

**The freedom of Personal
Self-Determination as the Prime
Principle for "The Religion or Belief
Manifestation Test" in ECHR
Case-Law**

Metreveli Archil

The University of Georgia

*Abstract: This article focuses on the case law under Article 9 of the ECHR in the field of classifying an act as a manifestation of a particular religion or belief. It aims to criticize the long-time rigid practice of the European Commission and the European Court, which grants them the Power of Assessment in this regard. Namely, in the light of the general principles of the freedom of religion and belief, the author explains why it is natural and necessary for the Court to give up its Power of Assessment and leave the issue entirely in the scope of personal self-determination. In arguing own view, the author relies upon the Court's approach developed in the Case - *Osmanoğlu and Kocabaş v. Switzerland* (ECHR. 2017).*

Keywords: Freedom of Religion and Belief; Manifestation of Religion or Belief; Individual Dimension of the Freedom of Religion or Belief; Freedom of Personal Self-determination in choice of Religion or Belief and their Manifestation Forms.

In 2017, the European Court of Human Rights (hereafter "the Court") delivered final judgment on the Case - Osmanoglu and Kocabaş v. Switzerland (29086/12. 10/01/2017). In this case, the applicants, who were Muslims, were required to have their daughters exempted from compulsory mixed swimming lessons at their primary school on religious grounds. Although the Swiss Government refused their request, the applicants continued to resist. Accordingly, the national authorities imposed fines on them. The Court held that there was an interference in the parents' right to freedom of religion or belief on the part of the State. Namely, although the parents' resistance was not directly derived from the Koran, it still was undoubtedly motivated by their sincere faith. While there was a legitimate aim to restrict applicants' rights, the Court undeniably proved a precedential approach. Previously, the European Commission of Human Rights (hereafter "the Commission") and the Court, in such cases, usually used the so-called "Arrowsmith Test" (with minor modifications). The test considers that the manifestation of the religion or belief ("practice") does not cover every act, which is merely motivated or influenced by a religion or a belief but only those, which actually express the religion or belief in question. In the present case, the Court essentially argued that to recognize an act as the manifestation, it is not always necessary the direct accordance with the conviction, in question and person's sincere faith that he or she is acting in accordance with own belief is also sufficient.

Precisely this same approach revealed by the Court, in the Case of Osmanoglu, is the inspiration of the present article, which urges us to analyze and criticize the formation and development of "The Religion or Belief Manifestation Test"⁷ (hereafter "the Manifestation Test") entirely.

The author describes and discusses all the objective conceptions on which is or should be based the freedom of individuals to determine their social behavior and relationships freely, without any interference and according to own faiths solely. Based on this theoretical foundation, the author develops the attitude that when

⁷ The practice of the Commission and the Court to assess whether or not the particular act represents an actual Manifestation of the religion or belief, in question.

classifying a particular act as the manifestation, the Court should finally give up its power of assessment and leave the issue entirely in the field of personal self-determination.

General principles

Religious conviction is one of the most important foundations for sincere believers in personal self-understanding, perception of the universe, and determination of their relationship with it. In other words, religious convictions, on the one hand, shape the inner identity of the believer and, on the other hand, define their outward behavior. Usually, one's social life and personal relationships, shaped by religious convictions, are not merely subjective interpretations of religious concepts but strict and direct obligations. Hence, every person must be free to express their inner convictions, including in the forms they consider appropriate, without unjustifiable interference from other individuals or the State.

1. Two dimensions of the freedom of religion or belief

Universally, the freedom of religion or belief recognizes and protects the right to *hold* (Forum Internum) religious conviction, as well as the right to *manifest* it (Forum Externum). Thus, the freedom of religion and belief combines two dimensions - *Internal* and *External* (UDHR art. 18; Convention Art. 9; ICCPR Art. 18). In discussing these dimensions, apart from their proprietary content, the most important issue is the difference between their *absolute* and *non-absolute* natures. In particular, according to Article 9 of the European Convention on Human Rights (hereafter the "Convention") and Article 18 of the International Covenant on Civil and Political Rights (hereafter the "ICCPR"), *the Internal Dimension* is an absolute and unrestricted right but its *External Dimension* - is not. Hence, the freedom to manifest a religion or belief shall be subject only to such limitations as are prescribed by law and are necessary for a democratic society in pursuit of one or more of the legitimate aims (Convention art. 9 (2); ICCPR art. 18 (3)).

Notwithstanding this fundamental difference, the essential separation of the Internal and External dimensions of the freedom of religion and belief is impossible. Moreover, the external behavior and relationships of the believers are formed by the influence of their inner faith, and on the contrary, the ability or disability of free manifestations of inner faith necessarily affects the internal dimension of their belief (Kokkinakis v. Greece, 14307/88. (25/05/1993). § 31). Consequently, the fundamental separation of these dimensions makes meaningless both of them, since, as far as it is impossible to separate a particular religious practice from the religion in question, it is also impossible to separate the freedom of manifestation of religion from the freedom to hold it. Therefore, legislation or practice that recognizes and protects only the freedom to hold a religious conviction and not, at the same time, the freedom of manifest it, is not a mere violation of the External Dimension of this freedom but also represents a gross intervention in the person's inner world and directly or indirectly impacts on his or her personal identity. The same applies to undue interference with the exercise of the freedom of manifestation of religion or belief, which limits or abolishes one's freedom to live and relate according own conviction.

2. The classical forms of religion or belief manifestation

All of the international norms set forth above explicitly describe the generally recognized forms by which one may manifest own religion or belief (individually or collectively and in public or in private), in particular, *worship, teaching, observance, and practice*. When discussing the essence of these forms, it is important to answer fundamental questions: does this list have *circumscribing* or *broadening* intentions?

First, it must be underlined that worship, teaching, observance and practice are interpreted broadly but not exhaustively and cover wide-ranging acts based or motivated by religion or belief.⁸ Furthermore, it is of primary significant that the

⁸ See: UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion) (30 July 1993); CPR/C/21/Rev.1/Add.4.

Court's case-law, under Article 9 of the Convention, does not include an exact and exhaustive definition of these terms. In the absence of general definitions, the Court always seeks to determine whether a particular action represents one of them. However, even in such a case, its purpose is not necessary to classify the action into only one of the four forms. Therefore, often one action corresponds not only to one, but to two or three forms of the manifestation.⁹ This indicates that the Court defines the forms of the manifestation through some practical experience and does not rely upon the preliminarily considered exact and exhaustive concepts. Thus, the Court, in principle, is not closed to recognizing such act as the manifestation which has not yet been practiced but actually represents the manifestation of one's religion or belief.

While the Court continuously examines all particular acts independently as to whether it is placed in one or more of the four recognized forms, it is clear that an exact and exhaustive understanding of the content of these forms could not exist even during the elaboration of the Convention (as well as the UDHR and the ICCPR). Thus, their statutory fixation, given the Convention's (as well as the UDHR's and the ICCPR's) human rights spirit, should have been more of a Broadening intention of the right, rather than the Circumscribing one.¹⁰

§ 4; UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981). Art. 4.

⁹ Cf.: Kuznetsov and Others v. Russia 184/02 (11/01/2007). § 57, Kokkinakis v. Greece 14307/88 (25/05/1993). § 31, Eweida and others v. The United Kingdom 48420/10, 36516/10, 51671/10, 36516/10 (15/01/2013). § 89, Jakóbski v. Poland 18429/06 (07/12/2010). § 45. Etc.

¹⁰ The Broadening intention of these forms is directly emphasized through the Study of Discrimination in the Matter of Religious Rights and Practices. Arcot Krishnaswami. Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. UN. New York. 1960. p.17.

3. The impossibility of exact and exhaustive definition of the "Manifestation Forms"

Significantly, no International Act protecting the freedom of religion and belief includes the definition of the terms "religion" or "belief." On the other hand, all competent definitions of these International Acts grant the broadest content to these terms.¹¹ Furthermore, the legal definition of these terms is also inappropriate at the national level.¹² The absence of such definitions is quite rational since, in addition to the general absence of a homogenous and universal understanding of these concepts, it is expressly important that the existence of such a strict definition would be essentially inexpedient. In particular, it would resist the goal of the freedom of religion and belief, which intends to embrace any religious convictions to ensure that all believers have the right to freely adopt and practice any religious convictions, which they confess by their inner faith, based only on their personal choice. Thus, on the one hand, the absence of the legal definition of the terms "religion" and "belief" and on the other hand, the absence of an exact and exhaustive definition of the terms "worship," "teaching," "practice" and "observance," equally point to the primary broadening intention of both dimensions (internal and external) of the freedom of religion or belief.

The above consideration relates to the problem of legal and conceptual understanding of the terms "religion" and "belief." However, this problem does not have only this dimension. It also involves a principle of logical confrontation. In particular, the rule of logical reasoning first implies a precise understanding of the core doctrines (religion or belief) to properly understand their consequent concepts (worship, teaching, practice, and observance). In this sense, it is virtually impossible to argue

¹¹ For the UDHR see Arcot Krishnaswami. 1960. P 1. (Footnote 7), For the Convention - Guide on Article 9 of the Convention - Freedom of thought, conscience and religion. European Court of Human Rights. Updated on 31 August 2020. § 14, For the ICCPR - General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion). § 2.

¹² Guidelines for Review of Legislation Pertaining to Religion or Belief. OSCE. ODIHR. (2004). II.A.2.

that the national authorities or the Court have any power or competence to define whether an act is an actual manifestation of religion or belief in question. Since in the absence of a legal definition of religion or belief, they cannot rely on any legal basis in their decision-making, as they operate predominantly in the scope of legal categories (Cf. *Manoussakis and others v. Greece* 18748/91 (26/09/1996). § 41). This logical dilemma is also evident from a reversed perspective. In particular, it is difficult to guarantee that the national authorities or the Court in assessing any act as the manifestation of particular religion or belief will not assess the religion or belief itself and, nevertheless, be able to prove objectively that they are in direct and close nexus with them. Assessing a link between the conviction and the act, considering the diversity of the religions and beliefs protected by the freedom of religion and belief, is extremely difficult.¹³

Summary of General Principles

The reasonings and arguments developed above can be summarized as follows:

1. The freedom of religion and belief is a consolidated right that integrally includes both internal and external dimensions. Thus the ability or disability of a person to freely manifest their own religion or belief and to form and practice corresponding social relationships and behaviors necessarily has a direct influence not only on the external but also on the internal dimension of his/her freedom of religion and belief;
2. The classical forms of the manifestation of religion or belief – worship, teaching, practice, and observance – do not have a precisely established exact and exhaustive understanding. They are broadly interpreted and intended to extend rather than limit the freedom of religion and belief;

¹³ For example, the organs of the Convention (namely, the Commission) have experience when, in deciding, whether the restriction on the right to manifest one's religion was justified, had to discuss if the religion in question was identifiable itself. Cf. *X. v. The United Kingdom* 7291/75 (04/10/1977).

3. The fact that the terms "religion" and "faith" are not subject to legal definition in itself creates a logical problem of the legal definition of the forms of their manifestation.

All of this indicates that the right to *manifest* a religion or belief, likewise the right to *have* a religion or belief, is a matter of a genuinely subjective personal self-determination. Therefore, national authorities and the Court, which have not, in principle, any competence to assess the essence of this personal sphere, cannot, in principle, hold any power to assess its legitimacy. This preliminary conclusion will be the guidance we will rely on in the second part of this article.

"The Manifestation Test" – the Practice of the Organs of the Convention

While the arguments discussed in the preceding chapter, in principle, fully protect the right of personal self-determination in the choice of forms of manifestation of their convictions, the practice of the Organs of the Convention in this respect still seems to be contradictory. This part of the article aims to describe, analyze, and criticize this practice.

*1. Arrowsmith v. the United Kingdom*¹⁴

In 1978, the European Commission of Human Rights delivered a decision on a case where the applicant was a United Kingdom citizen. She was a pacifist who urged British soldiers to leave the military service and not go to war in Northern Ireland. While the applicant could prove her pacifist beliefs, she could not prove that the "practice" of handing out relevant leaflets to soldiers was a legitimate manifestation of her beliefs and not an act merely motivated by her belief. British courts convicted her and sentenced her to imprisonment. The applicant submitted a complaint to the Commission and claimed a violation of her freedom of belief under Article 9. The Commission accepted that Article 9 covered the applicant's belief but distributing

¹⁴ Arrowsmith v. The United Kingdom 7050/75 (12/10/1978).

leaflets did not constitute a "practice" of Pacifism because it seemed political opposition to a particular government policy. The Commission interpreted a distinction between acts, which are "merely motivated or influenced by a religion or belief," and the acts, which actually "manifest" the belief in a "practice." The "test" focused upon whether a particular manifestation is necessary in order for someone to practice personal belief (in which case an exemption is available), as opposed to situations in which the act in question is simply inspired by personal belief (in which case an exemption is unavailable). The Commission noted that not every act motivated or influenced by a belief will suffice to be a "manifestation" and ruled that there was no "Manifestation" (*Arrowsmith v. The United Kingdom* 7050/75 (12/10/1978))

This precedent has become so-called the "Arrowsmith Test," according to which the "manifestation" of religion and belief does not "cover" every act which is merely *motivated or influenced by a religion or a belief, but only those that "actually express" (or is "intimately linked" to) the belief in question.* The Organs of the Convention repeatedly used the Arrowsmith Test" in different variations.¹⁵ It is remarkable that in parallel with this test, the Organs of the Convention adopted a different approach in several cases. In particular, they have replaced the term "does not cover" with the term "does not protect," which would substantially change their approach.¹⁶ Because, in contrast to the principle that the manifestation does not "cover" any act motivated or influenced by the religion or belief in question, it is principally correct that the right to manifest a religion or belief does not unconditionally protect any act, including the classical forms of the manifestation, such as "worship, teaching, practice, and observance." Nevertheless, the approach of

¹⁵ Cf: *C. v. The United Kingdom* 10358/83 (15/12/1983); *Vereniging Rechtswinkels Utrecht v. The Netherlands* 11308/84 (13/03/1986); *Van Den Dungen v. The Netherlands* 22838/93 (22/02/1995); *Porter v. The United Kingdom* (15814/02. 08/04/2003). *Pretty v. The United Kingdom* 2346/02 (29/04/2002); *Pichon and Sajous v. France* 49853/99 (02/10/2001); *Skugar and others v. Russia* 40010/04 (03/12/2009).

¹⁶ For example: *Kalaç v. Turkey* 20704/92 (01/07/1997). § 27. see also *Leyla Şahin v. Turkey* 44774/98. (10/11/2005). § 105;

the Organs of the Convention did not change substantially, and the right to choose a precise form of the manifestation did not remove in the sphere of personal self-determination of individuals (or even communities). The fundamental problem of the Arrowsmith Test –imposing the burden on the applicant to prove that a particular act is a direct and obligatory requirement of a particular religion or belief – has remained unchanged for a long time.¹⁷

2. *Eweida and Others v. the United Kingdom*¹⁸

The Arrowsmith Test was significantly extenuated, but not radically changed in 2013. In the present case, two applicants – Ms. Eweida and Ms. Chaplin – complained that their employers had placed restrictions on their visibly wearing Christian Crosses at work. Two other applicants – Ms. Ladele and Mr. McFarlane – complained that they had been dismissed for refusing to carry out certain duties which they considered incompatible with their religious beliefs. In this case, the Court made extensive and modified interpretations of the essence of the connection between religion and belief and the forms of their manifestation. In particular, the Court noted that in order to count as a "Manifestation," the act in question must be intimately linked to the religion or belief. Furthermore, the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement on the applicant to establish that he or she acted in fulfillment of a duty mandated by the religion in question.¹⁹

Thus, the Court identified two important aspects. First, the Court has retained that part of the Arrowsmith Test which excludes from the "manifestation" acts which are

¹⁷ Other authors earlier also criticize this approach, for example, cf: Uitz, R. (2007) *Freedom of Religion in European Constitutional and International Case Law*, Strasbourg: Council of Europe Publishing, pp. 28-29.

¹⁸ *Eweida and others v. The United Kingdom* 48420/10, 59842/10, 51671/10, 36516/10 (15/01/2013).

¹⁹ *Ibid.* § 82.

in some way inspired or influenced by the religion or belief in question but do not directly express it or which are only distantly connected to it. Second, it extenuated the applicants' burden of proof by stating that there is no requirement on the applicant to establish that he or she acted in fulfillment of a duty mandated by the religion, in question".²⁰ While the latter was a quite significant modification, the maintenance of the first aspect still left the problem of recognition of the freedom of personal self-determination in connection with the acts motivated by personal beliefs.²¹

3. *Hamidović v. Bosnia and Herzegovina*²²

The Court has revealed a principally new approach to classifying an act motivated or inspired by personal beliefs as "manifestation" in 2017. In the present case, a Muslim applicant was called to give evidence at the criminal trial. He duly appeared at the trial as summoned but refused to remove his skullcap when asked to testify, arguing that it was his religious duty to wear it at all times. He was expelled from the courtroom, convicted of contempt of court, sentenced to a fine, and later was sentenced to imprisonment for his principal non-payment. The applicant submitted a complaint before the Court under Article 9. The parties agreed that the punishment imposed on the applicant for wearing a skullcap in a courtroom constituted a limitation on the manifestation of his religion. This is in line with the official position of the Muslim community in Bosnia and Herzegovina, according to which the wearing of the skullcap does not represent a strong religious duty, but it has such strong traditional roots that many people consider as a religious duty.²³ Without

²⁰ The Court followed a very similar approach in the case *S.A.S. v. France* 43835/11. (01/07/2014). § 55.

²¹ Other authors earlier also mentioned this *modification*; for example, cf. Slotte, P. (2015) *International law and freedom of religion and belief: Origins, presuppositions, and structure of the protection framework*. Routledge Handbook of Law and Religion. Edited By Silvio Ferrari. p. 109.

²² *Hamidović v. Bosnia And Herzegovina* 57792/15 (05/12/2017).

²³ *Ibid.* § 30.

discussing the merits of this issue, the Court went on to examine the extent to which the restrictions imposed on the applicant's "freedom to manifest a religion" complied with the principles set out in Article 9 (2) of the Convention. In that way, the Court indirectly recognized that an act, which is not closely related to a particular religious doctrine, could still be regarded as its "manifestation" if the actor sincerely believes that the act constitutes a direct religious obligation. Moreover, the Court explicitly declared that there was no reason to suspect that the applicant's conduct was inspired by his sincere religious beliefs.

It should be emphasized that in discussing this case, the Court again referred to the reasonings developed in the *Arrowsmith* and *Eweida* Cases,²⁴ but did not restrict itself to the severe assessment test used in the case of *Arrowsmith* or its modified version used in the case of *Eweida*. This fact is important for a clear demonstration of coherence development of the "Manifestation Test."

Moreover, it is generally accepted that a person may follow a practice of religion that differs from the general practice of the religious community to which he or she belongs, and this right is protected by the freedom of religion and belief.²⁵ Accordingly, national authorities and the Court are required to observe this fundamental principle and, in all relevant cases, exercise extreme caution in examining the connection between personal and collective practices of religion. In no case, however, they should not rely solely on the generally recognized (by a community) forms of a particular "practice" to classify personal conduct or action as a "manifestation" of religion. For in such a case, the freedom of religion and belief will lose its personal nature and original essence.

*4. Osmanoğlu and Kocabaş v. Switzerland*²⁶

²⁴ *Ibid.* §§ 41, 125.

²⁵ Guidelines for Review of Legislation Pertaining to Religion or Belief. OSCE. ODIHR. (2004). II.B.2.

²⁶ *Osmanoğlu and Kocabaş v. Switzerland* 29086/12 (10/01/2017).

The fundamental innovation regarding the Manifestation Test the Court was made in 2017. In this case, the applicants were Muslim parents who wanted, on religious grounds, to have their daughters exempted from compulsory mixed swimming lessons at their primary school. Although the Koran laid down the precept that the female body has to be covered only from puberty, the applicants stated that their faith instructed them to prepare their daughters for the precepts that would be applied to them from puberty onwards. Their request for an exemption was refused. Under the applicable Cantonal law, pupils could not be exempted until they reached puberty. The applicants continued to refuse to send their daughters to swimming lessons. The authorities accordingly imposed minor-offense fines on them. The applicants alleged before the Court that the obligation to send their minor daughters to mixed swimming lessons was contrary to their religious convictions. The applicants submitted a complaint before the Court under Article 9 of the Convention and Article 2 of Protocol No. 1 to the Convention. As Switzerland has not ratified the Protocol, which is in principle the *lex specialis* in relation to Article 9 of the Convention, the Court considered the case under Article 9 of the Convention.

The Court held that the case concerned a situation where the applicants' right to manifest their religion was in issue. Therefore, they were entitled to rely on this aspect of Article 9 of the Convention. The Court considered, furthermore, that the applicants indeed suffered interference with the exercise of their right to freedom of religion as protected by that provision.²⁷ However, the interference had pursued a legitimate aim, namely to protect international students from any form of social exclusion.

It is noteworthy that the Court in this case referred only to the modified approach set forth in the *Eweida* case, not to the severe *Arrowsmith* Test, which gives hope that the latter may finally be ignored. Moreover, unlike the Case of *Hamidović*, where the Court relied on a collective assessment, in the *Osmanoğlu* case, neither there was

²⁷ *Ibid.* §§ 41, 42.

no similar argument in the case file²⁸, nor did the Court develop reasoning in this regard.

As for the modified Eweida approach in particular, a "close and direct nexus between the act and the underlying belief," it is not necessary to interpret this nexus only in the contextual sense, but, moreover, in the sense of the act of faith. This implies that a "close and direct nexus" can be expressed in the firm faith of the person that his or her belief precisely compels such an act. One argument is that even when there is a close and direct contextual connection between an act and a belief, that act still requires a "firm faith" to be fulfilled. Thus, as faith is of primary importance, it must be a decisive factor even when there is no close and direct contextual connection between the belief and the act, or it is not a direct religious obligation.

Summary of the Manifestation Test development

All of the above mentioned indicates that the practice of the Organs of the Convention concerning the development of the Manifestation Test is conventionally divided into four stages:

1. *The Arrowsmith's Severe test* - to consider an act as a manifestation, it must constitute a direct obligation of the religion or belief in question. Furthermore, the burden of proof of the conformity of the act and conviction is on the applicant;

2. *The Eweida's Modification* - to consider an act as a manifestation, it must have a close and direct connection to the religion or belief in question. However, a person is not obliged to establish that he or she acted in fulfillment of a duty mandated by the religion in question;

²⁸ On the contrary, the Case states that only a small number of Muslim parents living in Switzerland request such an exemption. *Ibid.* § 97.

3. *The Hamidović's Change* - to consider an act as a manifestation, it can be not a direct religious duty, but could still be regarded as manifestation if it has such strong traditional roots that it is collectively considered as such.

4. *The Osmanoglu's Innovation* - to consider an act as a manifestation, it is not necessary to be directly derived from that religion or belief, but the actor's sincere faith that she or he acts in accordance with his or her own religion or belief is sufficient.

This experience of the Organs of the Convention indicates that the Manifestation Test has an interesting and necessary evolution, which, in turn, gives us hope that it will eventually progress into a right of personal self-determination.

Conclusion

Although the Manifestation Test had a long and complicated evolution, the recent approach demonstrated by the Court in the Osmanoglu case is obviously hopeful. According to this approach, an act may be regarded as the manifestation of religion or belief even if that does not constitute a direct duty of the religion or belief in question as long as it is understood as such by its author's sincere belief. Indeed, the right to manifest a religion or belief, as well as the right to have them, is, in its essence, a matter of highly personal self-determination. Therefore, it is logical that the classification of any act as the manifestation of a particular religion or belief must be based principally on its author's sincere faith that her or his religion or belief requires precisely such an act and not even the assessments of relevant religious community or institute. Through this innovation, however, the Court has clearly emphasized the personal nature of the faith. Accordingly, the individual freedom of the manifestation of religion or belief is released from the obligation of precise coherence with specific doctrinal dogmas and rules of conduct and, thus, from the collective power of religious communities or institutions.

It is also important to note that this approach may deserve some critique. For example, such an argument may be the threat to "abuse" the freedom of religion and belief as a universal human right, and an attempt to protect and justify under it acts that would not otherwise be protected and justified. For instance, if an act is classified as a manifestation of religion or belief, it will enjoy higher protection than the same act under the general right to Freedom of Expression. This higher guarantee implies that Article 9 (Freedom of thought, conscience, and religion) and Article 10 (Freedom of expression) of the Convention cover different legitimate aims for restrictions. For example, unlike the Freedom of Religion and Belief, the Freedom of Expression may be subject to such restrictions as "interests of national security." The same can be said, in principle, about the right to Freedom of Assembly and Association (Art. 11 of the Convention).

Article 18 of the Convention (Limitation on use of restrictions on rights) says: "The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed." Taking into account this fact, we can theoretically assume that if the Court gives up its power of assessment in classifying a particular act as a manifestation of the religion or belief in question and leave the issue entirely in the field of personal self-determination, there may arise some risks. For example, the call against the national security one may determine as a manifestation of personal belief and consequently demand it to be justified and protected by Article 9. In such circumstances, this act cannot be restricted in pursuit of the "the interests of national security" under Article 10.

First, this argument is fascinating and important, including in terms of independent research, and therefore more complete and extensive discussion goes beyond the scope of this article. However, its significant nullification is possible under Article 17 of the Convention - Prohibition of abuse of rights. Thus, to avoid such a risk, in the establishment of the legitimacy of the particular religious practice, the task of the Court should not be the essential examination of the nexus between the act and the

religion in question. The Court should resolve this issue with instruments such as the "prohibition of abuse of rights" and the "incompatibility *ratione materiae* with the Article 9 of the Convention of an application".²⁹

Lastly, it is still difficult to say whether the Court will finally give up its power to classify an act as a manifestation of religion or belief and ultimately leave this issue entirely in the field of personal self-determination. The Court may see some (at least as mentioned above) of the risks involved in practicing this approach. Violating or damaging the personal dimension of the freedom of religion or belief to avoid such risks is entirely unjustified.

²⁹ For example, the Court found the inadmissibility on grounds of incompatibility *ratione materiae* with the Convention of an application lodged by a "global Islamic political party" complaining of the prohibition by the relevant German authorities of its activities in Germany. The Court considered that since it called for the violent destruction of the State of Israel and for the banishment and killing of its inhabitants, this party could not rely on the protection of Articles 9, 10, and 11, in pursuance of Article 17 of the Convention (prohibition of abuse of rights). *Hizb Ut-Tahrir and others v. Germany* 31098/08 (12/06/2012).