

## CONFERENCE REPORTS

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# Religious Liberty Under the European Convention on Human Rights

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The eighteenth annual meeting of the European Consortium for Church and State Research took place in Nicosia, Cyprus, in November 2007, the only divided capital city in the world. It was devoted to the question of how national courts respect and apply the European Convention on Human Rights (ECHR), particularly Article 9, in their jurisprudence. The conference gathered representatives of 26 European Union States (all except Malta) and was hosted by Mr Achilles Emilianides of the Cyprus Institute for Church and State Research. The conference was inaugurated in a ceremonial way, by the President of the Republic of Cyprus, the President of the Supreme Court, the Attorney General and the President of the European Consortium, Professor S. Berlingó from Messina.

The introductory lecture, delivered by Professor Jean Duffar, had a general character and referred to the leading ECHR cases in the field of religious freedom, starting with the classic ones (*Manoussakis, Kokkinakis*) and continuing to the most recent judgments (*Witnesses of Jehovah v Georgia*, May 2007). This lecture promoted a lively discussion with a number of questions raised: from what age can a child exercise its freedom of religion – the arbitrary obtaining of majority or as of the moment when it can decide whether to attend religious instruction or not (Professor F Margiotta Broglio)? Would the jurisprudence of national courts be different if there were no Convention, because the principles that animate the national provisions predate the ECHR (Professor Mark Hill)? Does the German compulsory state marriage hinder a free exercise of freedom of religion, as one can marry in church only after a state ceremony (Professor R Puza)? Professor JM Gonzales del Valle pointed out – which was a good way to sum up the first part of the discussion – that the jurisprudence of the Strasbourg Court respects national judgments, but in a number of cases it has effectively overruled domestic courts, resulting in changes to national legislation.

In the second part, Professor Malcolm Evans from Bristol University underlined in his introductory report the evolution of the jurisprudence based on the ECHR: while during the first period it was much more focused on safeguarding individual rights, the balance later shifted towards issues such as the registration of churches and other connected questions. Some of the participants also expressed their doubts whether the concept of state church or established church is as such compliant with the ECHR. The predominant opinion was that it was, since the rights of other religious denominations and their believers were not endangered. In a recent case in Denmark, where a small group called 'Catholics for Equality' (not being an official part of the Catholic Church) launched a suit against obligatory registration of all children in the Danish National Church, the Supreme Court did not regard this as an infringement of rights (judgment, November 2007).

Achilles Emilianides pointed out that some countries, sharing similar features, sometimes decide contested cases in different ways: while the notion of religion adherence is obligatory in public personal documents in Greece (such as identity cards), it was judged as unconstitutional in equally religious Cyprus. The current judicial developments seem to take account of growing religious pluralism in Europe, in particular the presence of Muslims and their different attitude towards human rights, which also caused a live discussion. Professor A Frhr v Campenhausen and M Rynkowski stressed that sharia is, through wills, mortgages and social insurance policies, effectively becoming a binding law in some member states of the EU.

Professor Jean Duffar underlined that in many situations it is difficult to agree among politicians on a new law, but after the judgment of ECtHR the required change is generally implemented uncontroversially. This part of the discussion concluded that Article 9 of the ECHR addresses the issue correctly: it is quite general, and does not focus on singular or individual issues.

The Saturday session focused on external aspects. Professor David McClean reported that many Caribbean countries that used to constitute a part of the British judicial system have their constitutions and bills of rights based on the ECHR, although their social reality differs significantly from that of Europe. Professor McClean raised the issue whether we can really speak of a European approach in terms of Article 9 and its understanding. Professor Rik Torfs underlined that Americans also, while engaging themselves in the promotion of democracy in south-east Asian countries, often recall the decisions of the ECHR, and not judgments of their own courts. B Schanda of Hungary pointed out that the simple fact that continental lawyers pay a great deal of attention to the case law of the ECtHR is something that should not be overlooked. Professor Hill drew a distinction between the principles that animate the convention (which have an overarching international flavour to them) and the particular manner in which those principles are implemented in EU member states

(where local custom and tradition can yield different results). The question whether ECtHR could become a European Supreme Court in the long term will remain, at least for the time being, unanswered. On the other hand, as Professor Marco Ventura suggested, we should bear in mind that we currently observe not only the import and export of certain ideas (such as the Anglo-Saxon understanding of case law) but also major internal changes in the framework of society. Professor Rik Torfs underlined that many societies that are very open and willing to enter economic competition turn out to be particularly closed in terms of religion, not least in the protection of their religion(s).

During the last session the issue of relations between the ECtHR and the European Court of Justice in Luxembourg was raised. In this respect, the case of *Bosphorus* (application no. 45036/98, decided in 2005) was mentioned, in which the ECtHR stated clearly that ‘the Court finds that the protection of fundamental rights by EC law can be considered to be, and to have been at the relevant time, “equivalent” . . . to that of the Convention system’ (paragraph 165). M Rynkowski referred to the expected accession of the EU itself to the ECHR, as agreed in the Reform Treaty, and the appointment to the Court of a 47th judge, on behalf of the EU.

The discussion on the national reports, and hence on the national references to the ECHR, could not be fully developed, as the provisions of the Constitutions of many member states are either very similar to the ECHR, or have been drafted based upon on the ECHR, as is the case in eastern Europe. Thus, the national courts often refer merely and exclusively to the provisions of the constitution. On the other hand, Professors Ventura and Duffar indicated that earlier in 2007 the ECtHR had issued important judgments, for example *Tysiąc v Poland* (5410/03) or the case of *Associated Society of Locomotive Engineers & Firemen (ASLEF) v the UK* (1102/2005). Although they do not refer directly to Article 9 and the freedom of religion, relevant and interesting conclusions can be drawn from them.

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