

THE FUNDAMENTAL RIGHTS DEFENDED TO THE CONVENTION IN THE ECHR THE OBLIGATION TO NEUTRALITY AND FUNDAMENTAL FREEDOMS

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Abstract: *This study examines the transposition and interrelation of fundamental rights, such as the right to freedom of expression with particular focus on their impact on the exercise of priestly functions. These rights, guaranteed by the European Convention on Human Rights are especially significant in cases where religious service is performed out of personal conviction rather than under an employment contract, as exemplified in the jurisprudence, including the case of Tothpal and Szabo. The origin of the case lies in two applications submitted under Article 34 of the Convention, highlighting violations of fundamental rights stemming not only from interpretative tensions in national legal systems but also from conflicts between constitutional principles and doctrinal coherence. The research aims to identify how the Convention defines and safeguards essential rights, including freedom of religion, freedom of expression, equality, and the right to dignity, and to explore the way in which the European Court of Human Rights (ECtHR) interprets these rights through its jurisprudence. By analysing key judgments such as Kokkinakis v. Greece, Sahin v. Turkey, Lautsi v. Italy and Eweida and Others v. the United Kingdom, the study highlights that neutrality is not a discretionary political choice but a binding international legal requirement designed to ensure equal treatment of all individuals irrespective of their beliefs or identities. The article concludes that the obligation of neutrality derives from the universal and nondiscriminatory nature of the rights enshrined in the Convention and is essential for the functioning of a pluralistic democratic society. Failure to observe neutrality leads to inequality, indirect coercion, and erosion of democratic pluralism, whereas respect for neutrality guarantees the effective protection of human dignity and fundamental freedoms.*

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Introduction

This study aims to clarify the legal status of the fundamental rights protected by the European Convention on Human Rights and to demonstrate why the state's obligation of neutrality constitutes an essential condition for their effective protection. The analysis begins from the premise that the rights enshrined in the Convention possess a universal and nondiscriminatory character, which requires states to comply both with negative

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obligations, refraining from unjustified interferences, and with positive obligations, ensuring the real and effective enjoyment of individual freedoms. The central objective of the research is to examine the manner in which the European Court of Human Rights has developed, through its case law, the substantive content of the state's duty of neutrality, particularly in sensitive areas such as freedom of religion, freedom of expression, ideological pluralism, and the equal treatment of citizens. By analysing relevant judgments, the study seeks to show that state neutrality is not a political choice but a legal requirement derived from the very architecture of the Convention, designed to prevent the imposition of dominant views and to safeguard the diversity of beliefs within a democratic society.

The author's main conclusion is that the obligation of neutrality should not be understood as a complete withdrawal of the state from the public sphere, but rather as a guarantee that the state will neither favour nor discriminate against any form of belief, whether religious or secular. This obligation ensures the conditions necessary for the genuine exercise of the freedoms protected by the Convention. Respecting neutrality strengthens pluralism, prevents subtle forms of pressure or symbolic coercion, and supports the democratic functioning of European societies. In this sense, the analysis demonstrates that the principle of state neutrality constitutes a fundamental component of the European public order in the field of human rights.

In order to better understand the case law in the case under review of the violation of Convention rights, we find it useful to provide a general analysis of some terms and describe them from the perspective of their influence on legislation. The Court's judgments and decisions resolve not only the cases brought before it, but also serve, in a broader sense, to clarify, protect and develop the rules of the Convention; thus, they contribute to the observance by States of the commitments they have undertaken as Contracting.

The right to religious freedom is a fundamental element of democratic society, protected both by national constitutions and international human rights law. However, within organized religion, particularly in states that recognize certain religious denominations, tensions often arise between individual conscience and institutional discipline. The recent case of a Lutheran pastor in Romania - who, along with members of his parish, established a new religious group and association - raises important questions regarding the scope and limits of religious freedom and the legitimate exercise of disciplinary authority by a religious denomination.

Article 17 was included in the Convention because it could not be excluded that a person or group of persons might seek to invoke the rights enshrined in the Convention in order to benefit from the right to engage in activities aimed at the destruction of those rights. In particular, it is not at all improbable that totalitarian movements, organised in the form of political parties, could abolish democracy after having prospered under democratic rule, such examples existing in modern European history.

In the present study, we have in mind the fact that the origin of the case is the unification of two applications Tothpal and another Szabo case that were brought before the Court under the Convention for the Protection of Human Rights and Fundamental

Freedoms, which specifically concern the issue that, by their criminal conviction for the illegal exercise of the profession of priest.

Literature Review

The scholarly literature addressing the obligation of state neutrality under the European Convention on Human Rights has developed significantly over the past decades, reflecting both the increasing complexity of pluralistic European societies and the evolving interpretative approach of the European Court of Human Rights (ECtHR). Early doctrinal analyses focused primarily on the structural principles of the Convention system, emphasizing the Court's role in safeguarding individual freedoms against excessive state interference. Scholars such as P. van Dijk and G.J.H. van Hoof highlighted the Convention's dual function of imposing negative obligations while progressively recognising positive duties, thus laying the groundwork for understanding neutrality as a legal requirement rather than a merely political expectation.

A substantial body of literature emerged following the Court's major religion-related judgments, most notably *Kokkinakis v. Greece* (1993) and *Lautsi v. Italy* (2011), which brought the principle of neutrality to the forefront of academic debate. Commentators analysing *Kokkinakis* argued that the Court initiated a shift toward a more comprehensive understanding of freedom of religion, acknowledging that genuine pluralism requires not only the absence of coercion but also the prevention of indirect or structural disadvantages imposed by state policies. Subsequent doctrinal assessments emphasized that neutrality must be interpreted in a dynamic manner, adjusted to the specific context of each case.

The literature surrounding *Lautsi* triggered one of the most intense scholarly debates, particularly regarding the margin of appreciation doctrine. Some authors criticised the Court for granting states excessive discretion in matters involving religious symbols in public institutions, warning that such deference risks undermining the uniform protection of Convention rights. Others welcomed the Court's prudence, contending that neutrality should not be equated with absolute secularism, and that national traditions may legitimately inform the interpretation of the Convention, provided that no coercion or discrimination results. This divergence reflects a broader theoretical dispute on whether neutrality is best conceived as strict secular impartiality or as inclusive pluralism, allowing a certain accommodation of majority cultural symbols.

The obligation of neutrality has also been examined in relation to freedom of expression, particularly through cases such as *Handyside v. the United Kingdom* (1976) and *İ.A. v. Turkey* (2005). Scholars have noted that the Court's jurisprudence demonstrates a consistent effort to prevent states from endorsing or imposing ideological, moral, or religious viewpoints, thus reinforcing a substantive model of neutrality. Theoretical analyses highlight that in matters of expression, neutrality functions primarily as a safeguard of ideological diversity, ensuring that democratic discourse remains open, even to ideas that challenge social or moral majorities.

More recent doctrinal contributions explore the obligation of neutrality in connection with equality and nondiscrimination, paying special attention to cases involving minority religions, gender equality, and education. Authors such as Eva Brems and Javier Martínez-Torrón argue that neutrality, in its contemporary interpretation, imposes increasingly robust positive duties upon states. These include the duty to protect vulnerable minorities from discriminatory practices and the duty to create conditions enabling individuals to freely manifest their beliefs without disproportionate burdens. The Court's decisions in cases such as *Eweida and Others v. the United Kingdom* (2013) have been widely analysed as consolidating the notion that neutrality must be operationalised in a balanced manner that respects both individual autonomy and the rights of others.

Finally, theoretical debates continue to question whether the ECtHR's approach provides sufficient clarity and predictability. Some theorists argue that the Court has adopted an inherently flexible, case-by-case approach that resists rigid conceptualisation, reflecting the diversity of European legal cultures. Others advocate for a more explicit doctrinal formulation of neutrality, which would strengthen the Court's consistency and enhance the legitimacy of its judgments.

Overall, the existing body of doctrinal, jurisprudential, and theoretical analyses reveals a progressive consolidation of the obligation of state neutrality as a cornerstone of the Convention system. The scholarly debate demonstrates that neutrality is not merely an abstract ideal but a practical legal standard that requires states to navigate the delicate balance between respecting majority traditions and protecting the rights of individuals and minorities within an increasingly pluralistic Europe.

Data and Methodology

This study employs a qualitative, doctrinal research design grounded in legal analysis and interpretative inquiry. The principal aim is to examine the evolution and application of the state's obligation of neutrality under the European Convention on Human Rights (ECHR) through a detailed scrutiny of relevant legal texts, case law, and scholarly commentary.

Data sources consist primarily of primary legal materials including the Convention itself, and the jurisprudence of the European Court of Human Rights (ECtHR). Key cases have been selected for in-depth analysis based on their direct relevance to the issue of state neutrality, their prominence in academic debates, and their illustrative value in highlighting doctrinal developments and practical challenges. Complementary secondary sources include academic articles, legal commentaries, and official reports which provide context and critical perspectives on the interpretation and implementation of neutrality.

The **analytical framework** integrates doctrinal legal analysis with elements of comparative law and legal theory. This approach facilitates a comprehensive understanding of both the letter and the spirit of the Convention's provisions, as well as their real-world

application. It also allows for critical engagement with the varying interpretations of neutrality across different jurisdictions and cultural contexts within the Council of Europe.

Regarding the **criteria for case selection**, priority was given to landmark rulings that articulate or refine the principles governing neutrality, especially those involving freedom of religion, freedom of expression, and non-discrimination. Cases were chosen to reflect a range of issues and geographic diversity to capture the complexity of the Court's approach. This purposive sampling ensures that the analysis remains focused while encompassing sufficient breadth to draw meaningful conclusions.

The study references the method of counterfactual analysis as a valuable tool for assessing the implications of judicial decisions and doctrinal positions. Counterfactual analysis involves considering hypothetical alternative outcomes - that is, asking a different legal reasoning or ruling had been adopted - to better understand the significance and consequences of the actual decisions. Although briefly mentioned, this method is not yet fully operationalized within the research. Future work could expand on this by systematically applying counterfactual scenarios to selected cases to explore how different interpretations of neutrality might have impacted the protection of fundamental rights and the development of legal norms.

Also the methodology of the present study had the following components: - choosing the topic to be studied, as the first stage of the scientific investigation, because it conditions the success of the research work more than any other stage of the research. In the present case, a topical topic was preferred, based on the theoretical contemporaneity and practical importance of studying the prevalence of fundamental rights protected by the convention; and the manifestation of theological faith in general. Scientific documentation, which constitutes a main component of the methodology for approaching the topic.

Due to the topicality of the topic, the use of informational connections and interconnections in ECHR cases with the same object was taken into consideration; sorting activity, including processing of approaches in other religions for an edifying approach regarding the essence of the research.

The Model and Findings

Critical Interpretation and Analytical Integration of the Case of Tóthpál and Szabó

The **Tóthpál and Szabó** case presents a significant jurisprudential moment in the evolving understanding of the state's obligation of neutrality under the European Convention on Human Rights. This case offers an opportunity to critically assess how the European Court of Human Rights balances competing rights and interests, particularly in the context of minority religious freedoms and state secularism.

At its core, the judgment illustrates the Court's nuanced approach to neutrality - not as a rigid separation of religion and state but as a principle ensuring that the state neither favors nor discriminates against particular beliefs. The ruling highlights the Court's endeavor to safeguard pluralism while recognizing the margin of appreciation afforded to

states in regulating religious expressions within their jurisdiction. However, a critical reading reveals potential tensions. While the Court seeks to protect individual freedoms, the latitude given to states risks permitting practices that may indirectly burden minority rights, thereby raising questions about the sufficiency of existing safeguards against subtle forms of discrimination.

From a broader analytical perspective, Tóthpál and Szabóunderscores the challenges inherent in operationalizing neutrality in diverse social contexts. The case reinforces the notion that neutrality must be interpreted dynamically, sensitive to both the majority's cultural traditions and the minority's need for effective protection. It thus reflects the ongoing dialectic within the Court's case law between universalist human rights principles and respect for national identities.

Moreover, the decision exemplifies the limitations of the margin of appreciation doctrine as a tool for reconciling pluralism with uniform rights protection. While flexibility is necessary, excessive deference may undermine the Convention's role as a guarantor of fundamental freedoms. This case therefore calls for a more rigorous analytical framework that systematically evaluates the impact of state actions on minority groups, potentially integrating counterfactual reasoning to examine how alternative approaches to neutrality could better protect vulnerable rights holders.

In conclusion, the **Tóthpál and Szabó** case is emblematic of the complex interplay between state neutrality, religious freedom, and democratic pluralism in the European human rights landscape. It invites scholars and practitioners to critically reflect on how legal standards are applied in practice and challenges the Court to refine its doctrinal tools to ensure that neutrality serves as an effective safeguard rather than a source of indirect exclusion.

In the context of the new era of development, it must be recalled that the European legislation, given the very clear link between the Convention and democracy, no person should be authorised to avail himself of the provisions of the Convention in order to undermine or destroy the ideals and values of a democratic society. (*Refah Partisi and Others v. Turkey*, (2003))

The general purpose of Article 17 is therefore to prevent totalitarian or extremist groups from exploiting the principles enshrined in the Convention for their own benefit. (see *W.P. and Others v. Poland* ,2004; *Paksas v. Lithuania*, 2011).

The Court considered that no element of the contested statements required the application of art. 17 and found a violation of art. 10 as a result of the conviction of the applicants. Regarding the Tothpal case and another Szabo case that notified the Court, it is relevant to first list the related legislation such as labor law and constitutional law in order to better understand the effects that led to the case analyzed from multiple perspectives, especially to highlight the role of religion in society and the state of affairs in general with religion.

Thus, according to labor legislation Art. 10 of the Labor Code, the individual employment contract is the contract under which a natural person, called an employee,

undertakes to perform work for and under the authority of an employer, a natural or legal person, in exchange for a remuneration called salary.

In fact, in the given context of the case, the applicants belong to cults without having a connection and in most cases the applicants have a professional identity, being priests who for various reasons were fired from their parish, their employment contract as priests having been terminated following disciplinary proceedings.

The second identity of the connection between the case on the merits in the Court's analysis was the fact that in both cases the priests continued to serve separately and had explanatory reasons related in particular to the relationship with the parishioners who, although they knew that they had been expelled, followed them in faith, participating voluntarily and with their own conscience in the officiated services.

Specifically in the case of the first applicant, the Court reveals that he was the pastor of the Evangelical Lutheran community in a city, an occupation that he performed under an employment contract concluded with the representatives of the Lutheran parish on the basis of the decisions of its general assembly.

This article examines the legal and ecclesiological implications of the formation of a new religious group and association by a Lutheran pastor in Romania, in the context of legislative changes concerning religious freedom and the special regime of recognized cults. The dismissal of the pastor by the Evangelical Lutheran Church of Romania following the establishment of the group and the association "Church" raises important questions about the balance between individual religious freedom and the internal autonomy of recognized religious denominations. The analysis is framed within the Romanian legal framework and relevant European jurisprudence on freedom of religion under Article 9 of the Convention (ECHR).

However, the pastor is supported by the parish representatives, which is why he continues to celebrate services in the Lutheran church in the presence of some of the community members, even posting a notice on the church door with information about the services that were then organized by the religious group and also participating in religious ceremonies outside the church.

Although the new pastor requests on behalf of the parish the excommunication of the first plaintiff from the church and his eviction from the parish house, this request is rejected by the Jurisdictional Court on the grounds that the statutory body of the parish, namely its general assembly, ruled in favor of the dismissed priest and did not recognize the new pastor as a representative of the parish.

In the continuation of the conflict between the two, the new pastor exercises a remedy in criminal proceedings for the illegal exercise of the priest's office because he continued to lead religious services in the Lutheran Church in violation of the dismissal decision.

However, the criminal court reasoned that the members of the Lutheran community knew about the dismissal of the pastor and that a majority of this community had followed and supported him and considered that the actions of the first plaintiff did not constitute crimes, but the considerations note that the office of priest could only be exercised with the

consent of religious organizations, whether or not they have legal personality, and that, in this case, this consent being withdrawn, obliges the plaintiff to pay an administrative fine.

Following the challenge of the prosecutor's decision before the Court of Justice, the dismissed pastor argued that he did not act as a Lutheran pastor, but only as a Protestant pastor, a dignity that his theological studies and the doctrine of the Protestant cult would have conferred on him. The witnesses heard at the request of the first applicant confirmed that the members of the community were informed about the latter's excommunication from the Lutheran Church and that the person in question celebrated the Protestant Holy Mass at the church, in accordance with a ritual different from the Lutheran one.

In the end, this pastor is sentenced to pay a higher criminal fine, moreover, the motivation reveals that, after being dismissed, the first applicant continued to officiate as a pastor, celebrating religious services and participating in marriage, baptism and funeral ceremonies. The court, however, decides to dismiss the pastor's argument based on the public notoriety of the excommunication from the Lutheran Church, considering that he was responsible for the illegal exercise of the function of pastor, because the Lutheran community in the city did not contest the jurisdiction of the Lutheran Church in Romania and did not become autonomous from this religious organization.

In the appeal procedure at the higher court, it is also noted that the pastor performed rites specific to the Lutheran cult, although his dismissal constituted a legal impediment to continuing his activity as a pastor in the Lutheran parish in the city.

Another factual situation concerning the second applicant, the application concerns a decision of the Reformed Church of Romania which came into conflict with the latter due to the filing of the divorce petition. The Reformed Church fired him, dismissed him from the position of priest and prohibited him from leading the Reformed religious service, a new priest being appointed in Băița.

Like the first case, the new priest officiated the service in the village church. While supported by the majority of the believers of the Reformed cult, the dismissed priest organized religious meetings in the parish house, where he still lived temporarily, or in the homes of the believers. At their request, he celebrated marriages and baptisms and participated in funeral ceremonies. The second applicant argues that these events took place according to rituals other than those specific to the Reformed religion. He also stated that the believers in question sang and recited prayers and that he himself spoke to them without claiming the status of a Reformed priest.

Like the first case, criminal proceedings were initiated for the illegal exercise of the priest's office, in violation of the dismissal decision, but the criminal court dismissed the complaint against the priest because the Reformed community in the village was divided and that some of the believers had deliberately followed the second applicant and participated in religious meetings unrelated to the Reformed service.

In the preliminary chamber, the court overturned the prosecutor's decision and, considering the evidence available in the prosecutor's file sufficient to justify sending the second applicant to trial, retained the case for an examination on the merits. However, the

court ruled that these testimonies were not credible, on the grounds that the witnesses in question had no theological training. Relying on the statements of the witnesses proposed by the Reformed Church and on the documents provided by it, the court considered that it was precisely the celebration of the Reformed service that was at issue, an activity prohibited to the second applicant.

Finally, the court convicted the second applicant of unlawfully exercising the office of priest, on the grounds that the person concerned continued to provide the Reformed religious service and to celebrate marriages, funerals and baptisms. It concluded that the second applicant had acted contrary to Christian teaching and had thus created and maintained a source of discord in the Reformed community of Băița. The court sentenced the second applicant to a two-month prison sentence, considering that only detention could lead him to reflect on his conduct and to rectify himself through fasting and prayer for at least 40 days, after which he could benefit from conditional release.

On appeal, given the division of the Reformed community in the village, the deprivation of liberty of the second applicant was likely to aggravate the conflict and ordered the suspension of the prison sentence with a probationary period of two years and two months.

The exercise of the function of priest or any other function that involves the exercise of priestly duties without the express authorization or consent given by religious structures, with or without legal personality, shall be punished according to criminal law.

In accordance with this decision, the Court examines the applicants' submissions that, by their criminal conviction for the illegal exercise of the function of priest, their right to freedom of religion has been violated. The first applicant relies on Article 9 taken in conjunction with Articles 6, 13 and 14 of the Convention.

The subject matter of a case "submitted" to it in the exercise of the right to an individual application is delimited by the complaint formulated by the applicant.

A complaint comprises two elements: the factual allegations and the legal arguments. Under the principle of *jura novit curia*, the Court is not bound by the legal grounds relied on by the applicant under the Convention and the Protocols thereto and may decide what legal classification to give to the facts corresponding to a complaint by examining it in the context of Articles or provisions of the Convention other than those relied on by the applicant see Radomilja (2018).

The Court recalls that an application may be rejected as abusive if it is knowingly based on false facts Gross (2014). Incomplete and therefore misleading information may also be considered an abuse of the right to an individual remedy, in particular if it concerns the substance of the case and if the applicant fails to sufficiently explain why he or she has not provided the relevant information (Predescu 2008).

In support of the admissibility of the application, the first applicant states that he or she has a theological background and that a distinction must be made between the activity of a priest in the professional sense and that activity in the biblical sense. Relying on the judgment in Case no. 38.178/97, ECHR (1999), he considers that he acted as a spiritual leader of a group of persons who had voluntarily followed him and that he sees this as an

expression of pluralism. In his second application, the second applicant states that he intervened, at the request of a part of the community, to guide it, without, however, celebrating the Reformed rites and without obtaining any financial gain. In this regard, he argues that the criminal legislation did not specify the duties of a priest or the criteria for establishing them and was therefore not sufficiently clear. He submitted that the judges had no theological training and had not relied on objective criteria, relying on the case-law on the principles relating to religious pluralism developed by the Court in the *Agga v. Greece* (no. 2) judgment (no. 50.776/99 and 52.912/99, 17 October 2002).

The Court notes that the Government have indicated in their observations that in the present case their conviction was intended to protect the rights of others. The Court is prepared to accept that the interference, which was prescribed by law, pursued the legitimate aim of protecting the rights of the churches concerned and their members.

Turning to the present case, the Court notes that the acts in dispute which justified the applicants' conviction were of a religious nature: they were charged, in particular, with having performed religious services and with having taken part in marriage, baptism or funeral ceremonies.

In this respect, the persons concerned were not charged with having committed acts capable of producing legal effects so that the court relied on legal provisions of Greek law according to which marriages performed by clerical personnel were assimilated to civil marriages and muftis were competent to rule on certain civil disputes between Muslims.

The Court further notes that the applicants have consistently stated that they acted with the support of a section of the communities concerned, which the Government did not dispute in their observations before it.

Furthermore, the Court notes that, although the acts of which the applicants were accused took place on the basis of the division of the respective communities, it has not been established, either before the domestic courts or before the Court, that the division of those communities gave rise to tensions or confrontations requiring intervention by the State authorities.

The Court recalls that it has already stated that there is a risk of tensions arising when a community, religious or otherwise, divides, but that this is one of the inevitable consequences of pluralism.

With regard to labour law, it is essential to note that, according to the Labour Code, the individual employment contract is the main institution of labour law, it being a contract *intuitu personae*. The employment contract is *synallagmatic*, *onerous*, *commutative*, *intuitu personae*, with successive execution,

Moreover, the Constitution further affirms in Article 41 that the right to work shall not be limited. Individuals enjoy full freedom in selecting their profession, trade, or occupation, as well as in determining their place of employment.

This right to work should not be viewed in isolation but is associated with the regulation of the special law that characterizes the type of this occupation, in the case of the study being primarily the profession of priest.

All the more, the essence of the right to work, also reaffirmed in the fundamental law, is reflected in Article 15 on freedom to choose an occupation and the right to work, which states that every person has the right to work and to engage in an occupation freely chosen or accepted.

However, in this case, the priest no longer had the right to exercise his right as a priest within the church, as his employment contract was terminated in the framework of internal and legal procedures. On the other hand, the court decision, having its own enforceable force, must be implemented, without investigating its validity or legality, if its illegality has not been established according to the procedures provided for by law, as a result, the termination of an employment contract to the extent that the court has maintained that contract as legal does not interfere with the profession practiced by a priest.

Another relevant example is found in the instrument of the tax authority requesting the fiscal registration of a natural person who obtains income from independent activities, if the legality conditions provided for by the special law regarding the exercise of the activity are not met.

The solution regarding tax registration must be understood in light of several relevant legal provisions. First, Article 14 of the Fiscal Procedure Code, republished and subsequently amended, establishes that income obtained by an individual is subject to tax law even when it derives from activities that do not meet the requirements of other legal norms. In addition, the Fiscal Procedure Code stipulates that any person or entity that enters into a fiscal legal relationship is required to register for tax purposes and is assigned a fiscal identification code. Consequently, taxpayers who obtain income from independent activities for which advance payments are withheld at source by the income payers are nevertheless obliged to submit a tax registration declaration to the competent fiscal authority in order to complete their registration.

It follows that the competent tax authority may carry out the tax registration of these categories of taxpayers according to the provisions of the Fiscal Procedure Code, republished, with subsequent amendments and completions, based on the contracts attached by them, with the clarification that the fulfillment of the tax registration obligation does not replace the fulfillment of the obligation to exercise the activity under the conditions provided by the law relating to the activity in question.

Moreover, the responsibility for compliance with the legal provisions on authorization lies with the persons carrying out the respective activities.

Consequently, tax registration is necessary for the tax authority to record those who carry out acts and operations that fall under the tax law, and not a condition for the legalization of activities, this remaining, as mentioned above, a responsibility of those who carry them out.

With respect to the legislation governing religious denominations, the year 2024 records a total of 19 religious cults officially recognized in Romania, in accordance with the provisions of Law No. 489/2006 on religious freedom. Statistical data also indicate the existence of 27,384 places of worship belonging to the 18 denominations active in

Romania as of 31 December 2015. Under this legal framework, religious denominations operate autonomously from the state, while at the same time benefiting from its support, consistent with Article 29 of the Romanian Constitution, which guarantees freedom of conscience and the autonomy of religious groups.

The legislative regulations applicable to religious denominations reflect an institutional responsibility to safeguard religious identity within society. As an important protection measure, the law provides that the religion of a child who has reached the age of 14 may not be changed without the child's explicit consent. Moreover, in line with the broader legislation on children's rights, certain restrictions are imposed to prevent any infringement of a minor's religious freedom. Beginning at the age of 16, every individual holds the unrestricted right to determine his or her own religious affiliation.

The legal framework strictly prohibits discrimination on religious grounds in all spheres of public and private life, mirroring the constitutional principle embodied in Article 16 on equality before the law, which states that citizens enjoy equal rights and are not subject to privileges or discrimination. Complementing this, the law also forbids religious defamation, the incitement of conflicts based on religious differences, and any public denigration of religious symbols, with corresponding sanctions established by statute. These provisions align with Article 21 on non-discrimination, which prohibits differential treatment based on a wide range of grounds, including sex, race, colour, ethnic or social origin, genetic characteristics, language, religion, convictions, political or other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation. Additionally, within the scope of the Treaties of the European Union and subject to their specific provisions, discrimination based on nationality is likewise prohibited.

The formulation of Article 21 draws inspiration from Article 13 of the former EC Treaty - now replaced by Article 19 of the Treaty on the Functioning of the European Union - as well as from Article 14 of the European Convention on Human Rights and Article 11 of the Convention on Human Rights and Biomedicine concerning genetic inheritance. To the extent that its content overlaps with Article 14 of the ECHR, its application is to be interpreted in conformity with the latter.

For those reasons, the Court declares the complaint under Article 9 of the Convention admissible. To that end, the Member States must repeal the national rule incompatible with EU law and, until then, render the provision in question inapplicable. That obligation is imposed on all national authorities, including local or regional authorities, and on national judges.

Religion remains a significant element of Romanian identity and cultural heritage. The Romanian Orthodox Church, which represents around 85% of the population, plays a dominant role in spiritual and social life, as shown in Table.2. Other denominations contribute to Romania's religious pluralism and promote interfaith dialogue, tolerance, and cultural diversity.

According to the 2022/2023 census data: – Roughly **85.3%** of respondents who declared a religion identified as Eastern Orthodox. Other denominations: ~4.5% Roman Catholic, ~3.0% Reformed, ~2.5% Pentecostal

There is a sizeable portion who did *not declare* a religion: for example ~15% of respondents in the 2021 census did not declare religious affiliation

Table 1. The evolution of religious cults

Indicator	Current (≈2022-25)	Plausible mid-century (≈2050) scenario
Share of Eastern Orthodox	~85% (of those declaring)	Perhaps slightly lower (e.g., in the 75-85 % range) due to non-declared and secularisation effects
Declared affiliation (any religion)	High (>80 %) but non-declaration growing (~15%)	Might drop (e.g., 70-80%) as more people opt out or identify as non-religious
Weekly church attendance	~23% report once a week in 2025 survey	Could fall to lower levels (e.g., <20%) as practice declines
Importance of religion in life	Still high (majority say religion important)	Could reduce gradually, especially among younger cohorts

Source: INSCOP Research 2021

As shown in Table 1 , a recent survey (June 2025) by INSCOP Research found that 99,8% people have religious affiliation, 85% of Romanians consider themselves religious. Church-attendance: the same survey found ~7.6% go to church several times a week; ~23% once a week; ~17.1% at least once a month; ~25.4% only on major holidays; ~6.8% never. Indicator of secularisation: some research indicates trust in the church and church-attendance are gradually declining. Even if affiliation remains high, levels of weekly attendance, membership and active participation are likely to decline (as with many European countries).

Taking into account the role and purpose of knowledge of international jurisprudence consistently in clarifying legislation in support of citizens, and in accordance with the Treaties and Conventions, every natural or legal person has the right to the peaceful enjoyment of his possessions. No one may be deprived of his property except for reasons of public utility and under the conditions provided for by law and by the general principles of international law. with reference to art. 6 § 1 Fair trial, the research aims to clarify complex cases and form regulatory intentions in the light of the principles of the ECHR in relation to the legal text in force, to ensure a correct application of the law.

Furthermore, it is important to highlight the regulation in the Fundamental Law which, through Article 20, legislates that the constitutional provisions regarding the rights and freedoms of citizens will be interpreted and applied in accordance with the Universal Declaration of Human Rights, with the pacts and other treaties to which Romania is a part.

At the same time, whenever there is a conflict between the international agreements and treaties on fundamental human rights ratified by Romania and the country's domestic legislation, international norms prevail, unless the Constitution or national laws offer greater protections, as indicated in Table 2. Therefore, the case law in this matter represents a legitimate and authoritative source of legal interpretation.

Table 2. Models of cults recognized under the law

	Name of cults
1.	Romanian Orthodox Church
2.	Serbian Orthodox Diocese of Timișoara
3.	Roman Catholic Church
4.	Romanian Church United with Rome, Greek Catholic
5.	Archdiocese of the Armenian Church
6.	Old Rite Orthodox Church of Romania
7.	Reformed Church in Romania
8.	Evangelical Church C.A. of Romania
9.	Evangelical Lutheran Church in Romania
10.	Hungarian Unitarian Church
11.	Baptist Christian Cult - Union of Baptist Christian Churches in Romania
12.	The Christian Church According to the Gospel in Romania
13.	Romanian Evangelical Church
14.	Pentecostal Christian Worship – Apostolic Church of God in Romania
15.	Seventh-day Adventist Church in Romania
16.	Federation of Jewish Communities in Romania - Mosaic Cult
17.	Muslim Cult
18.	Ather Religious Organization
19.	Assemblies of God in Romania

Source: Eurostat data owner recherche <http://www.worldbank.org>

As shown in Table 2 the recognition of religious denominations in Romania reflects the country's commitment to religious freedom, diversity, and democratic values. Through cooperation between the state and the various religious communities, Romania maintains a model of coexistence based on respect, tolerance, and cultural continuity.

This indicator measures a State's formal acceptance of international human rights norms and its declared intention or commitment to implement these rights in line with the applicable legal frameworks (structural indicator). However, it does not capture the extent of actual implementation (process indicator) nor the results achieved (outcome indicator).

Signing a treaty by a State does not constitute formal consent to be legally bound. Instead, the signature functions as a form of authentication and signals the State's willingness to proceed with the treaty process. It authorizes the State to advance to ratification, acceptance, or approval stages, and it creates an obligation to act in good faith by refraining from any actions that would frustrate the treaty's purpose and objectives, in accordance with the Vienna Convention on the Law of Treaties (1969).

Measures should be adopted to bridge existing gaps with other countries, especially those in the northwestern part of the European Union. Research by Galluzzo (2018) revealed a clear correlation between Single Area Payment Schemes and patterns of crop specialization. Romania continues to have a high nominal share of religious affiliation (especially Eastern Orthodox) and high levels of self-reported religiosity.

However, there are clear signs of gradual secularisation (lower practice, increasing non-declaration, younger generations less religious). Based on current trends, we can expect that by 2050 the dominance of the Orthodox Church will still likely hold, but its share of active participants and declared affiliation may decline somewhat. Smaller denominations and the category may grow in relative terms. For policy, research or rights-analysis contexts

(e.g., the relationship between Church and State, religious education, minority religions, secularism), key variables to monitor include non-declaration rates, generational shifts, urban vs rural practice, and immigration-driven changes in minority religions.

Conclusions

Considering all the aforementioned points, the Court concludes that state actions that endorse a particular leader of a fragmented religious community or attempt to impose a unified leadership on that community against its will amount to a breach of the right to freedom of religion.

The case provides a significant contribution to understanding the practical application and limits of the state's obligation of neutrality under the European Convention on Human Rights. In this case, the applicants challenged measures taken by public authorities that they argued constituted an infringement on their freedom of religion and belief, core rights protected by Article 9 of the Convention.

Critically examining the Court's reasoning reveals nuanced tensions inherent in balancing individual religious freedoms with the state's duty to remain neutral and impartial. The judgment underscores the complexity of defining neutrality not as mere abstention but as an active duty to prevent state endorsement or discrimination of particular beliefs. However, the Court's allowance of a margin of appreciation for the state highlights the delicate trade-off between respecting national contexts and maintaining uniform protection of Convention rights.

From a broader analytical perspective, *Tóthpál and Szabó* exemplifies the Court's pragmatic approach in operationalizing neutrality within diverse cultural and legal environments. It illustrates that neutrality must be interpreted flexibly but consistently, ensuring that state actions do not indirectly privilege or disadvantage any religious group. Moreover, the case contributes to the evolving jurisprudence on how states can accommodate religious practices without breaching the principle of secular equality.

The implications of this ruling extend beyond the immediate facts, touching upon broader debates regarding pluralism, the limits of state intervention in religious matters, and the protection of minority rights within democratic societies. It calls for continuous vigilance to ensure that neutrality does not become a pretext for indifference or covert discrimination, but rather functions as a dynamic principle fostering inclusivity and respect for diversity.

In integrating these findings into the wider theoretical framework, *Tóthpál and Szabó* reinforces the view that state neutrality under the ECHR is a complex, multifaceted obligation. It requires balancing competing interests and rights while upholding the overarching goal of protecting human dignity and pluralism. This case thus serves as a critical reference point for future legal analyses and policy-making concerning the role of the state in religious and ideological matters.

The ECHR has also emphasised that in a democratic society there is no need for the state to adopt measures to ensure that the respective religious communities remain or are placed under a single leadership (see Hassan 2009).

However, it must be noted that, in the present case, by convicting the applicants for their religious activities, the Romanian authorities de facto placed part of the religious communities in cities A and B under the aegis of the Lutheran and Reformed churches, excluding the possibility, for believers who so wished, of following the rites officiated by the applicants.

The ECtHR has emphasized, however, that religious freedom must be understood in conjunction with the autonomy of religious organizations (see Fernández Martínez v. Spain, 2014).

Exceptionally, we note how the court analyses the entire dimension of the State's role in society from a different angle and not the other way around. On these grounds, the Court particularly emphasised the State's role as a neutral and impartial organiser of the exercise of various religions, cults and beliefs and stated that this role favours public order, religious harmony and tolerance in a democratic society.

The Romanian legal system, in harmony with European standards, provides a balanced framework in which such tensions are addressed. Ultimately, the right of an individual to form a new religious entity does not negate the right of a denomination to maintain discipline and doctrinal integrity.

This case underscores the importance of mutual respect between personal conscience and institutional authority, a principle foundational to both ecclesial life and constitutional democracy.

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