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**DRUIDS, SCIENTOLOGISTS AND WICCANS – RELIGIONS, BELIEFS  
AND THEIR MANIFESTATION IN STRASBOURG JURISPRUDENCE**

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This article highlights two problems with the interpretation of Article 9 of The European Convention on Human Rights and Fundamental Freedoms. The first one relates to the issues of „beliefs” of a religiously indifferent character. The second one concerns the conditions that have to be met to qualify a given act as a protected „manifestation” of one’s religion or belief.

**Keywords:** human rights, freedom of thought, conscience, religion.

**ДРУИДЫ, САЙЕНТОЛОГИ И ВИККАНЕ - РЕЛИГИИ, УБЕЖДЕНИЯ,  
А ТАКЖЕ ИХ ПРОЯВЛЕНИЯ В ЕВРОПЕЙСКОМ СУДЕ**

**ПО ПРАВАМ ЧЕЛОВЕКА В СТРАСБУРГЕ**

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В этой статье освещаются две проблемы, связанные с толкованием статьи 9 Европейской конвенции «О защите прав человека и основных свобод». Первая проблема относится к вопросам убеждений религиозно-индифферентного характера. Вторая проблема касается условий, которые должны быть соблюдены, чтобы квалифицировать данное деяние как защищенное "выражение" своей религии или убеждений.

**Ключевые слова:** права человека, свобода мысли, совесть, религия.

The freedom to have, hold and change religion or belief represents one of the most fundamental elements constituting a personal sense of identity and therefore it is subject to the protection prescribed by international law [4]. Religion or belief should also be seen as an important factor motivating one's behavior – through acts and omissions. The paper will focus on selected issues concerning the protection of the manifestation of one's religion or belief guaranteed by Article 9 of the Convention for the protection of human rights and fundamental freedoms (the Convention) in the

jurisprudence of the European Court of Human Rights (ECtHR) and the European Commission of Human Rights (EComHR). It should be stressed that the scope of the protection of the rights in question is determined also by other articles of the Convention: Article 8 (right to respect for private and family life [5]), Article 10 (freedom of expression [6]) and Article 11 (freedom of assembly and association [7]). Article 9 is also closely connected with the equality principle as contained in Article 14 of the Convention, which *inter alia* forbids the discrimination of the grounds of "religion, political or other opinion". Nevertheless, this paper will focus primarily on Article 9 of the Convention, as it concerns the issue of the manifestation of one's religion or belief in a direct manner.

According to Article 9 of the Convention: "(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" [2]. It follows that the protection offered by Article 9(1) of the Convention includes two spheres of freedom: freedom to choose one's religion or belief (protection applies to the so called *forum internum*) and a freedom to manifest one's religion or belief (protection applies to the so called *forum externum*). The limitation clause contained in Article 9(2) of the Convention relates only to the *forum externum* sphere, which means that there is no possibility to impose restrictions on a person's freedom to choose his or her religion or belief. Leaving the question of the limitation clause aside, the paper will focus on two following issues:

- i. what is the content of the terms "religion" and "belief" in the meaning of Article 9(1) of the Convention? Whether the term "belief" (which *prima facie* is very broad) pertains to every single worldview one can have, and if not, how should we

distinguish between protected beliefs and other views, which do not fall within the scope of Article 9(1)?

ii. what conditions should be met for a person's behavior to be classified as a manifestation of his or her religion or belief?

3. Among the circumstances of cases concerning the breach of Article 9(1) of the Convention, adjudicated before the European Court of Human Rights (the Court) and the European Commission of Human Rights (the Commission) there are certain typical situations. Applicants can demand protection of the right to manifest their: (I) religion, which should be understood as a set of beliefs concerning matters such as: the origin and purpose of the human existence, the origin of the universe, immortality of the human soul, the existence and nature of a sublime entity etc., (II) beliefs, which can be described as an antithesis of a religion – agnosticism or atheism, (III) beliefs of religiously indifferent character, *i.e.* views which do not, in any way – whether affirming or challenging – relate to matters of religious concern as well as beliefs that can be characterized as religiously skeptical. The abovementioned cases will be discussed in an orderly manner.

The Court and the Commission have not developed their own definition of religion, nor have they set forth any uniform criteria that could serve to qualify certain views as religions. Although some criticism is justified, it is important to keep in mind that we are dealing with a very elusive concept, which is almost impossible to define in legal terms. Many questions arise in that respect - for example: should we assume that only views connected with the idea of a supreme being are to be treated as religion? An affirmative answer would oblige the organs of the Convention to engage in a deliberation on complex theological issues (such as, whether divinity is a part of Buddhist's views or not), to which they are obviously not the appropriate forum. On the other hand, a negative response would lead to further, probably futile efforts in search for determinants of religious beliefs.

Furthermore, the method deployed by the organs of the Convention in cases of allegations concerning the breach of Article 9(1) allows to examine them without creating a definition of "religion". According to art. 31(1) of the Vienna Convention

of 1969 "an ordinary meaning should be given to the terms of the treaty in their context and in the light of its object and purpose". A special meaning shall be given to a term only if it is established that the parties so intended [36, p. 7]. Since there are no indications of such an intention on the part of states that were involved in the process of drafting the Convention, the term "religion" (French: *religion*) should be interpreted in accordance with its regular meaning. As a consequence, in the case of the most commonly known religious creeds such as Buddhism [19], Christianity [8], Islam [20], Judaism [21] or Sikhism [22], they are accepted by the organs of the Convention and there is no need to prove that these are "religions" within the meaning of Article 9(1) of the Convention. On the other hand, when a case concerns nontraditional beliefs, it is the burden of the applicant to prove that it should be treated as a religion. Among others, such a conclusion was reached by the Commission in the case of *X v. United Kingdom* [23] – where it decided that the application by a prisoner who was denied a right to be registered as a follower of the neo-pagan Wicca cult was manifestly ill-founded. Nevertheless, this decision does not obviously mean that neo-pagan beliefs cannot fall within the scope of the term "religion" within the meaning of Article 9(1) of the Convention - it merely points to the fact that the applicant has not provided the Commission with satisfactory evidence to support the claim and allow it to conclude that the Wicca cult can be treated as a religion within the meaning of the abovementioned provision.

It is important to note, that among the case-law concerning nontraditional religions, in which applicants have presented circumstances of a case in an exhaustive manner, the organs of the Convention have never questioned the religious character of their beliefs. What is more, there are no traces of elements that would allow to reconstruct the whole subsumption process conducted by the adjudicator. Occasionally short, almost encyclopedic mentions appear in the reasoning – such fragments refer to certain external features of religious movements, such as for example: the existence of common rules of behavior [9], the stability of such rules [24], or the fact of formal registration in accordance with the provisions of domestic law [10]. Nevertheless, these circumstances have never been indicated by the organs

of the Convention, even implicitly, as having any significance for the acknowledgement that the views held by the applicants should be treated as "religion" within the meaning of the Convention. It seems, however, that the inclusion of information about a religious movement or its history could be important for the merits of the case. For instance, the worldview of a given religious group can constitute a significant factor in a case in which the applicant claims that there was a breach of Article 9 of the Convention as a result of a divorce judgment delivered by a domestic court, where the custody of a child was granted after taking into account the religious affiliation of one of the parents [9]. Background information about certain religious movements did not appear in every case concerning nontraditional beliefs - no information of this kind was provided in decisions concerning the Church of Scientology [25] or the Divine Light Centre [26].

In these circumstances, it is impossible to conclude that the existence or nonexistence of the external features of a religious movement will constitute a decisive factor in determining whether certain beliefs should be classified as "religions" within the meaning of Article 9 of the Convention. Nevertheless, it is clear that the organs of the Convention are willing to accept as religions nontraditional beliefs that *prima facie* address such issues as the origin of the universe, human existence, or the existence and nature of the divine being [on different view see: 5, p. 311].

In numerous cases, both the Court and the Commission had to decide whether certain rights guaranteed by the Convention possess a negative aspect. According to their jurisprudence: the freedom of expression guaranteed in Article 10 entails the right not to express one's opinions against one's will [11], the freedom of assembly and association guaranteed in Article 11 entails the right not to be forced to assemble or join any organization [12] whereas the right to life stipulated in Article 2 cannot be seen as granting a right to death or a right to decide to commit suicide [5].

In this regard, the freedom of thought, conscience and religion as guaranteed in Article 9 of the Convention does not give rise to any doubts. From its mere wording, it follows that it covers both the freedom to possess and manifest one's religion and

the freedom to possess or manifest one's belief - the juxtaposition of these two terms suggests that the Convention protects not only views that affirm certain religious concepts, but also views that are based on a critical assessment of these concepts. The Court adopted such a position in the case *Kokkinakis v. Greece*, where it noted that: the "freedom of thought, conscience and religion is one of the foundations of a democratic society within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to 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" [6, par. 31]. In this regard, it is also worth to mention the decision of the Commission in the case *Angelini v. Sweden* [27] where it was decided that the possibility of violation of Article 9(1) of the Convention could not be ruled out in a situation where an atheist is obliged to participate in religious instruction organized in a public school.

The term "belief" as mentioned in Article 9(1) has not been characterized in any way – the question arises whether it should be seen as a protecting all kinds of religiously indifferent views? An affirmative answer seems irrational, especially if someone were to argue that any opinion, such as 'X is the best rugby player in the world' is such an important element of one's personality, that it was worthy protection on international level.

When analyzing Article 9 of the Convention, the content of Article 2 of the Protocol No.1, which guarantees right to education, should also be taken into account. It states that: "no person shall be denied the right to education, (...) the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions". It is worth noting, that there are discrepancies between the English and French wording of the Convention – French versions contain the term "*conviction*" both in Article 9(1) of the Convention and in Article 2 of the Protocol No.1 ("*convictions religieuses et philosophiques*"), whereas in the English version the words "belief" and "convictions" are employed respectively. Controversies concerning the scope of the term "belief" as contained in Article 9(1) are reflected in the jurisprudence of the organs of the Convention.

Surprisingly, one of the most important judgments in this regard concerns the application of the abovementioned Article 2 of the Protocol No.1 – *Campbell and Cosans v. The United Kingdom* [13]. The case before the Court pertained to the issue of corporal punishment used for disciplinary purposes in a public school. Both applicants complained that the use of corporal punishment interfered with their rights as parents to ensure their sons' education and teaching in conformity with their philosophical convictions, as guaranteed by the second sentence of Article 2 of Protocol No. 1. The Court noted, that: "in its ordinary meaning the word "convictions", taken on its own, is not synonymous with the words "opinions" and "ideas", such as utilized in Article 10 of the Convention, which guarantees freedom of expression; it is more akin to the term "beliefs" (in the French text: "*convictions*") appearing in Article 9 – which guarantees freedom of thought, conscience and religion – and denotes views that attain a certain level of cogency, seriousness, cohesion and importance". Thus, it is worth to note that the organs of the Convention have set a higher threshold for the protection of religiously indifferent beliefs. A person demanding protection with regard to his or her religion should prove that such a religion actually exists (as it was indicated above, *prima facie* evidence that given views relate to issues of religious concern will be sufficient), whereas in the case of a view of religiously indifferent character, a person should demonstrate that its substance has attained "a certain level of cogency, seriousness, cohesion and importance". Although the position taken by the Court in *Campbell and Cosans* was confirmed in its subsequent judgments (with few exceptions – e.g.: *C.W. v. The United Kingdom* [28]), the organs of the Convention have not developed a more consistent standard in this regard. In particular, the meaning of the attributes of "cogency", "seriousness", "cohesion" and "importance", as enumerated in the judgment, was not clarified.

In the case of *Salonen v. Finland* [29] the Finnish authorities refused to register the child's name chosen by the parents (*Ainut Vain Marjaana*, meaning: 'The one and only Marjaana'), indicating that it is inconsistent with domestic laws – namely the Finnish Name Act. In the application the parents claimed that the choice of the child's

name influences its proper development and therefore the refusal was contrary to Article 9 of the Convention. The Commission decided that applicants' wish to give their daughter a particular name might fall within the ambit of the right to freedom of thought and therefore might be considered as a "belief" within the meaning of Article 9(1). However, it then went on to note that not every act which is motivated or influenced by a religion or a belief is protected by the Convention. The Commission declared that in the case at hand the applicants' wish could not be seen as a manifestation of their belief, which it described as an expression of a "coherent view on fundamental problems". Regrettably, the reasoning did not contain any explanation as to why the Commission did not consider the parents' beliefs as being sufficiently "coherent" or concerning "fundamental" issues.

A certain dose of intuitiveness with regard to the qualification of what constitutes a belief was also visible in the case *X. v. Germany* [30], which concerned the right of a person to have his ashes scattered on his own land after death, which had been denied by German administrative authorities. The applicant argued that it would be contrary to his beliefs if he was to be buried at the cemetery, where Christian religious symbols are present. Although from the circumstances of the case it could follow that the applicant's wish was motivated by his atheistic beliefs, the Commission however did not examine this matter and concluded its reasoning by stating that it "does not find that it is a manifestation of any belief in the sense that some coherent view on fundamental problems can be seen as being expressed thereby".

It is not without significance, that the organs of the Convention have remained silent regarding the meaning of the terms deployed to describe the substantial content of beliefs examined by them, namely: "coherent", "fundamental", as well as the less often invoked notions from the *Campbell and Cosans* case: "serious", "cohesive" and "important". It seems, that none of these terms was given a particular, autonomous meaning. We should rather assume that the Commission and the Court apply them interchangeably to present certain distinguishing marks of those beliefs that are considered worthy of protection offered by the Convention. The analysis presented



above shows that the organs of the Convention often rely on their intuition when confronted with questions concerning religiously indifferent beliefs protected on the grounds of Article 9(1), which leads to some degree of unpredictability in their jurisprudence. There are examples of decisions in which the Commission did not find a violation of freedom to manifest one's belief, such as: *Salonen v. Finland* and *X. v. Germany*. On the other hand, there are numerous examples, where the organs of the Convention decided that views held by the applicants are worthy of protection, e.g. the beliefs of a medical doctor who was deprived of his license because in his practice he had applied alternative medicine [31], or the anthroposophical beliefs of a person who refused to participate in a pension scheme [33]. Nevertheless, the Commission did not decide whether anthroposophy was a religion or a belief within the meaning of Article 9(1) of the Convention). It is also worth to mention that the organs of the Convention have never expressly refused to qualify racist views as "beliefs" in the meaning of Article 9(1), but since the cases under consideration concerned mainly the obtaining and circulation of this kind of views (usually in the form of different publications) they were examined under Article 10 of the Convention [14]. In any case, Strasbourg jurisprudence unanimously rejects the possibility of applying Article 9(1) of the Convention to beliefs pertaining to facts, such as Holocaust denial [32].

It follows from para. 1 of Article 9 of the Convention that both religions and beliefs are protected in their manifestation in one of the prescribed forms: worship, teaching, practice and observance. The way this norm is applied (which is reflected by the protection offered to individuals) seems to depend on the answer to the crucial question - since the aim of Article 9(1) is to protect actions motivated by the religion or belief adhered to by a person, it is important to establish if (and how) we should examine whether a causal connection between a religion or a belief (*forum internum* sphere) and an external act indeed exists.

In this regard it is worth to invoke the decision in *Arrowsmith v. the United Kingdom* [34] which will serve as a starting point for further deliberation. The applicant was convicted and sentenced to 18 months of imprisonment by a British

court for the involvement in the protest campaign. She distributed leaflets to soldiers urging them to desert or to refuse to obey orders in case they were sent to Northern Ireland. The applicant raised that the distribution of the flyers flowed from her "life-long commitment to the pacifist cause". The Commission decided that public declarations of pacifist ideas and encouraging others to refrain from using violence could be, in principle, considered as a "manifestation" of one's beliefs in the meaning of Article 9(1) of the Convention. Nevertheless, it also noted that not every act which is inspired by one's belief was to be protected - the manifestation has to have some real connection with the belief. Furthermore, a distinction should be made between actions that actually express the belief concerned, and those which are merely influenced by it [37, par. 71]. According to the Commission, only actions actually expressing one's belief are protected by Article 9(1) of the Convention; nevertheless, it was not specified how this test should be applied in practice. In this regard the decision contains only a vague statement about necessity to use an objective, and not subjective, assessment in order to establish whether or not a particular manifestation falls within the protection afforded by the provision.

In the case at hand it was difficult for the Commission to accept that the leaflets disseminated by the applicant constituted a manifestation of her beliefs, as they did not concern pacifism as such; it was rather a protest against governmental policy. Moreover, the wording and the content of these flyers did not even indicate that the author held pacifist beliefs. In these circumstances the Commission decided that the actions of the applicant cannot be treated as a manifestation of her beliefs within the meaning of Article 9(1) of the Convention.

The decision raises several doubts. The term "manifest" indicates that protection is granted in cases where beliefs existing in the sphere of *forum internum*, manifest themselves on the outside (externalize). Nevertheless, there is nothing in Article 9(1) of the Convention suggesting that one's actions inspired by personal views are protected only if others could "identify" motives behind that person's behavior. The Commission noted that leaflets of the same content could as well be distributed by anyone, and not necessarily by a person of a pacifist belief, which led

to the rather awkward conclusion that the applicant's behavior did not constitute a manifestation of her beliefs. This finding, if taken in a more general sense and applied to every single case concerning the manifestation of one's belief on the ground of Article 9(1) of the Convention, would limit the protection offered by this provision considerably. It is difficult to imagine an act motivated by one's belief that could not be performed by persons who do not share the same convictions. For instance, a pupil can refuse to take part in religion classes because of his ideological beliefs as well as for any other reason, not necessarily connected with his views.

The practice after the decision in *Arrowsmith v. The United Kingdom* shows that a problem with a rigorous distinction between acts "motivated by" and "expressing" certain beliefs was acknowledged by the organs of the Convention. In the search for new criteria to determine the scope of protection offered to actions constituting manifestation of one's beliefs the Commission and the Court have avoided references to the relationships between *forum internum* and *forum externum* sphere. In *Logan v. The United Kingdom* [19] the applicant, a practicing Zen Buddhist, made a claim that the obligation to pay alimony had rendered it impossible for him to afford to participate in Buddhist meetings and to visit monks. The costs of travelling to the nearest priories, which were more than 100 miles away from his house, were too high and therefore he claimed that his rights as stipulated in Article 9(1) of the Convention had been violated. The Commission declared the application inadmissible, indicating that the applicant did not demonstrate that visiting priories can be considered as an indispensable element of his religious worship. Nevertheless, it did not explain on what grounds and in what manner the distinction between "dispensable" and "indispensable" acts should be made. In the face of the multitude of rites existing in every religion, it seems impossible to carry out a precise qualification of each action as belonging to one of the two opposing categories - the issue of traditional Islamic clothing for women could serve as an example [1, p. 64]. It seems unreasonable to expect the organs of the Convention to replace theologians, clerics and believers themselves in deciding which forms of religious practices are necessary. What is more, such rigorous observance of the proposed division evidently

leads *ad absurdum*: it would be contrary to the spirit of Article 9 of the Convention to assume that the freedom to manifest one's religion would not be violated in the case of an arbitrary (*i.e.* not justified by the reasons set forth in Article 9(2) of the Convention) introduction by state authorities of a ban on wearing religious symbols such as holy medals (See: *Eweida and Others v. the United Kingdom* [15]).

In the case *V. v. Netherlands* [33] the applicant raised, that the obligation to participate in a pension scheme is contrary to his anthroposophical beliefs. In its reasoning, the Commission first invoked the *Arrowsmith* case, stressing that in order to determine the scope of protection offered by Article 9(1), it is crucial to establish whether particular behavior actually expresses one's beliefs. Nevertheless, instead of examining the abovementioned issue, the Commission restricted itself to noting that "the obligation to participate in a pension fund applies to all general practitioners on a purely neutral basis, and cannot be said to have any close link with their religion or beliefs" [33, p. 268]. It continued stating that "the refusal to participate in such a pension scheme, although motivated by the applicant's particular belief, cannot, in the view of the Commission, be considered as an actual expression of this belief" [33, p. 269]. The conclusion which follows from the abovementioned statements is that the refusal to adhere to obligations imposed on a certain group of people in a neutral way is not subject to the protection afforded by Article 9(1). It seems, however, that the Commission has confused two issues: (1) whether the applicant's behavior manifests ("actually expresses") his beliefs, and (2) whether the freedom to manifest religion or belief was violated by a state. It is possible to argue that imposing an obligation that is objectively neutral in terms of religion or belief, does not constitute a violation of Article 9(1) of the Convention. Nevertheless, it is unreasonable to contend that the very character of a state's action (its neutrality) should affect the assessment of an applicant's behavior, *i.e.* whether or not it manifests his or her beliefs.

Therefore, it seems more appropriate to conclude that, since the obligation imposed on the applicant was neutral, it is impossible to declare that the Netherlands violated the freedom of thought, conscience and religion. In such a case, there is no

need to analyze whether the applicant's refusal to participate in a pension scheme constituted a manifestation of his anthroposophical beliefs.

A more constructive attempt of resolving the issue at hand was delivered by the Court's judgment in the *Pichon & Sajous v. France* case [16]. The application was lodged by two pharmacists who had refused to sell contraceptives because of their religious beliefs and had been punished with a fine for a violation of the French Consumers Code. When examining the admissibility of their application, the Court noted that Article 9(1) of the Convention protected 'personal convictions and religious beliefs, in other words what are sometimes referred to as matters of individual conscience'. It further pointed out that protection was also provided to 'acts that are closely linked to these matters such as acts of worship or devotion forming part of the practice of a religion or a belief in a generally accepted form' [16, p. 4]. Nevertheless, the Court concluded that 'in safeguarding this personal domain, Article 9 of the Convention does not always guarantee the right to behave in public in a manner governed by that belief'. In France the sale of contraceptives is legal, requires medical prescription and can take place only in a pharmacy. Therefore, the Court decided that the applicants cannot give precedence to their religious beliefs and impose them on others, since they are free to manifest those beliefs in different ways outside the professional sphere.

It is important to stress that the Court did not mention the distinction between acts 'motivated by' and acts 'actually expressing' religious beliefs as previously made in the *Arrowsmith* case. Instead, it was indicated that protection should be granted to actions 'closely linked' to one's religion or belief. The solution presented in *Pichon & Sajous v. France* leaves more discretion for the organs of the Convention, but at the same time seems more appropriate, as it allows to avoid the practical problems that occurred when deciding whether the act was 'actually expressing' or merely 'motivated by' one's belief. The position was further developed in subsequent judgments - in *Eweida and Others v. the United Kingdom* the Court declared that an act must be 'intimately linked' to religion or belief in order to count as a manifestation within the meaning of Article 9(1).

In *Pichon & Sajous v. France* the Court also modified its attitude toward manifestation as such by attaching more importance to the distinction between different forms of it – those worthy of protection and those which are not. The Court identified two areas where an individual can manifest his or her beliefs – the public sphere (where one's freedoms are restricted by the rights of others) and the private sphere (where a confrontation with the rights of other people does not occur). Taking into account the necessity to secure public order, it is important to note that in the public sphere protection should apply only to 'acts of worship or devotion forming part of the practice of a religion or a belief in a generally accepted form', such as the compliance with principles concerning clothing, diet or prayers [3, p. 761]. Nevertheless, in *Eweida and Others v. the United Kingdom* the Court stressed that the manifestation of religion or belief cannot be limited to such acts. In each and every case the Court should determine whether a 'sufficiently close and direct nexus' between the act and the underlying belief exists.

The solution developed by the Court seems necessary in order to safeguard the social and legal order, which would be endangered if we decided to treat Article 9(1) of the Convention as a general clause, allowing to neglect law in every event where a conflict between legal norms and one's beliefs occurs (*Leyla Şahin v. Turkey* [17]). This concluding remark relates also to the question of Article 9(2) of the Convention – regardless of the distinction indicated above, the limitation clause remains the basic tool for the Court to protect public order (*Mann Singh v. France* [18]). In other words: every instance of a manifestation of one's belief, whether in private or in public, can be subject to limitations, provided that they are prescribed by law and necessary in a democratic society in the interests of public safety, the protection of public order, health or morals, or the protection of the rights and freedoms of others.

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