FREEDOM OF CONSCIENCE AND RELIGION

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1 GENERAL

Article 9 of the European Convention on Human Rights (the Convention) provides that:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 14 is another Article of the Convention that covers the protection of freedom of religion. It establishes the general protection of the rights contained in the Convention, without discrimination on the basis of religion or other grounds. However, Article 14 may be applied only in conjunction with another Article of the Convention (in other words, in conjunction with Article 9 in cases concerning freedom of religion).

Article 2 of Protocol No. 1 to the Convention is also significant with regard to freedom of religion. It states:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

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Articles 8, 10 and 11 of the Convention may also be relevant to the protection of freedom of religion.

Although freedom of religion may be indirectly protected by various Articles of the Convention, the focus of this contribution will be Article 9.

The drafters of Article 9 were inspired by Article 18 of the Universal Declaration of Human Rights, the drafting of which is somewhat similar to paragraph 1 of Article 9. The second paragraph of Article 9, i.e. the limitation clause, was proposed by the delegation from the United Kingdom during the drafting process.

The Turkish and Swedish delegations proposed different limitation clauses. Turkey’s main concern was the resurgence of Islamic fundamentalism. It therefore proposed an addition to the first paragraph which would read: “This provision does not affect existing national laws as regards rules relating to religious practice and membership of certain faiths”.

On the other hand, Sweden was concerned that the provisions on religious freedom could undermine its domestic rules on religious arrangements. Accordingly, it also proposed an amendment to the same effect. Both amendments failed to find their way into the Convention. The United Kingdom and the Netherlands objected to them on the ground that they were unnecessary since the Convention allowed for reservations.

Many different relationships exist between religion and the State in Europe, and they are the result of each individual State’s historical, social and political development. At one end of the spectrum, there are States that have no meaningful separation between religion and the State. The Greek Constitution, for example, begins “In the name of the Holy, Consubstantial Indivisible Trinity”; its Article 3 states that “the prevailing religion in Greece is that of the Eastern Orthodox Church of Jesus Christ”. The Constitution of Iceland states that “The Evangelical Lutheran Church shall be the National Church in Iceland and shall, as such, be supported and protected by the State”. In the United Kingdom, the monarch is the Head of the Church of England.

At the other end of the spectrum, there are States with a strong secular tradition, which make a clear separation between religion and the State. The Constitution of France describes France as “an indivisible, secular, democratic, and social Republic” (emphasis added).

Article 2 of the Turkish Constitution states that “Turkey is a democratic, secular and social State” (emphasis added). Article 24 of the Constitution protects freedom of conscience and belief. It goes on to state that “no one shall be compelled to worship or to participate in religious ceremonies and rites, to reveal religious beliefs and convictions, or be blamed or