on the same day to the prefect of the Deux-Sèvres department for specific individual

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[395] Article 10.3 of Decree no. 80-791 of 1 October 1980 empowered prefects to authorize individual slaughterers only where no religious body had been approved for the religion in question.
[396] Article 276 of the Countryside Code.
[397] Decree no. 81-606 of 18 May 1981.
[398] Article 10 of the French Decree, May 1981, no. 81-606.
[399] Loi of the French Republic, 9 December 1905, *concernant la séparation des Églises et de l'État.*
[400] Loi of the French Republic, 9 December 1905, *concernant la séparation des Églises et de l'État.*

authorizations to perform ritual slaughter in a facility there. The verdict was that an ecclesiastical or religious entity may, as such, exercise the rights promised by Article 9 of the Convention[401] on behalf of its followers. If the faithful are not actually prevented from obtaining and consuming meat that complies with their religious tenets, the right to freedom of religion guaranteed by Article 9 of the Convention cannot be extended to the right to participate personally in the performance of ritual slaughter and the subsequent certification process. The applicant association's members had been denied access to slaughterhouses where they could practice ritual slaughter, access that had previously been granted to another Jewish association; however, it emerged from the case file that they had discovered the possibility of obtaining supplies of meat consistent with their ultra-orthodox prescriptions, so the Court does not recognize an interference with their right to freedom of religion.

In the case of *Association Les Témoins de Jéhovah v. France*[402] the primary objective of the applicant association, which it refers to as a Christian religion, is to assist in the upkeep and practice of its movement. Donations are the movement's source of funding. The Jehovah's Witnesses were designated as a sect in a 1995 legislative study. A tax audit of the applicant association's financial records was carried out in the same year. It was issued notice to declare the gifts it had received from 1993 to 1996 based on the information acquired. The authorities subsequently chose to subject it to the automatic taxation procedure in the absence of a declaration; the association rejected and requested that the tax exemption applicable to donations and legacies to liturgical associations be applied to it. Sew in conjunction with Article 9[403], even though manual gifts made up 90% of the applicant association's income, the contested supplementary tax assessment had focused on all of them. Taxing those gifts amounted to interference, and as a result, the association's running funds were drained, making it impossible for it to continue to guarantee its adherents' actual freedom of religion. No matter how much money was recorded by the applicant association as donations in its accounting, the appeals court believed that it amounted to manual gifts. Since those donations had been "disclosed" by the applicant association's submission of its financial records to the tax authorities during the tax audit that got underway in 1995, they were taxed in accordance with Article 757 of the General Tax Code. The Tax Code specified that manual gifts "disclosed" to the tax authorities were liable to gift tax, which speaks to the measure's foreseeability. The legislature's main goal was to control how property is passed down within families, therefore this restriction only applied to natural

[401] Article 9 of the Convention of the Council of Europe, 3 September 1953, European Convention for the Protection of Human Rights and Fundamental Freedoms.
[402] Judgment of the European Court of Human Rights, 30 June 2011, no. 8916/05, *Association Les Témoins de Jéhovah v. France*.
[403] Article 9 of the Convention of the Council of Europe, 3 September 1953, European Convention for the Protection of Human Rights and Fundamental Freedoms.

individuals. In a government response dated March 2001, it was noted that manual donations received by associations were subject to the Tax Code's requirements; the notification of the automated taxation procedure and the supplemental tax assessment in this instance, however, originate from 1998. The Government had also not referred to the Court of Cassation's rulings, which at the relevant time had interpreted the Tax Code to apply to legal companies. Following the court case involving the applicant association, the pertinent article of the Tax Code was changed in 2003 to account for the financial effects of this fiscal policy on associations and to exclude organizations that served the public interest from taxation. In this case, it was decided that the concept of "disclosure" of gifts applied to the filing of accounts to the authorities during a tax audit. The applicant association would not have been able to predict how the courts would interpret the contested section given that manual gifts were previously exempt from any declaration requirements and were not routinely subject to duty on transfers without consideration. As the law existed at the time, the applicant association could not have anticipated that the mere submission of its accounts would constitute disclosure due to the Tax Code's ambiguity about the definition of "disclosure". In the end, this idea had made taxing manual gifts contingent on the results of a tax audit, which inevitably indicated a factor of chance and, as a result, lacked predictability in the way the tax legislation was applied. Because of this, the applicant organization was unable to fairly anticipate the consequences that accepting donations and submitting its financial information to the tax authorities may have. As a result, the interference had not been authorized by law in accordance with Article 9 Section 2[404]. Considering the finding, the Court did not see it necessary to further investigate whether the additional conditions of Article 9's second paragraph had been met. The Court reached the unanimous conclusion that Article 9 was violated.

One of the most important cases regarding religious rights in the system of complaints is identified by *S.A.S. v. France*[405]. A law prohibiting the wearing of any apparel that completely encloses the face in public places was passed in France in October 2010. In essence, the regulation aims to control the burqa and niqab. The law was specifically designed to safeguard women's freedom and dignity, uphold gender equality, maintain public safety, and discourage the practice of the full-face veil. Anyone discovered donning a full-face veil in public faces a fine and/or being forced to undergo citizenship training, according to the law. Despite the extremely low number of women who wear full face veils, France passed the regulation. According to estimates from the French government, 1,900 women in France wear the veil, however some estimates put the figure as low as 400. The European Court of Human

[404] Article 9 Section 2 of the Convention of the Council of Europe, 3 September 1953, European Convention for the Protection of Human Rights and Fundamental Freedoms.
[405] Judgment of the European Court of Human Rights, 1 July 2014, no. 43835/11, *S.A.S. v. France*.

Rights determined that the idea of "living together" living together served as justification for the prohibition rather than public safety or gender equality. On 11 October 2010[406], France passed a law making it illegal to cover your face in public, except for places of worship. After a six-month transition phase of education, the law went into force on 11 April 2011, primarily to inform women who already wear full-face veils of the repercussions of doing so. The French ban is severe and comprehensive. It stipulates, among other things, that no one shall wear any face-covering garment in any public area. A fine of €150 and/or completion of a citizenship course are imposed on anyone who disobeys the ban to remind them of the republican values of tolerance and respect for human dignity as well as to make them aware of their legal and social responsibilities. A prohibition on the full-face veil, according to Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights, will not free oppressed women but may instead cause them to become even more cut off from society in Europe. A blanket prohibition on such clothing, in his opinion, would be an unwise invasion of personal privacy and raise major concerns about whether such legislation would be compliant with the European Convention on Human Rights. The Parliamentary Assembly of the Council of Europe issued a recommendation in June 2010 urging its members not to enact a blanket ban on complete veiling or other religious or distinctive attire. The Council of Europe's Secretary General, Thorbjrn Jagland, said in July 2010 that restrictions on the full-face veil miss the purpose of European democracy and human rights and capitalize on irrational, populist fear of diversity and the foreign. One year after the prohibition went into effect, on March 31 of that year, the French Ministry of Interior said that 354 women had been stopped and questioned for identification in person, and 299 women had been fined for wearing a full-face veil. A French Muslim woman named S.A.S. (name altered to protect her anonymity at her request) wishes to cover her face in public but fears that doing so will result in legal action. On the day the law went into effect, she submitted a complaint to the European Court of Human Rights contesting it. She claimed that the law violated her rights to respect for her private life (Article 8)[407], freedom of religion (Article 9)[408], freedom of expression (Article 10)[409], freedom of assembly and association (Article 11)[410], and the prohibition against discrimination (Article 14)[411]. As a third-party intervener, The Justice

[406] Loi of the French Republic, 11 October 2010, no. 2010-1192*, interdisant la dissimulation du visage dans l'espace public.*

[407] Article 8 of the Convention of the Council of Europe, 3 September 1953, European Convention for the Protection of Human Rights and Fundamental Freedoms.

[408] Article 9 of the Convention of the Council of Europe, 3 September 1953, European Convention for the Protection of Human Rights and Fundamental Freedoms.

[409] Article 10 of the Convention of the Council of Europe, 3 September 1953, European Convention for the Protection of Human Rights and Fundamental Freedoms.

[410] Article 11 of the Convention of the Council of Europe, 3 September 1953, European Convention for the Protection of Human Rights and Fundamental Freedoms.

[411] Article 14 of the Convention of the Council of Europe, 3 September 1953, European Convention for the Protection of Human Rights and Fundamental Freedoms.

Initiative submitted two written statements to the European Court of Human Rights. Justice Initiate addressed the comparative regulation of the full-face veil in Western European states in its initial set of comments, outlined the key factors to be considered when applying the proportionality principle, and presented the findings of the Open Society Foundations Report Unveiling the Truth, which is the first qualitative empirical study into the experiences and motivations of women who wear a full-face veil in France. The Ghent University Human Rights Centre, Amnesty International, Liberty, and Article 19 are four other NGOs who submitted written comments. The Belgian government, which has also banned the full face veil, also became involved. There were four distinct debates. An analysis of the origins and current condition of comparable bans on full-face veils in Belgium, Germany, Italy, and the Netherlands shows that the French law at issue in this case imposes stricter limitations than the rules of the other nations, except for Belgium. A review of legal limitations on wearing religious clothing in public settings, considering the standards for justification and the supporting data for any such prohibition. According to the Open Society Foundations Report Unveiling the Truth, Muslim women in France don the full-face veil as an expression of their Muslim religion and as a personal act of self-expression rather than because of force. According to the findings of the follow-up report to Unveiling the Truth, restrictions on women's freedom of movement and security in public spaces have had a significant negative impact on their physical and mental health as well as their relationships with family and friends. The law, according to the women, has had a considerable negative impact on their husbands and kids, especially the younger ones. All the respondents say that their sense of personal security has decreased. The ladies cited instances of physical abuse and public harassment brought on by a culture where people seem more willing to discriminate against those who wear full-face veils. And finally, most of the legal consequences applied by the government have been directed towards women. The part of the statute that makes forcing someone to hide their face illegal has only resulted in one conviction. The Court determined that despite this reasoning, criminalizing the wearing of a full-face veil is an action that is out of proportion to the goal of safeguarding the concept of "living together", an objective that is difficult to square with the Convention's limited list of justifications for restricting fundamental human rights. This case is extremely controversial. Wade[412] begin his consideration on the case starting from a reflection on the European Convention on Human Rights argues that restrictions on liberties are necessary in a democratic society and are set forth in law. The Universal Declaration of Human Rights further permits legal restrictions that are only made to ensure the proper recognition and respect of the rights and freedoms of others. In a democratic society, the restrictions must also adhere to the fair standards of morality, public order, and general benefit. There is no realistic method for a government to guarantee that everyone in a nation is always comfortable. A

[412] WADE (2018).

government may be helping one group feel more at ease in social situations by forbidding the burqa or niqab, while making those who use them frequently feel uneasy. According to Wade, the Court has determined through the S.A.S. decision that face-covering bans may be justified even though they violate international human rights instruments guaranteeing citizens' freedoms of religion and expression because they obscure the face and ostensibly complicate conversations. While not officially required to do so, courts should abide by precedents established in previously decided cases in the interests of legal certainty, predictability, and equality before the law. Regardless of how contentious the ruling was, it is quite likely that the Court will not reverse it. Wade questions the reader about the possibility of an impact on subsequent European Court of Human Rights cases due to the government's rationale for its face-covering prohibition. In this manner, the author asserts, the restriction will likely be overturned if the government chooses to stick with a previously rejected argument, such as public safety or gender equality. Supporters claim that by outlawing the burqa, which some Muslim women are forced to wear, they are eliminating the oppressive clothing. However, this viewpoint utterly ignores women who independently choose to wear the burqa without any outside pressure, like S.A.S. However, despite the Court's good faith efforts, assimilation of Muslims into European culture is forced upon them rather than facilitated. The Court's decision, which effectively says that those who hide their faces for religious reasons cannot live together with people of other nationalities, is ludicrous and could be harmful. The Court established a new idea without any moral or legal foundation, instead of defending the individual freedoms guaranteed by numerous human rights instruments.

In the case of *Shingara Mann Singh v. France*[413] the Strasbourg Court was asked if the French requirement that people appear bald in photographs for identification documents was permissible under the European Convention on Human Rights. The same applicant is involved in the case that is the subject of this post, but this time he made a claim about the ban on wearing a turban in his passport photograph (rather than his driver's license) and, more importantly, he brought his claim before the UN Human Rights Committee (hereafter HRC). It is highly unusual for the same applicant to submit nearly identical claims to various human rights organizations. The Human Rights Committee applies the same logic to (Mann) Singh v. France (HRC, 26/09/2013, CCPR/C/108/D/1928/2010), which involves the same issue as Ranjit Singh v. France. (See the Ranjit Singh blog entry.) The HRC decides once more that it is against an individual's right to manifest his religion (article 18 of the ICCPR) to forbid wearing a turban in public, completely at odds with the European Court of Human Rights' precedent. This decision is made without providing any evidence to support this claim. The HRC acknowledges the significance of identification for public safety but notes that France did not provide an explanation for why wearing a turban that covers the top of the

[413] Judgment of the European Court of Human Rights, 13 November 2008, no. 24479/07, *Shingara Mann Singh v. France*.

head, yet still clearly shows the face, making it more challenging to identify a person. The HRC additionally notes that the state failed to explain how identification would be facilitated by an identity photograph in which a person appears bareheaded despite constantly donning a turban in daily life, and how this would lessen the likelihood of identity documents being forged. The disparity in the human rights organizations' approaches seems even more pronounced following the confrontation between the Strasbourg Court and the UN HRC. The UN HRC acknowledges the significance of identification measures but requires the state to demonstrate that the measure is required to ensure the public's safety, unlike the ECHR, which famously dismissed the case as being manifestly unfounded without thoroughly examining the applicant's claim and relying on the State's margin of appreciation. As a result, the HRC once again makes it clear that States cannot restrict someone's ability to practice their religion without providing strong justifications. The disparity in the human rights organizations' approaches seems even more pronounced following the confrontation between the Strasbourg Court and the UN HRC. The UN HRC acknowledges the significance of identification measures but requires the state to demonstrate that the measure is required to ensure the public's safety, unlike the ECHR, which famously dismissed the case as being manifestly unfounded without thoroughly examining the applicant's claim and relying on the State's margin of appreciation. As a result, the HRC once again makes it clear that States cannot restrict someone's ability to practice their religion without providing strong justifications. It can be claimed that applicants are increasingly making their way to the Human Rights Committee with their religious claims as evidenced by the Mann Singh v. France case. Even though the European Court of Human Rights ('ECHR'), with its legally non-binding statements, gives less protection than the Strasbourg Court, future applicants may decide that it is strategically more advantageous to apply to the UN body after these successful precedents. Nevertheless, the HRC at least accords the applicant recognition despite the potential absence of a de facto follow-up of the current judgement and therefore concrete rectification of the human rights violation. Aside from the fact that the HRC determined that Mann Singh's right to display his faith was violated, the HRC notes that Mann Singh's claim is likewise deserving of consideration after carefully weighing all the competing interests. In this way, the HRC's choice subtly promotes respect and understanding. Contrarily, it may be claimed that Mann Singh received the opposite message from the European Court of Human Rights in 2008. The European Court of Human Rights did not pay enough attention to the applicant's claim and as a result did not recognize or at least gave the impression that it did not understand the significance of the applicant's concerns. Instead, it accepted the State's legitimate goal in a one-sided manner without considering the applicant's claim and by relying on the margin of appreciation. Some wonder whether the Strasbourg Court's future reasoning in instances involving freedom of religion will be impacted by these varied views. Although the Strasbourg Court is an independent body and is not required to adopt the HRC's methodology, it

cannot ignore the growing number of cases that are being submitted to the HRC. On the Strasbourg Court's jurisprudence regarding religious freedom, the least that can be said is that it is unpredictable. The Court emphasized that a balance between the interests of all parties must be reached, despite the State's discretion in matters of religious accommodation. This strategy is already consistent with how the UN Human Rights Committee handled the situations mentioned above. There are still ongoing arguments over several human rights issues related to religious claims. These allegations will presumably eventually be presented to human rights organizations like the Human Rights Committee and the European Court of Human Rights. Though it concerns right now, I wonder who will be responsible for the claims.

In *Phull v. France*[414] The applicant, Mr. Suku Phull, is a resident of the United Kingdom and was born in 1953. The case's facts, according to the applicant's submission, can be summed up as follows. Being a practicing Sikh, the applicant is compelled to wear a turban by his faith. He claimed that in October 2003, he took a business trip to Strasbourg; on the way back, on 10 October 2003, security personnel at Entzheim Airport required him to take off his turban for examination as he passed through the security checkpoint and entered the departure lounge. The petitioner claimed that the airport authorities had violated his right to freedom of religion in contravention of Article 9 of the Convention. He maintained that it had not been necessary for the security personnel to force him to take off his turban, especially as he had not objected to being scanned by a hand-held detector or going through the walkthrough scanner. The applicant further claimed that his right to freedom of movement had been violated under Article 2 of Protocol no. 4. According to his argument, he ought to be immune from these kinds of security checks on the territory of member states as he is a citizen of one of the EU's member states. The applicant requested that the airport administration had violated his right to freedom of religion. He maintained that it had not been necessary for the security personnel to force him to take off his turban, especially as he had not objected to being scanned at the walk-through or using a handheld detector. The applicant further claimed that his right to freedom of movement had been violated under Article 2 of Protocol no. 4[415]. According to his argument, he ought to be immune from these kinds of security checks on the territory of member states as he is a citizen of one of the EU's member states. The Court observes that the applicant did not bring up these grievances in French courts. However, it believes that it is not necessary to investigate whether he had access to domestic remedies within the meaning of Article 35 1 of the Convention because, in any case, the application is not acceptable for the additional grounds listed below. Regarding the first grievance, the Court is willing to assume that the contested action constituted an infringement on the applicant's right to manifest his religion or beliefs because the Sikh faith

[414] Judgment of the European Court of Human Rights 11 January 2005, no. 35753/07,*Phull v. France*.
[415] Article 2 of Protocol nº 4 to the European Convention on Human Rights.

mandates that all male adherents wear turbans. Therefore, the Court must decide whether the interference was required in a democracy for the sake of public safety as defined by the second paragraph of Article 9. The petitioner, a practicing Sikh, was fined in *X v. the United Kingdom*[416] for disobeying a rule requiring motorcyclists to wear protective helmets. He claimed that he had violated Article 9[417] since he was unable to wear a helmet because his faith compelled him to wear a turban. The Commission determined that the requirement to wear a helmet was an essential safety measure and that any consequent restriction on the applicant's freedom of religion was justified under Article 9[418] Section 2 for the preservation of health. The Court comes to a similar result in this instance. First off, security checks at airports are unquestionably necessary for the sake of public safety as defined by that clause. Second, given that the measure was only seldom used, the procedures for implementing them in the current case were reasonable for the respondent State. As a result, this portion of the application is clearly unfounded and must be dismissed in accordance with Articles 35, paragraphs 3 and 4, of the Convention[419]. Regarding the second complaint, the court determines that the security procedures that travelers must go through in airports before boarding do not, in and of themselves, represent a restriction on their freedom of movement. This portion of the application must be rejected in accordance with Articles 35, paragraphs 3 and 4, because it is rationing material incompatible with the Convention's provisions. Due to these factors, the application was unanimously ruled to be inadmissible by the court.

Finally, in the case of *El Morsli v. France*[420] the applicant was a follower of Islam, usually wearing a veil. She married to a French national who resides in France since 2001. She claimed that on 12 March 2002, she went to the French Consulate General in Marrakesh to apply for a visa, to travel to France and join her husband, but that she was denied entry into the building because she would not take off her veil for an identity check. The applicant then sent a registered letter requesting a visa, but her request was denied. The applicant's husband subsequently filed a second appeal with the Conseil d'Etat, still on his wife's behalf, citing in particular his wife's rights to religious freedom and respect for her family life. The Conseil d'Etat rejected the appeal on December 7 for the reasons listed below: the wearing of the veil or headscarf, which allows Muslim women to display their religious convictions, may be prohibited, especially for the sake of public order. The

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[416] Judgment of the European Court of Human Rights, 12 July 1978, no. 7992/77, *X v. the United Kingdom*.
[417] Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 3 September 1953.
[418] Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 3 September 1953.
[419] Article 35, sections 3 and 4 of the of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 3 September 1953.
[420] Judgment of the European Court of Human Rights, 4 March 2008, no. 15585/06, *El Morsli v. France*.

applicant protested that the consular officials had violated her right to freedom of religion by invoking Article 9 of the Convention. Because she had been willing to take off her veil, but only in the company of a woman, she felt that this violation was even more unjustified and that she had not objected to being identified. She claimed that her right to respect for her family life had been violated by invoking Article 8 of the Convention[421]. Additionally, she believed that the consular authorities had violated Article 14 of the Convention[422] by failing to guarantee her enjoyment of the right to publicly express her religious convictions through her attire. She cited Article 2 of the Convention to express her dissatisfaction with the French government's failure to aid a person in need. Finally, she used Article 2 of Protocol no. 1 and alleged a breach of her children's right to an education because they were unable to travel to France with her. The Court cites Leyla Sahin v. Turkey[423] as authority for the proposition that the wearing of a headscarf might be deemed to be "motivated or inspired by a religion or belief". In this instance, the Court believes that the action at issue—removing her veil so she could pass an identity check—constituted a restriction as defined by the second paragraph of Article 9 of the Convention. It then notes that the petitioner did not claim that the action was not "prescribed by law" and concludes that it involved at least one of the legitimate ends specified in Article 9's second paragraph, namely, ensuring public safety or maintaining public order. In this instance, the Court sees no reason to deviate from this line of thinking about security checks at the entrance to the Consulate's property, including the identification of anyone requesting to enter, which it deems are unquestionably required in the interests of public safety. Additionally, and similarly to the Phull instance described earlier, the Court notes that the time frame in which she was required to remove her veil for a security check was unavoidably very short. The Court reiterates that to file a complaint with the European Court of Human Rights, the party in question must do so in compliance with the formal requirements and time-limits laid down in domestic law. Because the applicant in this case did not meet the requirements for submitting a visa application, she prevented the domestic authorities from evaluating her grounds under Article 8 of the Convention. Therefore, in accordance with Sections 1 and 4 of Article 35 of the Convention[424], this ground for non-exhaustion of domestic remedies must be rejected. The petitioner also referred to Articles 2 and 14 of the

[421] Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 3 September 1953.
[422] Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 3 September 1953.
[423] Judgment of the European Court of Human Rights, 10 November 2005, no. 44774/98, *Leyla Sahin v. Turkey*.
[424] Sections 1 and 4 of Article 35 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 3 September 1953.

Convention[425] as well as Article 2 of Protocol no. 1[426]. She argued that the French government had failed to help a person in danger, that she had been treated unfairly, and that her children's right to an education had been violated because they were unable to travel to France with her. The Court notes that neither explicitly nor substantively, the applicant did not bring these defenses before the national courts. Therefore, in accordance with Article 35[427] Sections 1 and 4 of the Convention, these grounds for no exhaustion of domestic remedies must be rejected in any case. For these reasons, the Court rules that the application is inadmissible by a majority vote.

3.3.3 REGIONAL LAWS INTERFERING WITH RELIGIOUS FREEDOM

In this paragraph will be analyzed in detail the regional laws of the State of France that provide a setting to interfere (at least formally) with religious freedom. The concept of *laïcité* finds its foundation in French law. The Observatoire de la *laïcité*[428] provides a systematic reading of the limitations of the concept. Employees and agents are not permitted to display their religious, political, or philosophical ideas through signs, clothing, or proselytizing in the administration, public services, enterprises, or groups with a public service mission. In this order, the Nation is represented by agents and employees, who are required to maintain an impartial and neutral demeanor both towards the public and their coworkers. Infractions are noted and may result in consequences. If the restrictions are justified by the nature of the work and are proportionate to the desired outcome, religious expression may be limited or prohibited by company policies in private businesses that do not engage in public service activities. The Law of 11 October 2010[429] forbids hiding one's face in a public location, which is defined as a common space (public roadways and spaces accessible to the public or utilized for public services). The legislation is not founded on the *laïcité* concept, but rather on factors related to public safety and the bare necessities of daily living in society. In accordance with the law of 9 December 1905[430], patients are permitted to practice their religion in public health facilities if it does not interfere with the department's operations and in accordance with the standards of public order, security, health, and hygiene. In an emergency,

[425] Article 2 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 3 September 1953.
[426] Article 2 of Protocol nº 1 to of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 3 September 1953.
[427] Article 35 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 3 September 1953.
[428] OBSERVATOIRE DE LA LAÏCITÉ (2017).
[429] Loi of the French Republic, 11 October 2010, no. 2010-1192, *interdisant la dissimulation du visage dans l'espace public.*
[430] Loi of the French Republic, 9 December 1905, *concernant la séparation des Églises et de l'État.*

patients are not permitted to challenge a doctor (a doctor cannot refuse to treat them). The competent authority, which must be impartial, may offer a variety of menus, such as those with or without meat, for mass catering in public facilities. Religious food regulations, such as halal or casher, are not required to be taken into consideration. However, in accordance with Article 2, Paragraph 2[431]of the Law of 9 December 1905[432], the supervisory authority must consider the fact that some people may not have the opportunity to practice their faith elsewhere in certain closed public institutions (for example, prisons, boarding houses, hospitals, or the army). If they do not interfere with the operation of the public service and do not exert pressure on the group members who do not wish to follow suit, the *laïcité* principle dictates that actions be taken to enable such individuals to adhere to the dietary restrictions of their religion. It is against the law for students to ostensibly display their religious affiliation in public primary and secondary schools by placards or clothing. In these settings, the goal is to safeguard kids against coercive demands that they wear the sign and to avoid confrontations between those who do and those who do not. The rules that apply to all officials and public servants as well as private sector workers performing a public service are applicable to all staff members charged with a mission in public sector higher education institutions, whether they have direct contact with students. This is true even though all faculty members are free to express themselves. These restrictions, including the requirement of impartiality, cannot be placed on outside speakers who have been asked to give a single lecture at a public institution. Additionally, instructors cannot decline to conduct a subject because, for instance, one or more students are sporting religious attire. Specific behaviors could include declining to shake hands with people of the opposite sex, to be with them in public spaces, to work with them, or to have their medical needs assessed by them. While there is not a set standard for politeness and customs vary by culture, age group, and social standing, it is inappropriate and potentially discriminatory to act in ways that undermine the equality of men and women. Requests for single-sex schedules may be rejected in public service areas (sports facilities, public swimming pools, etc.) based on gender equality and anti-discrimination laws rather than the *laïcité* principle. *Laïcité* affirms everyone's right to freedom of conscience, which includes the freedom to practice a religion, to practice no religion at all, to be an atheist, agnostic, or a believer in humanist ideals, to switch religions, or to have no religion at all. The right to believe must be distinguished from the freedom to express one's beliefs, though. The right to freedom of belief cannot be limited. The freedom to criticize any concept, opinion, or religion is a part of the freedom of thought, which is the source of the freedom of conscience, subject only to the freedom of expression laws. However, under certain circumstances outlined by the law (see the first part of this item), one's ability

[431] Loi of the French Republic, 9 December 1905*, concernant la séparation des Églises et de l'État.*
[432] Loi of the French Republic, 9 December 1905, *concernant la séparation des Églises et de l'État.*

to express their religious convictions may be constrained in the sake of maintaining public order. However, considering the constitutional principles established in our Republic and France's international obligations, with which such legislative constraints must be acceptable, freedom must always predominate, and restrictions must always be the exception. *Laïcité* ensures that the State, municipal governments, and public services are unbiased towards all residents, regardless of their religious or political opinions. The Republic does not acknowledge, pay for, or support any kind of religion. No religion or belief can be given a benefit or subjected to prejudice. *Lacité* is built on the separation of the State and the Churches, which implies that none can control the operation of the other. As a result, neither can the Churches govern the operation of religious institutions. *Laïcité* serves as an emancipator in two ways. One the one hand, all religious authority over the State has been abolished. The foundation of *laïcité* and democracy in France is the same: in neither case is the legitimacy of political authority based on a supernatural foundation, but rather, solely on the sovereignty of the people of citizens. Additionally, *laïcité* frees religions from all state interference.

A person is free to wear religious signs in the public area, in the sense of a common space (such as streets, public gardens, beaches, etc.), just like any other sign expressing a person's convictions, but hiding one's face is prohibited for reasons of public safety and in compliance with the bare necessities of societal existence. It is crucial to distinguish between what constitutes an objective disturbance of the peace that places a legal restriction on religious practices and a subjective perception that does not justify a restriction of the basic freedoms of movement, conscience, and personal freedom. Aversion or distrust may be sparked by dress regulations, bodily manifestations, or behaviors that are presented or perceived as showing one's religious allegiance. The fundamental right to express one's beliefs (in the realms of religion, politics, trade unions, and philosophy) would be violated if all signs indicating a person's religious or other ideas were prohibited in public locations (in the sense of the common space). The French Rule of Law, which is marked by the value of freedom, does not forbid anything. In a broader sense, people are free to dress however they please in all circumstances, with the exception of agents or employees engaged in public service missions, as long as they avoid legally prohibited forms of public display, follow the guidelines for professional attire, and are compliant with any restrictions justified by the nature of the task, such as those imposed by requirements of public order, decency, or hygiene.

If a person finds oneself in a boarding house, hospital, the military forces, or a prison facility, their ability to profess their faith elsewhere must be taken into consideration while using the *laïcité* principle. For this reason, the Law of 9 December 1905[433] mandates that chaplaincies, funded by the State, be established in such locations. The Republic ensures that the *laïcité*

[433] Loi of the French Republic, 9 December 1905, *concernant la séparation des Églises et de l'État.*

principle will be applied to public education. Students who have freely chosen their field of study are free to express their convictions in public higher education institutions that encourage debate and freedom of expression if it does not interfere with the institution's ability to function. However, the clothes of students should be adjusted to the standards for cleanliness or security of activities or courses. Students may be requested not to cover their ears during exams to check for communication devices to prevent fraud. Additionally, in addition to potential legal repercussions, contesting lectures through threats, coercion, or other attempts to confront the lecturer or exclude part of the students can result in disciplinary punishment. Finally, although if the departments in charge of administering exams are urged to avoid scheduling sessions on religious holidays, if possible, failure to do so does not constitute a breach of the candidates' right to exercise their religion freely.

For what concerns religious expressions in the public area and relationship with the Churches, as long as they do not disturb the peace, ceremonies, processions, or other public displays of worship are acceptable. However, for the sake of safety or traffic, mayors may enforce a route or place for such religious gatherings. Religions are free to express themselves on issues of society, ethics, politics, or social affairs, just like any other social organization, if they do not advocate discrimination, bigotry, violence, or civil disobedience. Any individual or group may legally express their opposition to a proposed law or even a legitimately passed law on the grounds that the text conflicts with their beliefs. They must, however, abide by the law once it is passed and refrain from impeding its implementation. However, no one is required to personally exercise the freedom that the law has provided. Expression of one's beliefs cannot go so far as to call into doubt the validity of decisions made by democratic authorities in the name of ideals deemed to be of a higher order. Although the *laïcité* principle makes a distinction between the Republic and the Churches, it does not forbid the public authorities from contacting representatives of the major world religions and philosophical schools. The real switch in the religious approach of France and what constitutes most of the criticism towards the State is represented by the laws starting from 2004. The French Senate gave its final approval to a law banning the wearing of overt religious symbols in public schools on 3 March 2004, named French ban on face covering[434]. The law does not actually alter the status quo that was established in France by a ministerial decree in 1994 and a government decision in 1989 regarding the wearing of headscarves or any other prominent emblem in public venues, universities, or private institutions. The law is a reaffirmation of the French public schools' strict religious neutrality. According to Bowen[435] the first headscarf affair is to trace back to September 1989 and represented by the case of three North African girls who attended a middle school outside of Paris on their first day

[434] Loi of the French Republic, 3 March 2004, no.2004-228*, encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics.*
[435] BOWEN (2008).

dressed in Islamic veil. The girls' appearance might have gone unnoticed in another situation. Girls had been wearing scarves to school for at least a few years. They either went to school wearing them or agreed to take them off during class. In fact, a girl wearing a headscarf was shown in a previous class photo at this middle school, demonstrating the institution's tolerance for cultural diversity. The celebration of the Revolution's bicentennial was seen as a betrayal by some, and the fall of the Berlin Wall left some people without a reference point and others without an enemy. For many on the Right but especially the Left, the late 1980s were demoralizing. Political Islam, which resulted in Salmon Rushdie's death sentence, is a potential new enemy. Sometimes articles about the three schoolgirls were accompanied with images of Iranian ladies dressed in heavy Islamic garb. These worries grew out of earlier ones about Islamization that the government had expressed in 1983 in response to Islamist exploitation of striking autoworkers and the risks posed by the Iranian revolution and the Lebanon War. In 1993–1994 there was a second high in public attention, which was also brought on by a commingling of domestic and foreign concerns. The middle school principal who started the initial "affair" in 1989 was now a deputy to the National Assembly by fall 1993, and he demanded that the government take notice of several fresh incidents. One year later, in response, the education minister issued a directive ordering principals to prohibit all "ostentatious" signs from being displayed in their buildings, including, he said, all Islamic scarves. As a result of this newly tougher approach, the number of cases that reached school disciplinary councils and the courts skyrocketed. There was a sizable gathering of expelled high school females for the first time. What had taken place between the autumn of 1993 and the autumn of 1994 to cause the current "crisis"? New, hardline armed opposition organizations emerged in Algeria because of the generals' cancellation of the 1992 elections. The most notable of them was the Armed Islamic Group (GIA), which may have included ex-mujahedeen from Afghanistan and was most likely infiltrated by state security officers. In Algeria, the GIA and the army started a cycle of violence and reprisal that claimed hundreds of lives. Five French nationals were slain in Algiers in August of 1994, and as a result, France became directly involved in what is now referred to as the "second Algerian War" by critics. French difficult neighborhoods are the target of a security crackdown by the nation's hardline interior minister, Charles Pasqua. Even if there were shortly fewer "scarf incidents", as opposed to thousands per year, there were still new concerns around the time of 9/11 that the scarves might be related to. 9/11 had unintended consequences for France. The 1990s saw the most significant security crackdowns, and the secret police already had comprehensive files on Muslims entering or leaving France. However, the World Trade Centre attacks did prompt the media to focus once more on potential domestic risks associated with Islam. Headscarves were more likely than ever to be perceived negatively, or in three different ways. According to the author of *Religious*

Freedom at Risk: The EU, French Schools, and Why the Veil Was Banned[436] the arguments over the laws banning veils within the framework of international human rights law as it relates to religious freedom. He affirms that a correct interpretation of this right would result in the repeal or significant alteration of both French statutes. The ECTHR has given the states an excessively large margin of appreciation and has not demanded a lot of evidence to support the need for such laws. Adrian contends that, when it comes to defending equality and freedom, particularly in relation to religious minorities generally and Muslim groups in particular, everyone has fallen short of the standards that we have set for ourselves.[437] In 2010, France extended the ban on face covering to the entirety of public places.[438] This provoked a series of cases and discussions that were already discussed before in this chapter.

3.4 STATE OF EMERGENCY AND RELIGIOUS RIGHTS.

This paragraph will deal with the problems connected to the state of emergency in general, how to deal with it and managing rights, in particular the religious ones, which states of emergencies are connected to France, and what were the issues regarding them. Before entering totally in the two French cases of state of emergency (2015-2017 and 2020-2022), it appears necessary to draw an outline of what in general a state of emergency means, and what rights are capable of being suppressed in that case.

Generally speaking, and according to De Shutter[439] the acceptability of limitations on human rights need to accomplish three principles: condition of legality, condition of legitimacy and condition of proportionality. First, any interference with a right must be prescribed by a law (*condition of legality*). Second, it must be justified by the pursuit of an acceptable purpose (*condition of legitimacy*). Third, the restrictions must only be limited to what is required to achieve the aim: it must be appropriate to pursuing the objective and must not go beyond what is necessary to accomplish it. It is also noted as fundamental that all the interests involved need to be balanced with one another, excluding the excesses (*condition of proportionality*). These principles are always valid and regulate the limits that can be imposed on human rights. A different discourse must be made regarding the state of emergency. Treccani defines the state of emergency as:

> "In the context of the social sciences, the term 'emergency' (emergency, urgence, etc.) is used - in a not necessarily technical sense - to indicate sudden situations of difficulty or danger, of a basically transitory nature (although not always short term), which lead to a crisis in the functioning of the institutions

[436] ADRIAN (2016).
[437] ADRIAN (2016).
[438] Loi of the French Republic, 14 September 2010*, no. 2010-1192, interdisant la dissimulation du visage dans l'espace public*.
[439] DE SHUTTER (2010), pp. 288-317.

> operating within a given social structure. In modern times, problems of this kind are normally analyzed above all with reference to the activity of public authorities as they are organized within states. The 'state of emergency' consequently indicates: a) the factual situation that arises when circumstances of this kind occur, and sometimes also b) the legal situation that follows from the official ascertainment of the same factual situation for the purposes of the adoption of the interventions that are appropriate to remedy the inconveniences deriving from it; however, the assessment deed usually takes on more specific denominations, such as 'declaration of state of siege', 'state of danger', and other analogous ones, variously differentiated as to their presuppositions and their juridical effects" [440].

Among the various types of emergencies, it includes belligerent situations, natural disasters, epidemics, economic crises, civil wars, and organized crime. The provisions relating to derogations in human rights are several and the purpose of the human rights instrument's derogation clauses is not to excuse the State from upholding human rights in the face of specific emergency circumstances. On the contrary, these sections serve to precisely outline the circumstances in which specific promises may be (partially) suspended. The International Covenant on Civil and Political Rights defines the derogations in human rights instruments in Article 4:

> "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin. No derogation from [Art. 6 (right to life), Art. 7 (prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent), Art. 8, paragraphs 1 and 2 (prohibition of slavery, slave trade and servitude), Art. 11 (prohibition of imprisonment because of inability to fulfil a contractual obligation), Art. 15 (the principle of legality in the field of criminal law, i.e. the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty), Art. 16 (the recognition of everyone as a person before the law), and Art. 18 (freedom of thought, conscience and religion)] may be made under this provision. [The same applies, in relation to States that are parties to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, as prescribed in Art. 6 of that Protocol.] Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation" [441].

[440] TRECCANI (2023), translation added.
[441] Article 4 of the International Covenant on Civil and Political Rights, 16 December 1966.

The American Convention on Human Rights defines the suspension of guarantees in Article 27:

> "1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.
> 2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.
> 3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension"[442].

Also, the European Convention on Human Rights defines the limits in time of public emergency in Article 15:

> "1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
> 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
> 3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary- General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate, and the provisions of the Convention are again being fully executed"[443].

According to De Shutter[444] derogations in time of public emergency need several elements to be applied. The first condition is a *public emergency*

[442] Article 27 of the United States of America, 18 July 1978, *American Convention on Human Rights*.
[443] Convention of the Council of Europe, 3 September 1953, *European Convention on Human Rights*.
[444] DE SHUTTER (2010), pp. 517-560.

which threatens the life of the nation. In reference to Article 4 ICCPR, with the Siracusa Principles[445] are defined the limits and derogations to the ICCPR:

> "39. A state party may take measures derogating from its obligations under the International Covenant on Civil and Political Rights pursuant to Article 4 (hereinafter called 'derogation measures') only when faced with a situation of exceptional and actual or imminent danger which threatens the life of the nation. A threat to the life of the nation is one that:
> (a) affects the whole of the population and either the whole or part of the territory of the State, and
> (b) threatens the physical integrity of the population, the political independence or the territorial integrity of the State or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognized in the Covenant.
> 40. Internal conflict and unrest that do not constitute a grave and imminent threat to the life of the nation cannot justify derogations under Article 4".

However, it is questionable if article 4 ICCPR implies a condition that the risk affects the entire population and all or a portion of the State's territory. In fact, this may be opposite to the Human Rights Committee's position that any derogation measures must be limited in scale, both in terms of the state of emergency's geographic coverage and the scope of any derogation measures used because of the emergency. It is also noted that, to be portrayed as such, *a state of emergency as to be officially proclaimed*. This is stated in a 2002 opinion[446] UK derogation from Article 5 para. 1 ECHR.

The second condition to apply derogations in time of public emergency is identified in the *necessity requirement*. As states by the Human Rights Committee:

> "Nevertheless, the obligation to limit any derogations to those strictly required by the exigencies of the situation reflects the principle of proportionality which is common to derogation and limitation powers. Moreover the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation. In practice, this will ensure that no provision of the Covenant, however validly derogated from will be entirely inapplicable to the behavior of a State party.
> [T]his condition requires that States parties provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measures based on such a proclamation. If States purport to invoke the right to derogate from the Covenant during, for instance, a natural catastrophe, a mass demonstration including instances of violence, or a major industrial accident, they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the

[445] Article 4 of the Covenant of the United Nations, 16 December 1966, *International Covenant on Civil and Political Rights*, Siracusa principles on the limitation and derogation provisions in the International covenant on civil and political rights (1985), paras. 39–40.
[446] See also Opinion of the Council of Europe, 28 August 2002, no. 1/2002, Strasbourg, *on certain aspect of the United Kingdom 2001 derogations from Article 5 par. 1 of the European Convention on Human Rights*.

> Covenant are strictly required by the exigencies of the situation. In the opinion of the Committee, the possibility of restricting certain Covenant rights under the terms of, for instance, freedom of movement (article 12) or freedom of assembly (article 21) is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation"[447].

The third condition falls in the *non-discrimination requirement*. Only Article 4 of the ICCPR[448] and Article 27 of the ACHR[449] specifically mention the prohibition of discrimination. The measures departing from the provisions of this document may not be based on discrimination on the ground of race, color, sex, language, religion, or social origin, as stated in Article 27 ACHR. One of the requirements for any justification of a departure from the Covenant is that the measures taken do not involve discrimination solely on the ground of race, color, sex, language, religion or social. This is stated in article 4 paragraph 1 of the ICCPR. The fourth condition regards the *compliance with other international obligations*. The relevant sections of the ICCPR, ECHR, and ACHR all declare that measures derogating from these treaties may be permitted only to the extent that they do not conflict with other obligations of declaration involved in international law (art. 4, art. 15, and art. 27, respectively). This means that a measure may be permitted after a State has declared its intent to derogate from its obligations under those instruments but may still violate other obligations of the State under international law, making it ineligible for approval by the State. Rather, as a requirement of acceptance under the derogation provisions themselves, the measures in question should fully comply with other obligations of the State under international law. This is significant since plenty of universal or regional treaties that have received widespread ratification do not allow for the possibility of a derogation in times of war or other public emergencies. Therefore, if a measure does not conform with the ICCPR, ECHR, or ACHR, it will not be accepted as being covered by a derogation under those instruments. This limits the amount of flexibility that States with derogation provisions have. Additionally, it sets the Human Rights Committee, European Court of Human Rights, or Inter-American Court of Human Rights in a difficult situation of having to determine whether a State has complied with other international obligations other than those stated in the instrument that these bodies are set up to monitor. The fifth condition is that *not all the rights are subject to derogation*. Certain rights, including human rights that impose *erga omnes* obligations and jus cogens norms, cannot be violated under any circumstances. The American Convention on Human Rights, the most recent of the three human rights documents that allow for derogations, has the longest number of rights that

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[447] General Comment of the Human Rights Committee, 31 August 2001, no. 29, *Derogations during a State of Emergency.*

[448] Article 4 of the Covenant of the United Nations, 16 December 1966, *International Covenant on Civil and Political Rights*.

[449] Article 27 of the Organization of American States, 22 November 1969, *American Convention on Human Rights*.

cannot be waived. The only rights that are exempt from derogation under all three treaties are the right to life, the prohibition of torture and other cruel, inhuman, or degrading treatments or punishments, the prohibition of slavery or involuntary servitude, and the prohibition of retroactive criminal legislation. However, as the Human rights Committee made clear, the list provided in the pertinent clauses is not necessarily exhaustive. Finally, the sixth condition is identified in the *international notification*. As stated by the Human Rights Committee:

> "A State party availing itself of the right of derogation must immediately inform the other States parties, through the United Nations Secretary–General, of the provisions it has derogated from and of the reasons for such measures. Such notification is essential not only for the discharge of the Committee's functions, in particular in assessing whether the measures taken by the State party were strictly required by the exigencies of the situation, but also to permit other States parties to monitor compliance with the provisions of the Covenant. In view of the summary character of many of the notifications received in the past, the Committee emphasizes that the notification by States parties should include full information about the measures taken and a clear explanation of the reasons for them, with full documentation attached regarding their law. Additional notifications are required if the State party subsequently takes further measures under article 4, for instance by extending the duration of a state of emergency. The requirement of immediate notification applies equally in relation to the termination of derogation. These obligations have not always been respected: States parties have failed to notify other States parties, through the Secretary-General, of a proclamation of a state of emergency and of the resulting measures of derogation from one or more provisions of the Covenant, and States parties have sometimes neglected to submit a notification of territorial or other changes in the exercise of their emergency powers. Sometimes, the existence of a state of emergency and the question of whether a State party has derogated from provisions of the Covenant have come to the attention of the Committee only incidentally, in the course of the consideration of a State party's report. The Committee emphasizes the obligation of immediate international notification whenever a State party takes measures derogating from its obligations under the Covenant. The duty of the Committee to monitor the law and practice of a State party for compliance with article 4 does not depend on whether that State party has submitted a notification"[450].

3.4.1 TERRORISM AND THE 2015-2017 STATE OF EMERGENCY

On 7 January 2015, a car drove to the headquarter of the satirical magazine *Charlie Hebdo* where the two brothers Cherif and Said Kouachi they opened fire inside the building killing 12 people and wounding 11, shouting "We have avenged the Prophet Muhammad" and "God is Great" in Arabic while calling out the names of the journalists[451]. In the same year, followed the November 2015 Paris attacks, a series of coordinated terrorist attacks that took place between 13 and 14 November 2015 in the capital. Three

[450] General Comment of the Human Rights Committee, 24 July 2001, no. 29, *derogations during a State of emergency*.
[451] BBC NEWS (2015).

suicide bombers attempted to enter the Stade de France in Saint-Denis during an international football game on 13 November 2015, but were unsuccessful. They subsequently attacked outside the stadium. Then, a second group of assailants opened fire on crowded Parisian cafes and restaurants while another detonated an explosive, killing himself in the process. At a 1,500-person Eagles of Death Metal concert in the Bataclan theatre, a third group carried out another mass shooting and kidnapped hostages, sparking a standoff with police. When police raided the cinema, the attackers were either shot or had set off their suicide vests. 130 people were slain by the assailants, 90 of them were at the Bataclan theater. Nearly 100 of the other 416 injuries were critical. Seven of the assailants died as well. These terrorist attacks together with the one of the 14 July 2016, in Nice, resulting in the deaths of 86 people, led to the beginning of a French state of emergency that lasted from 2015 to November 2017. The state of emergency in France was declared on 14 November 2015, immediately after the Bataclan attacks. According to Beaud[452], the chief of State solemnly declared a state of emergency while speaking on television, extending police authority at the price of civil freedoms. Shortly after, on 20 November 2015, the Parliament passed a law that extended the state of emergency for an additional three months while also tightening up the provisions of the statute from 3 April 1955. On February 20, 2016, the Parliament once more extended the emergency declaration for an additional three months. The state of emergency law, which dates from 1955 and was previously utilized three times during the Fifth Republic (1961 in metropolitan France, 1985 in New Caledonia, and 2005 in suburban regions), was only recently rediscovered by France because of the two attacks. First, day and nighttime administrative searches and home arrests imposed by the Ministry of the Interior that restrict the freedom of private individuals are the two key actions that allow for the imposition of this legal condition. They must visit the police station multiple times a day in addition to staying at home. Other restrictive methods include banning people from entering or staying, imposing nighttime curfews, or dissolving associations administratively. The freedom to travel freely, the right to privacy, and the right to assemble freely are among the essential liberties that are undercut by this type of legal system. Detention in custody is something that it does not permit, though. Theoretically, there can be no internment camps. Without mentioning that the guarantees for people are low, this succinct overview of a state of emergency's laws would be incomplete. A limited right of appeal to an administrative commission against actions performed while a state of emergency was in effect was established by legislation in 1955. By granting the right to challenge the legality of a measure before the administrative court, first requesting that it be suspended (freedom referral), the measures from 2015 just restated common law. It was attempted by some, with varying degrees of success. Only one home arrest was suspended before it was deemed illegal because of the police's inadequate understanding of the circumstances. Most

[452] BEAUD (2016).

of the critics on the 2015-2017 French state of emergency rely on two elements: the theme of the longevity of the measures that had to be temporary but lasted two years, and the types of measures, often strickling to the concept of Islamophobia. Vauchez[453] highlights that the 2015–17 state of emergency was not only implemented in a stunningly forceful manner, but it was also stricter than the one that emerged from the 1955 Act, which had been largely unaltered up until that point. Over 10,000 administrative measures were reportedly implemented during this most recent declaration of the state of emergency, including over 4,444 home searches, 754 house arrests, 656 geographic restrictions, 59 protection and security zones, 39 demonstration bans, and 29 pub and theater closures. First, it is important to emphasize that the circles and networks with (suspected) ties to radical Islam were a key target when the state of emergency was declared in response to terrorist assaults carried out by attackers claiming to operate on behalf of the Islamist group ISIS. However, several significant problems are raised by the elevation of radical Islam to the status of an appropriate and legal category. The extent to which intelligence service white memos, administrative actions, and court decisions have relied on this recently created legal category and were therefore used to accuse people based on their religion is revealed by a thorough analysis of the litigation brought on by state of emergency measures. Furthermore, these references were occasionally startlingly ambiguous. Some of the state of emergency declarations appear to have been based on vague references to a person's "Salafism", "rigorous practice of Islam", or ties to "radical Islamist movements," to the point where uncontrolled mistakes and error could not be prevented. The idea that Islam's radical practice is, in and of itself, an indication of radicalization, or even poses a threat to public order and security, has come up in a few court cases. Additionally, administrative authorities seem to have applied the state of emergency measures quite unevenly across the country. Overall, it's noteworthy that both mainland and foreign areas had received extensions of the state of emergency. Although it is difficult to prove whether administrative authorities on the ground have used the exceptional powers entrusted to them, it cannot be disputed that they had the right to do so even though the mainland has so far been spared from the immediate threat of terrorist attack. On the other hand, the implications of a legislative framework like the state of emergency cannot be controlled. Once triggered, it functions as a type of dispensation that enables administrative authorities to employ the extraordinary powers it gives them, regardless of the justifications they may have. In actuality, the no-containment rule used in the emergency is current judicial practice. As previously mentioned, this is largely due to the *Council d'Etat's* laws from December 2015. Notably, these also rely on a specific line of reasoning that claims administrative authorities are justified in taking actions that restrict rights and liberties in ways they would not typically do if they can demonstrate and prove that counterterrorism demands are exhausting all their capacity and resources,

[453] VAUCHEZ (2018).

leaving them unable to ensure the security of specific demonstrations. Vauchez says that the implications drawn from the current French scenario are diverse in nature. They serve as an example of how the state of emergency rule has resulted in a decline in standards for the protection of human rights. In France, the state of emergency has been in effect for a considerable amount of time, which has resulted in a variety of restrictions and breaches of human rights, not all of which can be justified as necessary in the battle against terrorism. They also show how states of exception affect the institutional harmony of the constitutional order, how difficult (if not impossible) it is to simply lift a regime like the state of emergency, and the pressure that results from that to normalize the formerly "exceptional" powers that it gives public authorities. The end of the state of emergency due to terrorism in France was declared on 30 October 2017[454].

3.4.2 COVID-19: WAS RELIGION AFFECTED?

After less than 3 years another state of emergency crossed France, with reasons very different to the previous ones. The 2020 state of emergency of France regarded the sanitary emergency of Covid-19, an experience that tied the whole world. As analyzed by Marie-Laure Basilien-Gainche[455] on 23 March 2020 the French Parliament adopted a new emergency regime with the Act no. 2020-290[456]. This was then activated by the same Act and extended through the Act no. 2020-946[457]. The Health Minister embraced Decree no. 2020-247[458] dated 14 March 2020, which forbade large social gatherings. Subsequently, a nationwide lockdown was implemented by the Prime Minister, Health Minister, and Home Affairs Minister through the adoption of Decree no. 2020-260[459]. This raised uncertainties about the necessity of introducing an extraordinary new protocol. The legitimacy of declaring a state of health emergency was a subject of debate, and the practical execution of such a protocol was a point of contention. Nevertheless, the Government opted to establish the new state of health emergency framework, citing Article L.3131-1[460] of the Public Health Code. This article vested the authority to enact measures to avert and mitigate potential threats to public health solely

[454] Loi of the French Republic, 30 October 2017, no. 2017-1510, *renforçant la sécurité intérieure et la lutte contre le terrorisme.*
[455] BASILIEN-GAINCHE (2021).
[456] Loi of the République Française, 23 March 2020, no. 2020-29, *d'urgence pour faire face à l'épidémie de covid-19.*
[457]Loi of the République Française, 11 May 2020, no. 2020-546, *prorogeant l'état d'urgence sanitaire et complétant ses dispositions.*
[458] Loi of the République Française, 13 March 2020, no. 2020-247, *relatif aux réquisitions nécessaires dans le cadre de la lutte contre le virus covid-19.*
[459] Loi of the République Française, 16 March 2020, no. 2020-260, *portant réglementation des déplacements dans le cadre de la lutte contre la propagation du virus covid-19.*
[460] Article of the Public Health Code of the République Française, 1 August 2022, Article L.3131-1 modifié for the Law n°2022-1089 du 30 juillet 2022 - art. 1 (V).

in the Health Minister's hands, rather than the Prime Minister. The French Parliament adopted the Emergency Response to the COVID-19 Epidemic Act no. 2020-290[461] using an expedited legislative procedure. This act encompasses a range of provisions, including measures devised to manage the epidemic's impact, granting the Government authority to promptly implement necessary economic relief strategies in response to the pandemic's aftermath, and deferring the second round of municipal elections. Within Act no. 2020-290, a total of 94 executive orders have been put forth, covering areas that typically fall under the jurisdiction of the Parliament. Notably, some of these orders bring about significant modifications to both judicial processes and administrative procedures raising concerns about their implications. The new special framework is outlined in Articles 1 through 8 of the Act (from Art. L. 3131-14 to Art. L. 3131-12 CSP[462]). As stipulated in Article L.3131-15 of the CSP, upon the declaration of a state of health emergency, the Prime Minister is endowed with ten distinct powers:

1. Impose constraints or bans on the movement of individuals and vehicles.
2. Forbid individuals from exiting their residences.
3. Mandate the isolation of potentially affected individuals.
4. Mandate the quarantine of affected individuals.
5. Temporarily shut down public-access establishments.
6. Restrict or prohibit gatherings on public pathways.
7. Enforce the requisition of essential goods and services to address the health emergency.
8. Temporarily regulate market prices to prevent or address market pressures.
9. Facilitate the accessibility of suitable medications for patients.
10. Utilize decrees to implement any other necessary regulatory measures that curtail rights and liberties.

Basilien-Gainche[463] stresses that during a state of health emergency, the administrative body is empowered to implement both individual and general measures. The tenth authority on the list grants the executive a near unrestricted mandate. This unique framework results in extensive curtailments of rights and liberties. For instance, decree no. 2020-293[464] instated the initial lockdown, encompassing travel and person movement bans, prohibition of gatherings, closure of non-essential businesses, shutdown of educational institutions spanning from elementary to higher levels, price controls on certain items like hand sanitizers, and requisition of masks for healthcare

[461] Loi of the République Française, 23 March 2020, no. 2020-290, *prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire.*

[462] Article of the Public Health Code of the République Française, valid from 7 August 2021 to 1 August 2022, Article L.3131-15.

[463] BASILIEN-GAINCHE (2021).

[464] Décret of the République Française, 23 March 2020, no. 2020-293, *prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire.*

professionals. Subsequently, decree no. 2020-337[465] broadened the requisition scope to encompass all products essential for healthcare facilities, including medications, pain relievers, and antibiotics. Decree no. 2020-370[466] further amplified the constraints on rights and freedoms as delineated in the previous texts. Decree no. 2020-1257[467] declared the commencement of the second state of health emergency. Furthermore, Decree no. 2020-1310[468] outlined measures to address the COVID-19 pandemic, following a trajectory like that of Decree nº. 2020-293[469].

Regarding the measures taken towards the limits imposed to religion, according to Anne Fornerod[470] during the 2020 state of public health emergency, the State Council has adhered to its established stance regarding religious freedom. It has affirmed that, as outlined by law, this freedom extends beyond an individual's mere expression of their chosen religious beliefs, so long as such expression aligns with public policies. This right also encompasses, under the same condition, the ability to partake in communal ceremonies, particularly within places of worship. In doing so, the Council upholds its prior, more comprehensive definition of the freedom of worship, attributing both an individual and collective dimension to it. In fact, it surpasses its past legal precedent by not constraining the exercise of this liberty solely to places of worship. Similar to the instances outlined above concerning the shutdown of Muslim places of worship during a state of emergency, the State Council introduces a novel perspective by equating individual and communal religious practices. In contrast to the conventional interpretation of freedom of worship, which primarily encompassed collective observances, the scope of this freedom now extends to individual practices as well. These individual expressions are generally recognized under French law as manifestations of the broader freedom of conscience. A pertinent example is found in the State Council's position expressed on 5 November 2020[471], indicating that while public school staff, akin to other public employees, hold the freedom of conscience, the principle of secularism (*laïcité*) restricts them

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[465] Décret of the République Française, 26 March 2020, no. 2020-337, *complétant le décret no. 2020-293 du 23 mars 2020 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire.*

[466] Décret of the République Française, 30 March 2020, no. 2020-370, *complétant le décret no. 2020-293 du 23 mars 2020 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire.*

[467] Décret of the République Française, 14 October 2020, no. 2020-1257, *d'éclarant l'état d'urgence sanitaire.*

[468] Décret of the République Française, 29 October 2020, no. 2020-1310, *prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire.*

[469] Décret of the République Française, 23 March 2020, no. 2020-293, *prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire.*

[470] FORNEROD (2022).

[471] Decision of the Joint Committee between the European Union and the Swiss Confederation, 5 November 2020, no. 217-017, *on the linking of their greenhouse gas emissions trading systems.*

from outwardly displaying their religious convictions while engaged in public service. Historically, references to freedom of worship have often been linked to a backdrop of collective practices, as evidenced in a case where the State Council affirmed the fundamental nature of freedom of worship. In this scenario, a petitioner employed in a public housing office challenged the denial of his request to be excused from work every Friday between 2 P.M. and 3 P.M. to attend prayers at the mosque. The significance of the orders issued during 2020 lies in their withdrawal from prior cases concerning the closure of places of worship. The opinion conferred on the participation in collective ceremonies the status of a fundamental component of the freedom of worship, thereby transcending previous interpretations. The decision to end the provisory ban on worship due to Covid-19 emergency occurred on 19 May 2020 by a decision of the Council of State that ruled that the limit was disproportionate to the objective of preserving public health.

CONCLUSIONS

The study opened with several questions that this thesis aimed to respond to. The core of the analysis was represented by understanding the methods of the Court of Strasbourg in balancing secularism and religious rights and comprehend the French study case. Also, a decisive point was to determine whether France had, in its extreme interpretation of secularism, attitudes that were discriminatory towards believers. To begin answering the first set of questions, the analysis of the cases of the Court of Strasburg highlighted a meticulous approach of the European Council towards the issue of religious rights. As a consequence, a considerable number of disputes regarding religion were produced. This could be deemed as a sign of an undoubted seriousness concerning the treating of the subject.

Chapter 1 considered human rights in their broadest interpretation, giving an overview on their premises and the laws produced, highlighting the importance of religious rights. After a detailed analysis on the conventions that regulate human rights and more specifically the religious ones, in Chapter 1, the study moved on to the reflection of the most relevant cases on the subject in Chapter 2.

Chapter 2 reviewed the main features of the Strasbourg Court's approach in judging cases about religious disputes. The Court applied European laws scientifically, also reviewing regional laws to avoid the hypothesis of laws vitiated by inconsistencies with supra-national laws. The analysis emphasized how the Court judged on multiple issues, interpreting the cases in the light of European precepts, declaring admissible all the disputes in which religious rights had been violated and ruling inadmissible only those cases which did not meet the requirements of rights violations. "How the Court of Strasbourg menage the balance between the promotion of rationalism and the right to freely manifest religious symbols?", "What were the compromises found by the European Court of Human Rights in solving cases concerning an ideal coexistence of religious freedom and secularism?", "How different are the positions on the same religious issue?". Starting with the first one, it can be said that the Strasbourg Court appears to pursue full religious freedom, and its work results always very coherent. In the repertoire of cases analyzed there are no conflicting judgments. Although the specific cases are very particular and different from each other, the Court, as a legal entity, is very careful to apply the same laws in the same way on the same subjects. To conclude, the Court manages the balance between the promotion of secularism and the right to freely manifest religious symbols through the precise application of the laws. Regarding the compromises of the Court about the coexistence of religious freedom and secularism, the most emblematic case is represented by of Leyla Sahin vs. Turkey[472]. In this the Court decided on the case of a Turkish female student of Muslim religion, who had been denied to

[472] Judgment of the European Court of Human Rights, 10 November 2005, no. 44774/98, *Leyla Sahin v. Turkey*.

attend lessons and to take exams, wearing the traditional Islamic headscarf, by the Istanbul University. The conclusion was a violation of the student's rights to freely manifest its religion, finding the actions of the University as in opposition to Article 9 of the ECHR.[473] Coexistence of secularism and religion appears possible and feasible even in controversial cases such as this. The answer to the last question naturally arises: the Court is very analytical in the resolution of cases, even if very different from each other. An emblematic example is that of special diets for religious reasons required by different prisoners. As seen both in the case of Neagu v. Romania[474], of Saran v. Romania[475] and of Jokóbski v. Poland[476], all very similar to each other, the Court expressed itself coherently finding violations of Article 9 of the ECHR[477] in all the three cases. So, the answer is that if the Court rules on several cases regarding the same subject and with a similar pattern, it is highly presumable that the outcome will be the same for every of them.

Chapter 3 focused on the case study of France. It began with a digression on the role that multiculturalism and history have had in producing radical laws regarding religion. The French study case turns out to be a symbol of a fact: laws and States are inextricably affected by their roots resulting as deeply connected to them. The concept of *laïcité* has been the subject of many controversies due to its radical nature. This drastic approach to secularism had provoked several discussions through States but appears now comprehensible if placed in the French framework. The roots of the concept merge in the Reign of Terror. That period, coinciding with the phase of de-Christianization during the French Revolution, represents a decisive parenthesis for the following decades. Although the attitude towards religion has today become more open since 1980, it is understandable how years of fear have shaped some French radical features, persisting for some time both in society and in laws. It is important to highlight that laws prohibiting religious symbols were not only affected by the French historical background. The implementation of the concept of *laïcité* walks the fine line between the multicultural set of France and the willingness to create a neutral public space where individuals of diverse beliefs could interact on equal terms, and the nationalistic French tendencies, which sees the display of symbols as an attack to the identity of the Nation[478]. Even though most of the cases are in line with the other applications of the Strasbourg Court, the case of S.A.S. vs France[479] resulted

[473] Article 9 of the European Convention on Human Rights.
[474] Judgment of the European Court of Human Rights, 10 November 2020, no. 21969/15, *Neagu v. Romania*.
[475] Judgment of the European Court of Human Rights, 10 November 2020, no 65993/16, *Saran v. Romania.*
[476] Judgment of the European Court of Human Rights, 7 December 2010, no.18429/06, *Jakobski v. Poland*.
[477] Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 3 September 1953.
[478] Wihtol De Wenden (2003).
[479] Judgment of the European Court of Human Rights, 1 July 2014, no. 43835/11, *S.A.S. v. France*.

as extremely controversial. In S.A.S vs France the Court judged the case inadmissible and the conduct of France as acceptable according to the concept of "living together". Wade[480]criticized the judgment through the following analysis. He pointed out that there are some situations where freedoms can be restricted for compelling reasons, such as a genuine, realized national security threat. Religious freedoms would frequently be superseded and overridden by the State's reason in circumstances where the restriction was narrower and precise. However, religious freedoms would prevail if the restriction was too wide, and the State was unable to limit it to a specific justification. Therefore, in S.A.S. vs France[481] the Court established the concept of living together as highly in favor of the State rather than creating a proportionate, fair balancing system that stabilities both the rights of the individual and the State. According to Wade, the Court should restore a balancing test and define living together more precisely to be fair and prevent one interest from dominating another. In the opinion of Wade, without discussion and limitations, this overly general and ambiguous term could undo everything that proponents of religious freedom have worked so hard to achieve. States would continue to benefit from the low threshold to a rationale that the Court would accept in the absence of a return to the balancing test. Also, the freedom of religious expression may be significantly impacted by this issue, at least in Europe. In Wade's opinion defining the term of "living together" is fundamental to avoid gray areas that may lead to judgments favoring the State over human rights in the future.

The criticisms about S.A.S. vs France were multiple. The direction of France radically changed during the two states of emergencies. The change of behavior during the 2015-2017 state of emergency, regarding terrorism and on the one of the 2020-2022, about Covid-19, was substantial. While the first state of emergency has been still widely criticized for being Islamophobic due to the amount of bans it made, the second one followed a different road. During the sanitary emergency of Covid-19, France was not only fully in line with the remaining European States but allowed the association of believers in places of worship, while many other countries forbade it. This denoted an absolute change towards religion, probably due to the amount of criticism received in recent years. To answer the questions posed at the beginning, it can be said that France has been extensively condemned for its radical positions on religion, and these positions derive from a very particular and specific historical background. The Reign of Terror, multiculturalism associated with highly conservative government parties and terrorism of Islamic origin, are all factors that have contributed to the construction of certain attitudes. It is plausible to think that in a state of emergency as the one experienced between 2015 and 2017, it is necessary and a priority for the government to protect its citizens, even if this may clash with criticism. It is

[480] WADE (2018).
[481] Judgment of the European Court of Human Rights, 1 July 2014, no. 43835/11, *S.A.S. v. France*.

also necessary to underline that today's French position seems to converge more and more towards a uniform model of religious freedom, because of a reiterated amount of international disapproval, due to the will to conform to European standards and because of a new-found tranquility of the State on the subject. To conclude France was placed in a historically controversial framework, but it is today converging towards an internationally uniform model. Therefore, despite substantial differences in the application of religious rights, a universal path seems nowadays possible.

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