

## **Fragmented Universalism: The Making of the Right to Freedom of Religion at the European Court of Human Rights**

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### **Summary**

The place of religion in contemporary Europe is highly contested. Many of these controversies around religion are being debated in national and international courts. The European Court of Human Rights (ECtHR) has become particularly prominent in this context. Its empowerment has created new opportunities for diverse religious actors to express their claims. Yet, while scholars have extensively debated courts' responses to demands of religious freedom and non-discrimination, we know little about when and how religious actors actually access and use the opportunities provided by international courts. To fill this lacuna, the dissertation studies strategic religious freedom litigation at the ECtHR.

Testifying to the growing judicialization of religion and politics, a plethora of NGOs of all denominations, along with various religious and secular activists, academics, international organizations and states intervene in the ever-growing number of religious freedom and anti-discrimination cases heard at the Court. In the past decades, they have brought many of the 47 signatory states of the European Convention before the transnational judiciary. Acting as litigants, councils, lawyers or third-party interveners, they broker the political and social place of religion that, for long, was defined by national institutions. Their assertions are diverse and concern topics as broad as religious veiling, faith-driven opposition to gay rights, religious education in schools, or the prosecution of religious groups. The Court has thus evolved into a global stage upon which furious religious controversies are rehearsed. The main protagonists are not only liberal human rights activists representing the underprivileged; they are also conservative religious actors defending the interests of the religious establishment.

The encounter between (secular) law and religion is fraught with tension. Both compete to establish the supremacy of their claims to absolute truth and morality: they are, however, deeply entangled. As the judicialization of religious politics has dramatically advanced, scholars have spilled much ink on discussing how courts mold and arbitrate religious conflicts and identities. Yet, we know little about how, in turn, religion influences law-making. The dissertation asks how religious actors shape the right to freedom of religion by transnational litigation. It showcases how legal strategies used by Jehovah's Witnesses, Muslims, Sikhs, Evangelicals, Christian conservatives and Russian Orthodox actors in religious freedom struggles at the ECtHR have delineated the boundaries within which the law unfolds. It thereby aims at opening the black box of the right to freedom of religion at unveil the many controversies and contradictions that inhabit the negotiation of this right at the transnational level.

Conceptually, the dissertation draws on theories of legal opportunity and framing strategies in combination with field theoretical tools, which have gained momentum in socio-legal studies in recent years. Religious freedom is, viewed from this vantage point, a field where actors with different degrees of power compete over law's proper interpretation. The dissertation shows that influence within the field requires its participants to align with its main premises and dominant frames. At the same time, this conversion to the field's logic does not exclude the skillful evasive action of actors who seek to circumvent, or reverse its undercurrents. This explains why marginalized religious minority actors develop contrasting legal strategies to those deployed by highly experienced and politically powerful networks of cause lawyers

defending religious majorities' interests. The resulting diverging legal approaches reflect power asymmetries and create ideological and religious friction.

Faith-based actors are but one, yet particularly understudied, set of actors shaping religious freedom. By litigating their claims in relation to their religious environment, their political networks and other legal stakeholders, they translate their social embeddedness into the narratives of religious freedom. This is not to say that religion explains everything. The argument is in fact not so much about quantifying influence. It rather suggests a break with dichotomist views of structure and agency when it comes to understanding the regulation of religion, and a shift from the sole focus on the jurisprudential outcome to its constitutive undercurrents in the particular case of the right to freedom of religion.

A purposefully constructed large-N dataset comprising all of the more than 1400 religious claims that have reached the ECtHR between 1959 and 2015<sup>1</sup> allows for the identification of cases involving strategic litigation and their assessment against the backdrop of the broader context of case law development. The dissertation builds on these high-profile religious freedom cases. It follows the trajectories of the litigants by tracing their conversion to legal activism, and by following them from the national into the transnational legal fields. Each chapter examines a different contentious episode. Taken together, they offer a comprehensive picture of how religious actors approach the law and are capable of changing the boundaries of religious freedom over time. The bulk of the analysis uses in-depth interviews conducted between 2015 and 2018 with a diverse range of interviewees, comprising Muslims, Sikhs, representatives of Evangelical and Christian conservative NGOs, Jehovah's Witnesses and members of the Russian Orthodox Church, as well as the lawyers defending the various cases, and experts of the Court. Analysis of a substantial corpus of legal decisions and documentation of the legal proceedings, as well as media publications by the litigants completes this qualitative investigation.

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<sup>1</sup> Koenig, Matthias & Lisa Harms (2019), *European Court of Human Rights Religious Litigation Database (1959-2015)*, Version 0.1 (unpublished, on file with author).