

# Protection and Promotion of Freedom of Religions and Beliefs in the European Context

Luca Paladini • Maria del Ángel Iglesias Vázquez  
Editors


# Protection and Promotion of Freedom of Religions and Beliefs in the European Context

Foreword by Philippe Couvreur

 Springer

### *Editors*

Luca Paladini  
Dipartimento di studi umanistici  
University for Foreigners of Siena  
Siena, Italy

Maria del Ángel Iglesias Vázquez   
International Law  
Universidad Internacional de La Rioja  
Logroño, Spain

ISBN 978-3-031-34502-9      ISBN 978-3-031-34503-6 (eBook)  
<https://doi.org/10.1007/978-3-031-34503-6>

© The Editor(s) (if applicable) and The Author(s), under exclusive license to Springer Nature Switzerland AG 2023

This work is subject to copyright. All rights are solely and exclusively licensed by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publisher, the authors, and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, expressed or implied, with respect to the material contained herein or for any errors or omissions that may have been made. The publisher remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

This Springer imprint is published by the registered company Springer Nature Switzerland AG  
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

Paper in this product is recyclable.

## Foreword by Philippe Cuvreur, Judge *ad hoc* and Honorary Registrar of the International Court of Justice, *Associé de l'Institut de Droit international*

La liberté d'aimer est le même droit que la liberté de penser, l'une répond au cœur, l'autre à l'esprit ; ce sont les deux faces de la liberté de conscience; elles sont au plus profond sanctuaire de l'âme humaine—Victor Hugo

I have read with great interest the contents of this new book, which is as richly documented as it is original, and it is with real pleasure that I will endeavour, in the following few lines, to introduce it very briefly, hoping to encourage many readers to discover it further.

As is the case with most of the essential subjects that touch the very depths of our lives, the subject of freedom of religion, conscience and thought—which we sometimes feel can be covered, in its most diverse aspects, by the more concise expression ‘freedom of belief’—appears to many of us to be both extremely familiar, when it is mentioned furtively in the course of a conversation, and surprisingly foreign, when it comes to defining its precise ins and outs in greater depth.

The familiarity that is immediately felt when this freedom is mentioned is undoubtedly due to its truly fundamental and, therefore, ‘immediate’ character in our democratic societies. Its various facets are so closely interdependent that no one would think of conceiving one without the other. The fact that everyone is free to believe or not to believe, and to think what he or she wants, seems today to constitute an *a priori* given, so obvious in these societies that the reasons for this state of affairs, perceived as fairly banal, now seem rather indifferent. And yet, even in contemporary democratic societies, what appears to be an obvious fact, so firmly anchored in the collective unconscious, is of recent appearance.

This is not to say that the problems associated with the emergence of beliefs, their adoption, manifestation or transmission are new—on the contrary. Human beings’ relationship with phenomena of immanence and transcendence, their intuitions in this respect, their questions and concerns in the face of intensely challenging issues which, although so intimately linked to their being, are nonetheless largely beyond the reach of their reason—which perhaps explains why these issues have continued to be posed, over the centuries, in such astonishingly identical terms—go back, like the sense of the sacred that can permeate this permanent quest,

and the mystical impulses that can accompany it, to the dawn of human times. The same is true of the rites and other varied cultural expressions to which this existential journey of the heart and the mind has given rise, marking societal behaviour to a greater or lesser extent, as well as of the progressive development of ideas—critical or otherwise—which is necessarily associated with such a journey.

This search, so noble and so elementary at the same time, in human beings, for the meaning of their being, or even for its sublimation into a beyond, has unfortunately not been without forms of intolerance, sometimes so radical that they have given rise to the cruellest conflicts and the most merciless persecutions. Such excesses have tended to become more pronounced, and even more widespread, as forms of social organisation have taken shape and the emergence of a diversity of beliefs and thought has been seen as incompatible, in one way or another, with the integrity of that organisation, or dangerous to it, whatever its state of development. The history of Europe, to limit ourselves to it, is unfortunately full of tragic episodes of anti- and inter-religious violence, more or less recurrent, from ancient Rome to the end of the Second World War. We need only think of the horror still inspired today by the mere reference to the Inquisition born in the thirteenth century, to the wars of religion of the sixteenth and seventeenth centuries, or to the bloody excesses of the French Revolution, despite the solemn proclamation, in Article 10 of the 1789 *Déclaration des droits de l'homme et du citoyen*, of the principle according to which '*Nul ne doit être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établi par la loi*'.

While the emergence of beliefs and the conflicts that accompanied it are thus ancient, the definitive consecration, in a fairly rigorously 'codified' form, of the ideals of religious tolerance and pluralism of ideas, which were born of the Reformation and Humanism and developed during the Enlightenment, is comparatively very recent. Freedom of religion, conscience and thought has thus made its entry, successively, at the internal level, into various constitutional texts and, at the external level, into such pre-eminent instruments as the 1948 Universal Declaration of Human Rights (Article 18), the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 9), the 1966 Covenant on Civil and Political Rights (Article 18), the 1969 American Convention on Human Rights (Article 12) and, closer still, the 1981 African Charter on Human and Peoples' Rights (Article 8), as well as in various instruments of primary and secondary European Union law (notably Article 6 of the Treaty on European Union and Article 10 of the Charter of Fundamental Rights of the European Union).

But while the *principle* of this freedom has since been so well established that it has become an integral part of our life, this is not the case with its material content and, above all, the conditions under which it must be exercised. However fundamental it may be, the freedom of belief of each individual *in foro interno*, like all the other freedoms, can only be manifested *in foro externo* while respecting the freedoms of others and the essential values of '*vivre ensemble*' within the societies concerned. It is therefore not surprising that the above-mentioned texts all set out, in fairly similar terms, certain limits to the realisation of this freedom, relating to the rights and freedoms of others, public safety and public order, health, morals, etc.

Stated in general terms, such limits obviously give rise to problems of interpretation when they are applied to the increasingly diverse concrete cases that arise in our communities. Phenomena such as the ‘globalisation’ of the world, and the ever-increasing and difficult-to-order migrations, have made the social fabric of these communities sometimes so complex that they have seen the resurgence of not only certain tensions, thought to be outdated, between philosophical or religious orientations of various kinds, resurrecting the classic divisions of hostility between ‘majority’ and ‘minority’ groups, but also a growing degree of intolerance, or even radicalism, which was also thought to belong to the past. In such a context, where the modern liberal, ‘materialistic’ and ‘hypocritically neutral’ State is often called into question, the balance between, on the one hand, the full enjoyment of such an essential freedom as freedom of religion, conscience and thought, and, on the other, the limits necessary for its harmonious and serene manifestation in a democratic and open society, is particularly delicate to achieve. All freedom is difficult to assume. As Sartre wrote, following Kierkegaard, ‘*c’est dans l’angoisse que l’homme prend conscience de sa liberté*’; and we know Dostoevsky’s famous phrase: ‘Nothing is more attractive to human beings than their freedom of conscience, but nothing is more of a cause of suffering’. It is by being aware of one’s freedom of belief and by assuming it that the holder himself or herself becomes the first actor responsible for regulating its manifestation. States further have a certain margin of appreciation and action in this respect, which is not easy to handle nor to control. As for the role of the judge, whether national, regional or international, it is undoubtedly essential, here as elsewhere, to ensure the effectiveness, in all its complexity, of the rule of law concerned, and its integrity, without which this rule could not fulfil its eminent social purpose. The intervention of the judge constitutes, particularly in the matter at hand, given the difficulty that characterises it, a privileged instrument for the fair and balanced protection of the rights of individuals and communities (including States), while respecting their duties.

Given its major importance in so many respects, freedom of belief has naturally been the subject of numerous studies, using a wide range of approaches and disciplines, including, of course, legal ones. This book is not just another one. Its editors have met the ambitious challenge of bringing together in a single volume a series of contributions of a high scientific level, but accessible to all, which, as self-sufficient but complementary monographs, offer a complete and up-to-date overview of the work of the two major European Courts—the European Court of Human Rights and the Court of Justice of the European Union—each with regard to its own legal system, both in terms of the definition and interpretation of the theoretical components of freedom of religion, conscience and thought, and in terms of the practical applications, individual and collective, to which these components may give rise in the most varied cases of everyday life (wearing of signs and symbols, exercise of worship, performance of rites, observance of special days off, etc.). The editors’ choice of limiting the book to the state of the problem in Europe seems judicious, since it was also a question of attempting to make certain comparisons and to identify certain interactions in a relatively more homogeneous human and cultural space-time.

The reader, whether a lawyer or not, a theoretician or a practitioner, will thus find in this book, which is quite unique from this point of view, precise answers to the many questions he or she may have concerning the general or concrete legal scope of this freedom, its necessary relations with related rights, such as those to private and family life, equal treatment and non-discrimination, education, or non-refoulement, as well as the limits to which its exercise is subordinated in the case law of the two Courts. In the course of the book, the reader will discover the points of convergence, and sometimes divergence, of these jurisprudences, particularly taking into account the institutional architectures in which these Courts exercise their specific functions and the links maintained by the distinct legal orders in which they operate (including the references made by EU instruments to the ECHR and the interferences between freedom of belief and the strictly ‘Community’ freedoms). The book approaches the work of these Courts both analytically and synthetically, in a dynamic and evolutionary perspective, and with a constructive critical spirit. It gives a clear indication, where appropriate, of the hesitations that their judges have sometimes experienced when making decisions, faced as they were with the uncertainty of certain values in rapidly changing societies, as well as the complexity of the subject, which thus remains, in various respects, open ...

This valuable overview of jurisprudence is very usefully completed by a final section concerning the measures, of a different nature, taken by certain organisations such as the ILO, the Council of Europe or the OSCE to promote freedom of religion, conscience and thought, inter-cultural dialogue and tolerance. Of particular interest is the study devoted to the position of the Holy See on religious freedom since the adoption on 7 December 1965, within the framework of the Second Vatican Council, of the famous Declaration *De Libertate Religiosa Dignitatis Humanae*, which constituted a true Copernican revolution within the Catholic Church. Since then, this position has been enriched by reflections in the wake of the Declaration to take full account of the evolution of our societies, as shown, for example, by the important document of the International Theological Commission entitled ‘Religious Freedom for the Good of All. Theological Approaches and contemporary Challenges’, published in April 2019, which contains interesting developments concerning, among other things, religious freedom and evangelisation. This chapter highlights the efforts of the Holy See, through various mechanisms, to strengthen dialogue between religions and with States, thus ensuring peaceful coexistence and constructive cooperation in their mutual relations.

To all those who have chosen to purchase this beautiful book, I wish them a good and fruitful reading!

The Hague, The Netherlands

January 2023

Philippe Couvreur

## Scientific Committee

Prof. Giovanna Adinolfi (Università degli studi di Milano); Prof. Silvia Angeletti (Università degli studi di Perugia); Prof. Elisa Baroncini (Università degli studi di Bologna); Prof. Javier Carrascosa (Universidad de Murcia); Prof. Gianluca Contaldi (Università degli studi di Macerata); Prof. Giacomo Di Federico (Università degli studi di Bologna); Prof. Carla Gulotta (Università degli studi di Milano-Bicocca); Dr. Bernhard Hofstötter (EU Commission); Prof. Javier Martínez-Torrón (Universidad Complutense de Madrid); Prof. Maria Paola Monaco (Università degli studi di Firenze); Prof. Massimiliano Montini (Università degli studi di Siena); Prof. Edmondo Mostacci (Università degli studi di Genova); Prof. Excmo Sr. Rafael Navarro-Valls (Conferencia Permanente Academias Jurídicas Iberoamericanas and Real Academia de Jurisprudencia y Legislación de España); Prof. Eulalia W. Petit de Gabriel (Universidad de Sevilla); Prof. Pietro Pustorino (LUISS Guido Carli, Roma); Prof. Mercedes Salido (Universidad Internacional de La Rioja); Adv. LL.M. Msc Edgardo Sobenes Obregon (International Litigation and Arbitration – ESILA); Rector Magnífico Prof. Jose María Vázquez García-Peñuela (Universidad Internacional de La Rioja); Prof. Marco Ventura (Università degli studi di Siena); Prof. Patrizia Vigni (Università degli studi di Siena); Prof. Mariano Vivanco Comes (Universitat de Valencia); Prof. Roberto Virzo (Università degli studi di Messina and LUISS Guido Carli, Roma); Prof. Francisco Javier Zamora Cabot (Universidad Jaume I, Castellón).



# Contents

<b>The Freedom of Religions and Beliefs in the European Context: An Introduction to the Book</b> . . . . .	1
Maria del Ángel Iglesias Vázquez and Luca Paladini	
<b>Part I The ECHR</b>	
<b>Freedom of Thought, Conscience and Religion Under the European Convention on Human Rights: New Approaches</b> . . . . .	21
Núria Reguart-Segarra and Victoria Camarero-Suárez	
<b>Clothing, Symbology and Religious Prescriptions: The Perspective of the European Court of Human Rights</b> . . . . .	53
Isabel Cano Ruiz	
<b>The Legal Protection of Religious Freedom and Belief in Public Transport: An Approximation from the Case Law of the Strasbourg Court</b> . . . . .	79
Silvia Meseguer Velasco	
<b>Personal Beliefs, Family and Education of Children</b> . . . . .	99
Miguel Rodríguez Blanco	
<b>Positive and Negative Obligations of Member States</b> . . . . .	119
Diego Aboy Rubio	
<b>Personal Beliefs and Risk of Danger in Case of Return to the Origin Country</b> . . . . .	137
Yanitza Giraldo	
<b>Part II The EU</b>	
<b>The Protection of Freedom of Religion in the EU Law</b> . . . . .	167
Valentina Petralia	

<b>Free Movement of Persons and Religious Freedom Within the EU . . . . .</b>	<b>193</b>
Alessandra Lang	
<b>Religious Freedom and Employment Discrimination in the Case Law of the European Court of Justice. . . . .</b>	<b>215</b>
Fabio Spitaleri	
<b><i>Jus Migrandi</i> and Personal Beliefs of Migrants Coming from Third States: Practice from the EU Asylum Policy . . . . .</b>	<b>237</b>
Francesco Cherubini and Tommaso Pochi	
<b>The EU and the Status of Churches, Religious Associations, Philosophical and Non-Confessional Organisations . . . . .</b>	<b>267</b>
Michał Rynkowski	
<b>Navigating Between Animal Welfare and Freedom of Religion . . . . .</b>	<b>283</b>
Costanza Di Francesco Maesa	
 <b>Part III Other International Actors in the European Context</b>	
<b>Freedom of Religion or Belief: The Role of the Holy See . . . . .</b>	<b>309</b>
Vincenzo Buonomo	
<b>The International Labour Organisation and Freedom of Religious Belief. . . . .</b>	<b>333</b>
Djamil Tony Kahale Carrillo	
<b>Promoting Diversity, Combating Hate Speech and Broadening Intercultural Dialogue: The Council of Europe's Actions in Favour of Personal Beliefs . . . . .</b>	<b>357</b>
José Ramón Intxaurbe Vitorica	
<b>The Organization for Security and Cooperation in Europe and the Promotion and Assistance to Member States in the Field of Freedom of Religion and Belief . . . . .</b>	<b>377</b>
Rubén Miranda Gonçalves	
<b>Freedom of Religions and Beliefs in the European Context: Concluding (<i>Quo Usque Tolerantia Nostra Nos Ducit</i>) . . . . .</b>	<b>399</b>
Maria del Ángel Iglesias Vázquez and Luca Paladini	

# Editors and Contributors

## About the Editors

**Luca Paladini** is Senior Lecturer of European Union Law at the University for Foreigners of Siena (Unistrasi), and qualified as Associate Professor. He graduated in Political Sciences and specialised in EU Law at the University of Milan. He holds a PhD in EU Law from the University of Bologna. He was Jean Monnet Fellow (2008–2009) and then Visiting Fellow (2009–2011) at the European University Institute (Florence). His research interests include the EU external action, the human rights international protection, and the domestic legal order conformity with international law and the EU Law. Luca Paladini is a co-editor of an edited book, author of a book and about 50 contributions on EU Law and International Law. He is a member of the editorial team of the Legal Journals ‘DPCEonline’, ‘Giurisprudenza italiana’, ‘GenIUS’, and ‘Revista Hispanoamericana de derechos humanos’. Since 2022, he is the Unistrasi Rector’s Delegate for ‘students’ traineeships and job placement’.

**Maria del Ángel Iglesias Vázquez** is Professor of International Law and Human Rights since 1999. She is a member of the Royal Academy of Jurisprudence and Legislation (Spain), the Bar Association of Valencia and the Spanish Association of Professors of International Law and International Relations (AEPDIRI). She is the author of several publications (books, book chapters, reviews, forewords and papers) on human rights, the most recent with a special focus on the rights of indigenous peoples (and freedom of beliefs). She has actively participated in several research groups (among others on culture, religion and human rights, and global law) and she is currently the lead researcher (director) of the group ‘Relevance of the status and condition of indigenous peoples’. She has supervised several doctoral theses and has been a member of doctoral and master’s thesis tribunals. She has taught and lectured in several countries in Europe and America. In 2008 and 2019 she was a Visiting Researcher at the Lauterpacht Centre for International Law (University of Cambridge).

## List of Contributors

**Diego Aboy Rubio** Universidad Internacional de La Rioja, La Rioja, Spain

**Vincenzo Buonomo** Pontifical Lateran University (PUL), Rome, Italy

**María Victoria Camarero Suárez** Jaume I University of Castellón, Castelló, Spain

**Isabel Cano Ruiz** University of Alcalá, Madrid, Spain

**Francesco Cherubini** LUISS Guido Carli, Roma, Italy

**Costanza di Francesco Maesa** University of Siena, Siena, Italy

**Yanitza Giraldo** International University of Rioja, Logroño, Spain

**Maria del Ángel Iglesias Vázquez** International Law, Universidad Internacional de La Rioja, Logroño, Spain

**José Ramón Intxaurbe Vitorica** Department of Public Law, Deusto Law School, Bilbao, Spain

**Djamil Tony Kahale Carrillo** Polytechnic University of Cartagena, Cartagena, Spain

**Alessandra Lang** University of Milan, Milan, Italy

**Silvia Meseguer Velasco** Universidad Complutense de Madrid, Madrid, Spain

**Rubén Miranda Gonçalves** University of Las Palmas de Gran Canaria, Las Palmas, Spain

**Luca Paladini** DISU, University for Foreigners of Siena, Siena, Italy

**Valentina Petralia** University of Catania, Catania, Italy

**Tommaso Pochi** LUISS Guido Carli, Roma, Italy

**Núria Reguart-Segarra** Jaume I University of Castellón, Castelló, Spain

**Miguel Rodríguez Blanco** University of Alcalá, Madrid, Spain

**Michal Rynkowski** European Commission, Brussels, Belgium

**Fabio Spitaleri** University of Trieste, Trieste, Italy