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

Author: Stefan Aelbrecht
Supervisors: Stephanie Lagoutte & Eva Maria Lassen
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.
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