This part deals with the historical roots of the concept of freedom of religion. Ben Vermeulen displays the development in Western Europe with its stress on individual freedom. In contrast Tamás Juhász shows a different way of dealing with basic human freedom in the Hungarian sphere, where freedom is not so much conceived as individual freedom but as the freedom of communities to organize their own life, culture, and religion. In the Western context, freedom of religion developed to a larger set of freedoms that finally can come in competition. Therefore, the relation of the basic freedoms is in the debate. In the classic Hungarian model, this discussion will not arise because the communities were in themselves a cultural and religious unity. When the community is free to organize its own life, all aspects such as language, customs, and religion are included. Juhász’ contribution shows that today’s dilemmas that arise from the dominant Western model of freedom are the consequence of a specific shape that freedom has taken in the human rights debate, and that alternatives might be possible.
In this article, I give a short, historical sketch of the development of legal guarantees of religious freedom in Europe—finally culminating in Article 9 of the European Convention on Human Rights. Then I deal with two fundamental questions involved in the application of this provision: how to define freedom of religion, and how to determine what restrictions of religious freedom are justified. Finally, the question will be raised whether independent guarantees of religious freedom should be maintained.

Religious Wars and Peace Treaties

The origin of the legal guarantees of the freedom of religion must be located in the civil wars of the sixteenth and seventeenth century. Then Western-Europe was torn apart by religious strife, caused by the Reformation that disrupted the medieval unity of the Corpus Christianum.

It should be stressed that the impact of these civil wars—raging in France, England, the Netherlands, and the German empire—was enormous. Not only did these wars end all claims to a universal religious and political unity that was headed by pope and emperor; they also caused the death of a staggering number of people. For instance, the Thirty Years War in Germany (1618–1648)—fought between Catholic, Lutheran, and Calvinist princes—took the life of millions. The German empire had ten million inhabitants in 1618; in 1648 there were only six million left.

At least a partial solution that helped to end these horrible wars was provided by the emergence of sovereign territorial states, which were able to secure religious peace within their borders. In peace treaties and constitutional guarantees, the state declared itself—at least to a certain extent—neutral, and guaranteed a minimum of religious freedom