



NEW RELIGIOUS MOVEMENTS AND FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION IN THE EUROPEAN CONVENTION ON HUMAN RIGHTS' JURISPRUDENCE

Asst. Prof. Dr. Joseph ZAND*

* Faculty of Law, Inonu University, Malatya, Turkey; joseph.zand@inonu.edu.tr

ABSTRACT

This paper critically examines the attitude of the Council of Europe through the jurisprudence of the European Court of Human Rights in relation to New Religious Movements (NRMs) sometimes referred to as 'cults'. On the whole, in contemporary Europe, NRMs seem to have been particularly vulnerable to persecution especially since the collapse of the Soviet Empire and the subsequent integration of many Eastern European states into the Council of Europe. Even though the Strasbourg organs initially limited religious freedoms to the individual, it now accepts that a religious organization also enjoys the right to religious freedom as representative of its members. In spite of this, by and large, NRMs have been denied recognition as bona fide religious institutions in Europe. This is mainly due to the fact that the European Court allows its member states a wide margin of appreciation in such matters. The Church of Scientology has been used as an example to illustrate the challenges faced by such organizations striving for recognition. This paper also considers the approach adopted by the British courts which represent a more moderate and measured approach towards NRMs.

Keywords: *New religious movements, European Court of Human Rights, Scientology, Freedom of conscience, Freedom of religion.*

INTRODUCTION

This paper will attempt to assess whether the phenomenon of New Religious Movements (*NRM*) has been treated harshly in Europe, with reference both to the case law of the European Court of Human Rights (*the Court*) and also that of the United Kingdom. This paper shall also concentrate on those groups, which the press and public often negatively describe as “*cults*”.^[1]

In recent times Europe has been ravaged by the conflict and persecution of minorities for their faith in such places as far apart as the Balkans, Northern Ireland and the Caucasus region. Respective communities are separated by differences of religion, ethnicity and race. However, hardly would any commentator admit that the conflicts fought are actually caused by religion. Moreover, in Europe there are groups often described as cults who claim to be persecuted simply because of their ‘faith’.^[2]

As a result of a glut of NRMs especially in the second half of the twentieth century in the “*New Europe*” the Court and the United Kingdom judiciary have been presented with a unique challenge. It will also be argued that the Strasbourg organs have been unwilling to recognise, and slow to protect, unconventional systems of belief, and that they have been willing to accord special dispensation to faiths, which have had long established history in Europe. The Church of Scientology will also be used as an example of an NRM, which, has been at the forefront of the campaign to be recognised as a bona fide Religion in Europe for the last 40 years. From the outset, it should be emphasised that NRMs are not splinter groups of existing churches, nor are they religions that may be identified with an “*immigrant group*”, such as, for instance, Islam, Sikhism or Hinduism.

[1] Generally see Daschke, D. and Ashcroft, W.M. (*eds.*), ‘New Religious Movements: A Documentary Reader’, New York University Press, 2005, p. 3; see also Arwick, E., ‘Researching New Religious Movements: Responses and Redefinitions’, Routledge, 2006.

[2] Cumper, P., ‘The Rights of Religious Minorities: The Legal Regulation of New Religious Movements, Minority rights’ in the ‘New’ Europe, 165-183, Kluwer Law International, 1999.

NEW RELIGIOUS MOVEMENTS

Since the end of the Second World War the speed and scope of social changes in Europe may not have been as dramatic as in some other parts of the world but still have had profound repercussions.^[3] As a response to these changes many people, mostly young people, joined various New Religious Movements (NRMs) established in Europe.^[4] According to Barker:

‘The term new religious movement (*NRM*) is used to cover a disparate collection of organisations, most of which have emerged in their present form since 1950s, and most of which offer some kind of answer to questions of a fundamental religious, spiritual or philosophical nature.’^[5]

‘NRM’ refers principally to groups, which have achieved most publicity and notoriety. They include the Unification Church (*UC*), the Children of God (*COG*) or Family of Love, the International Society for Krishna Consciousness (*ISKCON*), the Church of Scientology, the Divine Light Mission (*DLM*), Transcendental Meditation (*TM*), and the Rajneesh Foundation.^[6]

Since NRMs vary so vastly, impartial analysis of these groups is not an easy task, and as a result, our knowledge of some of these groups tends to be rather sparse. On occasions, NRMs have been responsible for truly dramatic situations.^[7] They have also been the subject of innumerable studies and hours of debate by “*politicians*” all over Europe, as Iban has noted, ‘they (*politicians*) constantly appear in the mass-media, and yet not only would there appear to be no solution to the problem, but it does not seem possible to obtain a clear definition of what the problem actually is.’^[8]

Although, the general perception is that there are vast armies of people whose lives have been significantly affected by these movements, in reality, their number compared to more established religions is still relatively small.^[9] In this regard, it has been observed that:

‘The real significance of NRMs lies not in their numerical strength, for NRMs in Europe have traditionally failed to emulate the success of their counterparts

[3] Melton, J.G., ‘An Introduction to New Religions’ in Lewis, J.R., (ed.), ‘The Oxford Handbook of New Religious Movements’, Oxford U.P., 2008, p. 19.

[4] Beckford, J, A., *New religious Movements and Rapid Social Change*, Sage Publications, 1988, pp. 32-34.

[5] Barker, E., ‘New Religious Movements: A Practical Introduction’, Rose of Sharon Press, 1989, p. 9.

[6] Generally see Lucas, P.C. and Robbins, T. (eds.), ‘New Religious Movements in the Twenty-First Century: Legal, Political and Social Changes in Global Perspective’, Routledge, 2004.

[7] Gas attack on packed subway trains in central Tokyo by supporters of Aum cult leader Shoko Asahara, *The Guardian*, 21 March 1995, at 18. Also see a tragedy involving mass suicide/murder of members of one of NRMs movements in Switzerland, October 1997.

[8] Iban, I. C., ‘Religious Tolerance and Freedom in Continental Europe’, *Ratio Juris*. Vol. 10 No. 1 March 1997 (90-107).

[9] Barker, ‘NRMs: A Practical Introduction’, op. cit., p. 9.

in the United States, but to the extent in which they demonstrate Europe's tolerance of religious diversity.'^[10]

It is interesting to note that the term NRM refers to the wide range of groups whose religious approaches are in evident contrast to the principles, of not only well established faiths, but also of those that have attained, or are in the process of acquiring a similar status.^[11] Although, earlier generations of new religions could be recognised as 'deviations' or heresies within the Judaeo-Christian tradition, a wide range of new practices have inspired new religious movements which are generally not considered praiseworthy in comparison to absolute values consolidated by the established churches in the west.^[12] Iban has noted that:

'... This is only the case, I insist, if this behaviour is backed by 'good reason', namely patriotism, religion, charity, solidarity, culture, etc. It would seem, therefore, that the values behind the new religious movements are not included in what we class as 'good reasons' that justify exceptional treatment.'^[13]

From the onset, it has to be pointed out that there are stark differences between NRMs. They mainly encompass movements, which are stigmatised, and yet wish to be recognised as genuine 'religions' in Europe.^[14] The concept of NRM is a problematic one in that it refers to organised attempts to mobilize human and material resources for the purpose of spreading new ideologies and sensibilities of a religious nature.^[15]

The term "new" is historically relative and no longer applies to many religious groups that traditionally have been considered as such.^[16] The NRMs under consideration have to be distinguished from longer established movements such as the Church of Jesus Christ of Latter-day Saints (*Mormons*), Jehovah's Witnesses and other Christian denominations which fairly recently have established themselves as bona fide religions mainly in Western Europe.^[17] This is

[10] Ibid.

[11] Chryssides, G.D., 'Historical Dictionary of New Religious Movements', 2nd edition, Scarecrow Press, 2011, pp. 4-5.

[12] Chryssides, G. & Wilkins, M.Z. (eds.), 'Reader in New Religious Movements: Readings in the Study of New Religious Movements', Continuum International Publishing, 2006, especially Chapter 4 on 'New Religions and the Churches', p. 396; see also Wilson, B. R., "The Social Dimensions of Sectarianism – Sect and NRMs in Contemporary Society, Oxford U.P., 1992.

[13] Iban, 'Religious Tolerance and Freedom in Continental Europe', op. cit., p. 100.

[14] Cumper, 'the Rights of Religious Minorities', op. cit., p. 166.

[15] Beckford, J. A., *New Religious Movements and Rapid Social Change*, op. cit., p. 29.

[16] Lucas and Robbins, 'New Religious Movements in the Twenty-First Century', op. cit., p. 227.

[17] See e.g., *Kuznetsov v. Russia*, no. 184/02, paras 73-74, 11 January 2007, in which the Court held that the action taken by a regional human rights commissioner in breaking up a Jehovah Witnesses' meeting had no legal basis and had been in pursuit of her private ends ...' Appleby, R. S., 'The Ambivalence of the Sacred: Religion, Violence, and

notwithstanding the fact that some of the abovementioned groups are still persecuted in some parts of Europe.^[18]

As stated above the number of NRM's membership is still relatively small and some sociologists such as Barker attribute this lack of success simply to the fact that the reaction to the movements is more significant than the movement themselves.^[19] It has even been argued that the reason for the apparent lack of enthusiasm on the part of the public in Europe is that due to the adverse publicity it tends to be wary of such movements.^[20] In fact, this sentiment has been accentuated by the media's portrayal of NRMs worldwide.^[21] It has also been noted elsewhere that the public at large tend to believe that NRMs preside over a process of 'brainwashing'.^[22]

Moreover, leadership of NRMs is another source of controversy. Since the leaders of such movements are mostly charismatic and powerful personalities, the public perception of NRMs is synonymous with such characters such as David Koresh, Bhagwan Rajneesh, Reverend Moon and Aum cult leader Shoko Asahara.^[23] Indeed, the media tend to portray such leaders as powerful individuals who lack accountability and more often than not indulge in excessive practices.^[24] Cumper has noted that:

'Some leaders portray themselves as 'father figure' and emphasise the primary duty of members is to the group has led to charges that NRMs are socially divisive and disrupt the traditional family unit.'^[25]

However, it is pointless to discuss the possible lack of freedom of the members of the NRMs, or the sincerity of their leaders, since this is something that cannot possibly be proven.^[26]

Reconciliation', Rowman & Littlefield, 1999, p. 264.

- [18] Lucas and Robbins, 'New Religious Movements in the Twenty-First Century', op. cit., p. 21.
- [19] Barker, E., 'New Religions Movements' in Smelser, N. J. & Baltes, P. B. (eds.), *International Encyclopaedia of the Social and Behavioural Science*, 16: 10631-34, Oxford: Elsevier.
- [20] Cumper, 'the Rights of Religious Minorities', op. cit., p. 167.
- [21] In fact, in recent years some American writers have also warned of the danger of NRMs and their social repercussions. Generally see Martin, W. R., 'The Kingdom of the Cults', Bethany House, 2003; Gallagher, E. V., 'The New Religious Movements Experience in America', Greenwood Press, 2004.
- [22] Lewis, 'The Oxford Handbook of New Religious Movements', op. cit., p. 3; see also Richardson, J., 'The Deformation of New Religions: Impact of Societal and Organizational Factors', in Robbins, W., Shepherd, W. C. & McBride, J. (eds.), 'Cults, Culture and the Law: Perspectives on New Religious Movements', Scholars Publishing, 1985.
- [23] Wessinger, C., 'Charismatic Leaders in New Religions', pp. 80-96 in Hammer, O. and Rothstein, M. (eds.), 'The Cambridge Companion to New Religious Movements', Cambridge University Press, 2012; Lewis, J. R. and Lewis, S. M., 'Sacred Schisms: How Religions Divide', Cambridge University Press, 2009, p. 129.
- [24] Lewis, J. R., 'Violence and New Religious Movements', Oxford U.P., 2011, p. 23-25.
- [25] Cumper, 'The Rights of Religious Minorities', op. cit., p. 168.
- [26] Iban, 'Religious Tolerance and Freedom in Continental Europe', op. cit., p. 100.

EUROPE'S ATTITUDE TO NRMS

At this stage it is worth mentioning that the apparent inconsistency in attitudes towards NRMs in Europe is due to cultural, legal, political, historical and constitutional diversity.^[27] Hence, in some European countries the NRMs face much sterner opposition than others.^[28] A high-level Enquete Commission on the so-called Sects Psycho-groups indicates the concern about NRMs in Germany.^[29]

According to a survey compiled by Richardson and Van Driel regarding the attitude of governments and the public in Europe towards NRMs, the Netherlands was the most tolerant country followed by Britain, France and Germany.^[30]

Indeed, public response reflects many complex factors and is an important aid to understanding the NRMs varying fortune around Europe.^[31] One of the best examples of this is Germany's treatment of the Church of Scientology which prompted a number of Hollywood celebrities to write a letter to the then German Chancellor Helmut Kohl, denouncing the German treatment of the Church of Scientology, accusing it of "*a shameful pattern of organised persecution*", and likening the treatment of Scientologists to that of Jews under Hitler.^[32]

Furthermore, the German government claimed that the Church of Scientology "*engendered a marked friend-foe mind-set in its members*", which may result in severance of family ties.^[33] Whilst it seems that in France the real opposition

[27] Evans, C., 'Freedom of Religion under the European Convention on Human Rights', Oxford U.P., 2001, at 21.

[28] See Garay, A., "*Liberte religieuse et proselytisme: l'experience Europeene*", Revue trimestriclle des droits de l'homme 17. Garay provides a study of European National Constitutions and legislations in which he concludes that Religious expression is generally protected and religious minorities do not generally suffer in Europe due to a refusal to recognize their spiritual identity; they suffer because respective societies are organized in a way that reflects the dominating religious cultures.

[29] Deutscher Bundestag, Final Report of the Enquete Commission on 'So-called Sects and Psychogroups': New Religions and Ideological Communities and Psychogroups in the Federal Republic of Germany, available at: < <http://www.agpf.de/Bundestag-Enquete-english.pdf>>.

[30] Richardson, J. T. and Van Driel, B., 'Journalists' Attitudes towards New Religious Movements', Review of Religious Research, Vol. 39, No. 2, Mass Media and Unconventional Religions (Dec. 1997), pp. 116-136.

[31] Introvigne, M., 'Something Peculiar about France: Anti-Cult Campaigns in Western Europe and French Religious Exceptionalism', in Lewis (ed.), 'The Oxford Handbook of New Religious Movements' op. cit., pp. 206-119.

[32] "*US stars accuse Bonn of Nazi View on Scientology*", The Daily Telegraph, 10 January 1997, at 14.

[33] 'The Scientology Organisation', paper submitted by the German delegation at the OSCE Human Dimension Seminar on Constitutional and Administrative Aspects on the Freedom of Religion, Warsaw, 16-19 April 1996, cited by Cumper, 'the Rights of Religious Minorities', op. cit., p. 166.

to NRMs (*in particular scientology*) comes from the families of the converted members who claim that ‘belonging to an NRM seems to imply both a rejection of the family and a questioning of its social role.’^[34]

In a reaction to the phenomenon of NRMs a report to the Parliamentary Assembly of the Council of Europe headed by the British Conservative member concluded that, “*as the 21st century approaches, sects [in Europe] are proliferating*”.^[35] The report also said that although this ‘phenomenon may not be a new one ... it is growing and spreading internationally’.^[36]

The report provided two reasons for the increase in these non-traditional religions. Firstly, ‘a waning interest in and support for churches of the traditional kind’, which has significantly resulted in leaving ‘a yawning gap in the field of spiritual quest.’^[37] Secondly, the public has failed to consider secular alternatives to religion, which has “*left an ethical void*”.^[38] Hence, the report concluded that, ‘the sects have taken advantage of the vacuum left by waning interest in the traditional institutions.’^[39] However, this has not deterred NRMs to seek recognition across Europe for a variety of reasons especially by litigation through the European Court of Human Rights.^[40] Cumper has observed that:

‘In Europe a number of NRMs are involved in campaigns to win official recognition from the state as bona fide religions. The advantages of this may range from tax benefits (*e.g., charitable status*) and making it easier to hold public meetings (*e.g., in a few European countries, places of religious worship must be registered with the state*), to tangible benefits, such as a higher public profile, an improved image, and welcome publicity for the group.’^[41]

[34] Ibid.

[35] Parliamentary Assembly Report on Sects and NRMs, Rapporteur: Sir John Hunt, 29 November 1991, Doc. 6535, at 4.

[36] Ibid.

[37] Ibid.

[38] Ibid.

[39] Wilson, ‘the Social Dimensions of Sectarianism’, *op. cit.*, p. 239.

[40] Anagnostou, D. and Psychogiopoulou, E. (*eds.*), ‘The European Court of Human Rights and the Rights of Marginalized Individuals and Minorities in National Context’, Martinus Nijhoff Publishers, 2009, p. 111.

[41] Cumper, ‘the Rights of Religious Minorities’, *op. cit.*, p. 169.

NRMS AND EASTERN EUROPE

Needless to say, NRMs face persecution in many European countries, but their treatment in Eastern European countries has particularly been harsh, where the authorities have questioned their practices.^[42] Since the Collapse of the Soviet Empire many NRMs have attempted to establish themselves in Eastern Europe with varying degree of success.^[43] In fact, NRMs in the 1990s were discriminated against and denied privileges in Eastern European countries such as Bulgaria, Latvia, Lithuania, Poland and Rumania by laws which distinguish between their officially recognised religious groups and those which are not so classified.^[44]

It is worth mentioning that this is in the light of the fact that Eastern European churches play a more prominent role in their societies in the post-communist era and have put respective governments under pressure to legislate to maintain the status quo.^[45] One of the best examples of such draconian measures is the law passed in Russia in September 1997, which protects the legal status of the official religions (*the Orthodox Church, Islam Judaism and Buddhism*) and any other faith registered in Russia in the last fifteen years.^[46] The case of *Kimlya and others v Russia*, was instigated by the Church of Scientology of Nizhnokamsk, which had been denied registration by the local authorities on the grounds that it had been in existence in the locality for less than required fifteen years.^[47] The Court held that the interference with the applicants' rights to freedom of religion and association cannot be said to have been "*necessary in a democratic society*", and that there had also been violation of Article 9 of the Convention, interpreted in the light of Article 11.^[48]

[42] Sweeney, J.A., 'The European Court of Human Rights in the Post-Cold War Era: Universality in Transition', Routledge, 2011, pp. 215-16.

[43] Generally see McKay, G., 'Subcultures and New Religious Movements in Russia and East-Central Europe', Verlag Peter Lang, 2009.

[44] Moreno, P., *The Status of Religious Freedom in OSCE Countries*, (*the Rutherford Institute*) 1997.

[45] See e.g. the case of *Jehovah Witnesses of Moscow and Others v. Russian*, 10 June 2010 (*No. 302/02*), para 99; in which there was allegations that the Russian Orthodox Church had exerted pressure on the Ministry of Justice to prevent some religious organizations from obtaining their registration.

[46] The law on Freedom of Religion of December 1990 enacted by the USSR was replaced by the Russian Federation on 26 September 1997 by a new federal law on freedom of conscience and religious associations (*no. 125-FZ of 26 September 1997*). Many observers have criticised this legislation home and abroad on the basis that it disregards the equality of religions. See Cole-Durham, W. and Ferrari, S. (eds.), 'Law on Religion and the State in Post-Communist Europe', Peeters Publishers, 2004, p. 297.

[47] *Kimlya and others v. Russia*, no. 76836/01 and 32782/03, 1 October 2009, para 102.

[48] *Ibid.*

IS THERE A CHRISTIAN BIAS?

As noted above, traditionally very few cases on the basis of infringement of Art 9 of the Convention reached the Strasbourg organs (*Court and Commission*). As a result, in recent decades, a burgeoning and often controversial jurisprudence related to this article has begun to develop.^[49] Although, the more established NRMs such as Jehovah's Witnesses have managed to obtain redress under the Convention newer NRMs such as the Church of Scientology have been unable to achieve recognition.^[50] However, 'this contrasts sharply with the deference accorded to state churches and in particular to adherents of Christianity by the European Commission and the Court.'^[51]

This has prompted some observers of accusing Strasbourg organs of Christian bias.^[52] It is a truism that the drafters of the Convention were very much influenced by Judeo-Christian tradition in Europe in 1950s.^[53] At the one end of the European spectrum there are countries such as France and Turkey that the concept of secularism (*separation of religion and state*) is enshrined in their constitutions.^[54] While most other states do not have provisions that so vigorously promote secularism as does the French Republic (1958), which describes it as 'a Republic, indivisible, secular, democratic and social.'^[55]

At the other end of the spectrum, some constitutions reveal strong links between the state and a church or religion.^[56] The Constitution of Greece (1975/1986), for example begins 'In the name of the Holy, Consubstantial Indivisible Trinity.'^[57] The United Kingdom has established the Church of

[49] Controversial cases such as *Leyla Şahin v. Turkey (GC)*, 18 March 2011 (*No. 30814/06*) and discussed in Altuparmak, K. & Karahanogullari, O., 'After Şahin: the Debate on Headscarves is not Over', *European Constitutional Law Review* 2 (2006) 268; McGoldrick, 'Human Rights and Religion: the Islamic Headscarf Debate in Europe, Oxford: Hart, 2006).

[50] *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria (no. 40825/98)*, 31 July 2008; this case was based the fact that the Austrian authorities granted Jehovah's Witnesses legal personality twenty years after their first request to be recognized as a religion and had therefore treated them differently than any other religious community. See also

[51] Cumper, 'The Rights of Religious Minorities', *op. cit.*, p. 174.

[52] Gunn, J., 'Adjudicating Rights of Conscience under the European Convention on Human Rights', in 'Religious Human Rights in Global Perspective: Legal Perspectives', Van de Vyver, J.D. and Witte Jr., J. (eds.), the Hague, M. Nijhoff, 1996, p. 329.

[53] Adhar, R. and Leigh, I., 'Religious Freedom in the Liberal State', Oxford U.P., 2nd ed., 2013, pp. 23-50; see also Evans, 'Freedom of Religion under European Convention on Human Rights', *op. cit.*, pp. 19-22.

[54] Constitution of the Republic of Turkey, Law No. 2709 of 7 November 1982 as amended by Law No. 3361 of 17 May 1987. Article 2 describes the Republic of Turkey as a 'democratic, secular and social state' and Article 4 renders these principles irrevocable.

[55] Constitution of Republic of France, promulgated on 4 Oct. 1958, preamble.

[56] Doe, N., 'Law and Religion in Europe: a Comparative Introduction', Oxford U.P., 2011, pp. 40-44.

[57] It goes on to proclaim that 'the prevailing religion in Greece is that of the Eastern Orthodox

England to the extent that the Monarch is the 'Supreme Head of the Church of England.'^[58]

Therefore, there are a variety of relationships between the church and the state in the member states of the Council of Europe.^[59] While with the exception of Turkey, Albania and Bosnia, the majority of the High Contracting Parties of the European Council share a Christian heritage this does not disguise the fact that member states adopt different legal approaches towards NRMs. As a result of the diversity and lack of uniformity of approach, the Court has granted the high contracting states a wide margin of appreciation.^[60]

THE CHURCH OF SCIENTOLOGY

In the twenty-first century the Church of Scientology is one of most controversial NRMs, which has been denied the status as a "*religion*" in Europe.^[61] The Church of Scientology was founded by L. Ron Hubbard in early 1950s.^[62] Although, the Church of Scientology enjoyed some initial success in the early years of its establishment but 'one could have hardly predicted Scientology's meteoric rise or its history of public conflict from its modest beginning.'^[63]

Scientology is perhaps 'the best-known NRM for using legal action as a way to deter detractors and promote its organisation.'^[64] In spite of stating its case forcefully, it has found it difficult to secure the recognition as a bone fide religion in Europe.^[65] The Church of Scientology claims to be the fastest growing

Church of Jesus Christ ... acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and Synodal canons and sacred traditions.' Article 3 of the Constitution of Greece, 7 June 1975 (*as amended*).

[58] Hill, M., Sandberg, R. and Doe, N. (*eds.*), 'Religion and Law in the United Kingdom', Kluwer Law International, 2011, p. 65.

[59] Evans, 'Freedom of religion Under the European Convention on Human Rights', *op. cit.*, p. 21.

[60] Yourow, H. C., 'The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence', Kluwer Publishers, 1996, p. 12.

[61] Luca, N., 'Is there a Unique French Policy of Cults? A European Perspective', in Richardson, J. T. (*ed.*), 'Regulating Religion: Case Studies from around the Globe', pp. 58-59.

[62] Generally see Lewis, J. R. (*ed.*), 'Scientology', Oxford U.P., 2009; which provides a collection of scholarly writings regarding Scientology.

[63] Melton, G. J., 'Birth of a Religion', pp. 17-33, in Lewis, J.R. (*ed.*), 'Scientology', *ibid.*, p. 17.

[64] Richardson, J. T., 'Law', pp. 227-240, in Ebaugh, H. R. (*ed.*), 'Handbook of Religion and Social Institution', Springer, 2005, p. 236.

[65] Melton, G. J., 'Scientology in Europe: Testing the Faith of a New Religion' in Davis, D. and Besier, G., 'International Perspectives on Freedom and Equality of Belief', Baylor U.P., 2002, pp. 69-84.

religion in the world.^[66] According to its official website, Scientology boasts 8 million members attending 2318 churches in 107 countries.^[67] It has been described by its President as a “*sincere and genuine religion in all respects*”^[68]. Yet, these sentiments are not shared within some of the member states of the Council of Europe such as Germany and France.^[69]

Furthermore, Scientology in the past has accused Germany of systematic persecution of its members, which prompted the United States government to criticise Germany in its annual human rights report for the treatment of Scientologists.^[70] The criticism reached a peak when the US granted asylum to a German member of Scientology.^[71] Nevertheless, in other jurisdictions such as Australia^[72] and the United States^[73] Scientology has had more favourable response and has been recognised as a bona fide “*religion*.” Now this paper would consider the legal approach adopted by both the European Court of Human Rights and the United Kingdom courts towards NRMs.

THE LEGAL APPROACH TO NRMS IN EUROPE

Article 9 of the Convention protects freedom of thoughts, conscience and religion and is one of the foundations of ‘democratic society within the meaning of the Convention.’^[74] It states:

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 a 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 freedom of others.

[66] Official Church of Scientology website: <<http://www.Scientology.Org>>.

[67] Ibid.

[68] Ibid.

[69] The German Government has accused Scientology of profiteering rather than straightforward religion (Submission to the OSCE Seminar on Religious Freedom, ‘Parliamentary Assembly Report on Sects and NRMs’, op. cit.

[70] Germany, ‘country Reports on Human Rights Practices for 1998’, published by the Bureau of Democracy, Human Rights and Labour of the State Department, 26 Feb. 1999.

[71] Franz, D., ‘US Immigration Court Grants Asylum to German scientologist’, New York Times, 8 Nov. 1997, at 13.

[72] Church of the New Faith (*Scientology*) v. The Commissioner for Payroll Tax ALJRt 57 (1983) 785.

[73] Founding Church of Scientology v. United States 409 F.2d 1146 (*D.D.Cir. 1969*).

[74] Mowbray, A., ‘European Convention on Human Rights’, Oxford University Press, 3rd ed., 2012, p. 599; White, R.C.A. and Ovey, C., ‘The European Convention on Human Rights’, Oxford U.P., 2010, p. 402.

Moreover, Article 14 (*prohibition of discrimination*) of the Convention might be relevant to freedom of religion cases.^[75] It is worth mentioning that more often than not Articles 8-11 of the Convention which enshrine rights in the first paragraph, set out possible qualifications to the right in their second paragraph as a means of right-restrictive measures.^[76] In step with other international human rights instruments related to religious liberty,^[77] Article 9(1) sets out a positive right to both the manifestation of religion or belief (*the forum externum*), and the freedom of thought, conscience and religion (*the forum internum*), a sphere of 'inner belief' which is considered inviolable.^[78] According to Sandberg:

'The right to freedom of thought, conscience and religion is unqualified. This includes the right to hold a religion or belief and to change it. The right to manifest one's religion or belief is qualified by Article 9(1) in that the manifestation must be "*in worship, teaching, practice and observance*" and, more importantly, by the possible qualifications in Article 9(2). These permit the state to interfere with the right if the three tests in Article 9(2) are met. The interference must be "*prescribed by law*", have one of the legitimate aims listed in Article 9(2) and be "*necessary in a democratic society*."^[79]

On the face of it, it would seem that Article 9 of the Convention would provide enough protection for any NRMs. Nonetheless, due to intransigence of some of the member states of the Council of Europe this has not been as straightforward as it may seem.^[80] Until the early 1990s the case-law related to the right to freedom of thought, conscience and religion was relatively sparse.^[81] Although this may have been a reflection of religious freedom in Europe in contrast to many other parts of the world, the Court adopted a rather cautious approach to interpretation of the aforementioned Article.^[82]

[75] Knight, S., 'Freedom of Religion, minorities, and the Law', Oxford U.P., 2007, p. 56.

[76] ECtHR, *Al-Nashif v Bulgaria*, 20 June 2002 (*No. 50963/99*).

[77] Freedom of Religion is protected in all of the major international and regional human rights instruments, such as Article 18 of the International Covenant on Civil and Political Rights (*ICCPR*), Article 3 of the American Declaration of the Rights and Duties of Men (*American Declaration*), Article 12 of the American Convention on Human Rights (*ACHR*), and Article 8 of the African Charter on Human and Peoples' Rights (*ACHPR*).

[78] Evans, M.D., 'Freedom of Religion and the European Convention on Human Rights: Approaches, Trends and Tensions', in Cane, P., Evans, C. and Robinson, Z. (eds.), 'Law and Religion in Theoretical and Historical Context', Cambridge University Press, 2008, pp. 291-315, p. 292.

[79] Sandberg, R., 'Law and Religion', Cambridge University Press, 2011, p. 82.

[80] Kent, S. A., 'The French and German versus American Debate over "*New Religions*", Scientology, and Human Rights', *Marburg Journal of Religion*, Vol. 6, No. 1, January 2001, p. 3.

[81] Harris, D. J., O'Boyle, M., Bates, E. P., Buckley, C. M., 'Harris, O'Boyle & Warbrick Law of the European Convention On Human Rights', Oxford U.P., 2nd ed., 2009, p. 425.

[82] *Arrowsmith v. United Kingdom*, No. 7050/75, Comm. Rep. 1978, 19 DR 5. This narrow

The first major decision related to the violation of Article 9 was only delivered in the much referred to Kokkinakis case in 1993.^[83] Since then a rich and often controversial jurisprudence has developed.^[84] It is worth mentioning that in that case only one judge (*Judge Martens*) did not mention the dangers of unscrupulous groups use the process of brainwashing to gain new converts.^[85] Despite the importance and extent of the interests protected by Art 9 some scholars have argued that:

‘In spite of the clear breadth of interests protected by Article 9, this provision was not examined in detail by the European Court until 1993. Whilst this may have been a reflection of the fact that freedom of religion and belief is accorded much greater protection in Europe than in many other parts of the world, it was also, at least in part, almost certainly due to the Commission’s tendency to interpret Article 9 narrowly.’^[86]

Consequently, Article 9 provides protection not only for established religions (Buddhism,^[87] Christianity,^[88] Hinduism,^[89] Islam,^[90] Judaism,^[91] and Sikhism^[92]) but also covers newer religious organizations such as Jehovah’s witnesses, and the Church of Scientology in spite of resistance on the part of some of the members of the Council of Europe such as France and Germany.^[93] There is a general agreement that the right is fundamentally important despite a lack of agreement as to what it entails.^[94] The Court has elaborated on the strong link between religion and democratic society, stating that, ‘freedom of thought, conscience and religion is one of the foundations of a democratic society within the meaning of the Convention.’^[95] Hence the Court has reiterated that Art. 9 is not simply ‘one of the most vital elements that go to make up the identity of believer’ but also ‘a precious asset for atheists, sceptics, and the unconcerned.’^[96]

approach by the Court has been criticized by some scholars; e.g. Evans, C., ‘Freedom of religion Under the European Convention on Human Rights’, op. cit., p. 115.

[83] Kokkinakis v. Greece (1994) 17 EHHR 379.

[84] Sweeney, J.A., ‘Freedom of Religion and Democratic Transition’, in Buyse, A. & Hamilton, M. (eds.), ‘Transitional Jurisprudence and the ECHR: Justice, Politics and Rights’, Cambridge University Press, 2011, p. 103.

[85] Kokkinakis v Greece, op. cit., at 438.

[86] Harris, et al., ‘Law of the European Convention on Human Rights’, op. cit., p 425.

[87] X v. UK No 5442/72, 1 DR 41 (1971).

[88] Stedman v. UK No 29107/95 hudoc (1997); 23 EHRR CD 168.

[89] ISKCON v. UK No 20490/92 hudoc (1994).

[90] X v. UK No 8160/78, 22 DR 27 (1981).

[91] D v. France No 10180/82, 35 DR 1993 (1983).

[92] X v. UK No 8231/78, 28 DR 5 (1982).

[93] Urban, H. B., ‘The Church of Scientology: A History of a New Religion’, Princeton University Press, 2011, p. 201.

[94] Harris, et al., ‘Law of the European Convention on Human Rights’, op. cit., p 425.

[95] Hasan and Chaush v. Bulgaria, 26 October 2000 (No. 30958/96) para. 60.

[96] Kokkinakis v. Greece, op. cit., para 31.

In *Church of X v UK* Britain had imposed restrictions on members of the Church of Scientology to enter UK as they were deemed to be dangerous.^[97] The European Commission held that the Church could not bring a case since only a natural person could do so and not a legal body.^[98] However, this rule has now been amended and legal bodies such as churches and organisations with religious and philosophical objects can now exercise their right under Art 9.^[99] Hence, their collective interests and not only the interests of their members could be protected.^[100] Indeed, Scientology was the first organised religion to benefit from the Commission's reversal of earlier decisions to refuse to hear cases from churches complaining of a breach of their religious freedom as in the case of *X and the Church of Scientology v Sweden* where the Commission held that the Church of Scientology had a right to pursue an action in its own right.^[101]

Cumper encapsulates the cautious manner in which Strasbourg organs have interpreted and applied Art 9 in five stages as follows:

(i) that the Strasbourg organs have refused to define the concept of religion or even listing the criteria of religion; (ii) deliberately, the Court has refused to recognise some NRMs (*such as Scientology*) as religions; (iii) they have accorded more rights to 'traditional faiths' through their case law; (iv) there has been a marked reluctance to refer to Art 9, rather they tend to call upon other provisions of the Convention; (v) and finally even when they have made a reference to Art 9 they have allowed states a wide margin of appreciation.^[102]

It is worth noting that no human rights treaty including the European Convention, has ever defined 'religion or belief'.^[103] The Commission has generally performed the task of defining religion or belief in the context of Art 9.^[104] In many domestic legal systems that protect freedom of religion in constitutional or legislative regimes, the issue of what constitutes religion has been of great controversy.^[105]

However, in other Jurisdictions such as the US there has been far greater willingness to recognise NRMs than its European counterparts.^[106] Although, the reluctance of the Strasbourg organs to define 'religion' is understandable, the

[97] *Church of X v. the United Kingdom*, app. No. 3798/68, 13Y.B. Eur. Conv. On H.R. 306.

[98] *Ibid.*

[99] *Chappell v. UK* Application No. 12587/86 (1987) 53 DR 241.

[100] Cumper, 'the Rights of Religious Minorities', op. cit., p. 172.

[101] *X and the Church of Scientology v. Sweden*, App. No. 7805/77, 16 Eur. Comm'n H.R. Dec. & Rep. 68, 70 (1978).

[102] Cumper, 'The Rights of Religious Minorities', op. cit., p. 173.

[103] Evans, 'Freedom of Religion under European Convention on Human Rights', op. cit., p. 51.

[104] Harris, O'Boyle, Warbrick, at 357-8.

[105] Greenawalt, K., 'Religion as a Concept in Constitutional Law', 72 *California Law Review*, 753 (1984).

[106] *Thomas v. Review Board*, 450 U.S. 707 (1981), at 714.

same could not be said of their failure to list the characteristics of a 'religion'.^[107]

In X v UK the Commission failed to recognise Wicca (*an ancient religion of Celtic people*) as a religion and in that case prison authorities to register Wicca as his religion had refused the applicant.^[108] The Commission adopted the same approach in cases involving Druidism^[109] and the Devine Light Zentrum (DLZ).^[110] Finally, when the European Commission considered the sale of a religious artefact, it refrained from commenting whether scientology was a religion.^[111]

Although Strasbourg in its early case-law limited the enjoyment of religious freedom to the right of individuals, it has now adopted an approach which is more attuned to the collective right of religious freedom.^[112] The turning point in the attitude of the Court came in 2000, with its decision in the case of Hasan and Chaush v. Bulgaria, in which the Court recognized one of the two rival religious groups.^[113] This indicated that the Court was no longer just concerned with the religious right of individual but the whole community. The Court's case-law indicates that it has since devoted more attention to the collective religious right of communities especially in Eastern Europe.^[114] The best manifestation of this legal approach could be discerned from the Court's decision of Church of Scientology Moscow v. Russia.^[115] After ten years of attempting to re-register as a religious institution through use of the legal system of Russia, Scientology took its case to the Strasbourg and was admitted by the European Court of Human Rights.^[116] In April 2007, the Court ruled in favour of the Church of Scientology of Russia, finding a violation of Article 11 in light of Article 9 and ordered Russia to re-register Scientology as a religious organization.^[117]

[107] Cumper, 'The Rights of Religious Minorities', op. cit., p. 173.

[108] X v. United Kingdom, 11 DR, at 55.

[109] Chappell v. UK Application No. 12587/86 (1987) 53 DR 241.

[110] Omkarananda and Devine Light Zentrum v. Switzerland Application No. 8118/77 (1981) 25 DR 105.

[111] X and the Church of Scientology v. Sweden, op. cit, para 68.

[112] Doe, 'Law and Religion in Europe', op. cit., p. 89.

[113] Hasan and Chaush v. Bulgaria, 26 October 2000 (No. 30985/96), para. 29.

[114] Metropolitan Church of Bessarabia and Others v. Moldova, 13 December 2001, No. 45701/99, Supreme Holy Council of the Muslim Community v. Bulgaria, 16 December 2004, No 39023/97; the Moscow Branch of the Salvation Army v. Russia, 5 October 2006, No. 72881/01; Gldani Members of Congregation of Jehova Witnesses v. Georgia, 3 May 2007, No. 71156/01; Svyato-Mykhaylivska Parafiya v. Ukraine, 14 June 2007, No. 77703/01; Religionsgemeinschaft der Zeugen Jehovas v. Austria, 31 July 2008, No 40825/98; Kimlya and Others v. Russia, 1 October 2009, No. 76836/01; Mirolubovs and others v. Latvia, 15 September 2009, No. 798/05; and Holy Synod of the Bulgarian Orthodox Church v. Bulgaria, 16 September 2010, No. 35677/04.

[115] Church of Scientology Moscow v. Russia, 5 April 2007, No. 18147/02.

[116] Ibid.

[117] Ibid.

ARTICLE 9 AND THE MARGIN OF APPRECIATION

The Strasbourg organs have traditionally granted national authorities in certain matters an element of discretion, subject to the general supervision of the European Court.^[118] As a result, the Court has developed the concept that states have a 'margin of appreciation' in deciding whether a particular restriction on a right is required in the given circumstance.^[119] If a constraint on religion or belief is prescribed by law, the Court then considers whether the law or the manner in which it was applied is 'necessary in a democratic society' for one of the reasons outline in Art 9(2). In the *Handyside* case the Court said:

By reason of their direct and continuous contact with the vital forces of their countries, state authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirement as well as on the 'necessity' of a 'restriction' or 'penalty' to meet them.'^[120]

Nevertheless, it is for the national authorities to make the initial assessment of the reality of pressing social needs implied by the notion of 'necessity'. It has to be emphasised that the state does not have infinite elbowroom, in fact, 'the domestic margin of appreciation thus goes hand in hand with a European supervision'.^[121]

In *Otto-Preminger-Institute v Austria*^[122] the European Court upheld the ban on a motion picture, which had offended the local Catholic community by portraying Jesus as a simpleton and the Virgin Mary as sexually immoral. Also, in *Wingrove v UK*, the court upheld the ban granted by the British Government on showing of a short film about a nun's erotic visions of Christ on the cross in order to protect the sensibilities of Christians.^[123]

As pointed out above, Germany has been one of the most vociferous states against recognition of Scientology in Europe. Nevertheless, if Scientology wishes to challenge the restrictions in Germany having exhausted domestic remedies, it may be able to rely on the case of *Vogt v Germany*.^[124] In this case, a German teacher had been dismissed on the basis that her activities for the reformed Communist Party of Germany (*DKP*) were incompatible with her duty of political loyalty as a civil servant. She successfully managed to challenge the

[118] *Darby v. Sweden*, Commission's Report, 9 May 1989, A 187, para. 45.

[119] Generally see Arai-Takahashi, Y., "*The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*", Cambridge University Press, 2002; also Shahpanahi, N., 'Margin of Appreciation in Context of Freedom of Religion (*Article 9 of the European Convention on Human Rights*) in the Interpretation of the European Court of Human Rights', University of Toronto, 2011.

[120] *Handyside v. United Kingdom*, Judgement of 7 December 1976, Series A, No. 24; (1979-80) 1 EHRR 737.

[121] *Ibid*, at 23.

[122] *Otto-Preminger-Institute v. Austria*, (1995) 19 EHRR 34.

[123] *Wingrove v. UK*, (1997) 24 EHRR 1.

[124] *Vogt v. Germany* (1996) 21 EHRR 205.

decision. However, it is debateable whether Scientology can rely on Vogt, since the German Government can argue that Vogt is more applicable to Articles 10 and 11 rather than 9. Furthermore, the Government can also argue that the then Communist threat in Europe was a telling factor in Vogt, where it was distinguished from the earlier case of *Glaserapp*.^[125] There is no question that the German government could also argue that after the end of the Cold War era, Scientology presents a threat and rely on Art 9(2).^[126] Therefore Germany can claim that the restrictions on Scientology have a legitimate aim based on the public safety and also necessary in a democratic society. As this paper has attempted to illustrate the Court is very reluctant to challenge member states' rationale as noted by some scholars that all cases relating to religious beliefs or religious activities relating to Germany were declared inadmissible on the basis of margin of appreciation.^[127]

THE BRITISH APPROACH

The Courts' attitude in the United Kingdom in recent years towards NRMs in general and the Church of Scientology in particular has been more tolerant than some of their European counterparts. The main reason for NRMs wishing to be recognised as a "*religion*" in the UK in particular is for tax exemptions as well as the prestige that it would bring with it. English law is particularly generous in favour of bona fide religions such as Judaism, Islam, Hinduism and Sikhism, which have been brought to the UK through its immigrant population mainly from its former colonies.

It is worth mentioning that since the Reformation the Church of England has been the only lawful religion in the UK.^[128] The reigning monarch is the head of the Church of England and the House of Lords the upper house of the parliament, includes bishops from the Church of England.^[129] Inevitably, the Church of England's status as the established church means that some preference in law is allotted to it over other denominations, although being

[125] *Glaserapp v. Germany* (1987) 9 EHRR 25.

[126] Yourow, H. C., 'The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence', Kluwer Publishers, 1996, p. 95.

[127] Anagnostou, et al., 'The European Court of Human Rights and the Rights of Marginalized', op. cit., p. 111.

[128] According to Sandberg 'the constitutional position of religion differs in the four nations of the United Kingdom. While formerly there were established churches in all four nations, legislation disestablishing the national church has been enacted in respect of Ireland and Wales (*Irish Church Disestablishment Act 1869; Welsh Church Act 1914*). Two established churches continue to exist in England and Scotland.' Sandberg, 'Law and Religion', op. cit., p. 81.

[129] Boyle, K., and Sheen, J., *Freedom of Religion or Belief: A World Report*, Routledge, 1997. 316-17.

the established Church also carries some disadvantages too.^[130] In this regard, Knights is of the opinion that:

'Given the historical context of religious freedom, the dominance of Christian values as expressed in the legal system, and the position of the Church of England, other religions and their adherents were at risk of less favourable treatment than that afforded to the established church, its followers and the majority of the population.'^[131]

The United Kingdom's Government does not recognise the Church of Scientology as a religious organisation.^[132] According to a decision by the Charity Commission for England and Wales in 1999, the Church of Scientology's application for charity status in England and Wales was rejected.^[133] The Charity Commission held that the Church of Scientology would not be accepted as a charity in the UK since it was not deemed to be an organisation established for the charitable purpose of the advancement of religion even though 'it is accepted that Scientology believes in a supreme being', and 'the core practices of Scientology, being auditing and training, do not constitute worship as they do not display the essential characteristics of reverence or veneration for a supreme being.'^[134] Nevertheless, in 2000, since it was deemed to be a non-profit-making organisation the Church of Scientology received exemption from the value added tax in the UK.^[135] Moreover, it is significant to point out that the UK Defence Ministry has stated that Scientology is considered as a religion in the Royal Navy. On the other hand, the Prison Service in the UK does not recognise Scientology as a religion per se but those inmates who are registered Scientologists have the right to practice their religion and have access to the Church's representatives should they wish to consult them.

It is often claimed that since the implementation of Human Rights Act in 1998 there has been a substantial shift in the interface between law and religion in the UK.^[136] This is significant in light of the fact that prior to this no special provision dealing with religion in the UK existed and religious freedom existed mainly in common law as a broad and largely negative freedom rather than a

[130] Sandberg, 'Law and Religion', op. cit., pp. 25-26.

[131] Knight, 'Freedom of Religion, Minorities, and the Law', op. cit., p. 22.

[132] See Lord Justice Buckley's definition of worship in the Court of Appeal of England and Wales, *R v. Registrar General, ex parte Segerdal* [1970] 2 QB 679, at 707. Also U.S. Department of State, 2007 Report on Religious Freedom: United Kingdom available at: < <http://www.state.gov/j/drl/rls/irf/2007/90206.htm>>.

[133] <<http://www.charitycommission.gov.uk/library/start/pdfs/cosfulldoc.pdf>>.

[134] Ibid.

[135] U.S. Department of State, 2010 Report on Religious Freedom: United Kingdom available at:
< <http://www.state.gov/documents/organization/171729.pdf>>.

[136] Sandberg, 'Law and Religion', op. cit., p. 81.

positive right.^[137] Prior to the HRA 1998, the legislative framework in the UK contrasted directly with the positive right to freedom of religion existing in many of the bills of rights and constitutions around the world.^[138] Nevertheless, before the enactment of the HRA 1998, there was recognition on the part of the judiciary of the importance of freedom of religion.^[139]

The Human Rights Act 1998 (*HRA 1998*), section 13 states that a ‘particular regard’ is to be paid to the importance of the right to freedom of thought, conscience and religion when court decisions are taken affecting the exercise of that right by religious organisations. The phrase “*religious organisation*” used by section 13 is a much wider definition than the words “*religion*” or “*church*”. Cumper has noted:

‘Whilst the term “*religious organisations*” does include mainstream churches and religious charities, the extent to which it covers NRMs remains to be seen. In this, and in all other areas of the Human Rights Act, British judges must look to the ECHR.’^[140]

Jack Straw the then Home Secretary stated that Section 13 of the HRA 1998 reflected the Convention, in particular, he was confident ‘that the term “*religious organisation*” is recognisable in terms of the Convention.’^[141] However, it is interesting to note that both the Commission and the Court have refused to define “*religion*” in step with other international instruments in the past.^[142] Therefore, British judges would have to develop their own definition of religion for determining which groups including NRMs come under Section 13. It is debateable whether that would be of any assistance to NRMs to secure recognition in British courts as bona fide religious institutions.^[143]

[137] For a brief history of development of freedom of religion in the UK see Hamilton, C., ‘Family, Law and Religion’, Sweet & Maxwell, 1995, pp. 1-11.

[138] Knight, ‘Freedom of Religion, Minorities, and the Law’, op. cit., p. 22.

[139] R v. Secretary of State for the Home Department, ex parte Moon (1995) 8 Admin LR 477, 480; and also Ahmed v Inner London Education Authority (1978) QB 36, 41.

[140] Cumper, P., ‘The Protection of Religious Rights under Section 13 of the Human Rights Act 1998’, [2000] Public Law, 254.

[141] “20 May, 1998” Parliamentary Debates (*Hansard*) (*House of Commons*) Vol. 312 cc 989-1076.

[142] Evans, ‘Freedom of Religion under the European Convention on Human Rights’, op. cit., p. 51.

[143] See the recent case of the High Court in England, R (*Hodkin and Church of Scientology Religious Education College Inc.*) v. Registrar General for Births, Deaths and Marriages, Dec 12, [2012] EWHC 3635 Admin.

CONCLUSION

Freedom of religion or belief is a fundamental human right that protects a vital aspect of human integrity and autonomy.^[144] The European Convention from its inception has set out to uphold all the values that are precious to the Europeans including freedom of religion. However, the Strasbourg organs have been reluctant to allow cases relying on Article 9 to reach its courts and have shown a certain degree of eagerness to rely on other articles of the Convention. Nevertheless, as the case law of the Court illustrates, no NRM until recently had ever managed to successfully petition the Court. This is contrary to the spirit of new Europe and its commitment to human rights, which will be measured by its treatment of minorities (*including NRMs*).

It could also be concluded that the ambivalent attitude adopted by the Court and many members of the Council of Europe is a reflection of their protectionism towards the well-established state Churches, which play a major part in maintaining the status quo as well as consolidating their hegemony over their respective societies. This in some cases creates an impossible situation for NRMs to achieve recognition as a religion in those countries. Nonetheless, the case of Scientology is a ray of hope for many other law abiding NRMs for what they have achieved in other jurisdiction such as in the United States and Australia that one day could be the same recognition in law as a bona fide religious organisation.

[144] Evans, 'Freedom of Religion under the European Convention on Human Rights, op. cit., p. 200.

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