The Contribution of the European Court of Human Rights to Contemporary Religious-Related Dilemmas

I. Introduction

In a seminal article, the German philosopher Jürgen Habermas raised the question of “why we can term secularized societies yet ‘post-secular’?”1 arguing that “[…] three overlapping phenomena converge to create the impression of a worldwide ‘resurgence of religion’: the missionary expansion, a fundamentalist radicalization, and the political instrumentalization of the potential for violence innate in many of the world religions.”2

The point of departure of the present article is to see how main issues and dilemmas that religious minorities and groups pose and face in contemporary societies have or may be addressed through the lens of the European Court of Human Rights (hereinafter “the Court” or the “Strasbourg Court”).3 Rather

2 Ibid.
3 The European Court of Human Rights was set up in 1959 to ensure the observance of the European Convention of Human Rights and Fundamental Freedoms, adopted on 4 November 1950, ETS No. 005. On 1 November 1998, a full-time Court was established, replacing the two original enforcement institutions, the part-time Court and the European Commission of Human Rights (hereinafter referred to as “the Commission” or “ECommHR”). The pronouncements of the Convention’s organs
than looking at the most relevant pronouncements of the Strasbourg judges in the field of religion and belief according to a traditional approach analysis, this article will attempt to identify the contribution of the Strasbourg case-law vis-à-vis most urgent contemporary religious-related questions.

Reformulating some of the issues Habermas identified, the most challenging dilemmas featuring contemporary post-secular societies can be identified as the relationship between state and religion and the tendency toward a ‘militant secularism’, the missionary expansion and the problem of proselytism, the general distrust toward new religious movements, especially in a context in which one or more religions are mainstream, the issue of offenses to the religious feeling of believers, and the accommodation of increasing religious diversity in everyday life.

II. Definitional questions

The international catalogue of human rights contains many treaties and provisions concerning freedom of religion and beliefs. Regarding Europe, the first can be consulted in the official website of the Court at <http://www.echr.coe.int/echr/en/hudoc/description/>.

4 Human rights law has so far avoided a definition of religion, except to ensure that it includes the concept of belief. As John Witte Jr. has noted: “This capacious definition of religion in international law has left it largely to individual states and individual claimants to define the boundaries of the regime of religious rights”. Unfortunately, continues the same author, individual legislatures “embrace a bewildering array of definitions of religion”. John Witte Jr., “Introduction”, in John Witte Jr. and Johan D. van der Vyver (eds.), Religious Human Rights in a Global Perspective: Religious Perspectives (Martinus Nijhoff Publisher, The Hague, 1996).

5 The concept of belief includes religion but is not limited to its traditional meaning. Belief is thus a broader concept than religion and has been defined legally as “a conviction of the truth of a proposition, existing subjectively in the mind, and induced by argument, persuasion, or proof addressed to the judgment”. See, Natan Lerner, Religion, Secular Beliefs and Human Rights: 25 years after the 1981 Declaration (Martinus Nijhoff Publisher, Leiden, 2006).

6 Note, in this regard, that the Catholic Church has recently created a new Vatican office (Pontificium Consilium de Nova Evangelizatione Promovenda) for the promotion of new forms of evangelization to counteract an “increasingly secularization of societies”. See, Pope Benedict XVI, Apostolic Letter, Motu Proprio—Ubicumque et Semper, 12 October 2010 at <http://www.vatican.va/holy_father/benedict_xvi/apost_letters/documents/hf_ben-xvi_apl_20100921_ubicumque-et-semper_en.html>.

7 Some of these themes have been recently identified as relevant for possible future activities of the CoE Steering Committee for Human Rights. See, CoE, Committee of Experts for the Development of Human Rights (DH-DEV), List of themes for an exchange of views on future activities of the Steering Committee for Human Rights (CDDH), DH-DEV(2010)05, Strasbourg, 16 April 2010.

8 See, Universal Declaration of Human Rights, Art. 18; International Covenant on Civil and Political Rights, Art. 18; Declaration on the Elimination of All Forms of