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OBSERVANCE OF RIGHTS OF ATHEISTS AND  
RELEVANT LEGAL POLICIES WORLDWIDE

Master Thesis

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## **LIST OF ABBREVIATIONS**

**EU** – the European Union

**ECHR** – the European Convention for the Protection of Human Rights and Fundamental Freedoms on the freedom of thought, conscience and religion

**ECtHR** – European Court of Human Rights

**IHEU** – the International Humanist and Ethical Union

**UDHR** – the Universal Declaration of Human Rights

**U.S.** – the United States

**UN** – United Nations

## INTRODUCTION

Atheism is a very old concept<sup>1</sup> that is present in every society.<sup>2</sup> As an every phenomena not widely understood or accepted by dominating public, atheism experiences marginalization and oppression. The carriers of this ideology have to undergo punishments, restrictions, despise and threats that are caused only by the very fact of their belonging to this movement. However, as the future research will show, atheism is an ideology that contains set of convictions that in particular cases lead to infringement of rights of atheists, starting from limitation of their expression, proceeding to labor restriction, limitation of movement and even threatening their life.

The importance of this issue is obvious when we read the news. The recent case in Ireland, when authorities started prosecution on British actor for expressing his opinion on religious matter, and the case in Russian Federation, where a video blogger has been convicted for committing a crime of “insulting the feelings of believers.”<sup>3</sup> The origin of such dissonance in a common delusion that the international treaties and declarations have established secure grounds and protection mechanisms of atheists’ rights. Moreover, atheists receive much less attention from international organizations and sometimes are not even considered as an oppressed minority or even a minority at all.<sup>4</sup> The research is also aimed to show, why treating atheists as a “religious minority” is not beneficial for them but puts in a vulnerable position in countries with quite developed human rights protection system. All this will be conducted by using doctrinal in conjunction with socio-legal methodology to analyze the flaws of international framework and the impact of case law on this minority.

**Problem of research.** This research is focused on studying the international, reginal, national legislation, reviewing court judgements and decisions that influence atheists as a minority group in different countries, what are the most effective practices of their protection and what are the mechanisms and laws used for oppression of atheistic people. Main problem that is going to be

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<sup>1</sup> Jan N. Bremmer, “Atheism in Antiquity”. In M. Martin (Ed.) *The Cambridge Companion to Atheism* Cambridge: (Cambridge University Press, 2006): 11.

<sup>2</sup> WIN-Gallup International, Global Index of Religiosity and Atheism (2012), accessed April 10, 2018, 10. <https://sidmennt.is/wp-content/uploads/Gallup-International-um-tr%C3%BA-og-tr%C3%BAleysi-2012.pdf>.

<sup>3</sup> “Russia: Pokemon Go Blogger Convicted,” *Human Rights Watch*, May 11, 2017, <https://www.hrw.org/news/2017/05/11/russia-pokemon-go-blogger-convicted>.

<sup>4</sup> Nathalie Rothschild, New Atheists Are Neither a Minority nor Heirs of the Civil Rights Movement, HuffPost, Updated 8 May 2012, [https://www.huffingtonpost.com/nathalie-rothschild/new-atheists-are-not-an-oppressed-minority\\_b\\_1331079.html](https://www.huffingtonpost.com/nathalie-rothschild/new-atheists-are-not-an-oppressed-minority_b_1331079.html).

investigated in the research is the detection of ways how the atheists normally enjoy their freedoms and determining tools that prevent atheists from doing so. With this purpose it is also expediently to investigate set of common issues that atheists face, especially discrimination on a legislative and judicial levels. The research is aimed to study the least and most favorable practices in order to make appropriate comparison and draw conclusions.

**Relevance of the final thesis.** The relevance of the final thesis is grounded on the huge disparities in legislation, common practices of courts and even the definitive interpretation of the meaning of the term “atheism” and “atheist”. The inconsistency in application of principles and factual cases of violation of rights of atheists<sup>5</sup> also call for the review of legal policies that are being implemented even on a regional scale. The mere existence of countries which practice a death penalty as a punishment for apostasy<sup>6</sup> (in particular, for being atheist) is signaling about absence of widely recognized principles or norms in respect of the protection of atheists.

However, the so-called developed countries also have problems in respect of atheists’ protection and treatment,<sup>7</sup> especially accepting them in a society.<sup>8</sup> This is caused by several reasons, one of which is the dominating of the majority’s opinion when adopting legislation or deciding cases; another is the discontent of some countries with international treaties and bodies.<sup>9</sup>

**Scientific novelty and overview of the research on the selected topic.** Despite atheism is a very old concept<sup>10</sup> and the amount of norms regulating issue is extensive<sup>11</sup>, there is no one common

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<sup>5</sup> *Lautsi v Italy* App no 30814/06, ECtHR, 3 November 2009.

<sup>6</sup> Freedom of Thought 2017: A Global Report on the Rights, Legal Status and Discrimination Against Humanists, Atheists and the Non-religious, the International Humanist and Ethical Union (IHEU), 14.

<sup>7</sup> Corey L. Cook, Catherine A. Cottrell, Gregory D. Webster, “No Good without God: Anti-Atheist Prejudice as a Function of Threats to Morals and Values” <https://doi.org/10.1037/rel0000013>

<sup>8</sup> Gervais, Will M., Shariff, Azim F., Norenzayan, Ara “Do you believe in atheists? Distrust is central to anti-atheist prejudice.” *Journal of Personality and Social Psychology*, Vol 101 (6), December 2011, 1198, <https://doi.org/10.1037%2Fa0025882>

<sup>9</sup> John Witte Jr., Joel A. Nichols, *Religion and the American Constitutional Experiment*, (New York, NY: Oxford University Press, April 2016), 265.

<sup>10</sup> Jan N. Bremmer. Atheism in Antiquity. In M. Martin (Ed.), *The Cambridge Companion to Atheism* Cambridge: Cambridge University Press, 2006, 11

<sup>11</sup> These instruments will be listed and analyzed below but here are the examples: Universal Declaration of Human Rights, UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, European Convention for the Protection of Human Rights and Fundamental Freedoms, International Covenant on

doctrine, especially worldwide, which can ensure the observance of rights of people from this group. Authors, who researched this topic, conclude that this is still an open problem<sup>12</sup> and there are different practices even in neighboring countries, which sometimes vary drastically because they depend mostly on a national legislation and/or a national legal tradition.

The theoretical and doctrinal basis for the topic are well-developed, socio-political and historical aspects are studied considerably deep.<sup>13</sup> However, despite some very specific works aimed in the best case for comparison of regional practices,<sup>14</sup> there is no a comprehensive research on the matter of a legal status of rights of atheists worldwide.

Despite the fact that legal status of atheism is determined usually in the context of other freedoms,<sup>15</sup> there are no any considerations or researches on the matter how to regulate the issue universally. It is mostly regulated by norms and sets of rules that rely on a broad interpretation, which leaves the meaning of basic provisions open for interpretation of courts.<sup>16</sup> There are attempts to create the some kind of deriving explanation if of how exactly they correlate with atheism but they are only on national or regional level.<sup>17</sup>

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Civil and Political Rights, UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

<sup>12</sup> Alan Payne “Redefining ‘Atheism’ in America: What the United States Could Learn from Europe’s Protection of Atheists”. *Emory International Law Review*, 27, no. April 1, 2013, 701-702.

<sup>13</sup> See Phil Zuckerman, *Atheism and Secularity*, 2 volumes (ABC-CLIO, 2009); Richard Dawkins, *The God Delusion* (Black Swan; New Ed with additions edition, 2007); Christopher Hitchens, *The Portable Atheist: Essential Readings for the Non-Believer* (Da Capo Press; 1st edition (2007); Sam Harris, *The End of Faith: Religion, Terror, and the Future of Reason*, (W. W. Norton Company, 2005); Daniel C. Dennett, *Breaking the Spell: Religion as a Natural Phenomenon*, (Penguin Books; Reprint edition, February 6, 2007).

<sup>14</sup> Payne “Redefining ‘Atheism’ in America”

<sup>15</sup> Mostly freedom of thought, conscience and belief; see United Nations Human Rights Committee, “General Comment No. 22 to Article 18 of ICCPR.” Sometimes from the freedom of religion is included into the scope of freedoms protecting the rights of atheists but it is debatable from the theoretical point of view, which will be shown in a further research.

<sup>16</sup> Those are the rules fixed in the international law that are being used as fundamental principles of the protection of atheists.

<sup>17</sup> Council of the European Union, “EU Guidelines on the promotion and protection of freedom of religion or belief,” Foreign Affairs Council meeting Luxembourg (24 June 2013)

The work that can be identified by its spirit as the substantial and one that inspired this thesis is conducted annually by International Humanist and Ethical Union in a shape of reports. However, their reports are aimed at a monitoring observance of rights of atheists and humanists on the overall situation in every country, while this research is dedicated to analyzing the roots of the problems and suggesting solutions for them by studying the most prominent examples.

**Significance of research.** This research must help to create the concrete and precise scientific framework for improving the overall state of affairs for human rights protection of atheists as a group and individually. The suggestions that are provided here are aimed at resolving disparity and differences in treatment of atheists and religious people, alongside with other social groups of people who hold or refuse to hold any kind of beliefs.

**The aim of research.** The aim of this thesis is to analyze the legal and factual treatment of atheists as a minority in different countries and to make a conclusion on the actual validity of mechanisms used to protect their rights. For this purpose there are international instruments, case law and reports are studied in this research as well as the current news from this field. The issue of mistreatment of atheists is a widespread phenomenon; hence, it is addressed in the paper as a field in need of a legal development. The best and worst practices are to be compared, which leads to the suggestions on how to abolish inadequate practices and what is the potential role of international law in this process.

**Relevance of the final thesis.** First important thing to say is that an atheistic movement is on the rise right now<sup>18</sup> and the amount of people who become more visible and are concerned with their legal status is growing, therefore raising the social demand for clarification and determination of rules and protective mechanisms. It is unclear whether the existing legislation and legal policies are capable of protecting atheists effectively in all countries because as will be shown further, the actual legislation in selected cases is in discord, as is its application *de facto*, which is causing the straightforward need for establishing specific procedure with reliance on common principles.

**The objectives of research.** The research is entitled to identifying ways how to deal with human rights violations based on belonging of persons to atheistic minority. The thesis is dedicated to investigating, how a gap in legal understanding is influencing the actual state of affairs and what

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<sup>18</sup> Simon Hooper, "The Rise of the 'New Atheists'," *CNN*, November 8, 2006, <http://edition.cnn.com/2006/WORLD/europe/11/08/atheism.feature/index.html>

should be done to eliminate it; in particular, what can be done in the field of the international law in order to ensure effectiveness of protective mechanisms in all countries. This research is also aimed to present the analysis of acts and cases to draw a picture of a real situation with observance of rights of atheists. This includes preparation of suggestions for implementation of existing legislation, introduction of changes in it for effective application or adoption of new acts which potentially may have a positive impact on a harmonization of a legislation.

**Research methodology.** Methodology of scientific cognition alongside to doctrinal in conjunction with socio-legal methodology has been used to critically analyze, interpret, compare and assess international legal instruments and case law, formulate conclusions that are logical, clear, have only one meaning and are based on knowledge and international court practice, as well as solutions for improving of international legal regulation. The outstandingly demonstrative and typical examples are used in the research because it is unreasonable to investigate the whole amount of similar cases. For example, the countries with grave violations are not considered in terms of more minor violations because of the assumption that those violations trigger all interrelated kinds of problems. One country, in particular the United States, is being studied slightly more precisely for three reasons: first, as the correlation will show, this is a one exception of a rule of “high income = low religiosity,”<sup>19</sup> which makes the establishment of the effective human rights protection mechanism more realistic; the U.S. represents the practices of fifty states with their own Constitutions inside itself and, third, the U.S. normally does not blindly obey the international trends.<sup>20</sup>

The following methods were used to reach the objective of the research:

- 1) Logical method has been used to understand the complexity of interlinked connections between provisions of legal acts and their implementations into court decisions.
- 2) Method of analysis was used in order to analyze the provisions of legal acts, case law, findings of other researchers and the circumstances under which they are applied; draw conclusions.
- 3) Comparative method, which was useful to assess the differences and similarities in legal instruments, practice of court, the situation with causal relationship.

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<sup>19</sup> Max Roser, "Economic Growth", *Our World In Data*, 2018, accessed April 19, 2018,

<https://ourworldindata.org/economic-growth>.

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- 4) Method of a theoretical review of literature was used in order to understand notions and tendencies used by researchers.
- 5) Hermeneutical method has been used in order to correctly identify meanings of notions and definitions used throughout the research.

**Structure of research.** The research consists of an introduction, four chapters of body text, conclusion, recommendations, bibliography, abstract and summary.

The first chapter is divided into two subchapters, the second of which is divided into two sections. The first subchapter is focused on analyzing the definitions of atheism, because there is no unanimity on this matter, and the second is entitled to analyzing the international legal framework regulating the issue of protection of rights and freedoms that are essential for protection of atheists on the global level in the first section and on the regional level in the second section.

The second chapter is dedicated to religious influence on public office and is divided into two subchapters that investigate the gravest cases of religious influence and the cases that can help to understand and resolve the major problems, alongside with introducing other issues for consideration.

The third chapter is dedicated to religious influence on education and how exactly atheists may suffer from the unbalanced legal policies or inconsistent court practice and what may be an acceptable example to follow.

The fourth chapter is dedicated to tax preferences and other privileges of religious organizations and people. It studies such issue as an institute of conscious objectors and difficulties of atheists who want to invoke their convictions to avoid compulsory military service.

**Defence statements.** The legal acts and mechanisms for the protection of the rights of atheists are not sufficient and should be improved. As from the above-mentioned statements it is logical to conclude that this research seeks to prove the point that, despite the urge for a consistent regulation of the question, there is no any comprehensive system for the protection of the rights of atheists worldwide because of the lack of doctrinal accord, efficient legal instruments and effective protection mechanisms equally on international and national scale. Therefore, in order to enforce the legal policies stipulated by the soft law instruments and improve the situation with observance of atheists' rights on national level, the international law approach to this must be recreated taking into account all points outlined in this research.

## **1. MAIN DEFINITIONS AND INTERNATIONAL LEGAL FRAMEWORK REGULATING THE ISSUE**

This chapter is entitled to determining main definitions that are to be analyzed in the research and to legal acts regulating aspects either directly or indirectly influencing the issue of observance of rights of atheists. This chapter is important because it is impossible to work with the legal acts when there is no understanding of all approaches, as they tend to have different titles, imply different meanings and scopes for application. For the purposes of this thesis it is necessary to focus only on those definition that can be used for understanding and interpretation of legislation that protects or infringes rights of atheists.

The first subchapter contains a short screening of the background of emergence of the term “atheism” and a comparison of definitions and differences in them. Some historical background is used to prepare the reader for further conclusions and parallels, made within the context of meaning and approaches to atheism. It uses works of researchers from legal, philosophical and social fields as well as opinion of atheistic movement and describes the main similarities and differences between them.

The second subchapter analyzes global and regional legal instruments that constitute the foundation for further legal developments in this sphere. While there are not many instruments to analyze in a global and regional field, it is necessary to compare them and to analyze how they influence each other. The research here tries to assess whether the meanings established in a previous subchapter correspond and if yes, how they correspond to the contents of international sets of norms and rules. It is also shown on example if countries have a unanimity in understanding the scope of described rules.

In the end of the first subchapter of this chapter the conclusions are made on the connection and the efficiency of this connection between different interpretations. The main problems emerging from the differences in interpretation are established. In the end of the second subchapter the scope of protected rights is determined, with references to what exactly formulates this scope.

## 1.1 The Definitions of Atheism

This subchapter is necessary for all further research in order to outline the boundaries within the legislative understanding of the question is perceived, may be perceived and should be perceived. It covers the main definitions of atheism alongside with some additions and inclusions that can be assessed within the scope of the topic because of the social, statistical and cultural nuances and differences in understanding.

It would be appropriate the start with a philosophical explanation of what is atheism. With this purpose helps Paul Draper in the Stanford Encyclopedia of Philosophy:

“Atheism” is typically defined in terms of “theism”. Theism, in turn, is best understood as a proposition—something that is either true or false. It is often defined as “the belief that God exists”, but here “belief” means “something believed”. It refers to the propositional content of belief, not to the attitude or psychological state of believing. This is why it makes sense to say that theism is true or false and to argue for or against theism. If, however, “atheism” is defined in terms of theism and theism is the proposition that God exists and not the psychological condition of believing that there is a God, then it follows that atheism is not the absence of the psychological condition of believing that God exists (more on this below). The “a-” in “atheism” must be understood as negation instead of absence, as “not” instead of “without”. Therefore, in philosophy at least, atheism should be construed as the proposition that God does not exist (or, more broadly, the proposition that there are no gods).<sup>21</sup>

This is the most basic philosophical explanation of the term “atheism”, which is not limited by this terminology but it only precludes the various further interpretations and developments of philosophical understanding. However, as far as it is a legal paper there is no need to go too deep to understand the general philosophical approach. Consequently from what can be seen in the statement above, an atheist is a person, who positions himself or herself against the assumption that God or gods exist (by the way, note how strong the monotheistic vies influenced the definition taken from the Stanford Encyclopedia of Philosophy; a reference to absence of a single personalized God is seen much more often than mentioning any other gods).

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<sup>21</sup> Paul Draper, "Atheism and Agnosticism", *The Stanford Encyclopedia of Philosophy* (Fall 2017 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/fall2017/entries/atheism-agnosticism>

However, the Stanford Encyclopedia of Philosophy refers very often to “belief that God does not exist”.<sup>22</sup> This is opposed by the Oxford Handbook of Atheism by Stephen Bullivant and Michael Ruse, who after the investigation of different opinions on the matter reach the following conclusion regarding the definition of atheism as “an absence of belief in the existence of a God or gods.”<sup>23</sup> Such opinion is not a simple belief itself, as it implies the need of evidence. This is mainly the arguable point when discussing international legal acts, because they tend to group atheists under groups with beliefs, which is in dissonance with such definition.

It would be appropriate to have an insight into how does atheistic movement attempts to self-define its own values. For example, American Atheists claim that atheism can be called neither a system of beliefs, nor a religion.<sup>24</sup> They elaborate further that every person, who calls himself or herself a “humanist, a freethinker, a bright, or even a ‘cultural Catholic’ and lack[s] belief in a god”<sup>25</sup> is an atheist. This puts the first stone in the foundation of an understanding of the problem why legislation is not always explicit on this matter.

Atheists have always been a minority since the antiquity and it is proven by researchers that in that time people often accused each other in atheism to discredit a counterpart or to gain public respect and resources. Jan Bremmer claims that at least three developments for atheism have happened in the antiquity: invention of the term *atheos* by Greeks and transformation of it by Romans into *atheus* in which form we know it nowadays; the foundation by Greeks of the theoretical atheism (which he considers important); and finally, the stigmatization of atheists by all dominant groups in that times.<sup>26</sup>

It is important to understand that atheists are still a minority in most of the countries. This is substantiated by Gallup research that determined the average amount of people who identify themselves as convinced atheists, which equals to 13%.<sup>27</sup> This is a global average, which is

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<sup>22</sup> Stephen Bullivant, The Oxford Handbook of Atheism, edited by Bullivant S and Ruse M, Oxford Univ. Press, (2014): 12.

<sup>23</sup> Stephen Bullivant, The Oxford Handbook of Atheism

<sup>24</sup> “What is Atheism?”, American Atheists, accessed 8 March 2018 <https://www.atheists.org/activism/resources/about-atheism/>

<sup>25</sup> “What is Atheism?”, American Atheists, accessed 8 March 2018

<sup>26</sup> Jan N. Bremmer, Atheism in Antiquity. In M. Martin (Ed.), *The Cambridge Companion to Atheism*. (Cambridge: Cambridge University Press, 2006), 16.

<sup>27</sup> WIN-Gallup International, Global Index of Religiosity and Atheism – 2012, accessed April 10, 2018, <https://sidmennt.is/wp-content/uploads/Gallup-International-um-tr%C3%BA-og-tr%C3%BAleysi-2012.pdf>

representative for all countries and in no country convinced atheists constitute at least a majority without mentioning being a dominating one (with China, Japan and Czech Republic being an exception; however, this is also in a big extent because of the people who identify themselves as non-religious but not atheists).<sup>28</sup> This is also interesting that Gallup research draws parallel of poverty with religious dominance.<sup>29</sup> This is confirmed by the recent Our World in Data research, in which this correlation is called “clear”<sup>30</sup> and the claim that poor countries are more likely to be more religious is consequent from this conclusion. This poses an obvious threat to atheists in such developing countries, because in underdeveloped countries there are usually not enough resources to create an effective mechanism for protection of human rights.

Such situation with disparity in meanings and definitions leads to the situation when the numbers are arguable. For example, the Pew Research Center in its study claims that there are 3.1% of atheists in the United States<sup>31</sup>, while the recent research by Will Gervais and Maxine Najle, which uses the method of Bayesian estimation (specifically developed for purposes of working with sensitive groups) to indirectly estimate the amount of atheists in a society, and the result was 26%.<sup>32</sup> Speaking about the treatment of atheists in the United States, other research has showed that atheists has just recently conceded the first place of the most disliked group in the society to Muslims.<sup>33</sup> They outline that the domination religious majority have three main concerns towards atheists: “they associate atheists with criminality (a threat ‘from below’ in the status hierarchy) and with materialism and an elitist lack of accountability (threats ‘from above’).”<sup>34</sup>

It is possible to extrapolate the findings of the last study on overall bad attitude to atheists assuming only difference in accents of antipathy. This argument is important to show that atheists

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<sup>28</sup> WIN-Gallup International, Global Index of Religiosity and Atheism – 2012

<sup>29</sup> Ibid.

<sup>30</sup> Max Roser, "Economic Growth", *Our World In Data*, 2018, accessed April 19, 2018, <https://ourworldindata.org/economic-growth>.

<sup>31</sup> Pew Research Center, Religious Landscape Study <http://www.pewforum.org/religious-landscape-study/>.

<sup>32</sup> Gervais, Will M. and Najle, Maxine B., “How Many Atheists Are There?” *Social Psychological and Personality Science* Vol 9, Issue 1, First Published May 16, 2017, 3 – 10, <https://doi.org/10.1177/1948550617707015>.

<sup>33</sup> Penny Edgell, Douglas Hartmann, Evan Stewart, Joseph Gerteis; Atheists and Other Cultural Outsiders: Moral Boundaries and the Non-Religious in the United States, *Social Forces*, Volume 95, Issue 2, 7 December 2016, 607–638, <https://doi.org/10.1093/sf/sow063>.

<sup>34</sup> Penny Edgell, Douglas Hartmann, Evan Stewart, Joseph Gerteis; Atheists and Other Cultural Outsiders: Moral Boundaries and the Non-Religious in the United States, *Social Forces*, Volume 95, Issue 2, 7 December 2016.

constitute a sufficient and vulnerable minority, which tends to be relatively secretive. The aforementioned Gallup study also gives some explanation why it is difficult to define atheism, because many of the respondents despite rejecting being religious and constituting the absence of belief still rejected to call themselves convinced atheists.<sup>35</sup> This may be caused by two main reasons:

- 1) people, who could define themselves as atheists according to some of the definitions listed above, simply do not understand those definitions because of the distortion of their original meaning by religious majority and legal acts;
- 2) those people are afraid to disclose their true views and convictions because of the fear of stigmatization or persecution.

It is also worth mentioning another phenomena that within atheists' group there is emerging another micro group, who self-identify as ex-Muslims.<sup>36</sup> While they are experiencing the same problems as regular atheists, they are in addition more exposed and vulnerable because of the constant death threats from Muslims.<sup>37</sup>

Secular Humanism is explained to be a worldview incorporating atheistic beliefs by establishing the separation of the Church and State but going further in its understanding of the world and introducing values oriented towards humans as an individual and independent beings.<sup>38</sup> Thus, secular humanism is the one of the forms in which atheism can exist and, therefore, it constitutes the ground for being protected in this scope. The word "secular" will be used throughout the research and it will often refer to atheistic values of non-intrusion of the religion into their rights directly or via governmental institutions.

Moreover, Alan Payne suggests that it would be reasonable to include agnostics and non-believers in the definition of atheists, in spite of the differences that may arise in theoretical

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<sup>35</sup> WIN-Gallup International, Global Index of Religiosity and Atheism – 2012, accessed April 10, 2018, <https://sidmennt.is/wp-content/uploads/Gallup-International-um-tr%C3%BA-og-tr%C3%BAleysi-2012.pdf>

<sup>36</sup> Rahila Gupta, "I don't want to die because I'm an atheist': ex-Muslims speak out", *openDemocracy*, 11 August 2017 <https://www.opendemocracy.net/5050/rahila-gupta/islam-non-believers-deeyah-khan>

<sup>37</sup> Gupta

<sup>38</sup> "What Is Secular Humanism?", *Secular Humanism*, accessed March 14, 2018, <https://secularhumanism.org/index.php/3260>

approach.<sup>39</sup> He substantially argues that they are often grouped by researches and statistics altogether with atheists and it becomes hard to distinguish them in practice and that their vulnerability is comparable to those of atheists.<sup>40</sup>

## 1.2 Main International Legal Acts

This subchapter is divided into two sections: the first one dedicated to instruments regulating the issue on a global scale, and the second one dedicated to regional instruments that cover the most of countries that the research is analyzing.

The main global acts, such as Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social, and Cultural Rights, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief are considered in the first section normally represent the soft law instruments and, despite being undoubtedly foundational, they still have some flaws that are going to be examined further.

The second section is dedicated to regional instruments that in some cases are following the trend established by the global instruments but in some cases they in spite of the literal similarity to those global instruments do not follow the spirit of the international law and are biased towards the oppressive interests. This analysis helps to understand the background of the situation in specific countries with atheists protection and what stands behind the internal legislations discriminating and outlawing atheism.

In the end of the subchapter the conclusions based on the comparative analysis of the legal instruments are drawn and the legal framework is established within the research is operating in its legal conclusions and recommendations. Besides, the how does it correlate with the previous subchapter and chapter and gives first insight into what are the problems that should be addressed in recommendations, as they touch the question of the international regulations directly.

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<sup>39</sup> Alan Payne, "Redefining 'Atheism' in America: What the United States Could Learn from Europe's Protection of Atheists", *Emory International Law Review*, 27, no. 1, April 2013, 668.

<sup>40</sup> Payne, 668-669.

### 1.2.1 Global Acts

Global and regional acts can not only be useful for understanding the legal background of the question but they also implicitly contribute into our understanding of the definition (as they do not provide a direct explanation of atheism or who are the atheists). Because the protection of any person starts from ensuring one's basic first-generation rights and only if those rights are ensured the protection can cover other human rights. Therefore, for the purpose of this research the norms of international instruments will be studied, which establish the right of persons to uphold atheistic by its nature views. Other rights deriving from the recognition of right of persons to have such beliefs will be studied in more detail depending on the factual circumstances.

The main general international instrument, from which protection of atheist's rights emerges, is the non-binding Universal Declaration of Human Rights 1948.<sup>41</sup> In Article 2 it predefines that there shall not be any kind of discrimination regardless of any type of opinion.<sup>42</sup> Next important Articles are 18 and 19. Article 18 specifies that "[e]veryone 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 teaching, practice, worship and observance."<sup>43</sup> Article 19 states that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."<sup>44</sup>

The introduction of the full wording of both articles is important for understanding that the atheism is not protected by directly listing it as a right or a freedom but it does implicitly protect atheists exercising the abovementioned freedoms. Therefore, the freedom of thought, conscience and opinion are a cornerstone for observance of atheists' rights according to the Universal Declaration.

The Article 18 of the International Covenant on Civil and Political Rights 1976 actually explained, how these freedoms should be understood stating, that "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a

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<sup>41</sup> Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948)

<sup>42</sup> Universal Declaration of Human Rights, Article 2

<sup>43</sup> Ibid., Article 18

<sup>44</sup> Ibid., Article 19



religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”<sup>45</sup>

The United Nations Human Rights Committee in its General Comment No. 22 to Article 18 of ICCPR explains, “[t]he terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.”<sup>46</sup> This explanation gives a much broader sense to provisions from the legal acts to interpret “beliefs.” It is a first explanation that deals with a potential misunderstanding of what can be understood under beliefs and answers a question if an atheism could be included in scope of protection under article with this exact wording. While this Comment is not binding per se, it gives the understanding of what was the thinking behind provisions of the ICCPR and the general attitude of the United Nations in regard to aforementioned freedoms.

International Covenant on Economic, Social, and Cultural Rights 1976 has fixed in its Article 5 freedom of thought, conscience and religion alongside with the right to freedom of opinion and expression listing them under the paragraph “[O]ther civil rights”.<sup>47</sup> As it was adopted at the same time as ICCPR, it is interesting that it does not mention the freedom of belief at all but mentions the freedom of religion. However, it is possible that those who concluded that treaty implied the same scope of protection under the listed rights for free-thinkers, which is still not entirely clear.

Moving forward, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981<sup>48</sup> broadened the interpretation of the freedom of thought, conscience and opinion and obliged the Member States to adopt legislation to ensure the implementation of the provisions of the Declaration. As it is obvious from the title of the Declaration,

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<sup>45</sup> International Covenant on Civil and Political Rights (New York, 16 December 1966) 999 UNTS 171 and 1057 UNTS 407, entered into force 23 March 1976 [the provisions of article 41 (Human Rights Committee) entered into force 28 March 1979].

<sup>46</sup> International Covenant on Civil and Political Rights 1976, Article 18.

<sup>47</sup> International Covenant on Economic, Social, and Cultural Rights 1976, Article 5.

<sup>48</sup> Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, UN General Assembly, 25 November 1981, A/RES/36/55.

it is dedicated to the issue in question and it consists of eight articles. It is necessary to mention here the Article 1 of this Declaration, “1. Everyone shall have the right to freedom of thought, and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”<sup>49</sup> One novelty of the declaration was that it defined the discrimination grounded on belief.<sup>50</sup> It is interesting to note, however, despite the declaration being non-binding, “Bulgaria, representing the Eastern Soviet Bloc, registered a reservation complaining that the Declaration favored ‘religion’ over ‘atheistic’ beliefs. Iraq representing a religious bloc of Member States issued a reservation on behalf of the Organization of the Islamic Conference, implying it did not favor ‘religion’ enough.”<sup>51</sup>

This section provides with an overview of the general legal approach to the protection of atheists and it is obvious that atheistic beliefs were not specifically mentioned in the instruments of twentieth century. Those instruments are similar in parts where they establish a non-discrimination policies regardless of any features but in some cases contradict to the idea of atheism, explaining that the verbal difference is not a point for withholding the necessary protection of atheists. Despite all the uncertainty that is highlighted before, the idea behind the norms is correct and the spirit of the law acts as a unifying tool for main acts that this research is relying upon.

### 1.2.2 Regional Acts

In the European Scope the Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms on the freedom of thought, conscience and religion contains next provisions: “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

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<sup>49</sup> Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981, Article 1.

<sup>50</sup> “Reflections — Human Rights & Freedom of Religion or Belief—History, Education, Religion, Science,” *Tandem Project*, [http://www.tandemproject.com/issue\\_statements/statements/2010/060110\\_issue.htm](http://www.tandemproject.com/issue_statements/statements/2010/060110_issue.htm).

<sup>51</sup> “Reflections“.

observance.”<sup>52</sup> Assuming that the freedoms listed here are of the same broad scope it becomes obvious how the international instruments form their own scope of protection without referring to atheists directly. The rights mentioned there constitute that person with any convictions cannot be limited directly or indirectly in manifestation of this convictions. It is interesting, that Article 9 is very similar to Article 18 of Universal Declaration, taking into account that the first instrument is binding to signatory parties and the last one is not. It was probably caused by the motivation of drafters of ECHR to shape the provision of freedom of thought into a hard law and make them compulsory.

Similar provision are present in the original text of Article 18 of the ICCPR.<sup>53</sup> However, it was an attempt to specify its meaning by the Human Rights Committee in its General Comment No. 22 assuming the broad interpretation of “beliefs” and “religion”, which did not succeed in resolving the posed issue. This position is confirmed by the content of the Article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981, which protects “beliefs” in a context of a religion, as it mentions only the freedom of thought and religion, and equals latest to “beliefs.”<sup>54</sup>

Article 9 of the European Convention on Human Rights has made, probably, the longest way towards connection of philosophical, casual and legal understanding of definition and, therefore, making the most explicit and applicable rule (partly because it has hugely relied on the broad meaning stipulated in the Universal Declaration of Human Rights). The explicitly and transparency of this approach of deepened by the Council of the European Union in its Guidelines on the promotion and protection of freedom of religion or belief, where they elaborate that “[f]reedom of religion or belief protects every human being’s right to believe or to hold an atheistic or non-theistic belief, and to change religion or belief. It does not protect a religion or belief as such. Freedom of religion or belief applies to individuals, as right-holders, who may exercise this right either individually or in community with others and in public or private. Its exercise may thus also have a collective aspect.”<sup>55</sup>

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<sup>52</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, Council of Europe, 4 November 1950, ETS 5.

<sup>53</sup> International Covenant on Civil and Political Rights (New York, 16 December 1966) 999 UNTS 171 and 1057 UNTS 407, entered into force 23 March 1976 [the provisions of article 41 (Human Rights Committee) entered into force 28 March 1979].

<sup>54</sup> Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

<sup>55</sup> Council of the European Union, EU Guidelines on the promotion and protection of freedom of religion or belief Foreign Affairs Council meeting Luxembourg, 24 June 2013.

One of the landmark cases in European Union that specify the scope of application of the Article 9 of a European Convention of Human Rights is *Kokkinakis v. Greece*.<sup>56</sup> The European Court of Human Rights has established that Mr. Kokkinakis has been prosecuted for proselytism (which was a criminal offense in the Greece at that time): “[b]y 'proselytism' is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion (eterodoxos), with the aim of undermining those beliefs, either by any kind of inducement or promise of an inducement or moral support or material assistance, or by fraudulent means or by taking advantage of his inexperience, trust, need, low intellect or naïvety.”<sup>57</sup>

That literally meant the punishment was implied for actions directed at religious conversion of persons. However, the conversion could be interpreted broadly, which triggered the following line of thinking of the Court: the antiproselytism laws do not fall in line with the freedom of religion. The meaning of the decision on this case is also that the court directly formulated that natural persons fall into the scope of protection under Article 9 even in the next circumstances:

“As enshrined in Article 9 (art. 9), 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. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.

While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to ‘manifest [one's] religion’. Bearing witness in words and deeds is bound up with the existence of religious convictions.”<sup>58</sup>

Therefore, this decision has made it clear that atheists (among other representatives of non-religious convictions) are directly protected under the Article 9 of the EHCR and the provisions are to be understood in a manner that freedom of religion always means the right to manifest it (thus, including atheistic convictions as well). Therefore, the outcome of the case was positive not only for the Mr. Kokkinakis, but for the establishing of more precise and grounded European approach to protection of rights of atheists.

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<sup>56</sup> *Kokkinakis v. Greece*, 3/1992/348/421, Council of Europe: European Court of Human Rights, 19 April 1993, <http://www.refworld.org/cases,ECHR,3ae6b6ff4.html>.

<sup>57</sup> *Kokkinakis v. Greece*, § 16.

<sup>58</sup> *Ibid.*, § 31.

Charter of Fundamental Rights of the European Union is a regional legal instrument regulating the issue of a protection of human rights in European Union, which provisions are in force for EU countries after the Lisbon Treaty and they regulate the question of atheists protection with already familiar provisions regarding freedom of thought, conscience and religion in Article 10: “1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. 2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.”<sup>59</sup>

There is a not commonly perceived “right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right”<sup>60</sup> that is fixed by the Article 14 of this Charter. The broad formulation of the right allows to suggest that it is open for interpretation as a safeguard against indoctrination. Article 21 prohibits discrimination on the ground of “religion or belief, political or any other opinion.”<sup>61</sup> Respect towards religious diversity is stipulated in Article 22.<sup>62</sup> It still does not contain direct provision on atheist or at least reference towards people without religious convictions. However, because of its mandatory nature for parties, it stands as a separate act, which effectiveness depends not on a voluntary application and spontaneous incorporation of norms into national legislation but it depends on the observance by the institutions of the European Union.

Such instruments as American Declaration of the Rights and Duties of Man (Organization of American States, 1948), ASEAN Human Rights Declaration (Association of Southeast Asian Nations, 2009) and Cairo Declaration of Human Rights in Islam (Organization of Islamic Cooperation, 1990) are not studied in detail for two reasons. First is because they still have a voluntary character and second is because they are usually grounded on the Universal Declaration of Human Rights<sup>63</sup> and do not sufficiently contribute into the development of legal scope for protection of atheists.

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<sup>59</sup> Charter of Fundamental Rights of the European Union, European Union, 26 October 2012, 2012/C 326/02, Article 10.

<sup>60</sup> Charter of Fundamental Rights, Article 14.

<sup>61</sup> Ibid., Article 21.

<sup>62</sup> Ibid., Article 22.

<sup>63</sup> I.e., mentioning of Universal Declaration in the Preamble as a fundament for the text of current instruments.

American Convention on Human Rights (Pact of San José)<sup>64</sup> establishes the standard non-prejudice to religion scope in its Article 1<sup>65</sup> and has a special Article 12 with respect to the question of the protection of peoples' beliefs:

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.<sup>66</sup>

This article outlines some very important moments: the conjunction of rights important for free upholding and manifesting the belief, the limitation clause and reference to a moral education as a supplement or an alternative to religious education. This scope is broad enough to include the atheistic views into it without elaboration on the effect and scope of the Article. Moreover, the next Article 13 only reinforces the provisions of the previous one by prohibiting the incitement to religious hatred and violence.<sup>67</sup> Article 16 is more detailed on the matter of assembly right and ensures the freedom of association for ideological and religious purposes.<sup>68</sup> It also stipulates a non-expulsion provisions for people endangered by the religious attribute<sup>69</sup> and contains some other less viable provisions indirectly protecting the persons with atheistic views.

This Convention in many instances reproduces the norms of Universal Declaration and is somewhat similar to European Convention of Human Rights by its scope and level of elaboration on protected rights and freedoms. It is detailed and extensive when it comes to establishing scope of

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<sup>64</sup> American Convention on Human Rights ("Pact of San José"), Organization of American States (OAS), Costa Rica, 22 November 1969

<sup>65</sup> American Convention on Human Rights, Article 1

<sup>66</sup> Ibid., Article 12.

<sup>67</sup> Ibid., Article 13.

<sup>68</sup> Ibid., Article 16.

<sup>69</sup> Ibid., Article 22.

protection and it has mechanisms that ensure the effectiveness of other provisions (i.e., the prohibition of incitement to hatred and violence because of the listed attributes).<sup>70</sup>

African Charter on Human and Peoples' Rights (Banjul Charter) in its Article 2 establishes that “[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.”<sup>71</sup> It then proceeds in another article on specifically rights to “[f]reedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.”<sup>72</sup>

What is new in this Charter in comparison to other instruments, is that its Article 12 directly prohibits a religion to be a ground for a mass expulsion.<sup>73</sup> In spite of the fact that all African countries except North Sudan have ratified the Charter,<sup>74</sup> some of African countries are still not a safe place for atheists to be in and to manifest their views.<sup>75</sup>

Arab Charter on Human Rights (ACHR) contains a set of rules that are aimed at establishing similar to other global and regional human rights instruments.<sup>76</sup> In its Article 2 it stipulates that this charter applies without discrimination on a religious ground in particular.<sup>77</sup> Article 26 guarantees the “right to freedom of belief, thought and opinion.”<sup>78</sup> Article 27 elaborates on this matter that “[a]dherents of every religion have the right to practise their religious observances and to manifest their views through expression, practice or teaching, without prejudice to the rights of others. No restrictions shall be imposed on the exercise of freedom of belief, thought and opinion except as

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<sup>70</sup> Ibid., Article 13.

<sup>71</sup> “African Charter on Human and Peoples' Rights” (“Banjul Charter”), Organization of African Unity (OAU), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 2.

<sup>72</sup> “African Charter,” Article 8.

<sup>73</sup> Ibid., Article 12.

<sup>74</sup> Ratification Table: African Charter on Human and Peoples' Rights, accessed 31 March 2018

<http://www.achpr.org/instruments/achpr/ratification/>

<sup>75</sup> Angelina E. Theodorou, “Which countries still outlaw apostasy and blasphemy?” *Pew Research Center*, 2016 July 29, <http://www.pewresearch.org/fact-tank/2016/07/29/which-countries-still-outlaw-apostasy-and-blasphemy/>

<sup>76</sup> Arab Charter on Human Rights, League of Arab States, 15 September 1994

<sup>77</sup> Arab Charter, Article 2

<sup>78</sup> Ibid., Article 26

provided by law.”<sup>79</sup> Article 35 once more points out that the religious discrimination shall not be used<sup>80</sup> and Article 37 states that “[m]inorities shall not be deprived of their right to enjoy their culture or to follow the teachings of their religions.”<sup>81</sup>

All these articles tend to reproduce already known international norms, although the Preamble of the charter contains the direct reference to Islam, which is set to establish and regulate the matter: “[...] Pursuant to the eternal principles of brotherhood and equality among all human beings which were firmly established by the Islamic Shari'a and the other divinely-revealed religions [...],” which makes the understanding of the charter difficult for the protection of atheists.

Despite the Arab Charter contains neutral norms it is obvious that the undertone of the Charter is of the religious background and the neutral norms contain specific mentioning of the religion and religious views as a ground for non-discrimination but there are no any references to not holding any beliefs, which in the further research will be highlighted as a problem amongst the Arab States’ legal practice.<sup>82</sup> Therefore, it is the ground for uncertainty if this instrument seeks to protect a secular purpose and the legal effect of this instrument is questionable.

It is also obvious that the Charter is less detailed in comparison to previous instruments in respect of scope of protected rights and the safeguards that should exist for mutual reinforcement of protected rights and freedoms are not present, such as an absence of references to prohibition of hatred and violence by any of the listed attributes. Therefore, this instrument can be perceived as a human rights instrument only in case if the States, who recognized its legal status, will uphold the provisions in their literal sense, will restrict the extrajudicial punishments and preserve the enforcement of norms on non-discrimination on the national level.

The abovementioned legal sources show that the legal part of the question on the international framework has developed the approach to protection of atheists within the scope of rules protecting religious convictions and beliefs.

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<sup>79</sup> Ibid., Article 27

<sup>80</sup> Ibid., Article 35

<sup>81</sup> Ibid., Article 36

<sup>82</sup> Angelina E. Theodorou, “Which countries still outlaw apostasy and blasphemy?” *Pew Research Center*, 2016 July 29, <http://www.pewresearch.org/fact-tank/2016/07/29/which-countries-still-outlaw-apostasy-and-blasphemy/>



Therefore, the first and the foremost conclusion to be made is that despite atheists are usually appeal for protection of norms on religious freedom, they are not to be regarded from the logical point of view as a “religious minority,” as the previous considerations help to reach this conclusion. It is also possible to conclude that in the interpretation of current international legal instruments the rights of atheists are protected within the scope of the freedom of thought, conscience and religion. However, they still are a minority group, and it is reasonable to define them as an “atheistic minority” or at least “irreligious minority” for a further reference. The second option is could still be interpreted in widely but the coverage of atheists is still more correct with this formulation.

In conclusion, the main problem with identifying atheism is that there are very serious differences in philosophical, legal and casual understanding of this phenomena. There is no unanimity even inside of each of this approaches. There are still gaps, which may cause a problem to the understanding of the issue. They mostly occur when analyzing the term “beliefs”, while trying to fit the atheists’ protection under different freedoms, such as freedom of religion or freedom of conscience. Nevertheless, not one of these freedoms cannot absolutely take full burden of responsibility (if it is appropriate to say so) for solely protection atheistic beliefs by its own scope.

It was also established, that atheists usually constitute the less percent of population directly depending on the overall poverty of the country, which creates double threat: less people in comparison to dominating majority means it is harder to assemble and defend themselves, and less resources means it is more difficult for the government to create an effective system of minorities’ protection (if they seek to do it at all).

The actual meaning of many norms is not initially clear for readers and those who may attempt to apply or incorporate those norms into a national legislation. This will be investigated deeper during the overview of States’ actual practice.

Rules protecting atheists in national laws vary from country to country, that is why they will be highlighted when needed during analysis of legislation or the consideration of actual cases. At that time the international acts have shown the consistency in terms but not in a clear and unified interpretation of those terms. While most of the international acts are non-binding, they contain provisions that:

- 1) lay a foundation for understanding what is the principles of protection of atheist’s rights under international law;

- 2) create a platform for transposition of such principles from the soft law into the hard law shape.

It is also important to note that according to global and regional acts rights of atheists, about which the further research is conducted, can be formed into two main categories:

- 1) to hold an opinion, which constitutes a conviction of their perception of the world;
- 2) to manifest their views freely with some reasonable limitations.<sup>83</sup>

This division will also help to establish the boundaries of protection and to understand what the actual situation in a specific State is. The rights that are being protected by international acts can also be split in two categories:

- 1) general rights establishing the freedom to have atheistic convictions and not to be persecuted for this;
- 2) supplemental rights that guarantee to the atheists all other minor rights deriving of their equal status with all people.

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<sup>83</sup> E.g. The provisions of European Convention on Human Rights, Article 9 (2). This is not specifically mentioned here, as different jurisdictions have their own scope of reasonable limitations but as an example the Article 9 (2) of the ECHR reserves the possibility to limit this extent in order to prevent the infringement of rights and freedoms of other people.

## 2. PROBLEM OF RELIGIOUS INFLUENCE ON PUBLIC OFFICE

This chapter is divided into two subchapters: first one is dealing with violation of the basic rights that allow atheism to exist as a phenomenon and the second one is focused on countries that have mechanisms for combating discrimination and that have actual examples of this mechanism in force. The scope of the chapter is relatively broad, because it elaborates on what kind of influence a public office may experience and what would be the outcome of this influence. Mostly it shows how religion can distort the legislation or its implementation in a way harmful for atheists.

This chapter will not only contain the examples of how atheists are being treated while working or pursuing to interact with public institutions. It is appropriate to at least partially dedicate this chapter to the investigation how the religion influence on the authorities leads to direct violations and infringements of right of atheists.

### 2.1 Violation of Rights Establishing the Freedoms that Allow to hold Atheistic Convictions and not to be Persecuted for This

There are no laws in most countries that criminalize apostasy or blasphemy but there is a set of countries that still practice this.<sup>84</sup> It needs to be said that there are much more countries that criminalize blasphemy.<sup>85</sup> The recent report by International Humanist and Ethical Union (IHEU) has also determines that the “apostasy” in a meaning pursuant to legal persecution is a “conversion from a specific religion is outlawed and punishable by death”<sup>86</sup> and under blasphemy they mean largely actions that can be described as a simple “criticism of religion.”<sup>87</sup>

An important note must be made here: the crime of apostasy can be incriminated to any person, who qualifies under the criminal legislation of a relevant country; therefore, atheists are not

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<sup>84</sup> Freedom of Thought 2017: A Global Report on the Rights, Legal Status and Discrimination Against Humanists, Atheists and the Non-religious, the International Humanist and Ethical Union (IHEU)

<sup>85</sup> Ibid.

<sup>86</sup> Ibid., 13.

<sup>87</sup> Ibid., 14.

the only vulnerable group in this case. However, atheist are still exposed at a great extent because it is enough to only proclaim oneself an atheist to receive qualify as an apostate according to a definition. Even though not all countries that have relevant legislation are actively using it, the threat of enforcement of such laws remains. The relatively recent report by Hanibal Goitom “Laws Criminalizing Apostasy in Selected Jurisdictions” studied Afghanistan, Algeria, Bahrain, Brunei, Egypt, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen.<sup>88</sup> This report suggests that there are “countries that expressly make apostasy a capital offense,”<sup>89</sup> namely “Afghanistan, Brunei, Mauritania, Qatar, Saudi Arabia, Sudan, the United Arab Emirates, and Yemen.”<sup>90</sup> Goitom claims that despite not all of those countries enforce such laws, he names at least two identified cases of their actual enforcement in Iran and Sudan.<sup>91</sup> However, Goitom says that only Iran has executed a person convicted of apostasy up to date of the research.<sup>92</sup> In Mauritania, Saudi Arabia, Jordan and Yemen people have been charged for their online activity under this offense.<sup>93</sup>

The report finds that in some countries of the list (Afghanistan, Brunei, Sudan, and Yemen) a person convicted of apostasy receives an opportunity to repent before and after conviction, usually which makes one’s sentence much softer.<sup>94</sup> Goiton also mentions Sharia’a as a basis for including the apostasy directly or indirectly into criminal legislation.<sup>95</sup> While some countries have this provision in force already and other consider adopting it, not all countries, where this provision in law is absent, are ignoring the possibility to persecute apostates under religious laws.<sup>96</sup> In some cases there are additional punishment, like annulling of marital status of a convict or depriving of some property rights.<sup>97</sup>

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<sup>88</sup> Hanibal Goitom, “Laws Criminalizing Apostasy in Selected Jurisdictions,” (Law Library of Congress, Global Legal Research Center, 2014)

<sup>89</sup> Goitom, 1.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid., 2.

<sup>97</sup> Ibid.

## Apostasy laws, 2014



Note: Countries with an apostasy law, rule or policy at some level of government during calendar year 2014.  
Source: Pew Research Center analysis.

PEW RESEARCH CENTER

Theodorou, Angelina E., "Apostasy laws, 2014" *Pew Research Center*, 2016 July 29, [http://assets.pewresearch.org/wp-content/uploads/sites/12/2016/07/FT\\_16.08.01\\_restrictions\\_apostasy640px.png](http://assets.pewresearch.org/wp-content/uploads/sites/12/2016/07/FT_16.08.01_restrictions_apostasy640px.png)

Nevertheless, Goitom mentions that the research was dealing with the official data and did not deepen into some aspects but there is a widespread phenomenon, especially in Iran and Syria, of extrajudicial killings of people, who are suspected of apostasy.<sup>98</sup> This opens a whole new level of assessment on how do atheists enjoy their freedoms, if they have any. According to the research data only Tunisia prohibits extrajudicial punishment for this offense.<sup>99</sup> In this case atheists can face an untimely death without any prosecution even as a consequence of a mere suspicion.

However, the last report may be not exhaustive in its analysis, as it used older data and did not consider all reports from the countries in question. Newer article by Angelina Theodorou from Pew Research Center shows that, for instance, "authorities in Sudan charged 25 men for apostasy" in only in December of 2015.<sup>100</sup> This data differs from that of the last report, which is why it is necessary to pay a very detailed attention to discrepancy in information from different sources.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Angelina E. Theodorou, "Which countries still outlaw apostasy and blasphemy?" *Pew Research Center*, 2016 July 29, <http://www.pewresearch.org/fact-tank/2016/07/29/which-countries-still-outlaw-apostasy-and-blasphemy/>

## Blasphemy laws, 2014

The map displays blasphemy laws in 2014. Countries with such laws are shaded in olive green. The map includes labels for various countries, with some abbreviations used for smaller nations. An inset map provides a detailed view of the Caribbean region.

**Caribbean Region (Inset Map):**

- Bahamas
- Antigua and Barbuda
- St. Vincent & the Grenadines
- St. Lucia
- Barbados
- Grenada
- Trinidad and Tobago
- Guyana
- Suriname

**Other Countries with Blasphemy Laws (2014):**

- Ireland (Ire.)
- Denmark (Den.)
- Poland (Pol.)
- Italy
- Greece (Gre.)
- Turkey
- Malta
- Lebanon (Leb.)
- Terrace (Terr.)
- Israel (Isr.)
- Iraq
- Iran
- Afghanistan (Afgh.)
- Pakistan (Pak.)
- Bahrain (Bah.)
- Qatar
- U.A.E.
- Saudi Arabia
- Oman
- Yemen
- Somalia
- Sudan
- Egypt
- Libya
- Algeria
- Tunisia (Tun.)
- Morocco
- W. Sahara
- Mauritania
- Senegal
- Nigeria
- India
- Bangladesh
- Burma (Myanmar)
- Maldives
- Singapore
- Brunei
- Malaysia
- Indonesia

Source: Pew Research Center analysis.

Theodorou, Angelina E., “Blasphemy laws, 2014” *Pew Research Center*, 2016 July 29, [http://assets.pewresearch.org/wp-content/uploads/sites/12/2016/07/FT\\_16.08.01\\_restrictions\\_blasphemy640px.png](http://assets.pewresearch.org/wp-content/uploads/sites/12/2016/07/FT_16.08.01_restrictions_blasphemy640px.png)

[...] atheism and ‘apostasy’, especially advocating for atheism or fundamentally criticizing religion as such, are often reviled within religious belief structures; these things are often particularly and explicitly reviled within Islam; and most states with an established, enforced or deeply conservative religion today are Islamic. But nor can governments, clerics, or state bureaucracies bear all the blame, since many of the pains and oppression faced by the non-religious in such countries results from social intimidation, including pressure from schools, family, friends. The result of all this – just as many conservative and extremist followers of Islam would probably agree and desire it! – is that it is Islamic states, and Islamic populations, which pose the most prevalent and often the most serious threat to the non-religious people in their societies today.<sup>101</sup>

<sup>101</sup> Freedom of Thought 2017: A Global Report, IHEU, 14.

(29%).”<sup>102</sup> Even in the some of the U.S. states there are blasphemy laws (which are not enforced because of the Establishment Clause).<sup>103</sup> The situation with blasphemy laws is not that different from apostasy laws for atheists, because anti-blasphemy legislations usually protects some particular religion or religion as a phenomenon. Their presence in a relatively big amount of countries constitutes there not only the limitation of a right to freedom of expression but it can also be extended to a freedom of conscience, as it was established earlier that those rights go hand in hand. According to Theodorou there are also countries in Asia-Pacific that have apostasy laws but they are softer than in the Middle East and North Africa.<sup>104</sup>

It is consequential that most of the Muslim countries outlaw blasphemy one way or another, while not disclosing the actual data. However, as it is seen form the overview, European countries still also have blasphemy laws. The proper example of blasphemous legislation in Europe is the Defamation Act 2009 in Republic of Ireland,<sup>105</sup> which establishes the criminal liability for blasphemy: “A person who publishes or utters blasphemous matter shall be guilty of an offence and shall be liable upon conviction on indictment to a fine not exceeding €25,000.”<sup>106</sup> Under this rule the British actor Stephen Fry has been investigated by the Irish police for the expressing his opinion during the interview on the television after the complaint of one outraged citizen.<sup>107</sup> This is reportedly actually the first case, which prosecution started under this law since its adoption and the investigation has been stopped on the grounds that there were no more complaints and a person was only a witness but not a victim of this action.<sup>108</sup> Logically proceeding with this argument it is possible to conclude that under the same rule that very same phrase may be considered blasphemous or not depending on the amount of people who will file the complaint and claim the damages this phrase has done to them.

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<sup>102</sup> Theodorou.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Defamation Act 2009, Republic of Ireland, Number 31 of 2009, (23 July, 2009), § 36, <http://www.irishstatutebook.ie/eli/2009/act/31/enacted/en/print.html>

<sup>106</sup> Defamation Act 2009.

<sup>107</sup> Benjamin Kentish, “Stephen Fry's blasphemy probe dropped after Irish police fail to find ‘enough outraged people’,” May 8, 2017, <https://www.independent.co.uk/news/world/europe/stephen-fry-blasphemy-ireland-probe-investigation-dropped-police-gardai-not-enough-outrage-a7725116.html>

<sup>108</sup> Kentish

This practice cannot be considered favorable to atheists because they need to think twice before executing their right for a free speech and freedom of expression.

Moreover, other European countries also have defamation laws. For example, the Germany has provision in the Strafgesetzbuch (Criminal Code) about defamation.<sup>109</sup> It has been enforced lately not so long time ago, when the retired person has been fined for €500 for driving his car through Münster with stickers that the court has found blasphemous.<sup>110</sup> By the subjective opinion of the judge, those stickers did not constitute art and they offend the Pope and the cross.<sup>111</sup>

The European tradition for blasphemy laws is not new and it can be traced to a former European colony which is now situated far away geographically but has preserved piece of this traditional oppression tool. The thing is about the New Zealand that is located far away from the regions with high tensions between religious and non-religious people but still outlaws blasphemy as well:

- (1) Every one is liable to imprisonment for a term not exceeding 1 year who publishes any blasphemous libel.
- (2) Whether any particular published matter is or is not a blasphemous libel is a question of fact.
- (3) It is not an offence against this section to express in good faith and in decent language, or to attempt to establish by arguments used in good faith and conveyed in decent language, any opinion whatever on any religious subject.<sup>112</sup>

This is an extract from the Crimes Act 1961 under which New Zealand may prosecute people for blasphemy without establishing a strict criteria what can and cannot be recognized as a blasphemy but leaves this open for consideration and interpretation. This gives to a court a flexibility for arbitrary decisions, who is eligible to receive punishment under this norm. The last part of the article, which is supposed to clarify the matter and protect the freedom of expression, does not help as it again provides only with widely understood broad terms.

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<sup>109</sup> Strafgesetzbuch, § 166, [http://www.gesetze-im-internet.de/stgb/\\_166.html](http://www.gesetze-im-internet.de/stgb/_166.html).

<sup>110</sup> Justin Huggler, "Germany fines man for 'blasphemous' car bumper stickers," *The Telegraph*, 26 Feb 2016, <https://www.telegraph.co.uk/news/worldnews/europe/germany/12174806/Germany-fines-man-for-blasphemous-car-bumper-stickers.html>.

<sup>111</sup> Huggler.

<sup>112</sup> Crimes Act 1961, New Zealand, §123, <http://legislation.govt.nz/act/public/1961/0043/latest/DLM329036.html>.



International Humanist and Ethical Union in its recent report has stated that “in at least seven countries the non-religious were actively persecuted in new or evolving major incidents or trends in 2017. This includes the murder of humanists or atheists in at least: Pakistan, India, and the Maldives; we record new waves of incitement to hatred or violence in at least Malaysia, Mauritania and Pakistan; and we record new death sentences faced by alleged “apostates” (from Islam to atheism) in Sudan and Saudi Arabia.”<sup>113</sup> The last one has the worst rating according to IHEU’s ranking system<sup>114</sup> and, therefore, poses a real threat to any atheists connected to this country one way or another, despite being the party of the Arab Charter.

The last year’s report “records that in 30 countries at least one (usually more) boundary condition applies at the highest level of severity: ‘Grave violations’,”<sup>115</sup> “55 countries which meet the next highest level of severity: ‘Severe Discrimination’.”<sup>116</sup>

In particular, one of the troubling countries is Egypt, which shows a sign of worsening a situation for atheists. The recent news show that it moves towards infringement of atheists’ rights and despite the existing blasphemy laws Egyptian Parliament seeks to absolutely “criminalize the act of not believing in God — no insults or defamation of another faith required.”<sup>117</sup> “The Egyptian government has long punished blasphemy and has targeted atheists since the 2014 inauguration of President Abdel-Fattah el-Sissi. At that time — three years after the 2011 revolution that ousted longtime Egyptian President Hosni Mubarak — the government announced a national plan to ‘confront and eliminate’ atheism.”<sup>118</sup>

The persecution of atheists in Egypt is confirmed by another situation with Egyptian blogger, who have been silenced and expelled from the debates on television “after the host accused him of being “confused and unreliable” and being in need of psychiatric treatment. Mohammad Hashem was presenting his reasons for being an atheist on Alhadath Alyoum TV when host Mahmoud Abd Al-

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<sup>113</sup> Freedom of Thought 2017, 12.

<sup>114</sup> Ibid., 72.

<sup>115</sup> Ibid., 13.

<sup>116</sup> Ibid., 14.

<sup>117</sup> Kimberly Winston, “Egyptian Parliament considers outlawing atheism,” *USA Today*, Jan. 4, 2018, <https://www.usatoday.com/story/news/world/2018/01/04/egyptian-parliament-considers-outlawing-atheism/1005441001/>.

<sup>118</sup> Winston.

Halim told him he was being “inappropriate”.<sup>119</sup> Another atheist blogger has been detained by Egypt police just recently during the preparation of the research for “promoting atheism.”<sup>120</sup> IHEU confirms the problems in Egypt in its report: “According to the law, every citizen is theoretically equal and discrimination based on religion is criminalized in the penal code. In practice, however, there is significant discrimination, with disproportionate use of the law against religious minorities, and atheists have been repeatedly maligned by media and by government officials.”<sup>121</sup> It is possible to conclude that Egypt is right now in the situation that in case nothing will be changed atheists will face severe punishment for not concealing their views and not remaining in a shadow. This would be a grave violation of their rights but the situation only escalates and does not show any signs of improvement.

The report contains the warning about Western countries and their current practices and policies:

Many western and European countries are currently engaged in national and intra-national debate about rising nationalism and authoritarianism (this was the main subject of our Editorial Introduction last year). These debates are often thereby seriously questioning the inevitability of social and political progress generally. The warning carried by this report is not only that we record in several countries incidents and trends of active persecution, as if they just happened, independently and spontaneously. Rather, it is that this looks very much like a pattern of regression on a global scale.<sup>122</sup>

This trend can be seen on the recent example of Bavaria that occurred during the composition of this research: “Premier Markus Soeder’s proposal to display the Christian symbol in all regional government buildings is almost certain to be challenged in court for breaching religious neutrality laws. But Soeder said the crucifix was being displayed not as a Christian symbol but as a symbol of the identity of Bavaria, Germany’s richest and most conservative state.”<sup>123</sup> This proves that the

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<sup>119</sup> Lucy Pasha-Robinson, “Atheist kicked off live Egypt TV show for ‘inappropriate’ ideas: ‘Go straight to a psychiatric hospital’,” *Independent*, 9 March 2018, <https://www.independent.co.uk/news/world/middle-east/egypt-tv-atheist-kicked-off-live-believe-in-god-islam-muslim-religion-allah-blasphemy-illegal-a8247651.html>.

<sup>120</sup> “Egypt authorities arrest atheist blogger”, *News24*, May 6, 2018, <https://www.news24.com/Africa/News/egypt-authorities-arrest-atheist-blogger-20180506>.

<sup>121</sup> Freedom of Thought 2017, 37.

<sup>122</sup> Freedom of Thought 2017, 16.

<sup>123</sup> “Plan by Bavarian conservatives to display crosses triggers row,” *Reuters*, April 25, 2018, <https://www.reuters.com/article/us-germany-bavaria-cross/plan-by-bavarian-conservatives-to-display-crosses-triggers-row-idUSKBN1HW13W>.

warning if IHEU is not arbitrary and it actually has examples of ongoing attempts to coercively change the practice established by the existing secular movement.

## 2.2 Practice of Countries with less Severe Violations

In the European Union the alongside with the abovementioned *Kokkinakis* case the *Buscarini and Others v San Marino*<sup>124</sup> is another landmark decision that directly influences application of the European Convention of Human Rights with regard to obtaining public offices in a secular and non-discriminative manner.

The case has started after the applicants have been elected to the Parliament of San Marino and refused to give an oath with religious connotation.<sup>125</sup> They have alternative oath without religious wording it has been recognized as a not valid and “the General Grand Council adopted a resolution proposed by the Captains-Regent ordering the applicants to retake the oath, this time on the Gospels, on pain of forfeiting their parliamentary seats.”<sup>126</sup> Applicants took the required oath but reserved the violation of their rights.<sup>127</sup>

The decision of the European Court of Human Rights has found the violation under the next circumstances:

39. The Court notes that at the hearing on 10 December 1998 the Government sought to demonstrate that the Republic of San Marino guaranteed freedom of religion; in support of that submission they cited its founding Statutes of 1600, its Declaration of Rights of 1974, its ratification of the European Convention in 1989 and a whole array of provisions of criminal law, family law, employment law and education law which prohibited any discrimination on the grounds of religion. It is not in doubt that, in general, San Marinense law guarantees freedom of conscience and religion. In the instant case, however, requiring the applicants to take the oath on the Gospels was tantamount to requiring two elected representatives of the people to swear allegiance to a particular religion, a requirement which is not compatible with Article 9 of the Convention. As the Commission rightly stated in its report, it would be contradictory to make the exercise of a mandate intended

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<sup>124</sup> *Buscarini and Others v. San Marino*, Application No. 24645/94, 1999.

<sup>125</sup> *Buscarini and Others v. San Marino*, §§ 7-8.

<sup>126</sup> *Ibid.*, §§ 8-12.

<sup>127</sup> *Ibid.*, § 13.

to represent different views of society within Parliament subject to a prior declaration of commitment to a particular set of beliefs.

40. The limitation complained of accordingly cannot be regarded as ‘necessary in a democratic society’. As to the Government’s argument that the application ceased to have any purpose when Law no. 115/1993 was enacted, the Court notes that the oath in issue was taken before the passing of that legislation.

41. In the light of the foregoing, there has been a violation of Article 9 of the Convention.<sup>128</sup>

What the European Court of Human Right has actually did, it conducted the research on the historical background of San Marino and legal scope of current legislation<sup>129</sup> in force and concluded that until the necessity in a democratic society was the missing key element for recognition of this norm as a legitimate and appropriate to enforce. This constituted the compatibility with Article 9 (2) of ECHR because the limitation has not met adequate standard and the framework for future cases was outlined by the European Court of Human Rights. Therefore, the meaning of this decision for the protection of atheists is indisputable.

The main legal act in Ukraine that regulates the question of protection of rights and actually establishes, which rights and freedoms are protected, is the Constitution of Ukraine.<sup>130</sup> There are three main articles in the Constitution of Ukraine that regulate the question of protection of rights of atheists. The first one is Article 24 that guarantees equality of rights before the law regardless of, in particular, religious and other beliefs.<sup>131</sup> It is interesting that the phrasing of the Article can be interpreted equally “beliefs” and “convictions” in the original wording.<sup>132</sup> The familiar question on how does the term “other beliefs” is being interpreted arises but it is answered in another article.

Article 34 of Ukrainian Constitution establishes right to three freedoms important for further understanding of a Ukrainian approach to the protection of atheists:

Everyone is guaranteed the right to freedom of thought and speech and to the free expression views and beliefs.

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<sup>128</sup> Ibid., §§ 39-41.

<sup>129</sup> Ibid., §§ 36-39.

<sup>130</sup> Конституція України, (Відомості Верховної Ради України (ВВР), 1996, № 30, ст. 141; my translation)

<http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

<sup>131</sup> Конституція України, стаття 24

<sup>132</sup> Ibid., стаття 24

Everyone has the right to freely collect, store, use and spread information by oral, written or other means of one's choice.

The exercise of these rights may be limited by law in the interests of national security, territorial integrity or public order, with the purpose of prevention of unrest or crimes, protection of the health of the population, reputation or rights of other persons, prevention of the publication of confidentially received information, or support the authority and impartiality of justice.<sup>133</sup>

Another one is Article 35 that elaborates on a matter of other freedoms:

Everyone has the right to freedom of a worldview and religion. This right includes the freedom to profess any religion or not to profess any religion, to perform without restraint alone or collectively religious worship and rituals and to conduct religious activity.

The exercise of this right may be limited by law only in the interests of protection of the public order, health and morality of the population or protection of the rights and freedoms of other persons.

[...]

No one shall be excused of one's duties before the State or refuse to abide the laws for reasons of religious beliefs. In the event that the performance of military duty is contrary to the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service.<sup>134</sup>

It is notable how the logic behind the three articles is consistent, upholding the same principles and protecting freedoms in a similar manner with a possible measure of reasonable limitations. Article 21 reinforces this by declaring those rights "inalienable and inviolable."<sup>135</sup> Those provision sound precise and reliable, even specifically outlining the right not to profess religions at all, which is even more precise formulation than in international instruments because it does not need clarification and does not create ambiguity. This division gives an insight that Ukrainian legislators clearly knew the difference between professing a religion and not professing one. This will come in handy when realizing the provisions of a next law.

The provisions of the next important for this research law are controversial to the cause of the protection of rights of atheists. One of the developments of the Law of Ukraine On the Freedom

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<sup>133</sup> Ibid., стаття 34.

<sup>134</sup> Ibid., стаття 35.

<sup>135</sup> Ibid., стаття 21.

of Conscience and Religious Organizations<sup>136</sup> is that it in its Article 3 precisely describes the scope of the right on a freedom of conscience and guarantees it.<sup>137</sup> This scope includes “the freedom to have, receive and change religion or belief in one’s choice and freedom to practice alone or in association with others any religion or not to practice any religion, to send religious cults, to express openly and freely to disseminate one’s religious or atheistic beliefs.”<sup>138</sup> Therefore, this is one rare legal act that directly refers to the atheistic beliefs. That is another development, which is not common even for the international acts considered in the first chapter.<sup>139</sup>

The law than deepens the interpretation of the right for freedom of conscience by saying that “[n]o one can set obligatory beliefs and outlooks. No coercion in determining a citizen's attitude to religion, confession or denial of confession of religion, participation in or participation in worship, religious ceremonies and ceremonies, and the teaching of religion is not allowed.”<sup>140</sup> It looks like a sound rule, which in fact contradicts to the provisions of Code of Labor Laws of Ukraine on establishing religious holidays of particular confession as a national holiday and a day-off for all people regardless of their actual convictions.

The next Articles 5 keeps up the policy of separation of state and church and reinforces the secular nature of trying to reach the balance in protection of rights between people who “profess a religion and do not profess one.”<sup>141</sup> This article also constitutes the non-interference of the state in the activities of religious organizations conducted in accordance with the law.<sup>142</sup> Interestingly, just recently the President of Ukraine Petro Poroshenko has officially addressed the Patriarch Bartholomew I of Constantinople asking about Autocephaly for Orthodox Church in Ukraine, which was approved by People’s Deputies of the Verkhovna Rada (Parliament).<sup>143</sup> Of course, as noted in the

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<sup>136</sup> Закон України “Про свободу совісті та релігійні організації” (Відомості Верховної Ради УРСР (ВВР), 1991, №25, ст.283), <http://zakon2.rada.gov.ua/laws/show/987-12/print1509554349368634> (my translation).

<sup>137</sup> Закон України “Про свободу совісті та релігійні організації”, стаття 3.

<sup>138</sup> Ibid., стаття 3.

<sup>139</sup> See chapter 1.

<sup>140</sup> Ibid., стаття 3

<sup>141</sup> Ibid., стаття 5

<sup>142</sup> Ibid.

<sup>143</sup> “Парламент підтримав звернення Президента про автокефалію Православної Церкви в Україні”, *Інститут релігійної свободи*, Київ, 19.04.2018

[http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1890%3A1&catid=34%3Aua&Itemid=61&lang=uk](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1890%3A1&catid=34%3Aua&Itemid=61&lang=uk).

article the practice of such actions usually require the official address of higher representatives of the state but the President Poroshenko in his address claims to represent the whole nation and Orthodox Christians in particular, which is a logical fallacy because the whole nation cannot be involved in such action and representation of interests of specific religious group does not go in line with the rules of the Article 5.<sup>144</sup> The question if it can be considered the interference of the state in a religious activity (even if such interference was a positive one) is still open from a legal point of view but it seems to have controversial nature and may be a subject to arguments. The reasoning behind the secular article is still related to “what are the tax-payers’ money are being spent for?” question and among those tax-payers are atheists as well as the people of any other religious denominations, who potentially may not support the activities sponsored with their taxes.

Going back, the mentioning of atheism in the Law of Ukraine On the Freedom of Conscience and Religious Organizations was not accidental, which is confirmed by the next provision found in the Article 6 of the aforementioned act, which is dedicated to separation of a church from the school, and this provision states that “there is a prohibition on limitation of any scientific research, including those financed by the State, propagating of their outcomes or including them into general educational programs by the feature of their conformity or non-conformity with any religion or atheism.”<sup>145</sup> The role of this article is to prevent any kind of ideology from influencing public schools and indoctrination of pupils. However, alongside with this goal the article contributes to the set of rules containing direct references to atheism.

The Russian Federation stands as one of the countries where the formal integrity of the norms on protection of rights of atheists contradicts to current practice. With this purpose it would be appropriate to show this on the recent cases. First thing to mention is that the Constitution of the Russian Federation proclaims the Russian Federation to be a secular state.<sup>146</sup>

In its Article 19 the Constitution of the Russian Federation guarantees equality of rights and freedoms regardless of religion.<sup>147</sup> The Article 28 guarantees “the freedom of conscience, the freedom

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<sup>144</sup> Ibid.

<sup>145</sup> Закон України “Про свободу совісті та релігійні організації”, стаття 6.

<sup>146</sup> The Constitution of the Russian Federation, The Constitution of the Russian Federation (was Adopted at National Voting on December 12, 1993), *Rossiiskaya Gazeta*, December 25, 1993, Article 14, <http://www.constitution.ru/en/10003000-03.htm> (English translation by "Garant-Service").

<sup>147</sup> The Constitution of the Russian Federation, Article 19.

of religion, including the right to profess individually or together with other any religion or to profess no religion at all, to freely choose, possess and disseminate religious and other views and act according to them.”<sup>148</sup> Article 29 stipulates freedom of speech and prohibits incitement of hatred, religious in particular.<sup>149</sup>

Despite the legislative norms constitute the observance and dominance of human rights for atheists, recent events showed that it was even an attempt to use the blasphemy law in favor of atheists and protect their feelings but it failed.<sup>150</sup> The main problems outlined within Russian legislation are that it does not contain a strict definition of what is a secular state, the Orthodox Christianity is mentioned in a Law On the Freedom of Conscience and Religious Organizations as a religion with a special role and this all it worsened by the recent cases.<sup>151</sup>

Namely, one of the renowned cases from Russian Federation is about blogger who played Pokémon Go in the building of the Orthodox Church.<sup>152</sup> Human Rights Watch writes on this case:

The offense of ‘insult,’ one of the crimes of which Sokolovsky was convicted, was added to Russia’s criminal code in 2013, a year after several members of the feminist protest punk group Pussy Riot were convicted of criminal ‘hooliganism’ in retaliation for their anti-Putin performance in a Moscow cathedral. Parliament adopted a law amending article 148 of the criminal code to criminalize ‘a public action expressing clear disrespect for society and committed in order to insult the religious feelings of believers.’ The law provides no definition of ‘religious feelings’ and sets no threshold for ‘offending’ them, allowing prosecutors and courts tremendous discretion to target critical speech. Sanctions include fines and up to a one-year jail sentence.<sup>153</sup>

This situation depicts the real situation in Russian Federation with observance of atheists’ rights. It is impossible to predict what can be considered as an offence of somebody’s feelings under this legislation and it, therefore, may be equated with some form of a blasphemy law.

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<sup>148</sup> The Constitution of the Russian Federation, Article 28.

<sup>149</sup> Ibid., Article 29.

<sup>150</sup> “В Краснодаре прекращено дело об оскорблении чувств атеистов,” *Радио Свобода*, 23.04.2018, <https://www.svoboda.org/a/29187293.html>.

<sup>151</sup> Марьяна Торочешникова, “Осторожно, религия!”, *Радио Свобода*, 26.12.2017, <https://www.svoboda.org/a/28937813.html>.

<sup>152</sup> “Russia: Pokemon Go Blogger Convicted,” *Human Rights Watch*, May 11, 2017, <https://www.hrw.org/news/2017/05/11/russia-pokemon-go-blogger-convicted>.

<sup>153</sup> “Russia: Pokemon Go Blogger Convicted.”



The United States have a complicated system of protection of rights of atheists, built in a bigger extent not with acts but with precedents. Moreover, the United States should be perceived separately and precisely not only because it establishes its protective legal framework by precedents and not solely because of the fact that the atheistic movement is on the rise there<sup>154</sup> but because of its unusual situation with correlation of median wealth (which is relatively high) and religious influence (which is also relatively high and it is unusual).<sup>155</sup> This puts American atheists in a position, when the effective human rights protection mechanisms can be established by the government but the religious pushback interferes with this protection. This struggle is well-reflected in cases studied in the research on this matter and it is valuable source of knowledge on how the atheists' protection system can be established and function even in a circumstances of a high suspicion of a dominating society and stigmatization.

Nevertheless, the foundation for this system is stipulated in the supreme law of the United States, the Constitution of the United States, which establishes two general principles for protection of atheists; first rule which is found in the original text of the Constitution is a rule established by the Article VI that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”<sup>156</sup> This is a proto-secular norm, which only makes it clear that there shall not be a discrimination in respect of representation of people of plural beliefs and opinions in the bodies of a democratic state (thus establishing secular principles of governmental formation). The second norm, which is also known as the Establishment Clause, can be found already in the Bill of Rights and stipulated in a following provision: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”<sup>157</sup> What makes the Establishment Clause outstanding in the row of similar acts is the conjunction of the prohibition of establishing any kind of religion alongside with establishing the freedom of speech and assembly, which serves as a guarantee that those principles are interdependent and cannot be striped one by one. However, there is still no direct mentioning of a freedom not to exercise any religion and this may be interpreted only under the secular provision of a

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<sup>154</sup> Hooper.

<sup>155</sup> Max Roser, “Economic Growth,” Our World In Data, (2018), accessed April 1, 2018  
<https://ourworldindata.org/economic-growth>.

<sup>156</sup> U.S. Constitution, Article VI, §3.

<sup>157</sup> U.S. Constitution, Amendment 1.

first part of the sentence. This is substantiated by the rulings of the Supreme Court that declared the equality of religious and nonreligious people before the law in terms of protection of their rights under the Establishment Clause.<sup>158</sup> In other words, it is absolutely possible to understand and provisions referring to an exercise of religious freedom in the United States as to a provision that protects the exercise of nonreligious beliefs. The further interpretation of the legislation of the United States will be made keeping this fact in mind.

Next act that continues the policy of freedom of religion is the Religious Freedom Restoration Act of 1993 (RFRA).<sup>159</sup> This act elaborates on the matter introduced by the First Amendment grounding on the former cases decided by the Supreme Court and its purpose is best described in the Section 3:

(a) In General. — Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Exception. — Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person

(1) is in furtherance of a compelling governmental interest;

and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial Relief. — A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.<sup>160</sup>

Alongside to the ensured norm on the freedom of religion (which as established earlier in case of the US is understood as freedom not to profess one) this act has a provision, which reminds of the reservation of the Article 9 (2) of European Convention of Human Rights about the reasonable restrictions.<sup>161</sup> This is intended to be a safeguard measure, which has been broadly interpreted by the

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<sup>158</sup> See *McCreary County v. ACLU of Kentucky*, 545 U.S. 844 (2005).

<sup>159</sup> The Religious Freedom Restoration Act of 1993 (RFRA), Pub. L. No. 103-141, 107 Stat. 1488 (16 November 1993).

<sup>160</sup> The Religious Freedom Restoration Act, Section 3.

<sup>161</sup> European Convention on Human Rights, Article 9 (2).

Supreme Court in Hobby Lobby case,<sup>162</sup> which led to confusion of how this provision should be understood correctly.

It is important to note that in the United States according to the Aleksandra Sandstrom from Pew Research Center “[a]ll but four state constitutions – those in Colorado, Iowa, Hawaii and Washington – use the word “God” at least once. The constitutions in Colorado, Iowa and Washington refer to a “Supreme Being” or “Supreme Ruler of the Universe,” while Hawaii’s constitution makes reference to the divine only in its preamble, which states that the people of Hawaii are “grateful for Divine Guidance.”<sup>163</sup> “Most state constitutions – 34 – refer to God more than once. Of the 116 times the word appears in state constitutions, eight are in the Massachusetts constitution, and New Hampshire and Vermont have six references each. Perhaps surprisingly, all three of these states are among the least religious in the country.”<sup>164</sup> That what the finding says and it contradicts to the basic logic, because if to think of the truly secular country, it would be impossible to accept such wording in a highest legal instrument of the state.

This could potentially pose a serious and obvious problem for atheists living in those states unless for the case *Torcaso v. Watkins*, 367 U.S. 488 (1961).<sup>165</sup> This case emerged from the next circumstances: “[t]he appellant Torcaso was appointed to the office of Notary Public by the Governor of Maryland, but was refused a commission to serve because he would not declare his belief in God. He then brought this action in a Maryland Circuit Court to compel issuance of his commission, charging that the State's requirement that he declare this belief violated ‘the First and Fourteenth Amendments to the Constitution of the United States. ...’ [...] The Circuit Court rejected these federal constitutional contentions, and the highest court of the State, the Court of Appeals, affirmed, [...] holding that the state constitutional provision is self-executing, and requires declaration of belief in God as a qualification for office without need for implementing legislation.”<sup>166</sup>

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<sup>162</sup> *Burwell v. Hobby Lobby*, 573 U.S. \_\_\_\_ (2014).

<sup>163</sup> Aleksandra Sandstrom, “God or the divine is referenced in every state constitution”, *Pew Research Center*, 17 August 2017, <http://www.pewresearch.org/fact-tank/2017/08/17/god-or-the-divine-is-referenced-in-every-state-constitution/>.

<sup>164</sup> Sandstrom, “God or the divine is referenced in every state constitution.”

<sup>165</sup> *Torcaso v. Watkins*, 367 U.S. 488 (1961).

<sup>166</sup> *Torcaso v. Watkins*.

This may seem as a violation of the basic principles of secularism, stipulated in the US Constitution, which reasoning was upheld by the Supreme Court in respect that “[t]his Maryland religious test for public office unconstitutionally invades the appellant's freedom of belief and religion, and therefore cannot be enforced against him.”<sup>167</sup> Therefore, The Supreme Court has resolved this issue in a straightforward manner, which was still not very expected by some. However, the decision is imperfect because the court, namely Justice Black, unexpectedly has made a reference in a footnote 11 to a Secular humanism as a religion: “Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others.”<sup>168</sup> This decision therefore stands as controversial, because, on a one hand it made clear that secular provision of Article VI of the US Constitution are to be applied directly in case of contradiction with other states’ Constitutions but undermined the findings that secular humanism is not the same as a religion.<sup>169</sup> The reasoning behind this could be an attempt of a Court to show that nonreligious beliefs are similar to religious when it comes to legal protection and the norms protecting the free exercise of religion could be understood as those protecting the nonreligious people.

However, this decision does not constitute that the matter has been finally resolved. The very fact that this provision exists disturbs some of the representatives of the atheistic society.<sup>170</sup> They compare the existence of this provision in the legislation to potential existence of norms regarding Jews, African-Americans or women and claim that it would cause the outrage among society,<sup>171</sup> even if the Supreme Court would have had similar decision, recognizing this norm as unconstitutional. They even meet a resistance from religiously biased politicians. At that time, according to the article, the case of abuse of the dead norms in states’ Constitutions keep happening while people still winning such cases, but for some reason public officials try to invoke it again and again.<sup>172</sup>

Nevertheless, the United States have recent cases that have another vector of thinking. The famous *Burwell v. Hobby Lobby* case has raised a question of religious personality of a for-profit

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<sup>167</sup> Ibid.

<sup>168</sup> Ibid., footnote 11.

<sup>169</sup> Paul Kurtz, *What Is Secular Humanism?* (Prometheus Books, 2007).

<sup>170</sup> Laurie Goodstein, “In Seven States, Atheists Push to End Largely Forgotten Ban”, *The New York Times*, 6 Decemver 2014, [https://www.nytimes.com/2014/12/07/us/in-seven-states-atheists-push-to-end-largely-forgotten-ban-.html?\\_r=0](https://www.nytimes.com/2014/12/07/us/in-seven-states-atheists-push-to-end-largely-forgotten-ban-.html?_r=0).

<sup>171</sup> Goodstein.

<sup>172</sup> Ibid.

corporate entity.<sup>173</sup> According to the case, the question was either the provisions about mandatory contraception insurance are applicable in case when the United States Department of Health and Human Services (HHS) “demand[s] that three closely held corporations provide health-insurance coverage for methods of contraception that violate the sincerely held religious beliefs of the companies’ owners.”<sup>174</sup> The Supreme Court has considered a lot of precedents before it has reached the conclusion that “[t]he contraceptive mandate, as applied to closely held corporations, violates RFRA.”<sup>175</sup>

The main problem with this decision is that it, in fact, distorts logic of the previous achievements of the Supreme Court because by the affiliation of beliefs of the owners with their closely held corporate entity the Supreme Court endangered the workers, whose insurance policy now depends on their employer’s religion. In particular, it puts atheists in an inferior position because despite the recognition by the Supreme Court of their equality with religious people it is still how atheists can invoke this provision in respect of their closely held corporations.

Although there is no a precise explanation how this can be equally applies by atheists, who do not have any common beliefs regarding medicine (because it have been established, it is out of scope for which atheism gives an answer) there are two logical ways of explaining how this can be understood: the first one means that although atheists are equal with religious people but they do not have some universally recognized beliefs in respect of medical intrusions and, therefore, cannot invoke the mentioned provision if they are owners of closely held corporation; the second way is that any atheist owning a closely held corporation can claim any belief to be sincere in regard to medical intrusions and it can cause a bureaucratic chaos and non-transparent way of choosing insurance plans for workers. Both solutions are equally pointless and harmful. This consideration on agreeability and controversy of the decision is reinforced by the division amongst the Supreme Court itself because the decision has been adopted 5 to 4 votes.<sup>176</sup>

This decision stands as controversial also among atheists, who actively criticize it, like it does George Takei cited by newspapers: “‘Hobby Lobby is not a church. It’s a business — and a big one

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<sup>173</sup> *Burwell v. Hobby Lobby*, 573 U.S. \_\_\_\_ (2014).

<sup>174</sup> *Burwell v. Hobby Lobby*.

<sup>175</sup> *Ibid.*

<sup>176</sup> Paul M. Barrett, “A Supreme Feud Over Birth Control: Four Blunt Points,” *Bloomberg*, July 7, 2014,

<https://www.bloomberg.com/news/articles/2014-07-07/supreme-court-feuds-over-the-hobby-lobby-birth-control-ruling>.

at that. Businesses must and should be required to comply with neutrally crafted laws of general applicability,' Takei wrote. 'Your boss should not have a say over your healthcare. Once the law starts permitting exceptions based on 'sincerely held religious beliefs' there's no end to the mischief and discrimination that will ensue'.”<sup>177</sup>

In conclusion of the chapter, the set of problems can be identified:

- 1) there is an extensive number of countries, where the fundamental rights of atheists are not only disrespected but endangered. They can freely enjoy neither the freedom of conscious, nor freedom to manifest their views. The constitutive feature of most of those countries is that they are usually governed by the Islamic law and neglect the human rights instruments, both international and national;
- 2) there are countries where atheists experience only limited restrictions, such as blasphemy law that have been proved to be not usually enforceable under jurisdiction with highly developed human rights protection mechanisms;
- 3) the countries with considerably less pressure on atheists utilize other tools of infringement of their rights, such as religious requirements to governmental service (which is often on the books and not enforced due to superior judgements but it is still in the legislation), going out of the usual boundaries of the understanding religious freedoms (in favor of religion) and laws with uncertain and vague interpretations that can easily be exploited by enforcers;
- 4) court decisions can be both beneficial to atheists and restraining because of the unclear way of reasoning of the court, which impedes the progress in establishing the strict unanimous practice for protection of atheists.

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<sup>177</sup> Shadee Ashtari, “George Takei Blasts High Court’s Birth Control Ruling, Calls For Hobby Lobby Boycott,” *Huffpost*, Jul 02, 2014, [https://www.huffingtonpost.com/2014/07/01/george-takei-hobby-lobby\\_n\\_5548303.html](https://www.huffingtonpost.com/2014/07/01/george-takei-hobby-lobby_n_5548303.html).

### 3. PROBLEM OF RELIGIOUS INFLUENCE ON EDUCATION

This chapter studies the important for the democratic society issue: a separation of a church and school. This is a matter that is being under consideration because of the potential ideological influence on the children that can be done by biased people for money that are being provided by the all kind of tax-payers, including atheists and religious people. This chapter is a logical continuation of a previous chapter where the question of a wall of separation between state and church in secular countries is being raised. This term has been established earlier by Thomas Jefferson, who claimed that there should have been such a separation for the purposes of non-intrusion of the state into private business of convictions of people.<sup>178</sup> In respect of education it is notable that in democratic jurisdictions the separation of church and school is in particular actual besides of simply the separation of the church and state.<sup>179</sup> Nevertheless, the problems appear and those problems will be highlighted in the following chapter.

The consequences of nebulosity in terms and approaches to this matter in law are reflected in reality. Unfortunately, the countries with assumed domination of rule of law and democracy are not protected from deviations in cases with involvement of religious feelings. In particular, in education. For instance, according to the IHEU report “in Northern Ireland 94% of state funded schools are religious in character.”<sup>180</sup>

One of the most famous precedents in Europe is the case of *Lautsi v. Italy*. There were two sequential cases, actually, *Lautsi v. Italy*<sup>181</sup> and *Lautsi and others v. Italy*,<sup>182</sup> one repealing findings of another. The factual circumstances of the case were that the mother of the children attending the school have raised a concern over the crucifixions publicly displayed in classrooms, which contradicted to a principle of a “secularism in accordance with which she wished to bring up her

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<sup>178</sup> Thomas Jefferson, “Jefferson's Letter to the Danbury Baptists: The Final Letter, as Sent,” *The Library of Congress Information Bulletin*, The Library of Congress, June 1998, <https://www.loc.gov/loc/lcib/9806/danpre.html>. (accessed April 12, 2018).

<sup>179</sup> Fleur de Beaufort and Patrick van Schie, “Separation of church and state in Europe,” European Liberal Forum asbl, 2012, <http://www.cjg.be/wp-cont/uploads/2015/07/Separation2012.pdf>.

<sup>180</sup> Freedom of Thought 2017, 19.

<sup>181</sup> *Lautsi v. Italy* App no 30814/06, ECtHR, 3 November 2009.

<sup>182</sup> *Lautsi and others v. Italy* App no 30814/06, ECtHR, 18 March 2011.

children.”<sup>183</sup> The school governors by the majority of votes have decided to keep symbols on the walls.<sup>184</sup> She tried to appeal this decision to the Administrative Court but failed.<sup>185</sup> Italian court system and administrative bodies tried hard to justify the presence of those symbols in a public school but first decision seemed to be absolutely in line with limitations towards display of such symbols imposed by the Article 9 (2) of the ECHR.

The first case was resolved by the extremely precise and detailed investigation of the historical aspect and legal provisions of both Italian legislation and provision of European Convention of Human Rights. This case concerns both right on education and right to manifest one’s religion or beliefs. The findings of that investigation are reflected in the initial decision of the Second Section of the European Court of Human Rights: “To conclude, effective protection of the rights guaranteed by Article 2 of Protocol No. 1 and Article 9 of the Convention requires States to observe the strictest denominational neutrality. This is not limited to the school curriculum, but also extends to ‘the school environment’. As primary and secondary schooling are compulsory, the State should not impose on pupils, against their will and without their being able to extract themselves, the symbol of a religion with which they do not identify. In doing so, the respondent Government have violated Article 2 of Protocol No. 1 and Article 9 of the Convention.”<sup>186</sup> This wording was simple and substantiated. However, the further political pressure has led to a change of circumstances.<sup>187</sup>

Nevertheless after some time and big pressure, it became obvious to the wide publicity, that the European Court of Human Rights expressed the powerlessness to uphold the legal consistency of its decisions in questions with religious undertone. This landmark case is the cornerstone and unfortunate example of legal mistreatment of atheists in a field of education and display of religious symbols in a present-day Europe. The proof of this is that at the first decision, the Chamber of the Second Section of the Court has found the violation of the Convention, but after the tempestuous reaction of the Italian people, government, European Parliament and other European countries the Grand Chamber overturned this decision. The arguments of the court in the first instance were that “57. The Court considers that the compulsory display of a symbol of a particular faith in the exercise

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<sup>183</sup> *Lautsi v. Italy*.

<sup>184</sup> *Ibid*.

<sup>185</sup> *Ibid*.

<sup>186</sup> *Ibid*.

<sup>187</sup> *Lautsi and others v. Italy*.



of public authority in relation to specific situations subject to governmental supervision, particularly in classrooms, restricts the right of parents to educate their children in conformity with their convictions and the right of schoolchildren to believe or not believe. It is of the opinion that the practice infringes those rights because the restrictions are incompatible with the State's duty to respect neutrality in the exercise of public authority, particularly in the field of education.”<sup>188</sup> However, the Grand Chamber overrules this decision calling the crucifix “an essentially passive symbol” without explanation, what does it mean. It states that this case is different from the other famous case of *Dahlab vs. Switzerland*, where Muslim teacher was prohibited to manifest her religion by wearing a headscarf in front of the children at school because of the reason of their “tender age.”<sup>189</sup>

Such an abrupt shift testifies the obvious dependence of the European Court of Human Rights on the momentary opinion of the religious majority and a current political mood. Despite the descending opinions, it is possible to trace how rapidly the rhetoric of the Court changed since the first decision in a term less than a year and a half. There is no doubt that such frivolous interpretations have been caused only by the uncertainty in the definitions in the international instruments, which had given an unmeasured margin of appreciation to every state. Literally speaking, the atheists' minority was disregarded in favor of religious majority using the existing law to justify their dominance even in contradiction to previous logic of Court's decisions. This situation was quite similar to the case of 2006 in Romania, where the National Council for Combating Discrimination (CNCD) has adopted a Decision 323/2006, prohibiting placing religious symbols in public schools, which has been overruled because of the displeased public response<sup>190</sup>. It can be even considered as an obvious violation of Court's independence, as well as the freedoms listed in protection of atheists' rights and principles of a secular country.

Another perspective is brought by the case from the USA *McCullum v. Board of Education*<sup>191</sup> following *Everson v. Board of Education* a year before, where it was established that the First Amendment protects non-believers.<sup>192</sup> The Supreme Court ruled that public schools are not entitled to coerce all pupils to religious instruction classes. This was a decision, which determined the further

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<sup>188</sup> Ibid.

<sup>189</sup> *Dahlab vs. Switzerland*.

<sup>190</sup> “Dispute over public religious symbols in Romania”, *Ekklesia*, 12 December 2006

[http://www.ekklesia.co.uk/content/news\\_syndication/article\\_061212rom.shtml](http://www.ekklesia.co.uk/content/news_syndication/article_061212rom.shtml)

<sup>191</sup> *McCullum v. Board of Education*, 333 U.S. 203, 1948.

<sup>192</sup> *Everson v. Board of Education*, 330 U.S. 1, 1947.

atheists' protection at the USA. However, if we look precisely on the wording of the decision, we will see the true subtext. The investigation showed "...the use of tax-supported property for religious instruction and the close cooperation between the school authorities and the religious council in promoting religious education. The operation of the state's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects. Pupils compelled by law to go to school for secular education are released [...] in part from their legal duty upon the condition that they attend the religious classes. This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith."<sup>193</sup> It could have seemed legit and just, but its reference devalues the meaning of this decision for atheistic minority protection. Therefore, this decision is dictated by the responsibility more before the taxpayers, than before any community or minority.

The next cases *Zorach v. Clauson* 1952,<sup>194</sup> *Torcaso v. Watkins* 1961<sup>195</sup> (mentioned earlier) upheld the tone made by the previous two and would have established an effective secular rules, if only not an overwhelming public reaction and resistance of the government and Congress. Amandine Barb has researched this outcome and concluded, that "despite the explicit legal recognition of non-believers' rights under the 1st Amendment, to challenge and transcend the 'moral boundary' of religion remains difficult." <sup>196</sup> Until now "[...] for many Americans, the atheist is not only a social misfit, he also remains a less reliable citizen, less 'morally fit' than others to properly serve society and the common good. [...] in today's American society, religion continues to be perceived as one of the basis of 'civic solidarity' and of a certain 'moral order'."<sup>197</sup>

*Lemon v. Kurtzman*<sup>198</sup> is another landmark case for the United States' field of the protection of atheists' rights. The circumstances of the case were complicated and created the situation of a supposed accord with the Constitution.<sup>199</sup>

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<sup>193</sup> *McCollum v. Board of Education* ,1948.

<sup>194</sup> *Zorach v. Clauson*, 343 U.S. 306, 1952.

<sup>195</sup> *Torcaso v. Watkins*, 367 U.S. 488, 1961.

<sup>196</sup> Amandine Barb, An atheistic American is a contradiction in terms: Religion, Civic Belonging and *Collective Identity in the United States*, European journal of American studies, Vol 6, No 1, 2011, para 24 <http://ejas.revues.org/8865>.

<sup>197</sup> Barb.

<sup>198</sup> *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

<sup>199</sup> *Lemon v. Kurtzman*, 603.

Rhode Island's 1969 Salary Supplement Act provides for a 15% salary supplement to be paid to teachers in nonpublic schools at which the average per-pupil expenditure on secular education is below the average in public schools. Eligible teachers must teach only courses offered in the public schools, using only materials used in the public schools, and must agree not to teach courses in religion. A three-judge court found that about 25% of the State's elementary students attended nonpublic schools, about 95% of whom attended Roman Catholic affiliated schools, and that to date about 250 teachers at Roman Catholic schools are the sole beneficiaries under the Act.<sup>200</sup>

As becomes obvious from the case those supplements to salary were entitled to correct the inequality in salaries of teachers in public and nonpublic schools. The main issue in the circumstances was that in nonpublic schools the expenses on secular education were usually less than in public.

The general question decided by the Court was whether that would be just to use taxpayers' money to supplement the difference in salaries for people, who potentially could teach the beliefs that go in contradiction with beliefs of taxpayers. With that purpose the Court has decided to establish a three-pronged test for such cases:

- 1) "the statute must have a secular legislative purpose;"<sup>201</sup>
- 2) "its principal or primary effect must be one that neither advances nor inhibits religion;"<sup>202</sup>
- 3) "the statute must not foster 'an excessive government entanglement with religion'."<sup>203</sup>

The Supreme Court specifies that first two of those principles are borrowed from *Board of Education v. Allen*, 392 U. S. 236, 392 U. S. 243 (1968) and the last one is taken from *Walz* 397 U. S. 674.<sup>204</sup>

This test, which is known as a "Lemon test" by the name of the plaintiff in the case has become useful in other cases after.<sup>205</sup> The outcome of the case was upholding the secular line established in earlier cases:

The merit and benefits of these schools, however, are not the issue before us in these cases. The sole question is whether state aid to these schools can be squared with the dictates of the Religion Clauses. Under our system, the choice has been made that government is to

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<sup>200</sup> Ibid.

<sup>201</sup> Ibid., 603.

<sup>202</sup> Ibid.

<sup>203</sup> Ibid., 604.

<sup>204</sup> Ibid., 603-604.

<sup>205</sup> See *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290 (2000), *Kitzmiller v. Dover Area School District*, 400 F. Supp. 2d 707 (M.D. Pa. 2005).

be entirely excluded from the area of religious instruction, and churches excluded from the affairs of government. The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that, while some involvement and entanglement are inevitable, lines must be drawn.<sup>206</sup>

This reasoning here was entirely secular, standing for the existing wall of separation of Church and State that has been perceived by the Supreme Court as the foundation for the democratic system of government.<sup>207</sup>

In Ukraine the Article 35 of Constitution claims that “[...] The Church and religious organizations in Ukraine are separated from the State and the school is separated from the Church. No religion shall be recognized by the State as mandatory. [...]”<sup>208</sup>

Gennadiy Druzenko has researched the question of influence of religion on education in Ukraine and concluded that:

All teachers in Ukrainian public schools are appointed and paid by local authorities regardless of what courses they teach. To gain a license to operate, private schools are required to employ teachers which meet the standards laid down in the law. Yet —spiritual educational establishments are completely free in their pedagogical hiring decisions, since as was pointed out above, the Ukrainian state does not recognize religious education and thus does not establish any requirement for it. Both private and religious schools pay teachers from their own resources.<sup>209</sup>

This leads to a conclusion that the situation in this aspect for Ukraine is less tense than for other countries. There are no provisions regarding some inadequate treatment of private religious institutions either in Ukrainian legislation and the matter remains not disputable. This model may be a good solution for countries that experience tensions regulating separation of education and religion.

One of the most suppressive countries in respect of education is reportedly Saudi Arabia.<sup>210</sup> It is claimed that the “[r]eligious indoctrination is utterly pervasive in schools”<sup>211</sup> and “[r]eligious

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<sup>206</sup> Ibid., 625.

<sup>207</sup> Ibid., 623.

<sup>208</sup> Конституція України, стаття 35.

<sup>209</sup> Gennadiy Druzenko, “Religion and the Secular State in Ukraine,” *Religion and the Secular State: Interim Reports*, BYU Law: International Center for Law and Religion Studies, 2014, accessed April 6, 2018, <https://www.iclrs.org/content/blurbs/files/Ukraine.1.pdf>.

<sup>210</sup> Freedom of Thought 2017: A Global Report, 74.

<sup>211</sup> Ibid., 72.

instruction in a significant number of schools is of a coercive fundamentalist or extremist variety.”<sup>212</sup> One of the most urging problems of religious indoctrination in schools in Saudi Arabia remains a “problem of propagation of religious hatred.”<sup>213</sup> In addition to the overall critical situation with atheists in Saudi Arabia, where “[s]ince 2014 Saudi law defines ‘the promotion of atheism’ as an act of “terrorism”. Accusations of apostasy or promoting atheism have been made in recent years, with individuals facing possible death sentences and serving long jail terms”<sup>214</sup> it is logical to conclude that the Saudi Arabia does not even formally respect the Arab Charter on Human Rights, to which it is a party,<sup>215</sup> and the potential creation of the Arab Court of Human Rights appears in this light a political tool for controlling the existing order.<sup>216</sup>

The European countries did not absolutely succeed in the field of separation of church and school. For example, Fleur de Beaufort and Patrick van Schie write: “[t]he state subsidy for a denominational school can be viewed as a typical Dutch interpretation of the notion of ‘inclusive neutrality’, but which favours religious people above non-religious people.”<sup>217</sup> They also constitute in their work an awareness of the problem concerning the risks of not following by the European countries the principles of separation of church and public institutions.<sup>218</sup>

In conclusion of this chapter it is possible to outline next problems in atheists’ protection in the field of religious influence on education:

- 1) religious influence can be direct and public schools may be in dependency of it, using taxes of atheists for payment for religious education, therefore infringing right to choose in which manner to educate children;
- 2) atheists’ rights in sphere of education may be infringed by the judicial decisions that lack consistency and suffer from the public opinion and political pressure;
- 3) in countries with grave violations it is nearly impossible for atheists to realize their right to freely educate their children in a manner and views they want;

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<sup>212</sup> Ibid.

<sup>213</sup> Ibid., 74.

<sup>214</sup> Ibid., 72.

<sup>215</sup> Arab Charter on Human Rights.

<sup>216</sup> “Arab League Secretary General Welcomes Saudi Arabia's Ratification on the Statute of Arab Court for Human Rights,” *Saudi Press Agency*, July 24, 2016, <https://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=1513644>

<sup>217</sup> Fleur de Beaufort and Patrick van Schie, 96.

<sup>218</sup> Ibid., 18.

- 4) interference within the realization of rights on education without discrimination is permissible only in strictly limited cases after complying with specifically established tests (different for different jurisdictions);
- 5) mechanism of separation of religion and public education is actually a useful tool for protection of atheists and can be an advanced human rights development if ensured.

#### 4. PROBLEM OF TAX EXEMPTIONS AND OTHER PRIVILEGES FOR RELIGIOUS ORGANIZATIONS AND PEOPLE

The current chapter elaborates on the matter of preferences that have in nature some religion-directed benefits that should become obsolete with the dawn of an era of human rights and equality. The problem lays mostly not in the benefits itself but on in a way they are substantiated and treated by the law. The further examples will address how exactly those privileges undermine the progress made at the establishing anti-discrimination regime and how do they correlate with the spirit of the international law. The following analysis is showing the issued arising because of the differences in legally stipulated privileges and how these privileges actually contradict to the established earlier principles.

In Ukrainian Law On Freedom of Conscience there is a norm in the Article 18, that after analyzed poses some questions because it directly allows to religious organization not to be taxed: “Financial and property donations, alongside with any other income of religious organizations are not a subject of taxation.”<sup>219</sup> Similar but more detailed provisions can be found in the Tax Code of Ukraine, where religious organization are included into list of organization relieved from taxes,<sup>220</sup> are not obliged to pay a tax for income from all activities related to rituals and merchandize necessary for those rituals,<sup>221</sup> for land belonging to those organizations<sup>222</sup> and real estate.<sup>223</sup> This tax legislation poses entirely unresolved question because there is no real substantiation in laws why such preferences are imposed on organizations that perform essentially the same activities as any other business. The tax on the land and real estate still could be debatable due to the nature of activities of some religious organizations (e.g. self-sufficient monastery that does not perform any business-like activities); however, any people of atheistic beliefs conducting the same activity as such monastery with similar purposes (i.e. spiritual harmony) but under another label would not be exempt from this type of

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<sup>219</sup> Закон України “Про свободу совісті та релігійні організації”, стаття 18.

<sup>220</sup> Податковий Кодекс України (Відомості Верховної Ради України (ВВР), 2011, № 13-14, № 15-16, № 17, ст.112), стаття 133.4.6 (my translation).

<http://zakon2.rada.gov.ua/laws/show/2755-17/print1509554349368634> (my translation).

<sup>221</sup> Податковий Кодекс України, стаття 197.1.9.

<sup>222</sup> Ibid., стаття 283.1.8.

<sup>223</sup> Ibid., стаття 266.2.2.

taxation, which puts atheists in an obvious disadvantage in comparison with religious followers. However, the business activity of religious organizations faces unprecedented benefits from government, while the conduction of similar payed services and production of similar goods by atheists are not exempt from taxation on the ground of their convictions. This is an obvious inequality and puts atheists in a position when they could not obtain an ease of a tax burden appealing solely to their beliefs or convictions.

In the U.S. the Internal Revenue Service (IRS) considers churches as nonprofit charitable organizations that are exempt from federal income tax and are allowed to accept not-taxed donations.<sup>224</sup> “Unlike secular charities, however, churches are automatically considered to be 501(c)(3) organizations, and, while they may do so voluntarily, they are not required by law to submit an application for exemption or pay the application fee.”<sup>225</sup> The decision *Walz v. Tax Commission of the City of New York* has been the one ensuring the status quo of the State and the church in question of taxation on the ground that taxing church is the same as intervening into its activities, which is prohibited by the First Amendment.<sup>226</sup> Therefore, the American tradition of exemption of church taxation is reinforced by the Supreme Court’s decision.

Unlike the United States, European Union uses another model in some cases. *Congregación de Escuelas Pías Provincia Betania* of the case is representative because it has affirmed that “the tax exemption at issue may constitute unlawful State aid if and to the extent to which the activities carried on in the premises in question are economic activities.”<sup>227</sup> In short, the Court of Justice of the European Union has found the tax-exemption unlawful in case if it distorts the competition.<sup>228</sup> This is another perspective, although this is still only an exceptional case and the practice of tax-exemption still remains untouched.

Moreover, in other case the Advocate General “[...] Juliane Kokott reaches the conclusion that a tax exemption, such as that at issue in this case, does not contravene the prohibition on State aid where it affects a school building which is used by the Catholic Church for the provision of educational

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<sup>224</sup> “Background of the Issue,” *ProCon.org*, May 8, 2016, <https://churchesandtaxes.procon.org/view.resource.php?resourceID=006554>.

<sup>225</sup> “Background of the Issue,” *ProCon.org*, May 8, 2016.

<sup>226</sup> *Walz v. Tax Comm’n of City of New York*, 397 U.S. 664 (1970).

<sup>227</sup> *Congregación de Escuelas Pías Provincia Betania*, Case C-74/16, 27 June 2017.

<sup>228</sup> *Ibid.*



services in the context of its social, cultural and educational mission. On the other hand, that tax exemption would constitute State aid if the building concerned were used for genuinely commercial objectives.”<sup>229</sup>

The legislation of Ukraine contains another policy that poses question for validity of it for protection of right of atheists. It is about the institute of conscientious objectors. Provisions of the Article 2 of the Law of Ukraine On a Military Duty and Military Service that regulates the obligatory military service for male citizens of Ukraine,<sup>230</sup> state that the military service in Ukraine is organized according to the constitutional requirements about the separation of Church and religious organizations from State,<sup>231</sup> what is substantiated by the Article 30 of the relevant law, under which the students of religious educational facilities and servants of religious organizations are automatically relieved from the military duty.<sup>232</sup>

However, regarding the ordinary citizens there is another provision in the Article 1, which says that according to the Law of Ukraine on the Alternative (Non-Military) Service citizens of Ukraine have a right to substitute the obligatory military service with non-military service.<sup>233</sup> This Law On the Alternative (Non-Military) Service in its descriptive part elaborates that it regulates the conduction of such service by citizen, whose religious beliefs contradict to performance of a military duty.<sup>234</sup> The Article 2 of this law gives an insights of who are those people with the right to substitute the military service, and under this article they are people, with beliefs that contradict to performance of a military duty and, more importantly, who belong to a religious organizations that act in accordance with the legislation of Ukraine and which dogmas prohibit the use of weapons.<sup>235</sup> Article 4 establishes a requirement to confirm that beliefs of such people are true with documents.<sup>236</sup> All

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<sup>229</sup> Advocate General’s Opinion in Case C-74/16 *Congregación de Escuelas Pías Provincia Betania v Ayuntamiento de Getafe*, Court of Justice of the European Union, Press Release No 15/17, Luxembourg, 16 February 2017, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-02/cp170015en.pdf>.

<sup>230</sup> Закон України “Про військовий обов’язок і військову службу”, (Відомості Верховної Ради України (ВВР), 1992, № 27, ст.385), <http://zakon3.rada.gov.ua/laws/show/2232-12/print1456169097087469>, стаття 14.

<sup>231</sup> Закон України “Про військовий обов’язок і військову службу”, стаття 2.

<sup>232</sup> Ibid., стаття 30.

<sup>233</sup> Ibid., стаття 1.

<sup>234</sup> Закон України “Про альтернативну (невійськову) службу”, (Відомості Верховної Ради України (ВВР), 1992, № 27, ст.385), <http://zakon3.rada.gov.ua/laws/show/1975-12/print1456169097087469>.

<sup>235</sup> Закон України “Про альтернативну (невійськову) службу”, стаття 2.

<sup>236</sup> Ibid., стаття 4.

persons who have passed alternative service are further exempt from obligatory military gatherings<sup>237</sup> (which is a Ukrainian analogue of a boot camp), which applies accordingly to persons, who after finishing a military service consequently qualify for the exemption by gaining relevant beliefs.<sup>238</sup> Another legal act, issued by the government, “Provisions about conduction of alternative (non-military) service”, establishes that the requirement to confirm the fact that beliefs are true with documents is widely interpreted, non-exhaustive and the simple testimony of a representative of such an organization would be a sufficient evidence.<sup>239</sup> In the end of this legal act there is an officially approved by government “List of religious organizations whose doctrine does not allow the use of weapons,” which includes ten titles of religions or religious sects without even mentioning specific religious organizations as it was prescribed earlier by the provisions of the same act.<sup>240</sup>

Nevertheless, despite the absolute absence of logic and consistency in provisions of previous acts, it is also important to say that there is no specific mentioning of some particular beliefs or their absence as a ground for exemption in regard of atheists, or people, whose beliefs could possibly prohibit use of weapons. No atheistic organizations propagating pacifistic worldview are on the List and could not be included there, at least with the current understanding of the religious prerequisites for this norm. Potential targets for such inequality are a variety of persons; besides, as the research is focused on the protection of atheists’ rights, in this case it is sufficient to underline that atheists, who simply have convictions against the use of weapons (for example, it could be an atheist scholar with research on the adverse effects of violence and importance of peaceful approach in conflict resolution), still could not be exempt of the conscription duty and would be forced by government to act contrary to one’s beliefs. According to the actual Ukrainian legislation it is literally impossible for atheists to claim their beliefs as a ground for alternative service instead of a military one. On the other hand, people who associate themselves with appropriate religious organizations are not required to present any sufficient substantiation of their actual beliefs that would be evidential enough to ensure the sincerity of their motives and views. Therefore, this legislation does not offer sufficient protection to

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<sup>237</sup> Ibid., стаття 24.

<sup>238</sup> Положення про порядок проходження альтернативної (невійськової) служби, Затверджено постановою Кабінету Міністрів України від 10 листопада 1999 р. N 2066, <http://zakon3.rada.gov.ua/laws/show/2066-99-%D0%BF>.

<sup>239</sup> Положення про порядок проходження альтернативної (невійськової) служби.

<sup>240</sup> Перелік релігійних організацій, віровчення яких не допускає користування зброєю, Затверджено постановою Кабінету Міністрів України від 10 листопада 1999 р. N 2066.

the whole category of people, whose rights could be infringed by psychologically challenging responsibilities, atheists in particular.

There are no similar provisions in this article of in any other norm of the law that allow similar treatment for atheistic or secular organizations. Following the logic of the Article 5 and Article 3 of the same law the state should not interfere in a legal activities of religious organizations and treat them equally. Therefore, if the state considers such tax-relief provisions as a non-interference, than it should be applied to atheists as well on the basis of equal treatment. However, in case the state admits that tax-relief is the interference, than the provisions of the law are being violated and it should be recognized as unconstitutional. The absence of legally stipulated privileges for one group that are present for another group should be understood as a legal mistreatment, discrimination and inequality.

The Article 59 of the Constitution of the Russian Federation allows to opt-out from the serving a military duty by religious beliefs and substitute it. By far it is the similar provision to Ukrainian law and its enforcement is not very different despite the differences in formulation in law, that allegedly allows to choose the alternative service only by conviction<sup>241</sup> but the practice and approaches of the Constitutional Court of Russian Federation serve as an evidence that there is not easy to claim the right for alternative service under non-religious convictions (because it is harder to prove them) in comparison with people who can claim the religious beliefs.<sup>242</sup>

The situation with exemption from military service for religious people is also in Myanmar with no reservations regarding atheists or pacifists.<sup>243</sup> In Israel, for example, there is a Supreme Court

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<sup>241</sup> Федеральный закон от 25.07.2002 N 113-ФЗ (ред. от 28.12.2016) "Об альтернативной гражданской службе", статья 2, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_37866/1287368a0a448a211dcd8fb83a720e736fd70255/](http://www.consultant.ru/document/cons_doc_LAW_37866/1287368a0a448a211dcd8fb83a720e736fd70255/).

<sup>242</sup> Юлия Вишневецкая, "Как в России борются за альтернативную гражданскую службу," *Deutsche Welle*, 03.04.2018, <http://www.dw.com/ru/%D0%BA%D0%B0%D0%BA-%D0%B2-%D1%80%D0%BE%D1%81%D1%81%D0%B8%D0%B8-%D0%B1%D0%BE%D1%80%D1%8E%D1%82%D1%81%D1%8F-%D0%B7%D0%B0-%D0%B0%D0%BB%D1%8C%D1%82%D0%B5%D1%80%D0%BD%D0%B0%D1%82%D0%B8%D0%B2%D0%BD%D1%83%D1%8E-%D0%B3%D1%80%D0%B0%D0%B6%D0%B4%D0%B0%D0%BD%D1%81%D0%BA%D1%83%D1%8E-%D1%81%D0%BB%D1%83%D0%B6%D0%B1%D1%83/a-43231473>.

<sup>243</sup> "Myanmar enacts military draft law for men, women," *Foxnews*, January 09, 2011, <http://www.foxnews.com/world/2011/01/09/myanmar-enacts-military-draft-law.html>.

case *Ressler et al. v. The Knesset et al.*,<sup>244</sup> which protected the right of religious ultra-Orthodox people pertaining their beliefs and allowed them to be exempt. No similar law or judicial decision has been introduced regarding the rights of atheists in Israel to be exempt from the public service.

Therefore, the problem of inequality in treatment of atheists and religious people in cases when they try to invoke institute of conscious objectors under the appropriate jurisdiction is not solely Ukrainian issue and atheist in other States with draft military system experience similar encounters, when representatives of religious groups enjoy more favorable treatment than atheists (or non-believers) with strong anti-military convictions.

The provision that can be found in the Code of Labor Laws of Ukraine<sup>245</sup> directly contradict to the rules set out by the Constitution of Ukraine. Despite the Article 2 of this Code, which guarantees the equality of labor rights regardless of “religious and other beliefs”<sup>246</sup> and the Article 22, where it is less explicitly guaranteed the protection from ungrounded refusal of concluding the labor contract on grounds of “religious beliefs”<sup>247</sup> and membership in “other associations of citizens,”<sup>248</sup> Article 73 of this Code stipulates a list of national holidays, to which it includes, in particular, December 7 and 25 – day of Catholic and Orthodox Christmas (which is, actually, a religious holiday but it goes with the section of casual holidays being repeated in the section of religious holidays), Easter and Trinity (both religious holidays in the appropriate section but still compulsory for all citizens).<sup>249</sup> The article proceeds with a possibility of different religious confessions registered in Ukraine to apply for up to three days of vacation for celebrations of their big holidays with an obligation to work instead of those days in other time.<sup>250</sup> There are no more exceptions for any other organizations or minorities, which looks like an obvious contradiction to the provisions of Constitution. In particular, as it was established earlier, Ukrainian legislators are perfectly aware that people may not belong to any religion but those

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<sup>244</sup> *Ressler et al. v. The Knesset et al.*, (HCJ 6298/07, HCJ/6318/07, HCJ 6319/07, HCJ 6320/07, HCJ 6866/07), February 21, 2012, <http://versa.cardozo.yu.edu/opinions/ressler-v-knesset>.

<sup>245</sup> Кодекс законів про працю України (Затверджується Законом № 322-VIII від 10.12.71 БВР, 1971, додаток до №50, ст. 375), <http://zakon2.rada.gov.ua/laws/show/322-08/print1509554349368634> (my translation)

<sup>246</sup> Кодекс законів про працю України, стаття 2.

<sup>247</sup> Ibid., стаття 22.

<sup>248</sup> Ibid., стаття 22 (for example, if holding the atheistic views may be considered as the belonging to the atheistic movement; otherwise, the fact of membership in some kind of atheistic organization).

<sup>249</sup> Ibid., стаття 73.

<sup>250</sup> Ibid., стаття 73.

people are omitted by law in their capability to choose their optional days of rest. Moreover, the law directly and obviously benefits only representatives of two major confessions: Orthodox and Catholic (because of the nature of days chosen as religious holidays).

Ukrainian researcher Gennady Druzenko “raises concerns about discriminatory treatment against religious entities in comparison to other non-profit private organizations”<sup>251</sup> in respect of taxation. He concludes the following on this matter:

Ukraine is religiously diverse and tolerant of that diversity. The Ukrainian state declares itself (and predominantly is) secular. Various religious denominations are treated equally by law. In practice, however, Orthodoxy (and the Catholic Church of the Eastern Rite in Western Ukraine) enjoys some preferences and governmental support. Even though current legislation in the field of religious freedom and state-church relations is generally not of a discriminatory nature, it requires review and elaboration.

Still, the judicial system in Ukraine is young and highly corrupted; there is no comprehensive caselaw in religion-linked fields. Customs and shady political deals are often substituted for legal regulation and thus influence the church-state relationship more than written provisions. However, due to great religious diversity and the absence of a dominant institutionalized church, Ukraine remains one of the most successful states on the post-communist era from the standpoint of religious freedom.<sup>252</sup>

The findings of this research show that there is no absolute transparency and equality in the field of equal treatment of specific religious organizations in comparison with other groups. Nevertheless, it shows that despite the example shown on the example of alternative service. The principles stipulated in international instruments do not correlate with the factual treatment of atheists even under the national legislation and in practice. It is absolutely incorrect how those principles are applied and understood in the field of taxation and conscription opt-out preferences.

In conclusion to this chapter it is possible to underline following issues:

- 1) countries, in which the military duty still exist and that have an institute of conscious objectors it is easier to receive exemption of such duty or to supplement it with alternative service for religious people but for atheists it is either impossible or considerably difficult, that is the reason atheists are obliged to serve under such circumstances regardless of their convictions;

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<sup>251</sup> Druzenko, 734.

<sup>252</sup> Ibid., 736.

- 2) labor legislation is also affected by the religious norms in respect to the national holidays and possibility for relative compensation by allowance to choose the additional days of rest with working on other days instead is provide only for representatives of other religious groups but nor for atheists;
- 3) taxation is the issue that is directly provisioned in the legislation because the religious organizations are unconditionally exempt from all taxes regarding their non-profit and for-profit activities related to religious rituals and merchandize, while atheists do not enjoy similar treatment and there is no possibility for atheistic community to conduct similar activity justifying it by the spiritual necessity and to be exempt from taxes. Moreover, in most cases the legislator does not give any justification on why exactly the religious organizations receive such preferences simply implying that this is non-questionable and need no special regulation or clarification because in some countries churches are automatically considered exempt and need no application and/or fee to be recognized as exempt while secular organizations of similar nature are still obliged to do this. In European Union some cases the tax-exemption could be recognized as distorting a competition and
- 4) the influence of religion is not always devastating for atheists and it can be balanced using properly functioning human rights protection mechanism.

## CONCLUSIONS

- 1) Atheists are disadvantageous in various extent in almost all studied countries. During the research, at least four main general issues have been identified, which make the discrimination of atheists an emerging issue in many countries. It is possible to consider those as following:
  - a. absence of protective laws or presence of such that criminalize/defame atheists (e.g., countries with severe violations against atheists);<sup>253</sup>
  - b. atheists may be mistreated legally (e.g., a *Hobby Lobby* case where the factual impartiality of a state in question of legal enforcement is actively questioned),<sup>254</sup> protective laws are not enforced (on example of the Russian Federation it is obvious that the free speech norms are not applied correctly);<sup>255</sup>
  - c. violation of freethought laws by authorities or by individuals with no objections from authorities (e.g., the case of Sokolovsky and subsequent ignorance towards protection of atheists in the Russian Federation;<sup>256</sup> case of German driver<sup>257</sup> etc.);
  - d. protection of rights is impeded or discouraged (such as a stipulated in a legislation tax-relief for religious organizations and exemption from service for religious people).<sup>258</sup>
- 2) One of the fundamental problems is an absence of a clear and universally recognized definition of atheistic minority as a group of risk vulnerable to oppression, which has its own challenges and features, regarding historical background and psychological peculiarities of relations with majority groups.<sup>259</sup>
- 3) The Universal Declaration of Human Rights and Declaration and UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief are

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<sup>253</sup> See chapter 2, 27-35.

<sup>254</sup> See chapter 4, 42-45.

<sup>255</sup> See chapter 2, 39-40.

<sup>256</sup> See chapter 2, 40.

<sup>257</sup> See chapter 2, 32.

<sup>258</sup> See chapter 4.

<sup>259</sup> See chapter 1, 16-23.

non-binding and they act only as the guiding principles and the milestone for human rights' movement but not an effective instrument that can be efficiently referenced at.<sup>260</sup>

- 4) The Western countries have advanced more in the sphere of atheists' protection but they still struggle abolishing archaic rules and obsolete mechanisms of oppression such as religiously influenced legal provisions, factual inequality, despite the relatively successful practice of the European Court of Human Rights and the Supreme Court of the United States.<sup>261</sup>
- 5) The current apostasy and blasphemy laws, even if they are not being enforced, acts as an unnecessary tool of majority oppression even in a relatively developed countries (e.g., New Zealand,<sup>262</sup> Ireland<sup>263</sup> etc.). Their enforcement is arbitrary and in the counters of the elevated risk any person of different convictions or beliefs can suffer the consequences (e.g., selected North African and Middle East countries).<sup>264</sup>
- 6) The current rights' protection mechanisms are not sufficient enough to ensure the protection of atheists in all countries. The principles of rule of law and equality before law is making some positive gradual contribution to the protection of atheists' rights but very slowly and with obstacles. This conclusion derives from few factors: international interpretations,<sup>265</sup> court decisions,<sup>266</sup> factual political situation on example of Egypt and Germany,<sup>267</sup> legally stipulated preferences for religious conscious objectors (e.g., in Ukraine<sup>268</sup> or Israel<sup>269</sup>) etc.).
- 7) There is in some cases no consistency in application of protective provisions by international judicial institutions, which leads to contradictions and sabotage of the progress reached (e.g., case of *Lautsi v. Italy*).<sup>270</sup>

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<sup>260</sup> See chapter 1, 16-18.

<sup>261</sup> See chapters 2, 3.

<sup>262</sup> See chapter 2, 32.

<sup>263</sup> See chapter 2, 31.

<sup>264</sup> See chapter 2, 16-19.

<sup>265</sup> See chapter 1,

<sup>266</sup> See chapter 4, 59-60.

<sup>267</sup> See chapter 2, 33-35.

<sup>268</sup> See chapter 4, 60.

<sup>269</sup> See chapter 4, 59-60.

<sup>270</sup> See chapter 3, 47-48.



## RECOMMENDATIONS

The research has identified the set of issues. It would be proper to suggest addressing each of them individually because there is no one universal and simple solution. The first and the foremost what can be done from the point of view of the international law, logically originates from the very first chapter. It is important to work out a clear and definitive legislative definition of atheism as suggested after the research of the issue with distinctive underlining of the possibility of persons not to hold religious or any other beliefs and to avoid relying on national margin of appreciation. This shall be done during either through changing the provisions of existing international soft law instruments or via the establishing of a new common framework of international hard law regulating questions of freedom of conscience and self-determination instead of using the provisions on religious freedom. The international framework cannot be easily changed and there are strong doubts that it will be. However, it does not preclude changing the approach to interpretation, which must influence the very process of application, understanding and treatment.

The second option looks more realistic because it is more complicated to transform existing provisions and the transposition of guiding ideas into that instrument of binding nature is easier to reach. This is important because without a clear and unanimous legal definition the national margin of appreciation remains too broad and countries can exploit it as they do now.

Second, death penalty, imprisonment, tortures and other sever punishments for apostasy must be abolished from any national legislation because even the existing legal framework does not incite countries to implement it. All existing blasphemy laws are an archaic way to suppress the freedom of speech and expression. These two problems can be solved via the same new international instrument, which will contain the principle of total abolition of persecution by attributes understood by international law as fundamental rights. The adoption of such instrument must be ensured by the leading the changes States by any peaceful and legal means available, such as economic and political sanctioning for refusal to harmonize the regional and national legislation in accordance with a newly created framework, international stigmatization of countries that refuse to comply with human rights provisions and political pressure on the governments and lawmakers of countries that do not follow their obligations.

The issue of tax exemption is harder to resolve in similar matter because of the deepened traditions and culture in some very religious countries among those who can potentially initiate the previous changes. This issue can be resolved either by the introduction of provisions into the new

framework on similar tax exemptions to non-governmental organizations of atheists that would operate in the manner to satisfy the spiritual needs of people or to agree to treat any similar activity equally and abolish the tax exemptions for organizations that conduct for-profit activities for the spiritual purposes and treat every entity doing so as business.

Public education must be unfoundedly separated in any instance from church because the taxes spent on the public schools are paid by all community representatives and not only atheists suffer when some religion gains easier access to public money than all others. It is not realistic to try spending comparable amount of money on different types of education (religious and not) because it is impossible to ensure the equal distribution of money in every society. Therefore, the provisions on the strict abolition of any state aid to schools must be present in a newly formed framework.

Military service exemption is one of the rare cases that is hard to influence from the international perspective because as it was established not many countries have conscription and clauses regarding this matter differ by national legislation. Therefore, this injustice can be corrected either by changing the draft system, which is not a competence of international law and this is likely to happen only after the internal demand to changes or it can be resolved by introducing provisions on the establishment of secular organizations that will have the equal to that of religious organizations power of testimony that the persons beliefs are of the nature contradictory to the military service to receive a right to pass alternative service. However, this issue is more complex and reaches beyond the boundaries of the research.

There is a need for additional specialized acts (regional and national) is present and shall be ensured by the new framework. They must be dedicated to non-religious minorities and ensure the equal enjoyment of rights by atheists and other groups in community. Those acts must be a point of reference for other equal and minor legislation for definitional and operational clarity.

For the control and enforcement of this comprehensive system it is vital to create body of a supervisory nature that will have an advisory powers and will be controlling the process of implementation of the new framework. It shall also cooperate with existing NGOs, monitor the situation of actual treatment of this minority group and authorized to gain access to official databases concerning the actions taken by public authorities in respect of atheists. It shall emit an annual report on the challenges and achievements during this process, introduced at the United Nations General Assembly.

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## **ABSTRACT**

The research is entitled to identifying ways how to deal with human rights violations based on belonging of persons to atheistic minority. It is dedicated to investigating a doctrinal and legal gap in this respect is influencing the protection of atheists and suggests that it should be eliminated to ensure the observance of atheists' rights in worldwide. This research is analyzing the international and national acts and cases to introduce the real situation with observance of rights of atheists. The thesis is investigating the issues arising in the field of religious influence on the public office, education tax exemptions for religious groups and other features influencing rights of atheists.

In the end the research concludes on the disturbing situation regarding atheists in many countries and constitutes an urge to change the doctrinal approach and to underline the necessity to create a consistent and universally applicable international framework with mechanisms, which will accelerate the positive changes.

**Keywords:** international law; human rights; legal status of atheists; rights of atheists; equality of atheism and religion before the law.

## **SUMMARY**

### **OBSERVANCE OF RIGHTS OF ATHEISTS AND RELEVANT LEGAL POLICIES WORLDWIDE**

The aim of this thesis is to analyze the differences in law and treatment of atheists as a minority worldwide and to assess if the atheists' rights are protected, and if so, how exactly they are protected. This includes in-depth analysis of international legislation and its correlation with national laws, alongside with the overview of the court cases. It is proven in the research that the mistreatment of atheists is ongoing in developed countries as well as in developing ones. In particular, the research brings a perspective on the legal prerequisites of this situation. The analysis shows the weakness of actual influence of the soft law instruments as well as the drawbacks of a merging soft law instruments with religious norms.

This research elaborates on a subject of grave violations (such as deprivation of life and liberty and tortures), tax exemption preferences for religious organizations, military service exemptions for religious people, influence of religion on public education and other public bodies and concludes that discrimination of atheists in those questions is still relatively common and must be combated.

The overall conclusions, based on the actual examples and comparisons, are explaining the reasons why the factual policies and laws are in discord with international principles and how this should be aligned. In particular, the research suggests the method how to influence the strict anti-atheist policies in countries with high threat level for atheists and to reduce violations in countries with relatively low threat level, by introducing another international regulations.

The research consists of an introduction, four chapters of body text, conclusion, recommendations, bibliography, abstract and summary.

The first chapter is divided into two subchapters, the second of which is divided into two sections. The first subchapter is focused on analyzing different approaches to the definitions of atheism and the second is entitled to analyzing the international legal framework that establishes the

boundaries, within which the research is making its conclusions and recommendations, in the first section and the same analysis is conducted on the regional level in the second section.

The second chapter investigates in which ways the religious influence on public office can create inequality between atheists and religious people and it is divided into two subchapters that investigate the situation of religious oppression in countries with the biggest issues, either qualitative or quantitate, and the second subchapter goes through the cases of less serious violations in countries that have implemented complicated rights' protection mechanisms. Here the research concludes on the necessity of the actions that should be taken in order to protect the basic rights of atheists.

The third chapter is dedicated to religious influence on public education, where the legislation and cases are examined and the conclusions lead to the understanding of the situation in more developed countries that still tend to abuse the rights of atheists covering this by judicial or legal prescriptions that are often biased towards the religion.

The fourth chapter is dedicated to tax preferences and other privileges of religious organizations and people. This chapter covers the inequality within the tax system for atheists from legal perspective. Another benefit is shown on the example of the countries with a military draft system, which tends to have exemptions based in the convictions of persons, which is called the institute of conscious objectors, and it shows how and why atheists are often discriminated against solely on the ground of their convictions. This outlines the obstacles for atheists, who want to invoke their convictions to avoid compulsory military service.

## HONESTY DECLARATION

16/05/2018

Vilnius

I, Stepan Duplinskyi, student of Mykolas Romeris University (hereinafter referred to University),  
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(*Faculty /Institute, Programme title*)

confirm, that the Master thesis titled “Observance of Rights of Atheists and Relevant Legal Policies Worldwide”:

1. Is carried out independently and honestly;
2. Was not presented and defended in another educational institution in Lithuania or abroad;
3. Was written in respect of the academic integrity and after becoming acquainted with methodological guidelines for thesis preparation.

I am informed of the fact that student can be expelled from the University for the breach of the fair competition principle, plagiarism, corresponding to the breach of the academic ethics.



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