



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Conference at Mardin Artuklu University

“Tolerance and Diversity: Freedom of Thought, Conscience and Religion”

Robert Spano
President of the European Court of Human Rights

Mardin, 5 September 2020

Dear Vice-President,
Dear Mayor,
Distinguished colleagues,
Ladies and Gentlemen,

First of all, I would like to thank you for the warmth of your welcome, which does not surprise me knowing the legendary Turkish hospitality.

I have not come alone on this, my first official visit after taking up office as President of the European Court of Human Rights, as I am fortunate enough to lead a delegation composed of Ms Saadet Yüksel, Judge at the Court elected in respect of Turkey and Hasan Bakirci, Deputy Registrar of our Second Section.

My close friend and colleague Judge Yüksel traces her origins to Mardin. I would like to thank her sincerely for having organised the visit not just to your inspiring city but also to this University.

This is the first time I have visited south-east Turkey and Mardin and I must say that I am struck by a city full of historical landmarks, so much so that Mardin has been, as I understand it, considered by some as an open-air museum due to its historical architecture. I can confirm this assessment.

I have been particularly impressed with our visit this morning to the ancient fortress city of Dara, perched atop layers of civilisation and history. To be able to visit a settlement which dates back 2,300 years was a privilege and a profoundly humbling and solemn experience for me. Of course, the civilisations which have lived there have now disappeared. Yet by stumbling through the ruins, we feel a sense of common humanity with the past. We reflect on what brings us together and what separates us from our ancestors.

I was particularly struck by the number of churches, mosques and madrassas in your city which is a testament to the fact that Mardin has been and still is a melting pot of different cultures and religions.

This brings me appropriately to the topic of my lecture today: diversity and freedom of thought, conscience and religion as viewed through the lens of the European Convention on Human Rights.

Freedom of thought, conscience and religion is a fundamental right which is enshrined in Article 9 of the European Convention on Human Rights. It also features in a wide range of national, international and European texts, as well as Article 24 of the Turkish Constitution. Article 2 of Protocol No. 1 to the Convention concerns one specific aspect of freedom of religion, namely the right of parents to ensure the education of their children in accordance with their religious convictions.

The importance of freedom of thought, conscience and religion has been emphasised on many occasions by the European Court of Human Rights. It is considered as one of the foundations of a democratic society. This freedom is, in its religious dimension, one of the most vital elements that make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, inter alia, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion. In democratic societies, in which several religions coexist within one and the same population, it may be necessary to place limitations on freedom to manifest one's religion or beliefs in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected.

The Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and has stated that this role is conducive to public order, religious harmony and tolerance in a democratic society. As indicated previously, it also considers that the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed and that this duty requires the State to ensure mutual tolerance between opposing groups. Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.

Moreover, as the Court has often emphasised, pluralism and democracy are built on genuine recognition of, and respect for, diversity.

The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion.¹ The Court has also stressed the States' positive obligation to secure the effective enjoyment of the rights and freedoms under the Convention. This obligation is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation.²

It is within this context that the Court may approach complaints of discriminatory treatment of certain religious groups. Discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations.³ However, not every difference in treatment will amount to a violation of Article 14.

The Court's case-law under Article 9 and Article 14 of the Convention includes a number of very high profile and interesting cases: from the wearing of the Islamic headscarf on university premises (*Leyla Sahin v. Turkey* (2005)); to displaying religious symbols in State-school classrooms (*Lautsi v. Italy* (2011)); to the full-face veil in public in France (*S.A.S v. France* (2014)). A not insignificant number of

¹ see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 92, 17 February 2004.

² see *Bączkowski and Others*, cited above, § 64.

³ see, among many authorities, *D.H. and Others v. the Czech Republic* [GC], no. [57325/00](#), § 175, ECHR 2007-IV, see also *Molla Sali v. Greece* [GC], no. [20452/14](#), § 135, 19 December 2018.

cases concern conscientious objection: the right not to act contrary to one's conscience and convictions.

I would like to focus on the State's duty of neutrality by taking one case brought against Turkey: it is the 2016 Grand Chamber case of *İzzettin Doğan and Others v. Turkey*. The duty of neutrality prevents the State, including the national courts, from deciding the question of the *religious belonging* of an individual or group, which is the sole responsibility of the supreme spiritual authorities of the religious community in question. In other words, the State cannot arbitrarily "impose" or "reclassify" the religious belonging of individuals or groups against their will.

The case concerned the domestic authorities' refusal to provide the applicants with the public religious service which, in the applicants' assertion, was provided exclusively to citizens adhering to the Sunni understanding of Islam. The applicants had requested that the Alevi community be provided with religious services in the form of a public service; that Alevi religious leaders be recognised as such and recruited as civil servants; that the *cemevîs* be granted the status of places of worship; and that State subsidies be made available to their community. Their requests were refused on the grounds that the Alevi faith was regarded by the authorities as a religious movement within Islam, more akin to the "Sufi orders".

The Court found a violation of Article 9 read alone and in conjunction with Article 14 of the Convention. The Court took the view that the authorities' attitude in refusing to take the specific features of the faith into account had infringed their obligation of neutrality and impartiality. The absence of a clear legal framework governing unrecognised religious minorities caused numerous legal, organisational and financial problems relating to the ability to build places of worship, to receive donations or subsidies, to appear in court in their own right, etc. The Turkish authorities had therefore overstepped their extensive margin of appreciation. The Court also found that the applicants had suffered discrimination as compared with the followers of the majority version of Sunni Islam, who benefited from the aforementioned rights and services.

Dear Dean,
Ladies and Gentlemen,

Allow me to conclude by recalling that the European Convention on Human Rights and the Turkish Constitution are grounded on the hallmarks of a "democratic society" and both, in a relationship of complementarity, attach particular importance to pluralism, tolerance and broadmindedness. Now what does this mean?

As the Court has made clear, although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved that ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.⁴

In a recent public lecture I described this relationship between majority rule and fundamental rights as one encompassing what I termed *the democratic virtues of human rights law*. The core of this idea is that for the furtherance of peace in a democratic society political action in achieving common solutions, which excludes the meaningful participation of marginalised groups or minorities, runs counter to the very concept of a true democracy.⁵

⁴ see *Chassagnou and Others v. France* [GC], nos. 25088/94 and 2 others, § 112, ECHR 1999-III; *S.A.S. v. France* [GC], no. 43835/11, § 128, ECHR 2014 (extracts); and *Bączkowski and Others*, cited above, §§ 61 and 63, with further references.

⁵ Robert Spano, 'The Democratic Virtues of Human Rights Law – A Response to Lord Sumption's Reith Lectures', [2020] E.H.R.L.R., Issue 2, 132-139, 134.

Ladies and gentlemen, it is indeed my firm belief that it is only together, as human beings respectful of each other and our humanity, that we can fulfil the promise of our shared destiny, living together harmoniously in the way envisaged by the constellations of rights and values encompassed by the European Convention on Human Rights.

Thank you for your attention.