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GENUINE CONFLICTS OF FUNDAMENTAL RIGHTS

Deconstructing the European Court of Human Rights approach to the
perceived conflict between freedom of expression and freedom of
religion

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Abstract

A pervasive narrative of conflicts of fundamental rights is besmirching the already complex relationship between freedom of expression and freedom of religion. One of the actors that has engaged in perpetuating that narrative is the European Court of Human Rights, particularly in the context of its case law on the respect for one's religious feelings. Here it is argued that the use of that narrative is highly unjustified. To dispel that narrative, we start with conceptualising genuine conflicts and analyse the impact thereof on the established means of resolution the European Court of Human Rights utilises. Then, we showcase those findings through the lens of the selected case law. The main theses are these: Genuine conflicts of fundamental rights exist, but are limited in number. Second, these genuine conflicts pose serious issues. Namely, all of the established means of resolution in their current conception fail. However, those issues do not arise in the context of the relevant case law, as it does not concern a genuine conflict of rights. This prompts criticism directed against the uninformed and non-transparent decision-making of the Court, as well as a strong argument in favour of discontinuation of the epidemic use of conflicts of fundamental rights in the realm of respect for one's religious feelings.

Table of Contents

INTRODUCTION	1
CONFLICTS OF FUNDAMENTAL RIGHTS	10
I. Defining Genuine Conflicts.....	12
A. Normative inconsistencies	12
1. Theoretical conceptualisation	12
2. Practical implications	14
3. Perceived Normative Inconsistencies	17
B. “Two or more instantiations of one or more abstract general fundamental legal rights”	18
1. Internal – External Dichotomy	19
2. The danger of collective goals	22
3. Positive and Negative obligations	23
4. Absolute and relative rights	25
C. “Genuine conflicts come about in adversarial circumstances”	25
D. Closing remarks	27
E. Intermediary conclusion	29
II. The Importance of Defining Genuine Conflicts.....	32
A. Conflict, Limitation and Abuse	33
1. Conflict and Abuse of Rights	33
2. Conflict and Limitation of Rights.....	35
B. Debunking the means of resolution	36
1. The ‘necessity’ test	36
a) ‘Rights and Freedoms of Others’	37

2.	Balancing	41
3.	The margin of appreciation.....	44
4.	Intermediary conclusion	46
III. ECHR Case Law through the Lens of Genuine Conflicts of Rights.....		48
A.	Identification of the typology of conflict.....	49
1.	“Two or more instantiations of one or more abstract general fundamental legal rights”	49
2.	Normative inconsistencies	52
3.	Adversarial circumstances	55
B.	Solving the “conflicts”	58
1.	Abuse	58
2.	The ‘Necessity’ test and Balancing	59
3.	Margin of appreciation	61
4.	Closing remarks	62
CONCLUSION.....		64
Bibliography.....		67