

## FREEDOM OF RELIGION OR BELIEF IN THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The right to freedom of thought, conscience and religion in Article 9 of the European Convention on Human Rights (ECHR) has become increasingly significant and contested. Through an examination of ECHR Article 9, its drafting history, and the related jurisprudence of the European Court of Human Rights (ECtHR), Caroline K. Roberts challenges the classic approach to this right in the literature. Roberts argues that claims that there is, or should be, a clear binary and hierarchical distinction between the absolutely protected internal realm and the qualified external realm in this right are not founded textually or jurisprudentially. Rather, the primary materials suggest that the internal and external aspects are deeply interrelated, and this is reflected in the ECtHR's nuanced and holistic approach to ECHR Article 9 protection. This comprehensive, rigorous and up-to-date reappraisal of ECHR Article 9 and the related ECtHR jurisprudence will be essential reading for academics and practitioners.

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# Freedom of Religion or Belief in the European Convention on Human Rights

A REAPPRAISAL

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*To my parents, Arthur and Caroline, and my sister, Zara.*

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## Preface

This book focuses on the right to freedom of thought, conscience and religion as set out in Article 9 of the European Convention on Human Rights (ECHR). Since the early 1990s, this right has become both increasingly significant and increasingly contested and there is now a substantial and influential body of case law from the European Court of Human Rights (ECtHR) relating to freedom of religion or belief. Interest in this right has also grown exponentially in the literature; however, there has been very little interrogation of the core premises that underpin doctrinal analyses of Article 9 in recent years. Significantly, the fundamental question – what is the law in relation to freedom of religion or belief? – has not been fully explored.

This book addresses this important doctrinal question. In doing so, it reappraises the classic understanding of ECHR Article 9 and the related jurisprudence of the ECtHR in the scholarly literature, and offers an alternative way of understanding the right that is grounded in the text of Article 9, the *travaux préparatoires* and the ECtHR case law.

Specifically, it argues that the dominant view that there is, or should be, a clear binary and hierarchical distinction between the absolutely protected internal realm (*forum internum*) and qualified external realm (*forum externum*) in the architecture of ECHR Article 9 and the related ECtHR case law is not founded textually or jurisprudentially. Rather, the evidence suggests that the *forum internum* and *forum externum* aspects of Article 9 are deeply interrelated and, as such, can more helpfully be understood on a conceptual continuum ranging from the *forum internum* to the *forum externum* because the *forum internum* is always relevant, to some extent, in Article 9 complaints.

This book seeks to demonstrate that the interrelated nature of the *forum internum* and *forum externum* is understood by the ECtHR and informs its nuanced and holistic approach to the protection of Article 9. In the ECtHR's consideration of Article 9 complaints, the degree of *forum internum* relevance

is the principal factor that it uses to ascertain the strength of an applicant's complaint. However, it is not the determining factor. This is because the ECtHR balances factors indicating a violation (primarily, but not only, *forum internum* relevance) with countervailing factors indicating no violation to reach its decision.

In terms of grouping Article 9 cases, this book suggests that it is easier to understand the jurisprudence if one thinks of it in terms of a series of concentric circles, rather than using a binary and hierarchical framework. In the loose concentric circles model advanced, *forum internum* relevance is strongest and countervailing factors are weakest in the innermost circle; *forum internum* relevance is weakest and countervailing factors are strongest in the outermost circle; and *forum internum* relevance and countervailing factors are at their most contested in the middle circle, because both may be strong or both may be weak.

This reappraisal of the place of the *forum internum* and *forum externum* in ECHR Article 9 and the related ECtHR jurisprudence has implications for both academics and practitioners in the field.

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## Abbreviations

CETS	Council of Europe Treaty Series
CoE	Council of Europe
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ETS	European Treaty Series
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NGO	non-governmental organisation
UNHRC	United Nations Human Rights Committee
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNECOSOC	United Nations Economic and Social Council
UNGA	United Nations General Assembly
UNTS	United Nations Treaty Series