

Chapter 7

Physical Education and Religious Freedom: The ECtHR Perspective

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ABSTRACT

*Freedom of religion has been constantly characterized as one of the foundations of a democratic society. On the other hand, the significance of physical education in the development of children's overall personality is beyond dispute. Thus, the question that arises is, What happens in a case of a conflict involving the above? The aim of this chapter is to provide an answer on the basis of the case law of the European Court of Human Rights. In particular, the fundamental cases of *Dogru vs. France* and *Kervanci vs. France* will be examined, as well as the recent case of *Osmanoglu and Kocabas vs. Switzerland*. Through the analysis of the cases, useful conclusions will be drawn on the possible impact of religious freedom on physical education.*

INTRODUCTION

Beyond dispute, religion plays a significant role within a person's identity. Apart from the dogmatic approach, religion contains important cultural characteristics that essentially enhance multiculturalism. This being the case, religious diversity needs to be protected, especially in the era of globalization, where global connectivity is increased and fundamental rights, particularly those of minorities, face new challenges (Brysk, 2002).

DOI: 10.4018/978-1-5225-5387-8.ch007

On the other hand, physical education undoubtedly completes the concept of education. The Roman satirical poet Juvenal explicitly incites to pray for a healthy mind in a healthy body (*mens sana in corpore sano*) presenting it first in the list of what is desirable in life (Satire X) (Rudd, 1991). In the same spirit, the pre Socratic philosopher Thales answers the question “what man is happy?” by stating: *he who has a healthy body, a resourceful mind and a docile nature* (Diogenes Laertius (-Hicks), 1972). In modern terms, physical education has been included in both primary and secondary education curricula in a form of public policy sometimes described even as a constitutional demand.¹

So, the main question is what happens if the two aforementioned principles collide? The aim of this chapter is to provide an answer on the basis of the case law of the European Court of Human Rights (hereinafter: ECtHR, the Court). In particular, the fundamental cases of *Dogru vs. France* and *Kervanci vs. France* will be examined, as well as the recent case of *Osmanoglu and Kocabas vs. Switzerland*. Through the analysis of the cases, useful conclusions will be drawn on the impact of religious freedom on physical education.

FREEDOM OF RELIGION IN THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The protection of freedom of religion is guaranteed in the European Convention on Human Rights (hereinafter: ECHR, the Convention), since the Convention came into force in 1953. In particular, article 9 states:

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.

As can be easily observed, paragraph 1 refers to the right itself, including several aspects, such as the freedom to change religion and the freedom to manifest religion. The Court has emphatically underlined the importance of religious freedom stating that:

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