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Freedom of Religion: the Doctrine of Forum Internum in the ECHR's Law Enforcement Practice

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Abstract
The legal dimension of freedom of religion is important in the formation of civilizational approaches to state-building processes, strengthening civil society, and the humanistic outlook of citizens that would promote pluralism and tolerance and be shared by the entire community. The study of the relevant legal framework in Ukraine, the state, scope, and completeness of the reflection of the essence of freedom of conscience and religion in it and some legal documents, has necessitated the expression of our thoughts on their implementation. The purpose of this study is to analyze the right to freedom of religion and to study the application of the forum internum doctrine in the judicial and law enforcement practice of the ECHR. To achieve this, the following research tasks were solved: the author analyses the doctrine of forum internum (personal faith, internal freedom), and approaches to its content; examines models of church-state relations (in particular, the ECHR judgments on the forum internum doctrine and their impact on Ukrainian legislation). A range of methods of scientific cognition was used in the course of the study, in particular, the dialectical method (to assess the mutual influence of various legal provisions on the protection of the right to freedom of religion and religious belief), the method of structural analysis and synthesis (in the context of the study of the doctrine of forum internum (personal faith, internal freedom), approaches to its content), historical and logical methods, methods of deduction and induction (helped to identify models of church-state relations (separating, identifying and cooperative), comparative (analyzed the ECtHR judgments on the forum internum doctrine and their impact on Ukrainian legislation). The author concludes that the doctrine of forum internum (personal faith, internal freedom) has a dualistic nature: on the one

hand, it gives a person internal freedom, i.e. the ability to choose, adhere to, develop and even completely change their personal thoughts and beliefs; and on the other hand, it obliges the State to refrain from actions aimed at preventing any ideological processing of a person, interference with fundamental ideas and beliefs that are born in the depths of a person's soul. However, the state may impose restrictions on freedom of conscience and religion, but they have fairly clear limits. The author examines the genesis of the concept of "freedom of religion" in the history of legal traditions and constitutional documents and concludes that a significant period has passed during which significant changes have taken place in the stereotypes in the public consciousness, religious ideas, and state-legal relations regarding freedom of worldview. The author examines the ECtHR judgments on the forum internum doctrine and their impact on Ukrainian legislation. It is noted that, given the complex state-building processes of modern Ukraine, the institution of religious freedom requires a more detailed study in the philosophical and legal sense, which will allow for improving its conceptual framework. The author points out that the problems associated with worldview values and human rights in the area of freedom of conscience and freedom of religion make it relevant to study the doctrine of forum internum (personal faith, internal freedom) and its impact on judicial and law enforcement practice.

Keywords: *freedom of worldview; freedom of religion; the doctrine of forum internum; internal freedom; judicial practice, ECHR judgments.*

Свобода віросповідання: доктрина forum internum у правозастосовній практиці ЄСПЛ

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Анотація
У формуванні цивілізаційних підходів до державотворчих процесів, зміцненні громадянського суспільства, гуманістичного світогляду громадян,

які сприяли б розвитку плюралізму, толерантності та поділялися б усією спільнотою, велике значення має правовий вимір свободи віросповідання. Вивчення відповідної нормативно-правової бази в Україні, стан, обсяг і повнота відображення в ній та в низці правових документів суті свободи совісті та віросповідання зумовили необхідність висловити власні думки щодо їх реалізації. Метою нашого дослідження є аналіз права на свободу віросповідання, вивчення застосування доктрини forum internum (особистої віри, внутрішньої свободи) в судовій та правозастосовній практиці ЄСПЛ. Для її досягнення вирішено такі дослідницькі завдання: проаналізовано доктрину forum internum, підходи до її змісту; розглянуто моделі державно-церковних відносин (зокрема, рішення ЄСПЛ щодо доктрини forum internum та їх вплив на законодавство України). З цією метою використано комплекс методів наукового пізнання, зокрема: діалектичний – для визначення взаємовпливу різних норм праворегулювання на захист права на свободу віросповідання та релігійних переконань; структурного аналізу та синтезу – в контексті дослідження доктрини forum internum, підходів до її зміст; історичний і логічний, дедукції та індукції, які допомогли виокремити моделі державно-церковних відносин – відокремлюючу, ідентифікаційну та кооперацій ну; порівняльний – для аналізу рішень ЄСПЛ щодо доктрини forum internum та їх впливу на законодавство України. Зроблено висновок, що доктрина forum internum має дуалістичний характер: з одного боку, дає людині внутрішню свободу, тобто можливість обирати, дотримуватися, розвивати і навіть повністю змінювати свої особисті думки та переконання, а з іншого – зобов'язує державу утримуватися від дій, спрямованих на запобігання будь-якій ідеологічній обробці людини, втручання у фундаментальні ідеї та переконання, що народжуються в її душі. Однак держава може застосовувати обмеження свободи совісті та релігії, які мають досить чіткі межі. Досліджено генезу уявлень про «свободу віросповідання» в історії правових традицій та в конституційних документах і зроблено висновок, що за цей час у суспільній свідомості відбулися суттєві зміни стереотипів релігійних уявлень і державно-правових відносин щодо свободи світогляду. Розглянуто рішення ЄСПЛ відносно доктрини forum internum та їх вплив на законодавство України. Наголошено, що з огляду на складні державотворчі процеси в Україні інститут свободи віросповідання потребує більш детального вивчення у філософсько-правовому сенсі, що дозволить вдосконалити його понятійний апарат. Вказано, що проблеми, пов'язані зі світоглядними цінностями, правами людини у сфері свободи совісті та віросповідання, актуалізують дослідження доктрини forum internum (особистої віри, внутрішньої свободи) та її впливу на судову та правозастосовну практики.

Ключові слова: *свобода світогляду; свобода віросповідання; доктрина forum internum; внутрішня свобода; судова практика; рішення ЄСПЛ.*

Freedom of conscience, religion, and belief legally and historically does have a certain special status and should enjoy this status in the minds of the international community.
***David Little* [1]**

Introduction

Freedom of religion, the establishment and observance of which is considered a criterion of human self-determination not only in the spiritual sphere but also in life in general, has come a long way before it was enshrined and recognized. The first international act to enshrine the right to freedom of religion and belief at the international level was the Universal Declaration of Human Rights in 1948.

After that, the UN did not reduce its efforts to instill respect for religious freedom around the world. To this end, two major historical documents were developed and adopted, namely: The International Convention on Civil and Political Rights (1966), where Art. 18 deserves special attention, and the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981). Along with the UN initiatives, some international organizations have taken other important, more geographically limited steps in this direction. These include the adoption of the European Convention on Human Rights of 1950 (Articles 9 and 2 of the First Protocol are devoted to this right); the American Convention on Human Rights of 1969 (especially Art. 12); The African Charter on Human and Peoples' Rights (1981), as well as some documents of the Conference (now the Organization) on Security and Co-operation in Europe, in particular the Vienna Concluding Document of 1989 (primarily the principles of 16-17) [2; 3].

Thus, the right to freedom of religion is a necessary component of the freedom of personal self-determination, which, according to constitutional law, is one of the fundamental natural human rights. This has led to an increased interest and choice by scholars of the freedom of worldview and religion as a subject of research.

In addition, according to international and national law, absolute freedom of thought and ideological choice is a component of freedom of conscience and religion: no beliefs can be criminalized or prohibited as long as they are only within the human mind. In other words, ideas or beliefs that are not expressed externally and do not entail any actions cannot cause public harm. Thus, the freedom of thought, conscience, and religion, which does not find its manifestation, cannot be subject to interference by the state.

Moreover, internal freedom of religion is based on the maxim lex noncogit ad impossible (the law does not require the impossible) - the law simply cannot control a person's thoughts, so it should be possible for an individual to change his or her religious faith or community [4].

It should be added that modern foreign scholarship has devoted a lot of research to the analysis of international law provisions. For example, scholars Y. Baskin, Y. Bezborodov, K. Borisov, D. van der Weijver, T. Vasylieva, M. Janis, K. Ivans, M. Ivans, Y. Karlov, D. Carlson, N. Lerner, D. Little, B. Tahzib, P. Taylor, D. Whitt, and others pay attention to the study of the protection of the human right to freedom of conscience and religion. It should be noted that developments in this area generally began with consideration in the nineteenth and early twentieth centuries of the possibility of separating religious rights and their protection. Such world-renowned scholars as J. Bluntschli, F. List, J. Martens, F. Martens, A. Riviere, A. Stoyanov, M. Taube, and G. Wheaton contributed to the solution to this problem [5].

In Ukraine, various aspects of the right to freedom of conscience and religion have also been the subject of research. Among the constitutional law specialists, the human right to freedom of conscience (constitutional and legal regulation) was the focus of attention of V. Bediia, constitutional and legal regulation of relations in the field of the right to freedom of religion in Ukraine – O. Bykova, the right to freedom of conscience and religion, and discussion issues around the forum internum aspect – O. Vasylchenko [6], philosophical and legal dimension of freedom of religion was studied by M. Koliba, constitutional provision of the right to freedom of worldview and religion – by V. Malyshko, evolution of approaches to regulation of the right to freedom of worldview and religion in legal science – by Y. Paida [7], constitutional and legal regulation of relations between the state and religious organizations in guaranteeing freedom of religion – G. Sergienko, judicial protection and some problems of exercising the right to freedom of religion – E. Tkachenko [8], Legal support for freedom of religion – L. Yarmol.

At the same time, there is a lack of comprehensive constitutional and legal studies of certain aspects of this right, such as the issue of internal freedom (forum internum), which determined the *purpose* of this publication – to analyze the right to freedom of religion, to study the application of the forum internum doctrine in judicial and law enforcement practice. To achieve this goal, the following tasks need to be addressed:
– to analyze the doctrine of forum internum (personal faith, internal freedom) and approaches to its content;
– to identify the models of church-state relations and their impact on the ECHR judgments on the forum internum doctrine.

The study of freedom of religion through the prism of the legal dimension makes it possible to identify certain national models and international peculiarities of protection of the right to freedom of religion, which is enshrined in national legal systems, legal acts of international organizations, and decisions of the ECHR.

Materials and Methods

Based on the outlined subject of the study, a comprehensive approach to the application of scientific research methods was chosen. Among the classical methods of the philosophical level, the author uses the dialectical approach to assess the interplay of various legal provisions on the protection of the right to freedom of religion and religious belief. The dialectical approach, as the ability to find the truth through rational discussion between interlocutors with different points of view (in the general sense), firstly, allows us to take into account social changes in modern societies and their impact on rethinking the content of the right to freedom of religion in different models of church-state relations; secondly, it made it possible to define freedom of religion as a general social (natural) human right – a natural historically formed human right to free and open recognition, inheritance, observance, change of religious or other doctrines, views, beliefs and proper guarantee by the state of respect and tolerance for religious feelings and beliefs of citizens, religious and church organizations acting by the legally established procedure, as well as a value-based worldview paradigm.

In addition, the work applies general scientific methods, including the *historical* method of research based on the study of the emergence, formation, and development of objects in chronological sequence; the *logical* method, which allows forming positions based on certain conclusions, and the use of mental activity, which helps to develop rational methods for the development of legal processes. Logic as a scientific tool allows for a deeper understanding of the cause-and-effect relationships that exist in real social life. Historical and logical methods make it possible to understand the essence of the problem in depth and to explore the idea of "freedom of religion" in constitutional documents.

When studying the doctrine of forum internum (personal faith, inner freedom) and approaches to its content*, structural analysis and synthesis* were useful as universal, oppositely directed ways of comprehending an object used both in theoretical research and in practice, especially in the study of interdisciplinary scientific concepts. According to G. Hegel, analysis is "the removal of a certain subjective obstacle from the subject, a certain external shell" by "applying logical definitions", while synthesis

is the unity of what is "originally separated, connected only by an external way" [9, p. 4]. Based on this, through analysis, the author gained knowledge about the individual elements of the object of knowledge in various facets of their existence, and at the level of synthesis, an idea of its structure and systemic features, and the interrelation of its essential characteristics was formed.

Using *deduction and induction*, the author examines the main systemic characteristics of ensuring freedom of religion in the modern world. Induction proceeds from the particular to the general, i.e., based on knowledge about a part of the subject matter of the study, an idea of the social phenomenon in general is formed. In induction, thought moves from less general to more general provisions, so that, summarizing the available empirical material, it is possible to make assumptions about the cause of the phenomena under study, to draw conclusions that are theoretically proved and turned into reliable knowledge through the use of deduction. For example, the method of deduction makes it possible to draw a conclusion about a particular element of a set based on knowledge of its general properties. Finally, both of these methods allowed us to distinguish between models of church-state relations (separating, identifying, and cooperative).

The existence of a large number of practical cases on ensuring and protecting religious freedom necessitated the use of a *comparative method*, which allowed us to study and compare practical cases and consider the possibility of balancing religious freedom with other rights or public goods. However, given that a comprehensive and integrated study of the issue required comparing different countries or cultures, the main obstacle was that data sets around the world characterize certain categories differently (for example, there are differences in the definition of religious freedom) or do not use the same categories. However, using the comparative method, the author analyses the ECtHR judgments on the *forum internum* doctrine and their impact on state-religious relations in different models.

Results and Discussion

1. The doctrine of forum internum, approaches to its content

As noted above, the international community has found a consensus on approaches to addressing the issue of enshrining and guaranteeing the right to freedom of religion or belief, which is, of course, reflected in the relevant international human rights instruments. According to Little David, "about the relationship of religious freedom to other human rights, it seems clear that existing human rights instruments and recent international jurisprudence give the right to religious freedom a special status" [1]. This

laid the foundations for the formation of the doctrine of *forum internum* (personal faith, internal freedom).

Among the fundamental points considered by the legislation in this area is internal freedom, including absolute freedom of thought and ideological choice as a component of freedom of conscience and religion. Freedom of thought, conscience, and religion, which has no external manifestation, cannot be subject to interference by the state, and a person may, at will, renounce his or her religious faith [4].

The doctrine of *forum internum*, *on the one hand*, gives a person internal freedom, i.e. the ability to choose, adhere to, develop and even completely change their personal thoughts and beliefs [10, p. 5], and *on the other hand,* it obliges the state to refrain from attempts to prevent any ideological processing of a person, including through religious indoctrination (influence) and other forms of manipulation, interference with fundamental ideas and beliefs that are born in the depths of a person's soul.

Let's look at each of these elements of the *forum internum* doctrine. *The first is the internal freedom of religion*, based, as already noted, on the maxim lex non cogit ad impossibilia (the law does not require the impossible) – the law simply cannot control a person's thoughts. Ideas or beliefs that do not have any external manifestation and do not entail any actions cannot cause public harm. State interference in the sphere of personal religious or non-religious beliefs (to force one to have certain views, beliefs, or change beliefs, or to disclose one's religious views) would directly contradict the concept of freedom of religion and international norms. This approach establishes the absence of limits to individual freedom of conscience and the possibility of its restriction to prevent indoctrination of the individual by the state, which allows a person to develop, deepen, and change his or her individual worldview.

The absolute nature of the "internal" aspect of freedom of religion (*forum internum*) is emphasized in almost all international documents that enshrine human rights and freedoms and the criteria for the permissibility of their restriction. The limits of freedom of conscience are defined by the European Convention, which clearly states that restrictions on the exercise of freedom of conscience and religion relate exclusively to the external manifestation of individual beliefs. Thus, Art. 9(2) states the following: "Freedom to manifest one's religion or beliefs shall be subject only to such restrictions 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 freedoms of others". The same approach is enshrined in other international legal instruments, namely Art. 18(3) of the International Covenant on Civil and Political

Rights and Art. 12(3) of the American Convention on Human Rights. In these acts, the provisions on restrictions on freedom of religion relate only to the freedom of manifestation of religion and demonstration of religious beliefs externally (*forum externum*) and do not affect the internal freedom of religion related to the mental activity of a person and other members of society, their internal beliefs (*forum internum*). In addition, there shall be no derogation from freedom of thought, conscience, religion, or belief, even in case of war or public emergency (Art. 4(2) of the International Covenant on Civil and Political Rights).

The second element of the doctrine *of forum internum is that the state refrains from interfering with the fundamental ideas and beliefs of the individual.* It should be possible for an individual not to renounce or change his or her religious faith or religious community [4].

Religious freedom is primarily a matter of personal conscience, but also includes, inter alia, the freedom to "manifest one's religion", either individually or in community with others, in public or private, and in the community of fellow believers. Art. 9 lists the various forms that may be manifestations of religion or belief, including worship, teaching, practice, and observance [11].

However, out of the two aspects of freedom of conscience and religion established by international law, it is the second component (exercise of freedom of conscience externally, in the collective dimension) that is subject to *restriction*, i.e., the limits of freedom of conscience and religion lie in the area of public religious activity. Thus, according to international documents, namely Art. 9(3) of the Convention and Art. 18(2) of the International Covenant on Civil and Political Rights, the state has the right to impose *restrictions on freedom of conscience and religion*, but these have rather clear limits. According to the criteria for restricting freedom of conscience and religion, the reasons for state intervention in this area are public order; security; health; protection of public morals; realization of rights and freedoms of others; the right of parents to ensure the religious and moral education of their children by their own beliefs (International Covenant on Civil and Political Rights, Art. 18(4)).

Thus, international norms have defined the possibility, reasons, and criteria for potential restrictions on religious freedoms. However, the scope of restrictions is not specified in international legal documents. There is still a debate about finding a balanced balance and compromise between the sphere of the free activity of individuals and religious communities and the sphere of prohibition, the violation of which authorizes state authorities to use various forms of coercion.

It is worth noting that in the absence of a clearly defined scope of restrictions in international law, and in the context of variability in the exercise of religious freedom, the decisions of the European Court of Human Rights, which constitute case law, play a significant role in establishing the limits of state powers concerning the cases and scope of restrictions on freedom of conscience and religion, and are particularly significant in this regard. Let us dwell on this in more detail.

As the analysis shows, the European Court of Human Rights (from now on – ECHR, the Court) imposes additional requirements on state authorities when applying restrictive measures:
– *firstly,* the restriction (interference with the exercise of freedom of conscience and religion) must meet an urgent social need and pursue legitimate aims. It should be noted that the recognized legitimate interests that allow for the restriction of religious freedom, according to the Court, are "in the interests of public order, health or morals or the protection of the rights and freedoms of others" (this wording is consistent with Articles 8, 9, 10 and 11 of the European Convention). For example, in the case of Serif v. Greece, a conviction for unlawful conferral of religious dignity to a "recognized religion" was considered a restriction pursuing the legitimate aim of protecting public order [12];
– *secondly,* in a democratic society, the restriction must, on the one hand, be consistent with the principle of necessity, which includes compliance with an urgent social need, proportionality to the legitimate aim pursued, and, on the other hand, be justified by foreseeable and sufficient reasons. The Strasbourg Court, in particular, defined the characteristics of a "European democratic society", establishing pluralism, tolerance, and broad-mindedness as its symbols.

In the case of Kokkinakis v. Greece, for example, the ECtHR stated: "As enshrined in Article 9, freedom of thought, conscience, and religion is one of the foundations of a 'democratic society' "... In its religious dimension, this is one of the most important aspects that define the identity of believers and their concept of life, but it also has value for atheists, agnostics, skeptics, and those who are not interested in these issues. Pluralism depends on it, and it is inseparable from the democratic society, which, after centuries of struggle, has been won at such a high price" [13].

In the case of Bessarabian Metropolis and Others v. Moldova, the Court noted that "In a democratic society in which several religions or several streams of the same religion coexist within the same population group, it may be necessary to impose appropriate restrictions on this freedom in order to reconcile the interests of different groups and to ensure respect for the beliefs of others. Nevertheless, in exercising its power in this regard

in relation to different religions, confessions, and beliefs, the state must remain neutral and impartial in order to preserve pluralism and the proper functioning of democracy" [11];

– *third,* the restriction must be imposed on legal grounds. This concept reflects the value of legal stability, which can be broadly defined as the ability to operate within the existing legal framework without fear of arbitrary or unpredictable state interference. Thus, the challenged measure must be enshrined in national law and be equally accessible and predictable, as well as contain sufficient protection against arbitrary application of the law.

It is important to add that freedom of conscience and religion do not protect any convenient behavior, provided that it is motivated by considerations of religion or philosophy. In other words, Art. 9 of the Convention protects the inner world of the individual, not any public behavior dictated by beliefs: this is why such behavior must be in line with the main (national) legislation [14].

It is worth mentioning once again that there is a lively debate about finding a balanced compromise between the sphere of the free activity of individuals and religious communities and the sphere of prohibition, the violation of which authorizes state bodies to use various forms of coercion.

Proceeding from the fact that everyone has the right to have beliefs and the right to profess them, enshrined in clause 1 Art. 9 of the Convention, the ECHR considers this provision, respectively, *in two aspects*: in the case of Ivanov v. Bulgaria, the Court noted that the right to have any belief (religious or not) in one's heart and not to change one's religion or beliefs – "this right is absolute and unconditional and the state cannot interfere with it, for example, by ordering a person to believe what he or she should believe or by taking measures aimed at forcing a change of beliefs; as for the right to manifest one's religion or belief in private and in community with others or in public, it is not absolute, but any restriction on the manifestation of one's religion or belief must be provided for by law and be necessary in a democratic society for the purpose of pursuing one or more of the legitimate aims listed in Art. 9, of Art. 9(2) of the Convention, as reflected, in particular, in the case of Eweida and Others v. the United Kingdom [15].

Thus, the doctrine of *forum internum* (personal faith, internal freedom) has a dualistic character: *on the one hand*, it grants a person internal freedom, i.e. the ability to choose, adhere to, develop and even completely change their personal thoughts and beliefs; and *on the other hand*, it obliges the state to refrain from actions aimed at preventing any ideological processing

of a person, interference with fundamental ideas and beliefs that are born in the depths of a person's soul. However, the state has the right to impose *restrictions on the freedom of conscience and religion*, but these restrictions have fairly clear limits.

Due to the complexity of the application of the *forum internum* doctrine, the European Court of Human Rights provides for additional requirements for state authorities when taking actions of a restrictive nature, in particular, with regard to freedom of religion, namely, interference with the exercise of freedom of conscience and religion must: meet an urgent social need and pursue legitimate aims; be carried out on legal grounds; and comply with the principle of necessity in a democratic society.

2. Models of church-state relations in the decisions of the ECtHR on the doctrine of forum internum

The difficulty of preserving the national identity of European states against the backdrop of expanding immigration, and diversity of cultures, traditions, and religions creates conditions for the spread of the phenomenon of communitarianism in modern Europe, which is the prevalence of religious identity over civic identity. The practice of social exclusion and numerous instances of discrimination against minorities necessitate closer unification based on a common unifying idea. Most often, this is their religious affiliation.

History proves that establishing a balance between religious institutions and the state, as well as between different religions, has always been considered a difficult task. Over the centuries, bloody events have occurred one after another due to the struggle for privileges and prerogatives, or with heretics [16].

As a result of this struggle, each state developed its own model that determined the relationship between the state and religious communities. The formation of these models is conditioned by the historical development of the country and the original factors in each European state.

2.1. Models of church-state relations

In the area of church-state relations in Europe today, there are three main models that have developed in the course of historical development: separating (in France, the Netherlands, Switzerland, Ireland), identifying (in the UK, Denmark, Greece, etc.) and cooperative (in Austria, Belgium, Germany, Portugal, Spain, Italy, Sweden, etc.) [17].

Let us get acquainted with them on the example of specific countries, which will make it easier to understand the role of the religious factor in the life of modern Europe.

The secessionist model. In 1905 (9 December), for the first time in history, France, by adopting a special law on the separation of church and state, set an example of a modern sovereign state based on the official breakdown of the union with the church and the withdrawal of the religious factor from the public sphere. Since then, the French state has traditionally been guided by the principle of secularism in its policy towards religious organizations, according to which manifestations of religion in the public sphere are not approved, as it is believed that public manifestations of religious affiliation harm the unity of French society, in which no religious association has any legal privileges. Issues related to the religious sphere are regulated by private law.

An illustrative example is the law adopted by the French National Assembly on 13 July 2010, which prohibits locking a person in public places. In 2014, the European Court of Human Rights in Strasbourg ruled that the law adopted in France, based on the idea of "peaceful coexistence", did not violate the European Convention on Human Rights. The ECHR's decision paved the way for the adoption of such a law in other European countries subject to the Court's jurisdiction. Later, a ban on the wearing of the niqab and veil (albeit only on the street) was introduced in the Netherlands.

The application of this Law in educational activities is interesting. Thus, in the case of Dahlab v. Switzerland, the ECtHR justified the interference with the forum internum of a Muslim teacher by protecting the rights of her students (Art. 9(1) of the Convention), when it confirmed the ban on teachers wearing Muslim headwear, noting that wearing it could establish the fact of certain indoctrination of children in the Muslim religion and was difficult to reconcile with the principles of tolerance, respect for others, equality and non-discrimination that teachers must adhere to in a democratic society [18].

Similar approaches have been taken in other cases relating to the education sector. In particular, in the case of Köze and Others v. Turkey, the Court found that the current rules in that state obliged all students of secondary education institutions to wear school uniforms and come to school with their heads uncovered, and in the cases of Dogru v. France, Kervantsi v. France Jamaleddin v. France, Aktas v. France, Ranjit v. France and Yazvir Singh v. France, the Court examined the French domestic jurisprudence according to which the wearing of religious symbols is per se incompatible with the principle of secularism in school institutions [15].

Thus, the sanctioning of a balanced mutual *separation* of the state and religious organizations consists of upholding the principle of secularism, recognizing the equality of all denominations before the law, distancing the

state from supporting any religion, refraining from budgetary funding (at least direct) of religious associations, ambiguity in the perception of social adaptation of churches and denominations, and their involvement in social and public activities.

The *identification model* is inherent in states where there is a mutual influence of faith and law, church, and secular in various forms of institutional and legislative relations. It should be noted that the existence of this model is explained by the strength of traditions and the importance of their special influence on maintaining the stability of the state. A striking example is the United Kingdom, where the monarch is the head of the Anglican (state) church, and the government readily supports the public expression of religious faith, sponsors denominational schools and furnishes its events and ceremonies with religious rituals. However, only a small proportion of the population (approximately 7-8 %) regularly attends religious services.

The above allows us to support the opinion of the prominent English scientist G. Spencer, who states that in modern British society, religion is perceived as one of the most widespread and sophisticated cultural habits that are not of great importance and are formal in nature [19].

However, at the same time, the current problems faced by representatives of various religious denominations give grounds to state that there is "banal discrimination" in the UK [20].

The applications to the ECHR by residents of *the United Kingdom* who *lost their jobs* due to discrimination on religious grounds are illustrative.

The case of Azmi v. Kirklees Borough Council clearly illustrates that an appearance standard can be justified as a proportionate means of achieving a legitimate aim. Azmi worked as a teacher's assistant and was dismissed for failing to comply with her employer's order requiring her to remove her niqab when working with children in the classroom. Azmi lost her claim for direct indirect discrimination. The court found that the employer's refusal to allow her to wear a headscarf covering her face put her at a particular disadvantage compared to others. The ECtHR stated that, under the rebuttable presumption, indirect discrimination was justified, i.e., the restriction on the wearing of the niqab was proportionate in view of the need to protect the right of children to receive the best possible education.

A similar approach, based on the balance of conflicting interests, was used in the case of Eweida and Others v. the United Kingdom, which included two cases related to appearance standards. In the first case, the Court ruled in favor of the employee, and in the second case, the employer managed to justify the restriction it had imposed. British Airways check-in counter

employee, Ms. Aveyda, was denied permission to wear a crucifix over her uniform. In this case, the ECHR Chamber ruled that the restriction was disproportionate. The Court made this decision because other forms of religious clothing, such as hijabs and turbans, were permitted, and the argument that the employer needed to maintain its corporate image was not sufficiently weighty compared to Ms. Eweida's freedom of religion.

However, in another case, in which the employer insisted that Nurse Chaplin remove a crucifix she wore on a chain around her neck because, in the opinion of management, the decoration could cause health hazards, the Court concluded that the health and safety reasons were sufficiently serious to outweigh the employee's religious interests.

Along with the Eweida case, the ECtHR considered the case of Ladel v. Islington City Council. Ms. Ladel asked to be exempted from the obligation to register same-sex marriages, citing her religious beliefs, but her request was denied. The Court of Appeal ruled that the refusal to grant Ms. Ladel's request was justified as the employer was entitled to rely on its policy requiring all employees to provide services to all customers regardless of the customer's sexual orientation.

In another case, a family and marriage counselor, Gary McFarlane, was dismissed after he stated that giving advice to gay people was against his beliefs.

It should be noted that all of them, including Eweida, had previously lost their cases in British courts. At the same time, the Court concluded that in the cases of Chaplin, Macfarlane, and Ladell, the plaintiffs' rights had not been violated. These cases were heard in Strasbourg simultaneously. The case was initiated in the UK under the name of Eweida v British Airways (2010), then it was joined with the claims of other employees in an appeal to the European Court of Human Rights and was considered as Eweida and Others v UK [21].

The experience of Greece is no less interesting. This is evidenced by the cases pending before the European Court of Human Rights in the area of freedom of conscience. The vast majority of them concern citizens and religious organizations in Greece, a country that has declared the Greek Orthodox Church the official religion. The Court's decisions once again confirm that the socio-political conditions that have changed since the Middle Ages, including due to migration processes, lead to the need to make significant adjustments to the system of established relations between the state and religious organizations.

In the case of Kokkinakis v. Greece and Larissis and others v. Greece, a distinction was drawn between "Christian witness" and "improper

proselytism": while the former is "an essential mission and duty of every Christian and every church", the latter is "a distortion or defamation of the former". Thus, internal religious freedom is subject to protection only in the case of improper actions, i.e., actions of a manipulative, fraudulent, or coercive nature.

In the case of Alexandris v. Greece, the ECtHR recognized the requirement to disclose the fact that the applicant is not a member of the Orthodox Church when taking the oath to become a lawyer as a violation of freedom of religion. The European Court noted: "The freedom to manifest one's religion also contains a negative aspect, namely the right not to manifest one's religion or religious beliefs and not to be forced to take actions that would allow one to conclude whether or not such a person has beliefs. State authorities have no right to interfere in this area of individual consciousness and certify religious beliefs or force one to disclose their beliefs on spiritual matters. This is all the more true in cases where a person is required to take action to fulfill certain duties, in particular, to take an oath to be admitted to office" [22].

In the case of Dimitras v. Greece, the ECtHR emphasized that witnesses and parties to a trial who do not wish to take an oath based on religious oaths should not be forced to disclose that they are "atheists" or adhere to the "Jewish" faith" [23].

Thus, religious tolerance existing in the system of the identification model is not yet religious freedom.

The cooperative model. It is believed that in modern Europe the most widespread model is based on increasing the role of cooperation in church-state relations, when, based on the principle of separation and in the absence of a state religion, legitimate cooperation between the state and religious organizations is implemented. In essence, this model is a "golden mean" between identification and strict separation.

The establishment of partnership neutrality between the state and religious institutions is possible where church-state relations are characterized by the maximum degree of mutual non-interference in each other's sphere of authority, a guarantee of broad freedom of religion, the creation of favorable conditions for social service of denominations, the provision of financial support to socially active churches that promote an atmosphere of tolerance and faithfulness, and the absence of a special state body that would control the activities of denominational entities. This is the case in the Netherlands, Germany, Finland, and Sweden.

For example, Art. 4(1) of the Constitution of Germany (1949), which is still officially considered temporary, guarantees the inviolability of freedom of

religion, conscience, and freedom to express religious and ideological views; § 8 of Chapter 2 of the Finnish Form of Government (1919) grants citizens the right to perform religious rites and to leave the religious community to which they belong and freely join another; para. 6 § 1 Chapter 2 Section 1 of the Swedish Form of Government (1974) provides for freedom of religion [24].

However, this model is best developed in Germany. In church-state relations (Staat-Kirche-Verhaeltnisse), the principles of ideological neutrality, parity, and tolerance are the main ones, and these relations are regulated by constitutional norms of public law, namely church-state law, which is their main regulator and is the oldest part of German constitutional law [25].

Certain religious organizations may be granted the status of a public law entity (Koerperschaft des oeffentlichen Rechts), which allows them to take an active part in public life and enjoy significant privileges: the right to collect church tax (levied at the rate of 8-9 % from members of religious organizations that are public law entities). The tax covers two-thirds of the church's financial needs), the right to teach religion in public schools (according to Art. 7 of the German Basic Law, religion is a compulsory subject in public schools), the right to act as employers and enter into labor relations of a public law nature, to receive exemptions from several taxes, to have representatives in the State Committee for Youth Work, etc. These privileges apply to all existing confessions (except Islam).

"Mutually beneficial" civilized relations between the state and the church organically fit into the modern liberal democratic system.

The national courts ensure that conflicts between the state and the church are comprehensively addressed through a thorough examination of the circumstances of the case and a careful balancing of the competing interests of the state and the religious community [26].

Thus, despite significant differences in the models of church-state relations, the only values of the European Union are religious freedom, religious autonomy, dialogue, and cooperation. It is from this perspective that the role of the European Court of Human Rights should be viewed, as it deals with different constitutional models that define the relationship between states and religious denominations; it must accept these models as a given, but at the same time provide effective protection for the individual and collective right to freedom of religion.

Conclusions

Thus, the concept of "freedom of religion" is one of the most difficult concepts within the category of human rights from both philosophical and legal points of view. Analyzing various models of church-state relations,

legal documents, and ECHR judgments, it can be concluded that *freedom of religion* as a general social (natural) human right is a natural and historically formed human right to free and open recognition, following, observance, and change of religious or other doctrines, views, and beliefs, and proper guarantee by the state of freedom of religious feelings and beliefs of citizens and religious and church organizations acting under the legally established procedure.

The genesis of the formation and consolidation of freedom of religion in legal documents shows that a significant period of time has passed, during which significant changes in stereotypes in public consciousness, religious beliefs, and state-legal relations have taken place. An analysis of the value characteristics of freedom of religion in different worldview traditions and at different times gives grounds to assert that there is a desire to comprehend the understanding of the natural human right to freedom of religion, which is inherent in one's inner worldview and corresponds to one's hopes and way of life. This has led to the possibility of the existence in Europe of three main models of relations between the state and the church that have developed in the course of historical development: separating (in France, the Netherlands, Switzerland, Ireland), identifying (in the UK, Denmark, Greece, etc.) and cooperative (in Austria, Belgium, Germany, Portugal, Spain, Italy, Sweden, etc.).

Outside the scope of the study were the issues of unlawful deprivation of liberty of individuals to try to "unprogrammed" the beliefs they acquired while in a "sect" (Riera Blume and others v. Spain), religious upbringing and education of children, protection from unlawful proselytism and the right to apostasy, manifestation and disclosure of religious beliefs, religious secrecy and confession (the problem of disclosure of "religious information" by third parties), the doctrine of *forum internum* in the ECHR judgments and their impact on Ukrainian legislation, etc. These issues may be the subject of further research.

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