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# Does religious freedom warrant protection as a fundamental human right?

Frane Stanicic\*<sup>1</sup>

<sup>1</sup>Faculty of law, University of Zagreb (PFZG) – Croatia

## Résumé

Religious freedom is, in various legal documents – international or in the constitutions of various states, in principle those western, stipulated as a fundamental legal right. For example, the International Covenant on Civil and Political Rights prescribes the right to freedom of thought, conscience and religion. Similarly, the European Convention on Human Rights prescribes that everyone has the right to freedom of thought, conscience and religion. The same phrasing can be also found in the European Charter of Fundamental Rights. When we glance through the constitutions of various countries of western legal circle, we find that most of them prescribe freedom of religion as a fundamental right. Better to say, as a constitutionally protected fundamental freedom. However, there are authors, such as the renowned legal theorist Himma, who argue that freedom of religion does not warrant protection by a special right. The argument is that the right to freedom of religion can be derived from other, more basic rights, and that this right should be protected as a right derived from other constitutional rights. The aim of this paper is to determine, using the practice of the ECHR and by mapping the right to freedom of religion in contrast to other fundamental rights such as the right to free speech, thought, conscience and association, whether the freedom of religion merits protection as a fundamental legal right or should it be protected as a derived right in which case it should be protected while protecting aforementioned rights. The answer to this question is of the utmost importance because if the right to freedom of religion does not warrant protection as a fundamental right, then its legal protection shouldn't be guaranteed as a special constitutional right, meaning that real fundamental rights should have precedence in their protection.

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\*Intervenant