Approaches to Ecclesiastical Legal Research

Studies in Ecclesiastical Law from the Perspectives of Legal Dogmatics, the History of Public Law and Comparative Methodology

SZILVIA KÖBEL – PÉTER NAGY (ed.)

L'Harmattan

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Contents

Lectori Salutem! 7

Szilvia Köbel
The Legal Concept of Religion: Some Approaches to Its Definition 9

Leon van den Broeke
Protestantism and the Law: Leadership, the Relationship Between the Local Church and the Denomination, and the Relationship Between Church and State in the Reformed Context 21

Zsombor Ercsey
Some Issues of Church Finance: A Comparative Study 37

Zoltán Ormóshegyi
The "Hungarian Martin Niemöller" – István Bán's Struggle Against Dictatorship 49

Péter Nagy
The Life and Work of Béla Szászy 65

Loránd Lajos Baló
The Normative Foundations of Religious Freedom in the Unitarian Church and the Framework of Its International Cooperation within the IARF 79

Bálint Domonkos Dobos
The Legal Status of Hungarian Reformed Congregations on the West Coast of the United States 99

Marcell Bodorkós
Could I Decide Too? Children's Freedom of Religion in School and Beyond 109

About the Authors 125

Lectori Salutem!

Following his inauguration in 2022, our Rector, Prof. László Trócsányi, has approved a variety of university and faculty research projects. Rector Trócsányi has especially supported research pertaining to ecclesiastical law. He has also supported the involvement of students in the research process as well as the building of international relations. It is within that framework that applied for a two-year faculty project with the title "*Protestantism and Jurisprudence*" which was a research initiative aimed at filling a gap in the professional literature. The main focus of the research project were the works of professionals of Protestant ecclesiastical jurisprudence and church history, as well as the analysis of fundamental questions surrounding the relationship between the Church and individual Protestant churches. The members of this research project included Zsombor Ercsey, Péter Nagy, and Szilvia Köbel, as well as two law students, Lóránd Lajos Baló and Bálint Domonkos Dobos. In 2024, we invited Prof. Leon van den Broeke from the Netherlands and Zoltán Ormóshegyi to our closing conference. Our relationship with Prof. van den Broeke is an extensive one, as he – together with Prof. George Harinck – published a study at our request in the Glossa Iuridica periodical in 2000 for the centenary of the death of Reformed pastor and former Dutch prime minister Abraham Kuyper.

Because we were successful in completing our project in 2024 – many thanks again to all participants – we could apply for another project with the title *"Research in Legal Dogmatics, the History of Public Law, and Comparative Studies of Ecclesiastical Law."* The focal point of this study was the intersectionality of methodology. We have already invited, as members of the project, Prof. Leon van den Broeke, as well as Zoltán Ormóshegyi – who has completed his PhD in the meantime and has become a colleague of our faculty.

We presented the project's research findings at an international conference on May 12, 2026. It was with great joy that we could also welcome Rev.

Matthew van Maastricht, a PhD student of Prof. van den Broeke from the United States, among our workshop presenters on May 12. Another new addition to our roster of presenters was Marcell Bodorkós, law student, whose topic of research is timely and closely tied to our own research project as well.

Beyond the conference, we also edited a volume based on the project's research. We are pleased to present it to the reader.

Szilvia Köbel
Leader of the Project

The Legal Concept of Religion: Some Approaches to Its Definition

Szilvia Köbel

Introduction[1]

The concept or definition of religion has always been a contested and complex question. This study will undertake a brief overview of some attempts at defining it, some international guidelines, the definition under Hungarian law, and finally a few court cases to examine the existing practices related to the concept.

There are multiple ways to approach the concept of religion, mainly from definitions in international law, state law, ecclesiastical law, and definitions relating to the individual person. This study will limit itself to the examination of the aforementioned definitions and will not attempt to answer the individual aspect of religion. Additionally, state law and ecclesiastical law will be presented from a Hungarian perspective.

I. The Concept of Religion in Hungarian Law

I.1. The Hungarian ecclesiastical law approach

Attempts to define religion in Hungarian ecclesiastical law have been sparse.[2] One of the first attempts is in the work of Hungarian theologian and legal scholar Kálmán Csiky.[3] His work contains a definition of religion through

[1] This study was conducted as part of the project "Research in Legal Dogmatics, the History of Public Law, and Comparative Studies of Ecclesiastical Law." Research Project 2024-2026 (10640A800), Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law.

[2] Szilvia Köbel, Thoughts on Protestant Ecclesiastical Jurisprudence in Hungary: A Methodological Approach to Research into Protestant Ecclesiastical Law from the Perspective of Legal Dogmatics and Public Law History, *Studia Z Prawa Wyznaniowego / Studies in Law on Religion:* 28, 97-108 https://doi.org/10.31743/spw.18682 (Accessed 16 July 2026)

[3] Kálmán Csiky, Az egyház jogi fogalma, *Sárospataki Református Lapok*, Vol. 4. No. 6-9. (February 1908): 56, 68, 74, 91.

his attempt at defining a church, which he breaks down into three main elements: *faith*, *religion*, and *denomination*.[4] He defines these three elements as follows: "Faith is a person's awareness of a higher being, God; it is that feeling of the soul through which a person involuntarily becomes aware of a supreme, omnipotent being who created, sustains, and governs the world."[5] He expands on this further, by explaining that faith is not a conscious decision, but rather a result of spiritual intuition, a longing to sense. And only based on this reasoning and definition of faith can religion exist.

Faith can, in fact, find external expression when someone outwardly manifests his or her faith through words or deeds. This external expression of faith is religion. A person's faith and religious convictions find recognition in their religion; conversely, it is through their religion that a person practices their religious convictions and fulfills the religious requirements that their intuition and conviction about God set before them as obligations to be fulfilled."

As for religious denominations, Csiky says the following:

> [P]eople who share the same religious convictions consciously unite for the purpose of practicing their faith collectively in public and of promoting and spreading their religion, which has taken shape through their religious views and convictions. To ensure that their religion, as a force for good, prevails among their fellow human beings, a religious denomination is established, which ensures its existence through the conscious unity of faith among its followers.[6]

As can be seen, attempts at defining the concept of religion, even those done by legal scholars, mostly limit themselves to a theological approach and only give loose guidelines for a clear legal definition.

I.2. The Hungarian constitutional law approach

We now turn to an examination of the concept of religion from the perspective of constitutional law, presented through the example of the Hungarian constitutional framework.

The first instance of an attempt to define religion comes from a Hungarian Supreme Court decision in 1999. In it, the courts attempted to define religion as follows:

[4] Ibid., 56.
[5] Ibid., 57.
[6] Ibid., 57.

> [r]eligion (religiosity) primarily means belief in the existence of respected supernatural forces and beings, as well as the resulting conceptual, emotional and volitional world of consciousness, and secondly behavior corresponding to them. […] The practice of religion presupposes the creation of a relationship between a superior being and man, in which man acknowledges his subordinate role and expresses his religious convictions through a cult that takes a communal form according to some ritual order.[7]

This definition was created mainly due to issues related to the registration and status of churches, which was one of the many lingering problems caused by the previous socialist regime and the – at the time – recent switch to a friendly separation model.[8] While this definition is quite precisely formulated, it gained only partial recognition in the Hungarian Parliament, as the Asylum Act of 2007 contained a merely normative definition:

> [t]he concept of religion includes in particular theistic, non-theistic and atheistic beliefs, in private or public religious ceremonies – either alone or with others – participation or abstention from participation in such ceremonies, as well as other religious activities or expressions of opinion, personal or community behavior based on any religious faith or required by this faith.[9]

The wording of this provision makes it clear that this is not meant to be an exhaustive definition of religion, but rather merely a description of what generally constitutes religious activity.

This normative style was continued a few years later in the Act Regarding Religion in Hungary, colloquially known as the *Church Act*.[10] Not only does this Act not define religion, it expressly limits itself to only defining religious activity and does so exclusively in the context of the religious activity of a religious community:[11] "Religious communities shall pursue activities linked to a worldview that is directed towards the transcendental, has a system of faith-based principles, the teachings of which relate to existence as a whole, and which embraces the entire human personality through specific codes of conduct."[12]

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[7] KGD 1999.211.

[8] See Szilvia Köbel, *Oszd meg és uralkodj! A pártállam és az egyházak* (Budapest: Rejtjel, 2005).

[9] Act LXXX of 2007 on the Right to Asylum 64. § (1) b)

[10] Act CCVI of 2011 on the Right to Freedom of Conscience and Religion, and on the Legal Status of Churches, Religious Denominations, and Religious Communities (hereinafter: Church Act)

[11] More precisely, the religious activity of a religious community as defined by this Act.

[12] Church Act 7/A. § (2)

In contrast to this restrained legislation regarding religion and its more theological elements, stands the – at that time – newly enacted Fundamental Law of Hungary[13] and its preamble, the so-called *National Avowal*. This Avowal expressly mentions that "We recognize the role of Christianity in preserving nationhood. We value the various religious traditions of our country."[14] This initial resolution by the Fundamental Law was made even clearer by its numerous amendments.[15] The seventh amendment, enacted in 2018, reinforced this principle: "We hold that the protection of our identity rooted in our historic constitution is a fundamental obligation of the State."[16] The ninth amendment, enacted in 2020, expanded on what this protection of identity should actually mean, by extending an existing paragraph with the following:

> Hungary shall protect the right of children to a self-identity corresponding to their sex at birth, and shall ensure an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country. Hungary shall protect the institution of marriage as the union of one man and one woman established by voluntary decision, and the family as the basis of the survival of the nation. Family ties shall be based on marriage or the relationship between parents and children. The mother shall be a woman; the father shall be a man.[17]

Within the reasoning for the amendment, the legislator explained that such a change was necessary, because "the concepts stemming from the natural order of creation are constantly threatened. The modern ideological processes in the Western world, which cast doubt over the created nature of the male and female genders, threaten the rights of children to a healthy development as outlined in the Fundamental Law."[18] The twelfth amendment, enacted in 2023, made this intent abundantly clear: "The protection of the constitutional identity and Christian culture of Hungary shall be an obligation of every organ of the State. In order to protect constitutional identity, an independent organ established by a cardinal Act shall operate."[19] To ensure practical

[13] The Fundamental Law of Hungary entered into force on January 1st, 2012. (hereinafter: Fundamental Law)

[14] Fundamental Law, National Avowal

[15] The word "amendment" is used here for the sake of clarity; in fact, both the Constitution preceding it and the Fundamental Law may be changed at will. As of the time of writing, the Fundamental Law has been changed 17 times; 15 of these changes were made by the Orban regime.

[16] Fundamental Law, National Avowal

[17] Fundamental Law Article XVI (1); Article L) (1)

[18] Official explanation of the 9th Amendment of the Fundamental Law of Hungary

[19] Fundamental Law Article R) (4); Act LXXXVIII of 2023 on the protection of national sovereignty.

enforcement of this change,[20] the government created the Office for the Protection of Sovereignty.[21] These changes were brought despite the fact that the preamble of the Church Act expressly notes the requirement of the "religious and ideological neutrality of the State." It is our opinion that these amendments call into question this requirement of neutrality as they are contradictory to the selfsame freedom of religion and belief guaranteed by the Fundamental Law.

The example of the Hungarian legislation shows that even if a country defines religion only normatively and leaves the concept open in a more substantive and perhaps even theological sense, it can nonetheless fill the concept with ideological meaning, through much less favorable means and with much more grave consequences.

II. Historical Attempts at Creating an International Definition

The attempts to create a definition for religion as such have not seen great success or widespread adoption. Most attempts have tried to define religion through the lens of religious discrimination and persecution.

For example, the conceptual foundations of religious equality date back to the UN's 1949 Universal Declaration of Human Rights. Born in the shadow of dictatorships, the universal demand for equality as an inalienable hallmark of fundamental human dignity and a condition for freedom emerged under the umbrella of the United Nations: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

The Universal Declaration absolutely establishes the principle that no individual belonging to the great family of humanity may be excluded from equality, which everyone acquires at birth (*ius sanguinis*). It defines a fraternal (horizontal) system of relationships among individuals (human beings) as the requirement for the realization of equality. Article 1 states that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Furthermore, the general clause prohibiting discrimination specifies the personal characteristics and circumstances that are at heightened risk of undermining the ideal of equality. Here, within this context, one encounters the prohibition against discrimination on the basis of religion:

[20] As well as other changes mostly reinforcing anti-EU sentiment.

[21] This office ceased to exist on July 16, 2026. See: Act. XXIV of 2026 on the cessation of the Office for the Protection of Sovereignty.

> Article 2
> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

The second half of this anti-discrimination article, however, is less well known: The Declaration permits no deviation from this principle based on whether a given country or territory possesses full or limited sovereignty. In doing so, it also restricts discrimination based on nationality within individual countries or territories. (Although it would be a stretch to draw a direct parallel, nowadays it has become established practice to invoke the broad discretion of Member States.) The Declaration contained a general clause regarding possible restrictions on the exercise of rights. Moreover, it established a general duty clause for individuals toward the "community," within which alone the free and full development of their personality is possible:

> Article 29
> 1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
> 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
> 3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.
>
> Article 30
> Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Article 18 of the Declaration comprehensively affirmed the fundamental right to freedom of religion, including the three elements that have since become defining features (freedom of thought, conscience, and religion – reflecting the universal and absolute character of the right; it declares individual and collective rights, in private and in public; equal protection of religion and *other beliefs*; and the right to express them through education, practice, and ritual:

"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 teaching, practice, worship and observance."

The 1966 adoption by the UN General Assembly of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which became treaties in 1976, was intended to give legal form and means to the vision of the Universal Declaration.

However, even before that, in order to accelerate the enforcement of these rights at the regional level, the Council of Europe adopted the European Convention on Human Rights in Rome in 1950. The historical connection between the two documents is indisputable.

Subsequently, the Charter of Fundamental Rights of the European Union, promulgated in 2007, joined the international protection system, which is based on shared universal values ("The Union is founded on the indivisible, universal values of human dignity, freedom, equality, and solidarity," "It places the individual at the heart of its activities, by establishing the citizenship of the Union").

However, since these treaties entered into force, it has become increasingly difficult to speak of the absolute nature of the right to religious equality, as it contains detailed limitation clauses even with regard to individual fundamental rights.

Article 18 of the International Covenant on Civil and Political Rights (ICCPR)

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a 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.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The 1951 Geneva Convention[22] outlined and defined the term 'refugee' and, within this context, also banned religious persecution and discrimination. The Convention itself also expressly guarantees refugees "freedom to practise their religion and freedom as regards the religious education of their children."[23] Although the Geneva Convention never defined religion, the court cases stemming from its provisions eventually required some rudimentary protocols relating to the religious persecution of refugees.[24] This eventually led to the creation of official guidelines,[25] the purpose of which was to provide legal interpretation guidance to governments, legal practitioners, decision-makers, and judges, as well as to UNHCR staff conducting refugee status determinations in the field. As the claims were often very complex, the guidelines offered only general parameters regarding the concept of 'religion' instead of a conclusive definition of the term. According to these guidelines, the concept of religion as a ground for persecution encompasses not only traditional religions (freedom of conscience), but also: a) religion as belief (including nonbelief), b) religion as self-identity, and c) religion as a way of life.[26]

III. International Case-Law on the Concept of Religion

Finally, I wish to present a few cases concerning the concept of religion that were brought in front of international tribunes.

III.1. Kokkinakis v. Greece

The *Kokkinakis* case[27] set the fundamental dogmatic rules regarding the rights enshrined under Article 9 of the Convention. One of the main things it established was that "a certain margin of appreciation is to be left to the Contracting States

[22] United Nations Convention relating to the Status of Refugees, 28 July 1951 (hereinafter: Geneva Convention)

[23] Geneva Convention Article 4.

[24] These protocols mainly took the form of General Comments of the UN Human Rights Committee, in particular: General Comment No. 22 of the Human Rights Committee, adopted on July 20, 1993, UN doc. CCPR/C/21/Rev.1/ADD.4, September 27, 1993, the 1981 Declaration on the Elimination of All Forms of Religious Intolerance and Discrimination, the 1992 Declaration on the Rights of Linguistic, Religious, National, or Ethnic Minorities, and the reports of the Special Rapporteur on religious intolerance

[25] Guidelines On International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, UNHCR, 28 April 2004.

[26] Ibid. II. A. 5.

[27] Case of Kokkinakis v. Greece 1993, ECtHR, App. no. 14307/88

in assessing the existence and extent of the necessity of an interference, but this margin is subject to European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court."[28]

III.2. Eweida and others v. UK

In the *Eweida* case,[29] four religious individuals had their requests for the accommodation of their religious practices rejected by their respective workplaces. As they were unable to contest these rejections before an English court, they turned to the ECtHR and claimed their rights under Article 9 had been violated. The main issue in front of the Court was the question as to what constitutes a manifestation of freedom of religion and belief, on which the Court ruled the following:

> In order to count as a 'manifestation' within the meaning of Article 9, the act in question must be intimately linked to the religion or belief. An example would be an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form. However, the manifestation of religion or belief is not limited to such acts; the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question.[30]

The Court ultimately found a violation regarding one of the applicants, but nonetheless reinforced its position that even the question of manifestation is primarily a question for member states, who have a wide margin of appreciation in determining how such manifestations may be limited.[31]

III.3. Magyar Keresztény Mennonita Egyház and others v. Hungary

In the *Mennonita*-case,[32] the ECtHR ruled on the regulations of registering a new church in Hungary. It found:

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[28] Ibid., 47.

[29] Case of Eweida and others v. UK, 2013, ECtHR, App. nos. 48420/10 etc.

[30] Ibid., 82.

[31] See Julie Maher: Eweida and Others: A New Era for Article 9?, *International & Comparative Law Quarterly* 63.1 (2014): 213–233.

[32] Case of Magyar Keresztény Mennonita Egyház and others v. Hungary, 2014, ECtHR, App. nos. 70945/11 etc.

> that, in removing the applicants' Church status altogether rather than applying less stringent measures, in establishing a politically tainted re-registration procedure whose justification as such is open to doubt and, finally, in treating the applicants differently from the incorporated Churches not only with regard to the possibilities for cooperation but also with regard to entitlement to benefits for the purposes of faith-related activities, the authorities disregarded their duty of neutrality vis-à-vis the applicant communities.[33]

However, it declined to examine the discriminative nature of the regulations in merit.

III.4. Izzettin Doğan and others v. Turkey

In the *Izzettin Doğan*-case,[34] the Court further clarified the scope of the margin of appreciation of member states regarding religious discrimination by explicitly stating that:

> The right enshrined in Article 9 would be highly theoretical and illusory if the degree of discretion granted to States allowed them to interpret the notion of religious denomination so restrictively as to deprive a non-traditional and minority form of religion of legal protection. Such limitative definitions have a direct impact on the exercise of the right to freedom of religion and are liable to curtail the exercise of that right by denying the religious nature of a faith (…).[35]

It also pointed out that the Turkish government essentially intervened in a theological debate and that "such an approach was inconsistent with the State's duty of neutrality and impartiality towards religions and clearly overstepped the State's margin of appreciation in choosing the forms of cooperation with the various faiths."[36]

III.5. Church of the New Faith v Commissioner of Payroll Tax

The final example will consider the famous case of *Church of the New Faith v Commissioner of Payroll Tax*[37] in Australia, where the Courts attempted to

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[33] Mennonita. 115.
[34] Case of Izzettin Doğan and others v. Turkey, 2016, ECtHR, App. no. 62649/10
[35] Izzettin. 114.
[36] Izzettin. 179.
[37] Church of the New Faith v Commissioner of Pay-Roll Tax (Victoria) ([1983] HCA 40, 154 CLR 120) (hereinafter: *Church v Commissioner*)

create a specific definition for religion. To the best of our knowledge, this is the only time a high court has attempted to create a legally binding definition for religion. The case concerned an emerging branch of scientology in Australia, whose followers were active under the umbrella of a registered foreign company named 'The Church of the New Faith'. Despite being incorporated, they were denied a payroll tax exemption usually given to religious institutions. Thus, the case mainly concerned whether the beliefs of The Church of the New Faith (i.e. Scientology) are to be considered an actual religion. The Court ultimately chose to accept a broad definition which did not necessitate a belief in a personal God. It accordingly defined the markers of religion as "first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion."[38] The High Court ultimately allowed the appeal and ruled in favor of the Church. There were two notable dissenting opinions in the case, both of which expanded on the definition.[39] Ultimately while the case had a significant impact both domestically and worldwide, it can be seen that even within the judgement, there was no complete consensus regarding the definition. In fact, as pointed out by the contemporary literature, Justices Mason and Brennan specifically stated that the courts of other countries should themselves clarify their own concepts for religion.[40]

Conclusion

Throughout the years, there have been many attempts at defining religion as a concept, but no state, court or international organization was ever able to create *one clear definition* – either domestically or internationally – that gained wide adoption. To this day, courts face a significant problem due to the lack of a clear definition in refugee cases, where matters of serious religious discrimination might arise.[41] The courts themselves, especially the ECtHR, seem to be of the opinion that such a definition should not stem from an international forum such as themselves, but rather that each member state

[38] Church v Commissioner, opinions of Justices Mason and Brennan.

[39] Church v Commissioner, dissenting opinions from Justices Wilson and Deane; as well as Justice Murphy J.

[40] Bruce Kaye: An Australian Definition of Religion, *UNSW Law Journal*, 16 (1991), 332.

[41] Such issues almost always cause controversy because, due to a lack of clear definition of the term religion, no clear definition for apostasy can exist, either. See Mirjam van Schaik, Hillary Lynn: Conceptualization Shapes Practice: Apostasy-Based Refugee Claims and International Human Rights Law, *Journal of Human Rights Practice* 16.3 (2024): 723–738.

should define it domestically. The High Court of Australia is to this day one of the only courts that has provided a clear definition of religion in a case and while that case has had some effects on the global stage, the definition created for it cannot be seen as a conclusive definition.

Ultimately, we believe that it is not the duty of any state or court to fully determine the substantial content of the concept of religion. A strictly normative definition likely does more harm than good, because it exposes the substantive aspects of the concept to political machinations.