



## KEY THEME<sup>1</sup>

### Article 9

# Autonomy of religious organisations

(Last updated: 29/02/2024)

## Introduction

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Religious communities have traditionally and universally existed in the form of organised structures. In cases concerning the mode of organisation of a religious community, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. The right of believers to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. The autonomous existence of religious communities is indispensable for pluralism in a democratic society and is therefore an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable (*Fernández Martínez v. Spain* [GC], 2014, § 127).

## State obligations in brief

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Under Article 9, the State's general role is that of a neutral and impartial organiser of the exercise of various religions, faiths and beliefs, in order to preserve public order, religious harmony and tolerance in a democratic society (*S.A.S. v. France* [GC], 2014, § 127).

### **What Article 9 forbids the State to do:**

- to oblige a religious community to admit new members or to exclude existing members (*Svyato-Mykhaylivska Parafiya v. Ukraine*, 2007, §§ 146 and 150);
- to determine the legitimacy of particular religious beliefs and the ways in which such beliefs are expressed, or to arbitrarily "reclassify" to which faith an individual or a community belongs (*İzzettin Doğan and Others v. Turkey* [GC], 2016, § 121; *Ancient Baltic religious association "Romuva" v. Lithuania*, 2021, §§ 125, 140 and 145; *Christian Religious Organization of Jehovah's Witnesses in the NKR v. Armenia*, 2022, § 76);
- to interfere with the internal affairs of a divided religious community by forcing it to come together under a single leadership (*Metropolitan Church of Bessarabia and Others v. Moldova*, 2001, § 117).

### **What Article 9 does not guarantee:**

- any right to dissent within a religious organization, either doctrinal or organisational (*Miroļubovs and Others v. Latvia*, 2009, § 80);
- any right to force the State to interfere with the appointment of religious leaders or ministers (*Sotirov and Others v. Bulgaria* (dec.), 2011);

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<sup>1</sup> Prepared by the Registry. It does not bind the Court.

- protection against dismissal from a religious community (*Siebenhaar v. Germany*, 2011, §§ 42-47, where the State had put in place a system of labour courts and such courts had undertaken a careful and thorough balancing exercise regarding the interests involved).

## Competing rights of other persons under other Convention Articles

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### *The general principles:*

- In disputes between a religious community and its employees, there is sometimes a conflict between the right of the community to autonomy, guaranteed by Article 9, and the rights of the employees, protected by other Articles of the Convention. A mere allegation by a religious community that there is an actual or potential threat to its autonomy is not sufficient to justify any interference with its employees' competing rights, which are also protected by the Convention (particularly under Articles 8, 9, 10 and 11). In addition, the religious community in question must also show, in the light of the circumstances of the individual case, that the alleged risk is probable and substantial and that the impugned interference with the competing right does not go beyond what is necessary to eliminate that risk and serves no other purpose unrelated to the exercise of the religious community's autonomy. Neither should that interference affect the substance of the right in question. Accordingly, the national courts must conduct an in-depth examination of the circumstances of the case and a thorough balancing exercise between the competing interests at stake. However, the State has a wide margin of appreciation in such matters (*Fernández Martínez v. Spain* [GC], 2014, §§ 123 and 132).
- A religious community can demand a certain degree of loyalty from those working for them or representing them. In order to determine whether the employee is subject to a heightened duty of loyalty, the domestic courts and the Court itself take into account the specific mission assigned to the person concerned within the religious organisation (*ibid.*, § 131).

### *See for example:*

#### Article 8:

- *Obst v. Germany*, 2010, and *Schüth v. Germany*, 2010: dismissal for adultery;
- *Fernández Martínez v. Spain* [GC], 2014: non-renewal of the employment contract of a married priest as a religious education teacher;
- *Travaš v. Croatia*, 2016: dismissal of a religious education teacher following divorce and re-marriage.

#### Article 10:

- *Lombardi Vallauri v. Italy*, 2009: non-renewal of the tenure of a professor at a Catholic university for allegedly unorthodox opinions.

#### Article 11:

- *Sindicatul "Păstorul cel Bun" v. Romania* [GC], 2013: impossibility for priests to establish a trade union.

#### See also Article 6 § 1:

- *Károly Nagy v. Hungary* [GC], 2017: lack of access to court to have a pecuniary claim adjudicated (no balancing exercise here).

## Recap of general principles

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- *Fernández Martínez v. Spain* [GC], 2014, §§ 127-132.

## Further references

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### ***Case-law guides:***

- [Guide on Article 8 - Right to respect for private and family life, home and correspondence](#)
- [Guide on Article 11 – Freedom of assembly and association](#)

## KEY CASE LAW REFERENCES

- *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, ECHR 2001-XII (violation of Article 9);
- *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, 14 June 2007 (violation of Article 9);
- *Mirojubovs and Others v. Latvia*, no. 798/05, 15 September 2009 (violation of Article 9);
- *Lombardi Vallauri v. Italy*, no. 39128/05, 20 October 2009 (violation of Article 10);
- *Obst v. Germany*, no. 425/03, 23 September 2010 (no violation of Article 8);
- *Schüth v. Germany*, no. 1620/03, ECHR 2010 (violation of Article 8);
- *Siebenhaar v. Germany*, no. 18136/02, 3 February 2011 (no violation of Article 9);
- *Sotirov and Others v. Bulgaria* (dec.), no. 13999/05, 5 July 2011 (inadmissible - expiration of the six-month time limit);
- *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, ECHR 2013 (extracts) (no violation of Article 11);
- *Fernández Martínez v. Spain* [GC], no. 56030/07, ECHR 2014 (extracts) (no violation of Article 8);
- *S.A.S. v. France* [GC], no. 43835/11, ECHR 2014 (extracts) (no violation of Articles 8, 9 and 14);
- *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, 26 April 2016 (violation of Article 9 and of Article 14 in conjunction with Article 9);
- *Travaš v. Croatia*, no. 75581/13, 4 October 2016 (no violation of Article 8);
- *Károly Nagy v. Hungary* [GC], no. 56665/09, 14 September 2017 (inadmissible - incompatibility *ratione materiae* with Article 6);
- *Ancient Baltic religious association "Romuva" v. Lithuania*, no. 48329/19, 8 June 2021 (violation of Article 14 in conjunction with Article 9);
- *Christian Religious Organization of Jehovah's Witnesses in the NKR v. Armenia*, no. 41817/10, 22 March 2022 (violation of Article 9 read in the light of Article 11).