Chapter 13

Religion, Expression and Pluralism

Agnès Callamard

1 Introduction

The vision and praxis of an integrated Europe, uniting its members around a common commitment to human rights and freedoms and a collective sense of responsibility to prevent oppression and repression, is going through a significant crisis. This is evidenced by its outright rejection (Brexit), by the physical and semantic walls keeping at bay those fleeing violence and poverty, which increasingly constitute its external borders, and the increasing use of language and of acts of exclusion and rejection, particularly targeting people of Muslim faith but also the Roma and others.

These are manifestations of reflexes grounded on an imagined homogenous (ethnically and religiously) Europe and carefully fed by populist leaders creating or infusing their fears, often masquerading as fears of others. These are also the products of an easily manipulated amalgam between Islam with the acts of mass violence perpetrated on European territory by a few individuals and groups which are sought to be justified in the name of radical Islam.

Religion looms large in this Europe of fears and walls: there is the idea of a militantly secular Europe, as exemplified by France’s combative stand on a range of religious issues. There is the notion of a Christian Europe, as defended by Hungarian and Czech leaders, amongst others. And there is Islam, the object of direct or subtler denunciation and which is often misunderstood by European leaders, institutions, and possibly peoples. It is possible to identify three understandings of the role and place of religion: as the guardian (of borders, culture, identity); as the suspect (to be excluded from the public space); and as the dangerous (threatening the European Convention on Human Rights).

This chapter will argue that the jurisprudence of the European Court of Human Rights (the Court, European Court) on the intersection between freedom of expression and freedom of religion reveals that these various understandings of religion have co-existed alongside each other for many

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1 This chapter is an expanded version of a paper previously published as ‘The Expression of Religious Beliefs: In the Name of Pluralism, although Not Quite Religious,’ 12 Religion & Human Rights (2017), pp. 153–163.
decades, and that the Court has accommodated (and justified) these different ideas through its focus on democratic pluralism rather than religious pluralism. This position can be traced back to the 1993 *Kokkinakis v. Greece* judgment which laid out the Court’s first position on religious freedom. It insisted that freedom of religion must be protected because it constitutes an essential tenant of democracy and pluralism. The Court, however, did not mention religious pluralism, even though it would have been logical to do so given the context of the decision. Instead, the Court celebrated democratic pluralism, meaning a pluralism of ideas and convictions, at the service of democracy.²

This is not to say that the European Court does not uphold religious freedom as a fundamental value. In *Kokkinakis*, as in subsequent judgments regarding Article 9 of the European Convention on Human Rights (ECHR), the Court has consistently embraced religious freedom as a core European value, arguing that religious freedom must be safeguarded, not only for the sake of the believers but also because it is equally important for non-believers: freedom of religion and conscience and thought is an asset for all. It is on this basis that the individual and collective rights of a variety of religious groups, minorities and individual believers have frequently been protected,³ and the autonomy of Churches against State interference recognized,⁴ including with regard to their leadership or in the context of schisms and internal conflicts:⁵ ‘The autonomous existence of religious groups is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords’.⁶

But under the *Kokkinakis* doctrine, the Court does not attribute to the State a particularly pro-active function as far as religious freedom is concerned, and very little with regard to religious pluralism. Rather, the Court insists on the State acting in a “neutral” and “impartial” fashion with regard to the truth or legitimacy of beliefs held⁷ and on ensuring mutual tolerance between competing groups: ‘Accordingly, the role of the authorities in such circumstances is

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³ See for instance *Church of Scientology Moscow v. Russia*, 5 April 2007, European Court of Human Rights, No. 18147/02.
⁵ *Metropolitan Church of Bessarabia v. Moldova*, ibid.
⁶ *Moscow Branch of the Salvation Army v. Russia*, 5 October 2006, No. 72881/01, para. 58.