Legal personality, minority religions and religious accommodation in Eastern Europe

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Legal Personality, Minority Religions and Religious Accommodation in Eastern Europe

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Abstract. *An important aspect of religious accommodation in the public sphere is the willingness or otherwise of the State to accommodate religious groups, as well as individuals professing religious beliefs. The accommodation of religion in the public sphere can depend upon law and policy makers choosing to recognise certain beliefs and practices as religious beliefs and practices and, in certain contexts, this recognition is contingent upon religious groups acquiring legal personality. Achieving this recognition has proved to be problematic for minority religious groups, especially in Eastern European jurisdictions.*
This paper seeks to consider State responses to regulating minority religions, including new religious movements, in Eastern Europe by reference to a number of recent cases before the European Court of Human Rights. It will pay particular attention to the extent to which approaches to the acquisition of legal personality for religious groups may restrict or undermine religious freedom and accommodation.

Keywords*: Human rights, Freedom of religion or belief, Religious organisations, Legal personality.*

Introduction

It is widely accepted that the right to religious freedom entails the protection of both individual and collective elements.[2] Thus an important aspect of religious accommodation in the public sphere is the willingness or otherwise of the State to accommodate the beliefs and practices of religious groups, as well as individuals professing religious beliefs.

The accommodation of religion in the public sphere can depend upon law and policy makers choosing to recognise certain beliefs and practices as religious beliefs and practices and, in certain contexts, this recognition

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2 For an extended treatment of this point see Rivers 2010.

is contingent upon religious groups acquiring legal personality. Achieving this recognition has proved to be problematic for minority religious groups, especially in Eastern European jurisdictions[3]. A recent report by the Organisation for Security and Co-operation in Europe (hereafter OSCE) argues that obstacles to the acquisition of legal personality for minority religious groups can 'negatively affect the rights of a wide range of religious or belief communities.' (OSCE/ODHIR 2014, 5)

This paper will seek to consider State responses to regulating minority religions, including new religious movements[4], in Eastern Europe by reference to a number of recent cases before the European Court of Human Rights (hereafter ECtHR). It will pay particular attention to the extent to which approaches to the acquisition of legal personality for religious groups may restrict or undermine religious freedom and accommodation.

This paper will begin by an explanation of the concept of legal personality and a consideration of its significance for the protection of religious freedom under Article 9 of the European Convention on Human Rights (hereafter ECHR). It will then place the development of the ECtHR's Article 9 jurisprudence in the context of the post-Soviet expansion of the Council of Europe before examining recent judgments on the issue of State recognition of minority religions in Russia where legal personality has been at issue. Finally, it will offer some concluding remarks on the nature of the challenges faced by unfamiliar minority religions seeking recognition in an increasingly heterodox religious landscape.

Legal Personality

Legal personality is an axiomatic legal concept.[5] A person, in law, is the subject of legal rights and duties. A legal person can, in principle, enforce rights in court, be held liable for breach of legal duties, be deemed capable of entering into a contract or owning property. Legal personality is largely synonymous with human personhood but is nevertheless conceptually distinct from it; natural legal persons (human beings) are most obviously the

3 Note that for the purposes of this paper Eastern Europe is given a wide geographical definition and includes Russia. All states referred to are signatories of the ECHR.

4 The term 'minority religion' is used broadly in this paper to refer to religious groups that do not part form part of the dominant religious culture in a state. 'New religious movements' (NRMs) is used in the religious studies literature to refer groups that manifest forms of religious innovation, although there is debate regarding whether these forms of religiosity are entirely novel. For further discussion of this point and a helpful introductory overview of the literature on NRMs see Hammer and Rothstein 2012.

5 For a detailed discussion of the concept of legal personality see Smith 1928, Naffine 2003 and Note 2001.

objects around which legal rights and duties coalesce. The idea that legal personhood is conceptually distinct from the human person echoes a similar distinction present in philosophy and theology. [6]

The legal orthodoxy pertaining to legal personality is that it is a pragmatic fiction the construction of which facilitates the coalescence of particular legal rights and duties. In this sense, the concept of legal personality is merely a technical abstraction as Smith helpfully explains:

> *To say that a subject has legal personality is to say that it is a party to legal relations without indicating in particular what the relations are. To say that one has title, is to say that one is a party to a particular class of legal relations, namely, those which go with the ownership of property. In either case, if one takes away all the rights, powers, privileges and immunities that shelter under the term, there is nothing left except the shelter which, thereafter, is but a word without a meaning. (Smith 1928, 294)*

From this pragmatic perspective, legal rights and duties can therefore, in principle, be allowed to coalesce around any entity, natural or artificial. Human beings are generally given the status of natural legal personhood and it is well established that corporations can function as legal persons to serve the pragmatic purpose of groups of persons engaged in a common purpose. [7] However, the actual conferral of legal personality is sometimes contested and can be revealing of changing societal attitudes to the status of particular individuals or groups within society. For example, legal systems were able to facilitate the existence of human slavery by denying slaves legal personality. [8] Likewise, the position of women in legal history illustrates that being human is not always sufficient to be the object of a full range of legal rights and duties; women were not considered to be legal persons in their own right by the common law[9]. More recently challenges to the conferral of legal

6 For example, the idea that a person might not necessarily be a human being has long been present in Christian Theology where the doctrine of the trinity holds that God is Father, Son and Holy Spirit. Cardinal Newman, writing in the 19th Century, wrote that 'person' is the word: '... we venture to use in speaking of those three distinct and real modes in which it has pleased Almighty God to reveal to us His being' (cited in OED 2016).

7 For example *Salomon v Salomon and Co (*1897) is the seminal case on corporate legal personality in UK law.

8 An example of the importance of legal personality in the emancipation of slaves can be seen in the English case of Somerset v Stewart (1772). For an extended treatment of how US courts have approached the issue of personhood and slavery see Note, 2001.

9 For example, in his 1765 text Commentaries on the Laws of England, William Blackstone argued that by marriage a husband and wife are one person in law and for the duration of the marriage the woman's independent legal existence is suspended and consolidated into that of her husband's. 'By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is

personality have focused on attempts to break down the well-established legal divide between persons and animals.[10] In this way legal personality can be seen as a social construction which is revealing of wider social and political trends.

A long running theme within legal philosophy is the extent to which the concept of the legal person should in some sense be rooted in the concept of a natural legal person or human being. Naffine (2010) provides a survey of this discussion arguing that two key positions can be ascertained: the legalist and the realist. A legalist takes the view that non legal attributes are irrelevant in determining whether or not to class a thing as a legal person. The realist position differs in that legal personality should only be conferred on things with certain non-legal attributes; whether it be reason, a soul or sentience. She suggests that all of these approaches have influenced the way law approaches the legal person:

> *The concept of the person, I suggest, takes its meaning from all four metaphysical positions. All the approaches I consider have currency. All influence legal thinking but not in equal measure. Some ways of thinking about who and what we are, and how law should reflect that understanding, are more powerful than others because they are so much a part of legal orthodoxy. Others represent relatively new and controversial ways of thinking about law's subject. (Naffine 2010, 115)*

The argument presented in this paper is that, in principle, the rights and duties which constitute legal personality can coalesce around any entity, whether a natural human person, a corporation or even a non-human animal. This paper will make the case that the jurisprudence of the ECtHR reveals that in some instances the way in which legal personality is conferred by states, and overseen by the courts, is informed by the 'realist' approach to legal personality, in that legal personality is more easily conferred on religious organisations which fit the pre-existing templates of what a religion should 'conventionally' look like. Further, in some instances, the decision to grant or withhold legal personality to particular religious groups illustrates the role of the State in the social construction of religion and is thus a means of State control of religious freedom. (Temperman 2013)

incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs everything...' (Blackstone 1765, 442)

10 Animals are generally seen as property and conceptually ineligible for the status of legal personality. However this has been subject to sustained legal challenge in the USA by the Non-Human Rights Project, a campaign group who have launched a series of cases seeking review of the lawfulness of the detention of a number of chimpanzees in New York State.

Legal Personality and the Protection of Freedom of Religion under the ECHR

The preceding discussion has demonstrated that legal personality can apply equally readily to corporations as to human persons. Religious organisations are also able to take advantage of this legal form in a variety of different ways across Europe's national jurisdictions. [11] This can principally be achieved by enacting legislation, the conclusion of a covenant, registration, or through conclusion of co-operation agreements. If there is no legal mechanism for the conferral of legal personality on religious groups the group will rely on the general law. If a religious group fails to meet a jurisdiction's requirements for the conferral of legal personality, or choose not to acquire it, they still benefit from the protection of freedom of religion under Article 9 ECHR.[12]

Note that Article 9 protects the communal aspect of religious freedom. Under 9(1) the individual has a right to manifest religious belief *in community with others.* The ECtHR has long held that this should be interpreted in such a way that a religious organization can itself benefit from the protection afforded by Article 9 as a representative of the members of the group[13]. In *X and Church of Scientology v Sweden App no 7805/77 (1979)* at [2] the court held that 'the distinction between the Church and its members...is essentially artificial. When a church body lodges an application under the Convention, it does so...on behalf of its members. It should therefore be accepted that a church body is capable of possessing and exercising the rights... in its own capacity as a representative of its members.' This principle was later given unequivocal confirmation in *Leela Förderkreis e.V. and others v. Germany* (2009) at [79] where the court stated that 'a religious association may, as such, exercise on behalf of its members the rights guaranteed by Article 9.' As Garlicki (2007, 218) points out most religions 'cannot be

11 Doe (2011) provides a helpful survey of the legal mechanisms for the conferral of legal personality on religious organisations.

12 Article 9 sets the protection of freedom of religion under the ECHR as follows:
1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations 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.

13 Note that this is a departure from the ECtHR's original position as exemplified in Church of X v UK (1968) 29 CD 70: where in proceedings brought by a church seeking to rely on the protections offered by Article 9 it ruled that 'a corporation being a legal and not a natural person is incapable of having or exercising [ECHR] rights'.

exercised in a proper manner if the believers are deprived of the possibility to act collectively. Thus, individual freedom of religion cannot be guaranteed unless there is a collateral guarantee for the freedom to found and to operate a church or other religious community.'

The nature and range of protections afforded to religious organisations under Article 9 has been developed by the jurisprudence of the ECtHR in a number of recent cases raising a range of issues in relation to the institutional life of religious communities including employment, state privileges tax, property and freedom of worship in addition to issues relating to legal personality. [14]

As alluded to above, obtaining legal personality is not necessary to qualify for protection under Article 9; collective religious freedom exists as a right independent of the recognition of legal entity status. It is well established that Article 11[15] includes the right not only to establish an association but also to obtain legal recognition of that entity:

That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. (Sidiropoulos v. Greece (1998) at [40])

However, despite the fact that religious groups can claim the protection offered by the ECHR regardless of their domestic legal status, the acquisition of legal personality does, in practice, generate clear advantages for religious communities under national law. 'Once legal personality is acquired, national laws confer a range of benefits—in terms of their autonomy, property, and finance, and in the fields of education, spiritual care in public institutions, and marriage.'(Doe 2011, 110) For example:

> *The Constitution of Poland (Article 25.1) and the "Law on Guarantees of freedom of religion" of Poland provide that, in carrying out their functions, religious organizations may, among other activities: determine religious doctrine, dogma and rites; organize and publicly perform religious*

14 A recent example of case involving article 9 and employment rights is Fernández Martínez v. Spain (2014) and on taxation The Church of Jesus Christ of Latter-Day Saints v. UK (2014).

15 Article 11 ECHR:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

> *rites; lead the ministry of chaplains; govern themselves in accordance with their own rules (legal autonomy); establish, educate and employ clergy; acquire and dispose of movable and immovable property and manage it; produce, buy and sell objects of worship; use mass media; conduct educational activities; conduct charitable activities; create inter-church organizations at the state level; and belong to international religious organizations. [16] (OSCE /ODHIR 2014 at [30])*

The OSCE /ODHIR have highlighted the importance of legal personality for religious organisation for the protection of freedom of religion.

> *When the organizational life of the community is not protected by the freedom of religion or belief, all other aspects of the individual's freedom of religion become vulnerable. The ability to establish a legal entity to act collectively in a field of mutual interest is one of the most important aspects of the freedom of association, without which that right would be deprived of any meaning. As regards the organization of a religious community, a refusal to recognize it as a legal entity has also been found to constitute an interference with the right to freedom of religion under Article 9 of the ECHR as exercised by both the community itself and its individual members. (OSCE /ODHIR 2014 at [18])*

Langlaude Done (2016) provides a persuasive argument that ECtHR recognition of the significance of legal personality illustrates the importance given to the autonomy of religious groups. This is a key plank in the Article 9 jurisprudence of the ECtHR. Further, it shows that the ECtHR argues autonomy for religious groups is an important contributory factor to the success of pluralism in a democratic society. The ECtHR has argued that 'pluralism is indissociable from a democratic society, which has been dearly won over the centuries, depends on [freedom of thought, conscience and religion]'. (*Kokkinakis v. Greece (1994) at [31]) The importance of the autonomy of religious groups in a democratic society was reaffirmed in Hasan and Chaush v. Bulgaria (2002)* and the following reasoning of the court in that case is worth noting at some length as it is a clear illustration of the importance of this principle:

> *The Court recalls that religious communities traditionally and universally exist in the form of organised structures. They abide by rules which are often seen by followers as being of a divine origin. [...] Where the organisation of the religious community is at issue, Article 9 of the Convention*

16

> *must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Seen in this perspective, the believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable. (Hasan and Chaush v. Bulgaria (2002) at [62])*

An important case on this issue arose from the registration regime in Moldova and it is helpful to consider aspects of this case in some detail as it serves to summarise the ECtHR's approach to the significance of the conferral of legal personality to religious organisations for the protection of their religious freedom.

In *Metropolitan Church of Bessarabia v. Moldova* (2002) the applicants had joined together to form the Metropolitan Church of Bessarabia – a local, autonomous Orthodox Church. The government refused legal personality status to the church on the grounds recognition would provoke conflicts with the orthodox community. In this significant judgment the ECtHR ruled that:

> *While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to "manifest [one's] religion" alone and in private or in community with others, in public and within the circle of those whose faith one shares... the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords [...]In addition, one of the means of exercising the right to manifest one's religion, especially for a religious community, in its collective dimension, is the possibility of ensuring judicial protection of the community, its members and its assets. (Metropolitan Church of Bessarabia v. Moldova (2002) at [128])*

Although states are permitted to require registration in order for religious associations to acquire legal personality such schemes should not be particularly onerous or discriminatory. The OSCE advise that, 'access to legal personality for religious or belief communities should be quick, transparent, fair, inclusive and non-discriminatory. Any procedure that provides religious or belief communities with access to legal personality status should not set burdensome requirements.' (OSCE/ODHIR 2014 at [24-25]).

Particular examples are given of onerous or discriminatory requirements that include requirements for minimum numbers, length of existence, citizenship status of adherents and approval of other groups. (OSCE/ODHIR 2014 at [27-39]). Many of these issues have been highlighted in ECtHR litigation that originated in Russia. Russian decisions in limiting access to legal personality for religious groups have frequently been ruled to be in violation of freedoms protected by the ECHR. A number of cases have shown that minority religious groups are particularly likely to fall foul of these legislative hurdles. This paper will explore recent cases on this topic in detail after considering the background to religious freedom in the Russian Federation and the challenge faced by the ECtHR in the context of the post-Soviet enlargement of the Council of Europe.

The Regulation of Religious Groups in Post-soviet Europe

The issue of legal personality for religious organisations has been the subject of several ECtHR rulings over recent years. Many of them have their origin in disputes regarding the registration of minority religions or new religious movements in ex-Soviet states which introduced or adapted rules regarding the registration of religious groups in the 1990s. Registration of religious groups is common in former Soviet states, for example Latvia's Law on Religious Organisations of 7 September 1995, Romania's Law 489/2006 on the Freedom of Religion and the General Status of Denominations, Moldova's Religious Denominations Act (Law no. 979-XII of 24 March 1992). Hungary's recent registration law Act no. CCVI of 2011 ("the Church Act 2011") on the Right to Freedom of Conscience and Religion and the Legal Status of Churches was the subject of proceedings before the ECtHR in *Magyar Keresztény Mennonita Egyház and Ors v Hungary* (2014). It is helpful to place the proliferation of cases challenging the registration regimes for religious groups in the broader context of the post-Soviet expansion of the Council of Europe.

As Evans (2010, 321) points out the ECtHR jurisprudence in relation to Art 9 was limited and 'looked for many decades as though it was going to be effectively a dead letter.' Indeed it was not until *Kokkinakis v Greece* (1994) that the court found a violation of Article 9. But the post-Soviet period led to a sharp increase in the number of Article 9 cases with 60 additional cases in the first decade of the new millennium compared to only 30 up to that point (Evans 2010, 321). This increase is partly symptomatic of the transition that Eastern European states were making in consequence of becoming signatories to the ECHR. Sadurski (2004, 400) argues this widened membership provides a diversity and heterogeneity within the constituency of the Council of Europe which is in clear contrast to the original Treaty signatories who were a 'club of largely like-minded West European countries which share[d] much of their legal and political culture and traditions.' This expansion led to an increase in cases before the ECtHR from Eastern European jurisdictions relating to 'egregious violations of human rights.' (Sadurski 2009, 401). The result being that the ECtHR were required to respond to this more challenging expanded environment by playing more a role more akin to that of a constitutional court; the ECtHR moved from being a 'fine-tuner' of national legal systems to a 'scrutiniser of failing legal and political systems.' (Sadurski 2009, 401).

This approach resulted in the use of 'pilot judgements' by the ECtHR where widespread and systemic violations were identified and the State ordered to take far reaching steps in redress. (Sadurski 2009, 402). This change of emphasis was underpinned by the Committee of Ministers of the Council of Europe which instructed the ECtHR to identify violations which result from 'an underlying systemic problem...in particular when it is likely to give rise to numerous applications, so as to assist states in finding the appropriate solution.' (Resolution Res (2004)3 of the Committee of Ministers) Sadurski (2009,420-421) argues that the ECtHR have used 'pilot judgements' to try to create alliances with domestic constitutional courts to offer their support in bringing pressure on the legislative and executive branches of a state to bring them in line with internationally agreed standards of human rights protections. Evans (2010) argues that this type of alliance can be seen in the way in which the ECtHR supported the Moldovan domestic Supreme Court in *Biserica Adevarat Ortodoza din Moldova and Others v Moldova (2007)* finding against the Moldovan Government's refusal to register a religious group 'The True Orthodox Church of Moldova.' Although Sadurski (2009, 429) casts doubt on whether the political conditions within Russia, a state where many Article 9 challenges have originated, are sufficiently receptive to give proper effect to pilot judgements, a point which will be explored further below.

Freedom of Religion in Contemporary Russia

This paper will now consider contemporary relations between the Russian state and religious communities active in Russia in the context of approaches to religious freedom in the Soviet era. The limited amount of religious toleration in pre Soviet Russia gave way to an openly hostile approach to religious communities after the revolution. Lunkin (2012) argues that the Soviet state divided religious communities into those who were supportive of the state and those who were a threat to it and this conceptual approach is also evident in aspects of the approach of the State to religious minorities in post-Soviet Russia:

> *At the same time, in this new stage of Russian history, the ideological stereotypes and complexes rooted in the prerevolutionary and Soviet periods were embraced by the state. This produced the tendency to label adherents of non-traditional religions "sectarians" and harass them, as well as to identify the religious figures who were most loyal to the government, ultimately creating the foundation for the new regime's legitimacy by promoting the Russian Orthodox Church (ROC) as a symbol and pillar of state ideology. From the mid-1990s on, representatives of the Moscow Patriarchate joined with the ruling elite in attempts to suppress the freedom of religious competitors by employing xenophobic slogans that manifested support for the "traditional" religions and opposition to "sects," foreign missionaries, and Western influence in general. (Lunkin 2012, 157-8)*

This current of suspicion of minority and non-indigenous religious groups led to the passing of restrictive legislation in 1997 in the form of the Federal Law on freedom of conscience and religious associations (no. 125-FZ of 26 September 1997 – "the Religions Act")[17]. Lunkin provides a helpful summary of some of the key elements of the Religions Act:

> *The law essentially divided organizations into traditional (Orthodoxy, Islam, Buddhism, Judaism) and nontraditional (all the rest). Procedures involved in the establishment of an organization were changed substantially, in some cases restricting the eligibility of founders and members. For example, the right to establish a local religious organization was recognized as applying only to Russian citizens (Article 9). Foreign nationals and stateless citizens (including displaced persons) may be participants in a religious organization provided that their permanent residence is within*

17 See Durham and Homer 1998 for a detailed appraisal of this provision.

> *the Russian Federation (Article 3). Positively the law introduced a new definition of religious group as a voluntary association of individuals formed for the collective practice and proliferation of their faith, which can operate without official state recognition (Article 7). On the one hand, this legal provision vested in the religious associations the right to operate legally without being subject to state registration or interference. On the other hand, it required a fifteen-year probation period of activity within the territory of the Russian Federation for religious associations to enjoy such rights (Article 11, §5). (Lunkin 2012, 161)*

The judicial interpretation of this legislation by the Constitutional Court in 1999 softened some of its effects in practice (see Lunkin 2012, 161) but the requirements to register and the impact on minority religions has been the subject of several judgments against Russia by the ECtHR. Lunkin (2012, 162) argues that this was partly due to a more intolerant approach by the Putin regime which saw administrative measures aimed at disrupting the activities of missionaries and religious minorities18.

A number of ECtHR cases illustrate the difficulties presented by the Russian attempts to control the activities of minority religious groups via the Religions Act, some of which will be discussed below. For example, *Moscow Branch of the Salvation Army v. Russia* (2007) concerned a Salvation Army group in Moscow. The Salvation Army had been present in Russia from 1913 but was dissolved in 1923 after being declared an anti-Soviet group. A group reformed in 1992 and as a result The Salvation Army resumed its activities in 1992 and was registered as a religious association. As a result of the 1997 Religions Act the group were required to re-register and ensure their articles of association complied with the current law by December 1999. The applicants attempted to do so in February 1999 but their application was refused and the Moscow authorities applied for the dissolution for the organisation. The ECtHR found that Russia was in breach of Article 11 read in light of Article 9 and reiterated the importance of the autonomy of religious groups in a democratic state:

> *[T]he autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. The State's duty of neutrality and impartiality, as defined in the Court's case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs.*

18 Note that there has been a softening of the 15 year requirement (Sibireva 2016) but recent legislative developments suggest that future Article 9 challenges are likely (Associated Press 2016).

> *...the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes, including those proclaiming or teaching religion, are also important to the proper functioning of democracy. For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion.*[19] *(Moscow Branch of the Salvation Army v. Russia (2007) at [58 and 61])*

Jehovah's Witnesses of Moscow v. Russia (2010) is a similar case concerning a community of Jehovah's Witnesses in Russia which also resulted in a finding of a violation of Article 9 read with Article 11. In a strongly worded judgment the court found that a decision to dissolve the applicant community, revoke legal personality and to ban its future activities was disproportionate, indeed 'a blanket ban on the activities of a religious community belonging to a known Christian denomination is an extraordinary occurrence.' *(Jehovah's Witnesses of Moscow v. Russia* (2010) at [155])

The court went on to point out that 'the permanent dissolution of the applicant community, coupled with a ban on its activities, constituted a drastic measure disproportionate to the legitimate aim pursued.' *(Jehovah's Witnesses of Moscow v. Russia* (2010) at [159])

The court identified that this was one of a number of instances where:

> *in the period following the enactment of the 1997 Religions Act where the authorities have consistently denied reregistration to religious organisations which were described as "nontraditional religions", including The Salvation Army and the Church of Scientology. The Court found in both cases that "the Moscow authorities did not act in good faith and neglected their duty of neutrality and impartiality." (Jehovah's Witnesses of Moscow v. Russia (2010) at [157])*[20]

The pattern identified above continued in the case of *Church of Scientology of St Petersburg and Others v. Russia* (2014). Here the applicant Church was

19 Note that violations on similar grounds were found against Austria in Jehovas Zeugen in Osterreich v. Austria (2012) and Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria (2008)

20 A series of similar cases with findings against Russia include Church of Scientology Moscow v. Russia (2008) 46 EHRR 304, *Biblical Centre of the Chuvash Republic v. Russia App no 33203/08 (ECtHR, 12 June 2014), Taganrog Lro and Others v. Russia App no 32401/10, case communicated 6 March 2014*

refused permission to register as a religious organisation under the Religions Act. It observed that:

> *pursuant to Russia's Religions Act, a "religious group" without legal personality cannot possess or exercise the rights associated exclusively with the legal-entity status of a registered "religious organisation" – such as the rights to own or rent property, to maintain bank accounts, to ensure judicial protection of the community, to establish places of worship, to hold religious services in places accessible to the public, or to produce, obtain and distribute religious literature – which are essential for exercising the right to manifest one's religion ... Thus, the restricted status afforded to "religious groups" under the Religions Act did not allow members of such a group to enjoy effectively their right to freedom of religion, rendering such a right illusory and theoretical rather than practical and effective, as required by the Convention. (Church of Scientology of St Petersburg and Others v. Russia (2014) at [38])*

Thus this case is a further illustration of the attempts by the Russian Federation to control the activities of religious groups that are perceived as 'non-traditional.' The final section of this paper will offer some concluding remarks on the challenges faced by 'non-traditional' religious groups seeking legal recognition in Eastern European jurisdictions.

Conclusion

This paper has argued that in principle the rights and duties that constitute legal personality can coalesce around any entity including a religious group. In this way legal personality can be seen as a legal construction which is revealing of wider social attitudes and political imperatives. The ECtHR has a developed jurisprudence which points to the importance of the conferral of legal personality to enable religious groups to have full access to the freedom of religion and association under Articles 9 and 11 of the ECHR.[21] However in the absence of an overarching definition of 'religion' in the jurisprudence of the ECtHR there is a danger that when the domestic authorities decide whether a particular religious group qualifies for the conferral of legal personality there is space for assumptions to be made as to what counts as

21 This is an approach that has been firmly endorsed by the OSCE which asserts that 'obtaining legal personality status should be open to as many communities as possible, without excluding any community on the grounds that it is not a traditional or recognized religion or through excessively narrow interpretations or definitions of religion or belief.' (OSCE/ODHIR 2014 at [26]).

'religion.' Such assumptions are socially and politically constructed and this paper has shown that this can result in legal protection being more readily offered to religious groups which resemble orthodox established forms of religiosity at the expense of non-traditional or minority religious groups. [22] As such the formal protections and advantages provided by domestic law to religious groups can act as both a means of inclusion and of exclusion.

Evidence from the recent ECtHR case law on freedom of religion demonstrates that systems of registration at the domestic level in Eastern European jurisdictions have been applied in a manner that discriminates against 'non-traditional' religious groups, including minority religions and new religious movements. As such the conferral of legal personality on religious groups in these instances is informed by the 'realist' approach to legal personality, in that legal personality is more easily conferred on religious organisations which fit the pre-existing templates of what a religion should 'conventionally' look like.

Further, the decision to grant or withhold legal personality to particular religious groups illustrates the role of the State in the social and political construction of religion whereby certain manifestations of religiosity are deemed to be in some way undesirable and to be excluded, leading to discrimination against minority religions and new religious movements. In this way the decision to grant or withhold legal personality to particular religious groups illustrates the role of the State in the social construction of religion and is thus a means of State control of religious freedom.

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22 For an extended discussion of this point in relation to Western European jurisdictions see Peroni (2004, 236)

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Hugh McFaul

Juridinis statusas, religinės grupės ir religijos įsitvirtinimas Rytų Europoje

Santrauka

Svarbus religijos vaidmens viešajame sektoriuje aspektas yra valstybes noras prisitaikyti prie religinių grupių, taip pat prie šioms grupėms priklausančių asmenų. Religijos vaidmuo viešojoje erdvėje priklauso nuo konkrečios valstybės įstatymų bei politikų, kurie nusprendžia pripažinti tam tikrus įsitikinimus ir praktiką, kaip religinius. Tam tikrais atvejais šis pripažinimas priklauso nuo religinių grupių galimybės įgyti

juridinį statusą. Pasiekti tokį pripažinimą religinėms grupėms gana problemiška, ypač Rytų Europos jurisdikcijose.
Šiame straipsnyje siekiama išnagrinėti valstybės atsaką į religines grupes, įskaitant naujas religines kryptis, remiantis Europos Žmogaus Teisių Teismo bylų naujausia praktika. Straipsnyje didelis dėmesys skiriamas tam, kokiu lygmeniu religinių grupių juridinio statuso įgijimas gali riboti arba kitaip paveikti šių grupių įsitvirtinimą.

Reikšminiai žodžiai: žmogaus teisės, religijos ir tikėjimo laisvė, religinė organizacija, juridinis statusas, religinės mažumos.