In times of crisis, fundamental values may be in conflict to a much greater extent than in times of peace. Nevertheless, in extraordinary situations the value-based approach must be applied consistently with the rule of law and fundamental human rights. The danger of the distortion of the value-based approach is particularly perilous in emergency situations of an interstate political character – i.e., war/martial law, unlawful territorial expansion, and the use of force and violence. In these scenarios, political purposes may tend to be prioritised by the members of the judiciary. Therefore, the law is interpreted and the actions of state power institutions are justified politically, but not necessarily legally.

National constitutions, which are compatible with *ius cogens*, are supposed to be significant legal cornerstones preventing departure from the rule of law and safeguarding the protection of fundamental human rights and the justified interpretation of law, both in times of crisis and peace.

1.3. The War Against Freedom of Conscience*

1.3.1. Freedom of Conscience and Its Contemporary Relevance

From the time of Socrates to the events involving Salman Rushdie, the war against freedom of conscience has always been part of human history. What makes the state of this freedom even more pressing today is that we have recently seen an increase in the erosion of the freedom to hold, express and live according to personal beliefs and commitments through various constraints, including surveillance technology, religious discrimination, white supremacy movements, and re-education camps that inhibit freedom of conscience and other freedoms. Although it has been decades since freedom of conscience as a core human right first appeared under the protection of international law, this fundamental right appears to be an overlooked piece in the universal human rights jigsaw to the extent that it sometimes receives the label of a forgotten right. Why is this? First, what freedom of conscience means more precisely is anything but clear. Second, very little scholarly writing has been devoted to freedom of conscience. Third, it does not play a role in legal practice; thus, its content remains vague. Fourth, surprisingly, in this secular age, freedom of conscience continues to be seen through the rubric of religious freedom.

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In 2024, three anniversaries will bring together the global community as all of their dates are connected to the conception of human rights, including the fundamental human right to freedom of conscience, and global security. Both Immanuel Kant's moral system and his understanding of the possibility of a 'perpetual peace', which find their expression in modern human rights principles, are being undermined at the time when the world will witness his 300th birthday. In addition, the EU as a peace project was itself based on the view of minimum, universal freedoms, and when the largest EU enlargement happened 20 years ago, it signified that Central and Eastern Europe also believed in this European identity and its unquestionable attachment to universal values such as individual liberty, democracy, the rule of law and universal human rights, including the right to freedom of conscience. This reality has not stopped the rise of various 'exit' appeals towards illiberal democracy, or the practical suppression of judicial independence, which clearly reflects an entirely different agenda. The question to be posed in the contemporary time is whether the Kantian system and his conception of freedom are at risk of being replaced. If so, what could be the potential consequences for freedom, including freedom of conscience? Can there be a human rights system without the Kantian moral system that seems to be under attack, alongside universal values? As recognised by Kant and others, only a strong legal framework and alliance can bring about global peace. The North Atlantic Alliance was created to uphold freedom and security. NATO, which celebrates its 75th birthday in 2024, is bound to protect individual liberty, democracy, and the rule of law. It also agreed at its 2023 Vilnius summit to tackle global security threats, including food security issues that bring famine and pose a threat to peace across the globe.

The international order that emerged after the Second World War sought to uphold security by defending individual liberty, democracy, the rule of law, and human rights values, including the fundamental right to freedom of conscience. Article 1 of the UDHR, for example, sets out that 'all human beings are born free and equal in dignity and rights' and that 'they are endowed with reason and conscience'. The ECHR guarantees the right to freedom of conscience and its expression in Article 9. The EU Charter explicitly grants the right to conscientious objection in Article 10. Nonetheless, today we live in a world where time-honoured fundamental freedoms, particularly freedom of conscience, are under threat. In his reaction to the Russian war against Ukraine and the lack of action on the part of some Western countries, the President of the Republic of Ukraine, Volodymyr Zelensky, stressed that Ukraine, like any other state, should not be expected to compromise its conscience, sovereignty, territory, or independence. In this statement, the emphasis on conscience as a target in war is of particular importance. Today, the war in Ukraine, conscience conflicts, food and global economic insecurity, global

terrorism, and death threats against those exercising free speech all pose a threat to freedom of conscience and give rise to greater insecurity.

Beliefs of a religious or secular nature are a matter of conscience, and freedom of conscience is one of the foundations of contemporary society. The ECtHR has noted several times that freedom of conscience is undoubtedly one of the pillars of a democratic state. The very question of the human rights system – and, in particular, of the right to freedom of conscience – is central to the functioning of democracy itself. However, the contemporary world has recently seen an increase in the erosion of the freedom of conscience, along with various constraints that inhibit religious and other freedoms. The massacre of journalists working at the *Charlie Hebdo* magazine; the murder of a French teacher after a class on freedom of expression and the 'anti-separatism law' that followed these events; the dialogue on COVID-19 vaccination policies; the debate on abortion rights and related Polish legal changes; the refusal to sell a wedding cake to gay couples; the ban on Muslims entering the USA; white supremacist movements in the USA; or even the stabbing of Salman Rushdie on a lecture stage in New York – all of these events involved important aspects of freedom of conscience, and all weakened freedom of conscience worldwide. Although secular law guarantees freedom of conscience, 'conscience wars' (Mancini and Rosenfeld 2018) are on the rise around the world. On many occasions, law has only deepened these problems rather than addressing them. By turning Republican, Christian, Muslim or any other belief or ideology into state law, the fundamental human principles of living in the society are denied. As a result, conflicts of conscience among people lead to disagreements between communities, states or civilisations.

The growing number of examples of oppression directed toward freedom of conscience across the globe in 2023 resulted in two recent UN resolutions being adopted within a 1-month period. On 14 June 2023, the Security Council of the UN (hereafter – the SC) unanimously adopted a resolution urging the prevention of incitement and the condemnation of hate speech, racism, and acts of extremism. This resolution encourages the prevention of the spread of intolerant ideology, the promotion of tolerance, and that the challenges of hate speech be addressed. Another resolution, adopted by the UN Human Rights Council on 11 July 2023, focuses on religious hatred. The resolution on religious hatred was adopted following a request from the countries of the Organisation of Islamic Cooperation in response to a series of acts expressing hatred toward the Quran in Sweden and elsewhere. There was no unanimity regarding this resolution, as a number of Western countries regarded it as potentially restricting the exercise of the right to freedom of expression. The main difference between the West and the East in their outlook toward free speech and respect for religious

symbols was more than apparent here. As was observed, freedom over honour with regard to religious symbols prevails in the laws of European liberal democracies, whereas honour and religious dictates are most important for religious Muslims (Akyol 2019). It is very likely that this difference is at the heart of the matter which divides the West and the East (Fradkin 2019), and this division is sensible for the religious identity and the manifestation of freedom of conscience questions for those who live in the West. France – with its recent bans on certificates of virginity and Islamic clothing at schools and the subsequent reactions of various groups of people – represents how far this clash could lead in the future. In the West, where the presumption in favour of liberty dominates, both UN resolutions illustrate that the freedom to hold and act according to one's personal conscience remains an urgent issue (Zucca 2012, p. 26).

1.3.2. Freedom of Conscience and Its Development

In the secular age, it is suggested that conscience be seen as an ecumenical value that can appeal both to religious and secular citizens (Laborde 2017, p. 64). Here, conscience is a personal instinct, a form of moral self-awareness concerning what is or would be right and wrong. Such personal commitments and beliefs come from individual minds, and a secular state should recognise this because it is a question of the sovereignty of the person in their choices of conscience (Maclure and Taylor 2010, p. 21). The conscience is an inner obligation which goes beyond any other kind of norm, whether legal, religious or otherwise. It might be added here that conscience is a process of internal examination; a process in which a balance between inner beliefs and external rules is always sought. Two dimensions are evident in this search, namely: immunity from any enforcement against internal beliefs and values; and the power of self-determination in terms of the right to conscientious objection against any external force. Through conscientious objection, individuals protect their freedom to live according to the orders of their own conscience. However, the approach which suggests that freedom of conscience is equal to conscientious objection is too narrow, and does not enable the full concept of freedom of conscience to be revealed. Conscientious objection makes a person's conscience open and public in the sense that one can dissent from what secular law expects them to do as an obligation. Freedom of conscience is broader than conscientious objection. Thus, both dimensions represent the essence of what individual conscience and personal sovereignty entail.

In liberal societies, personal sovereignty signifies that respect for people includes respect for personal autonomy. Kantian reasoning serves as a conception of moral autonomy, which represents the capacity to deliberate and give

oneself a moral law rather than blindly following the injunctions of others, whereas personal autonomy is the capacity to decide and pursue a course of actions in one's life. Here, moral judgments are entitled to respect regardless of whether they are right or wrong, as long as they are central to the self-image and self-respect of the person (Macklem 2006, p. 81). Personal sovereignty in the secular age also means the freedom to hold and express one's core beliefs. In an age in which religion is just one way of seeking good, people are regarded as having the moral capacity to control their own lives under individually chosen belief systems (Tebbe 2021, p. 275). Core moral beliefs and commitments, which are sometimes called 'convictions of conscience', constitute the moral identities of individuals (Maclure and Taylor 2010, p. 13). Moral beliefs and commitments composing one's moral identity are at the heart of the notion of individual conscience. Conscientious duties are particularly weighty demands that constitute and maintain the integrity of individuals as moral persons (Laborde 2017, p. 61). Equal freedom of conscience, as noted by John Rawls, is the only principle that individuals in the original position (the state of nature, to phrase it differently) can acknowledge (1971, pp. 206–207).

Personal freedom, including freedom of conscience, has received its fullest expression in Western societies (Gregg 2019, p. 7). However, if the development of freedom of conscience through the ages is considered, it has undergone many different stages, and there have been many occasions of being misled by false interpretations given by different actors. Freedom of conscience has been a target, and it has been attacked using various instruments including secular laws, religious dictates, heavy guns, propaganda or surveillance technologies. From the time of Socrates to the present war of aggression against Ukraine, it seems that a hostile stance against freedom of conscience has always been part of human history. Conscience under control has always been a sought-after result achieved by implementing a long-term strategy. The entire history of society might be described through the stages that freedom of conscience as a human right has undergone in the face of authority, whether religious or secular, democratic or authoritarian.

Neither the church nor the secular state is totally neutral, and both tend to promote a particular conception of good life in accordance with substantively religious or secular standards (Laborde 2011, p. 104). Immanuel Kant once observed that churches and states alike tend to violate the right to freedom of conscience by rewarding or punishing the expression of beliefs and convictions, as well as by prohibiting or interfering with the critical examination of the beliefs they seek to impose (Wood 2020, p. 199). In the context of the war of aggression against Ukraine, these Kantian words become very relevant when considering

the behaviour of Russia towards the mind and conscience of the Russian people – especially toward those who oppose the prevailing ideology and the very idea of the war being waged by Russia. Indeed, religion or state ideology have always had a strong influence on beliefs, and have certainly penalised thoughts and beliefs that did not fit the prevailing world view. For instance, scientific belief or philosophical exploration that challenged established religious thinking could lead to a death sentence in Renaissance Europe (Alegre 2023, p. 30). Russian state ideology, with its message denying the existence of the Ukrainian state and of Ukrainians as a nation, has influenced thousands of Russians by transforming their personal thoughts and collective way of thinking with regard to Ukraine, and those who do not agree with the prevailing ideological message are prosecuted under the letter of the law. Collective conscience might always have a crushing effect on individual freedom. Moreover, even in this secular age the expression of individual beliefs might lead to one being stabbed before a lecture in New York – as was the case with Salman Rushdie in 2022.

It is also important to highlight another idea discussed in this secular age. Although we might see it as a paradox that religious freedom still plays a special role in the legislation and case law, scholars add that, in a liberal democracy, the secular law of religious freedom in general concentrates all attention not to belief as a state of mind, but rather to belief as an activity in the world (Asad 1993, p. 10). More precisely, if religion is in essence a state of mind, it should thus be located in the area of private life, whereas religious activities in public are to be supervised with a close eye based on secular law. Why is this the case? As a result of the concept of religion formulated in the Western secular mind, the concept of religion seems to be biased against non-Protestant religion (Asad 1993, p. 10). This argument suggests that secular modernity in Europe is protestant in its deepest sense (Laborde 2017, p. 22). The secular mode of governance and legislation relies on binary oppositions between divine and civil obligations, between belief and reason, between thought and action, and between mind and body. Thus, as Protestantism rejected Catholic ritualism, true religion according to modern secularism is located on the first side of each opposition mentioned above. In such modern reading, religion is private, individual, and textual. The issue of Islamic veiling, for instance, proves to be an exemplary case of the inevitable conflict between modern Europe based on secular law and those who live in Europe but have a different religious conscience based on the Islamic faith, which has no protestant history.

1.3.3. Freedom of Conscience and Its Relation to Freedom of Thought and Freedom of Religion

Freedoms of thought, religion and conscience are fundamental inner freedoms that allow scientific progress, artistic inspiration, emotional fulfilment, political engagement and spiritual enlightenment – and, as correctly observed, without these freedoms, democracy is meaningless (Alegre 2023, p. 5). Usually, freedom of conscience is enshrined in law alongside clauses relating to freedom of thought and freedom of religion. Commonly, all three are treated together as the right to freedom of thought, conscience and religion. Indeed, freedom of thought and freedom of religion have a very close link in their content to freedom of conscience. However, if we follow the principles of law, each legal term – although they correspond to one another and might even be used interchangeably – always has its own authentic meaning and content. Some authors claim that freedom of thought and conscience should be treated as purely internal human rights, whereas the focus of religious freedom is on the free exercise of religious beliefs (Lindkvist 2017, p. 6). Other authors hold that what makes all three more than similar is the architecture of their freedoms; namely, the similarity in the distinction between unrestricted *forum internum* and the right to external manifestation (Taylor 2005, p. 19). Therefore, it is obvious that freedom of conscience, thought and religion are interrelated, and they all have inevitably unique meanings.

Despite this, freedom of conscience is commonly perceived to be analogous to religious freedom, or is sometimes confused with the other fundamental freedoms, including freedom of expression. For instance, in one of its judgments the Constitutional Court of Romania stressed that 'freedom of conscience presupposes the possibility of individuals to possess and publicly express an outlook about the outside world' (Brodeala and Epure 2021, p. 739). There is no doubt that thoughts, beliefs and commitments find their meaning in acts of expression. Acts of expression are representative, for they consist in presenting to the world what already exists in a mind full of beliefs and commitments. It is true that in order to flourish, freedom of conscience depends on such freedoms as freedom of expression and privacy; however, freedom of conscience differs in a number of aspects from all other freedoms. Nonetheless, it is necessary to return to the question of the tradition of equating freedom of conscience and religious freedom. Timothy Macklem provides an illustrative way in which to capture the essence of the relationship between the domains of freedom of conscience and freedom of religion. Regarding conscientious objection, the examples of military service and medical treatment are common in case law. Take the example of a

doctor, cleric, teacher or lawyer who is called on to provide services as part of a public regime in a way that offends their conscience. Macklem argues that only in some of these cases is conscience married to religious conviction: 'in nearly all it is political community has called upon him to do; in every case it is principled and autonomous matter of following the dictates of one's own reasoning rather than the dictates of others' (2006, p. 68). Such a line of thinking reveals the essence of freedom of conscience and its link to religion in a secular age.

Ronald Dworkin suggested that freedom of conscience be redefined from the conventional Western right to religious liberty into the general right to ethical independence (2013, p. 132). There have been many more efforts to define it; however, the paradox of the secular age lies in the fact that although it is characterised by pluralism of beliefs, values, and commitments, special status is still given to religious freedom by presenting it as a liberal right.

1.3.4. The Right to Freedom of Conscience and Legal Regulation

The right to freedom of conscience is enshrined in the main relevant international and national legal acts. It was suggested that the right to freedom of conscience be named as a sacred right by the framers of the UDHR. The final text of the UDHR stipulates that all people are free and equal in dignity and human rights, and that all people 'are endowed with reason and conscience'. These words were to mean that reason and conscience are defining features of the human person, and are protected by international human rights law (Alegre 2023, p. 20). Furthermore, the text of Declaration explicitly mentions the right to freedom of thought, conscience, and religion (Art. 18). Since the Declaration was adopted, according to L. Lindkvist, this article has come to shape the understanding of what it means to speak of religious freedom as a human right (2017, p. 4).

Clauses concerning religious freedom and freedom of conscience might also be found in other significant international human rights treaties, including the International Covenant on Civil and Political Rights of 1966, the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981, and the UN Convention on the Rights of the Child of 1989. The EU Charter also guarantees the right to freedom of thought, conscience and religion (Art. 10). One exceptional aspect of the EU Charter is that, in the second paragraph of Article 10, it recognises the right to conscientious objection. The African Charter on Human and People's Rights notes in Article 8 that freedom of conscience, profession and the free practice of religion is guaranteed. The Universal Islamic Declaration of Human Rights mentions the right to freedom of belief, thought and speech in Article 12. Interestingly, the latter

Declaration adds Article 13, which concerns the right to freedom of religion. It is also necessary to add that freedom of conscience receives some protection by those articles of international treaties that are devoted to freedom of expression, freedom of speech, freedom to private life and so on. However, it is necessary to emphasise that is it is wrong to think that freedom of conscience is adequately protected by these human rights instruments. Even Kant urged that it is a mistake to think that freedom of conscience is adequately protected by freedom of speech or any other right (Wood 2020, p. 199).

The ECHR, adopted in 1950, also incorporates the right to freedom of thought, conscience, and religion (Art. 9). It is important here to emphasise the second paragraph of Article 9, which lays the basis for the justification of limitations on religious freedom. This paragraph speaks about limitations on manifestations of religion or belief, but not on holding these beliefs as such. However, the protection of religious practice implies that the right to hold religious beliefs is implicit in the text of Article 9. Four grounds for limitations are listed in this paragraph, and the list cannot be interpreted in an expansive manner. These grounds are: public safety, the protection of public order, health or morals, and the protection of the rights and freedoms of others. All four notions of limitations lend themselves to a diversity of interpretations. We have plenty of descriptions of what morals or public safety entail, and the same applies to the notions contained in Article 9 – namely, thought, conscience, and religion. The definitions of these concepts, as was mentioned before, are interconnected and differ in content. In order to learn more about the content of the right to freedom of conscience, there is a need to turn to the interpretation formulated by the ECtHR.

1.3.5. Case Law on the Right to Freedom of Conscience

The ECtHR has delivered a considerable number of judgments on Article 9 of the ECHR. The majority of them examine freedom of religion questions, and a small portion of cases discuss the freedom to hold, and to act according to, secular beliefs and commitments. Article 9 of the ECHR contains two strands, namely, to hold and to manifest one's religious and secular belief. In several judgments, the ECtHR noted that Article 9 contains religious as well as secular dimensions; thus, the scope of Article 9 is very wide as it protects both religious and non-religious convictions. If a conviction is to benefit from the right enshrined in Article 9, it must attain, as stated by the ECtHR in *Eweida and Others v. UK*, a certain level of cogency, seriousness, cohesion and importance. For instance, regarding compulsory vaccination cases, the ECtHR in *Vavricka and others v. the Czech Republic* held that the critical opinion of the applicants on vaccination needs always to be tested against the notion of whether a conviction or belief is

sufficient in cogency, seriousness, cohesion and importance. It is important to add that the ECtHR pointed out that if the parents (applicants) relied on Article 9 of the ECHR without mentioning any religious reasons for their positions on vaccination, it was not their freedom of religion that was potentially at stake but their freedom of thought and conscience.

The ECtHR has the right to analyse the sincerity of one's belief – namely, as stated in *Skugar and others v. Russia*, the Court has the right to make factual findings as to whether an applicant's religious or secular claims are sincerely held and genuine. The Court has refused to grant the protection of Article 9 to various applicants because of a lack of sincerity regarding their religious or secular convictions. For instance, a father's wish to inflict corporal punishment on his child (Abrahamsson v. Sweden); an applicant's wish, motivated by his Christian belief, to hand out tracts against abortion near an abortion clinic (Van Den Dungen v. Netherlands); the refusal of a driver to fasten his seatbelt while driving a motor car in order to express the view that he should be allowed to choose his own means of protection (Viel v. France); an applicant's wish to walk naked in public on the basis that such behaviour was socially acceptable (Gough v. UK) – all have been refused protection under Article 9.

In a number of judgments, the ECtHR has acknowledged that the safeguards of Article 9 apply to: (i) the 'major' and 'ancient' world religions which have existed for millennia or for several centuries (Jakobski v. Poland; Layla Sahin v. Turkey; X v. UK); (ii) new and relatively new religious or spiritual practices (Mockute v. Lithuania; Boychev and others v. Bulgaria; Romuva v. Lithuania; A. O. Falun Dafa and others v. Moldova); and (iii) various coherent and sincerely held philosophical convictions, such as pacifism (Arrowsmith v. UK), principled opposition to military service (Bayatyan v. Armenia), veganism and opposition to the manipulation of products of animal origin or that are tested on animals (W. v. UK), opposition to abortion (Knudsen v. Norway; Van Schijndel and others v. Netherlands), a doctor's opinions on alternative medicine (Nyyssonen v. Finland), the conviction that marriage is a lifelong union between a man and a woman and the rejection of homosexual unions (Eweida and others v. UK), and attachment to secularism (Lautsi and others v. Italy; Hamidovic v. Bosnia and Herzegovina). All of these secular beliefs and convictions receive the protection of Article 9 regardless of whether they are recognised by the state or not (Mockute v. Lithuania). The Court has made it clear that the right enshrined in Article 9 of the ECHR applies to atheists, agnostics, sceptics and the unconcerned (Kokkinakis v. Greece).

The case law of the ECtHR is not only diverse, but is also constantly developing. The principle of living together revealed by the Court is something that

is frequently added to the fully fledged method used by the Court in various cases which usually relate to freedom of conscience. *European consensus* is the method which has been applied by the ECtHR in cases of a sensitive nature, such as those concerning abortion, euthanasia, marriage, sexual relationships and so on. According to some observers, this method poses a threat to the content and limits of freedom of conscience, which is unique in all European countries (O'Hara 2021, p. 93). If one looks into the case law of the ECtHR, the first case that comes to mind is *Otto Preminger Institute v. Austria*, where the Court spoke of a uniform position on the particular question among European countries. The Court had to decide in this case whether a state sanction preventing the screening of a film was in breach of the ECHR, and whether the sanction was justified in the name of the protection of religious feelings. The Court decided that the sanction was justified because the film risked provoking a strong reaction from the Christian community which prevails in Austria. Here, religion received a different treatment, as in this case Austria, a secular state, could barely cope with diversity, let alone safeguard the right to the freedom to hold one's beliefs and express them publicly. According to the Court, the absence of a uniform European position on the significance of religion in society meant that the state was entitled to a certain margin of appreciation in assessing the necessity of imposing a restriction in order to avoid offending religious beliefs.

The notion of European consensus means much more than the idea and practice of settling political conflicts by negotiation and agreement. The effect of the language of consensus can be seen, for example, in the Court's finding in the case of *Stübing v. Germany*. According to the Court's central line of argument, there existed 'a broad consensus that sexual relationships between siblings are neither accepted by the legal order nor by society as a whole'. While in that case the Court provided a picture of Member States' different legal positions on incest, demonstrating that there was in fact no complete agreement on the matter, its references to a 'broad consensus' and 'society as a whole' imply at least some European commonality. It might be said that European consensus as a method of legal interpretation has played a role in shaping the identity and directions of Europe on a particular set of questions.

1.3.6. Freedom of Conscience in the Context of Russia's War of Aggression Against Ukraine

This section seeks to explore whether and to what extent freedom of conscience might turn into the object of war. It seems that the long-term purpose of war for the country which wages it, first of all, is to cause a considerable shift in the

collective conscience of a society or particular groups of people. The result of targeting socially significant norms of life, traditions, and the prevailing social set of beliefs and personal convictions could be totally different than if a country were to concentrate their attention on destroying infrastructure and trying to change a government. The Union of Soviet Socialist Republics (hereafter – USSR, Soviet Union) had the aim of changing the religious and other personal convictions of people in Eastern European states by means of law and violence. Trying to reflect how conscience was treated in Soviet times, Aleksandr Solzhenicyn once said that people in the Soviet Union were arrested and prosecuted not so much for the expression of personal beliefs, but rather for holding personal beliefs and convictions altogether (2009, p. 55). Losing the capacity to hold and express one's personal beliefs, and thus to make moral choices, means losing elements of personal identity (Alegre 2023, p. 92). Article 58 of the Criminal Code (hereafter – the CC) of the Soviet Union, which contained a vague description of fourteen crimes and related punishments, was the instrument which permitted the negation of personal identity, the human autonomy sphere, and freedom, including freedom of conscience, for thousands of people. Based on Article 58, 10 years in prison was prescribed as the punishment for the religious teaching of one's own children. However, as Solzhenicyn added, if a person agreed to abandon or change their religion into the prevailing ideology in the courtroom, they were able to safeguard their right to raise their children (2009, p. 56). In both ways, freedom of conscience was totally denied by the regime. This is just one example of what it means to wage war against freedom of conscience in order to fundamentally transform a system of values.

Today, Russia seeks to change the core principles and collective conscience of Ukrainian society. In his reaction to the Russian war of aggression against Ukraine and the lack of action on the part of some Western countries, President Volodymyr Zelensky stressed that Ukraine should not be expected to compromise its conscience, sovereignty, territory, or independence. A country's independence, sovereignty and territory are usually seen as targets of war. However, the collective conscience, which rises from thousands of individual consciences, needs to be treated as yet another strategic objective of this war. A war against freedom, including freedom of conscience, has been waged by Russia in Ukraine while trying to instil a particular ideology which is hostile to the idea of Ukraine as a sovereign state and the Ukrainian people as nation. One of the ways in which the aggressor has sought to achieve this is the deportation of children. From the beginning of the war against Ukraine, the tendency to deport Ukraine's children to Russian lands has been on the rise. Mounting evidence shows that Russia uses the forcible relocation and re-education of Ukraine's children in so-called

'summer camps' as key components of its systematic efforts to suppress Ukraine's identity, history, and the very freedom of conscience of its individuals. In addition, the regime in Russia has permitted fast-tracked Russian citizenship for children from Ukraine, facilitating the fostering of Ukrainian minors by Russian families and paving the way for permanent adoption in a country where the adoption of foreign nationals is not allowed by law. It is obvious that in its war against Ukrainian children, Russia seeks to fundamentally transform their collective way of thinking and to erase Ukrainian identity as such.

The conscience of people in Russia has also been profoundly transformed throughout the regime of President Putin. According to Vladimir Kara-Murza, Russia's regress under Putin has taken on a dramatic pace, to the extent that it has much more in common with the handling of 'enemies of the people' under Joseph Stalin than of dissidents under Leonid Brezhnev. Such a comparison leads to the analysis of certain legal documents. The results of comparative analysis might speak for themselves. For instance, the text of the CC of Stalin's time, particularly Article 58 thereof, has much in common with the current legal norms of the CC of Russia. This resemblance is evident in the general and vague terminology of the legal norms, which provides vast room for manoeuvre when applying them. For Kara Murza, repression and fear are the only ways that the Kremlin is able to keep significant anti-war sentiments in Russian society from translating into open protests. Today, those who oppose the war in Ukraine experience harsh punishment. The very aim of the regime is to instil fear in Russian society and to paralyse any will to challenge it. Kant believed that the use of punishment to influence belief is ineffective or even counterproductive, as motives of hope and fear can influence a person's freedom of conscience only by violating the person's inalienable right to form convictions that are free from such wrongful influences (Wood 2020, p. 199). Indeed, Russians of different backgrounds and vocations have refused to become silent accomplices to the war, even at the cost of personal freedom. This chapter takes a closer look at how, by legal means, Russia has waged a war – both against the freedom to hold personal anti-war beliefs and to act accordingly, and against its own citizens.

To first return to the comparative analysis between legal norms in the CC of Stalin's time and those of Putin's Russia, the country has recently enacted two laws by which it criminalised war reporting, protesting the war, and expressing or even holding any personal beliefs or convictions regarding the war of aggression in Ukraine, Russian state authority and the army. The aim was to suppress all dissent and deny access to any information that contradicts the official Russian narrative. Article 207 (3) (disseminating false information about the actions of the armed forces) was introduced into the Russian CC on 4 March 2022, 10 days

after the invasion of Ukraine. On the same day, the Code of Administrative Offences was changed by adding Article 20(3) on discrediting the armed forces. According to Article 207(3) of the CC, public dissemination under the guise of reliable statements of knowingly false information containing data on the use of the Russian armed forces or the exercise by Russian state bodies of their powers outside the territory of Russia for the purposes of protecting the interests of Russia and its citizens, maintaining international peace and security now came to be treated illegal 'Knowingly false information' implies everything that does not come from Russian official sources. Another question is the meaning of the words 'public dissemination' or 'under the guise of reliable information'. What is 'public' is also decided by the authority and, as practice shows, it is possible to receive a fine or imprisonment for 'liking' something on social media or for statements made in private WhatsApp or Viber messages. According to lawyers working in independent media and human rights defence groups, the severity of punishment in modern Russia varies greatly depending on the qualification of each case, the principles of which are often unclear – for almost identical actions, one can receive sentences ranging from 4 months to 19 years. From 24 February 2022 to 27 August 2023, 19,794 arrests are known to have been made in Russia. More than 7,200 people were fined administratively for discreditation and were prosecuted under criminal law. Punishments for spreading knowingly false information range from fines to imprisonment. The dissemination of false information, which results in grave consequences, can lead to imprisonment for up to 19 years. Again, what 'grave consequences' could mean is left to the courts to explain, and Russian courts have broad discretion for interpretation. A further article in the CC speaks of the discreditation of the state authority and the army (Art. 280 (3)). Simply put, this criminalises criticism of the use of the Russian military or the activities of state authorities operating abroad. Article 284 (2) is also important, as it criminalises pleas for the adoption of measures that introduce or prolong sanctions against Russia or its citizens or legal entities.

The abovementioned articles of the CC and the Code of Administrative offences constitute a single system of freedom of conscience restrictions. All of these articles are connected to the beginning of Russia's military aggression against Ukraine. Retaining the power of authority holders and changing the nature of public conscience and its expression could be seen as the most significant aims of the abovementioned legal norms. The CC penalises the public dissemination of deliberately false information regarding the use of the Russian Armed Forces, with punishments ranging from large fines to imprisonment for up to 3 years. Those who allegedly disseminate such information using their official position, or as part of an organised group, or when accompanied by the fabrication of

evidence, or when guided by greed, or when motivated by political, ideological, racial, ethnic or religious hatred or hatred against a social group, could face 5–10 years in prison. In the event of grave consequences, the punishment might reach up to 15 years, with a ban on carrying out a profession or certain activities for up to 5 years. Public calls, for instance, for the armed forces to be withdrawn or to stop the war are illegal according to such legal regulation. These legal norms contradict Article 29 of the Russian Constitution and Russia's international obligations, including Article 18 and 19 of the International Covenant on Civil and Political Rights (hereafter – ICCPR); moreover, they contravene the basic principles of law. Any restrictions on fundamental human rights cannot be justified by military censorship. According to the Russian Constitutional Act on Martial Law, under martial law, the law does not impose special restrictions on freedom of speech, opinion, or conscience. It is important to emphasise that there are no legal grounds for such restrictions when martial law is not imposed. The urgent introduction of new legal norms, the rhetoric of officials and the context of their application make the legal norms even more questionable. By making only one source of information truthful – namely, the official channel – and by prohibiting the use of the word 'war' to describe the war, Russian authorities not only restrict freedom of speech, but also wage a war against the freedom to hold, express and act according to one's personal beliefs. Simply speaking, a war against the personal autonomy of Russian citizens is being waged.

A law that defines a crime in vague terms is likely to raise due-process problems. Such laws, first of all, contradict the legal principle of *nulla crimen sine lege* (no crime without law). Laws of vague quality were found in the norms of the Soviet CC, especially the aforementioned Article 58, which was mostly concerned with questions of the conscience of people under the Soviet regime. Two passages from Article 58 should be quoted here in order to illustrate the similarity in the text and its content between Soviet law under Stalin and modern Russian legislation under Putin's regime. Article 58 (10) states: 'Propaganda or agitation containing an appeal to overthrow, undermine or weaken the Soviet authority or to commit individual counter-revolutionary crimes, or dissemination, preparation or possession of literature containing such matter, entails deprivation of liberty for a period of not less than 6 months'. There is a clear resemblance between the vague text and content of the present-day legal norm on the dissemination of information on the state authority or the army and said Article of the Soviet CC. In addition, Article 58 (12) of the Soviet CC stated that 'any omission, by any person having certain knowledge of the matter, to report any counter-revolutionary crime, which is in preparation or has been committed, entails deprivation of liberty for a period of not less than 6 months'. This

legal norm, according to Solzhenicyn, affected everyone in the former Soviet Union, and if a person knew of and did not report a violation then it was treated as if they had committed it themselves (2009, p. 81). There was no maximum punishment provided in these two parts of Article 58. Such legal text created a status quo which was described by Solzhenicyn as follows: 'where there is a law, there is a crime' (2009, p. 83). It is very likely that the only thing which separates the criminal law policy of Stalin from that of Putin is that under the authority of the latter, punishments still have an upper limit, at least in the text. However, the remainder of the text bears a striking resemblance. The application of these laws continues steadily, with 182 people persecuted under Article 207 (3) (fakes) and 97 under Article 280(3) (discreditation). The latter number has grown steadily since the beginning of 2023, as more and more people have been fined administratively for discreditation (more than 7,200 as of September 2023) and have been subject to persecution. Sentences under these articles have also changed towards becoming harsher. It is possible to receive a fine simply for 'liking' something on social media, or for statements made in private WhatsApp or Viber messages.

Of course, the right to freedom of conscience is not an absolute right like the majority of other human rights, and it may be restricted under three conditions: the restriction should be provided by law; it should pursue a legitimate aim; and it should be necessary and proportionate to achieve that aim. All of the abovementioned new legal norms are directed towards freedom of conscience, freedom of expression, freedom of speech and so on. In other words, they touch on all of the main aspects of core human freedom. All of these restrictions fail all three parts of the justifiability test. Although these restrictions are written in the letter of law, these laws do not satisfy the qualitative criterion of foreseeability as they are too vague. They are, in fact, so vague that people cannot foresee what kind of speech or text might be regarded as an act against the law. Take, for instance, the words 'grave consequences' from Article 207(3), which, according to this legal norm, might lead to 15 years of imprisonment. It seems that any belief or opinion regarding the army or the state and its oral or written expression might be regarded as unlawful and, thus, punishable harshly because it could create grave consequences. These laws are for suppressing any form of pluralism, dissent, public protest or critical thought. In other words, it is against freedom to think freely and to have personal beliefs and commitments. In this regard, in the case of *Navalny v. Russia*, the ECtHR has already noted that the restrictions stated by these laws were implemented with the aim of suppressing any kind of pluralism and freedom of thought and conscience. These laws are neither necessary nor proportionate, and were issued a little more than a week

after the onset of armed aggression against Ukraine. Their restrictions are so general and vague that a person might be imprisoned for wearing a peace sign, quoting the Bible, saying that the armed forces are unprofessional, or even singing the song 'give peace a chance'. Therefore, they have no ground against all three of the abovementioned criteria, and these restrictions grounded in law are unlawful and of a repressive nature. If we take a closer look at Article 58 of the former Soviet CC, all 14 of its passages were considerably vague and general, and remind us well that legal history might be repeated.

By applying all of the aforementioned legal norms, the courts of Russia came to be guardians of the war. In order to illustrate this point, the case of Alexey Gorinov can be analysed. Mr. Gorinov, a deputy of the Council of Deputies of the Krsnoselsky Municipal District, suggested, instead of praising 'the special operation' in Ukraine, that an exhibition of Ukrainian children's paintings be made. Later, Gorinov expressed his views against the war in Ukraine by making these statements public on social media. According to the court, the defendant, using his official position as a deputy and motivated by political hatred, committed public dissemination, and this charge was laid under the guise of reliable reports of deliberately false information containing data on the use of the Armed Forces of the Russian Federation in order to protect the interests of the Russian Federation and its citizens and maintain international peace and security. The court found Gorinov guilty in committing a crime provided for in Article 207 (3) of the CC. The defendant stated that he expressed his personal opinions and beliefs, which he independently concluded, and he did not intend to spread deliberately false information about the actions of the Armed Forces of the Russian Federation in the territory of Ukraine. The court, however, had no doubt that Gorinov acted with direct intent, because, quoting the court of the Russian Federation, 'the defendant was aware of the public danger of his actions, foresaw the inevitability of socially dangerous consequences and desired their onset and guided by the motive of political hatred expressed in a dismissive, unfriendly, aggressive attitude towards the current executive and legislative authorities of the Russian Federation deliberately misled a limited circle of people about the legality of the actions of the Armed Forces of the Russian Federation during a special military operation, creating the appearance of illegal activity violating international legislation of both the Armed Forces of the Russian Federation individually and the state authorities of the Russian Federation as a whole, which led to the undermining of the authority and discrediting of the Armed Forces of the Russian Federation in society, and caused citizens who have seen the above video a sense of anxiety, fear, anxiety and insecurity on the part of the state'.

The court in Gorinov's judgment considered it necessary to note that Article 10 of the ECHR, along with the proclamation of the right of everyone to freely express their opinion, proceeds from the fact that the exercise of such freedom imposes duties and responsibilities and may be associated with certain formalities, conditions, restrictions or sanctions that are provided for in the law and are necessary in a democratic society in order to protect health and morals. The proclaimed right to freely adhere to one's beliefs and the right to freedom of expression, including freedom to seek, receive and disseminate all kinds of information and ideas by any means and regardless of State borders, simultaneously corresponded, as stated by the court in the judgment against Gorinov, 'to the standards enshrined in international legal acts establishing that the exercise of these rights and freedoms may be restricted, in particular, in the interests of security or public order, the prevention of riots or crimes (Art. 18, 19 and 29 (2) of the UDHR, Art. 19 of the ICCPR, Art. 9 and 10 of the ECHR)'.

Freedom in general and freedom of conscience in particular came to be an object of Russia's war against the Ukrainian people and against those Russians who oppose the war. Similarities between the law of Stalin's time and that of the current day are evident. The method of translating the law into an instrument in the war against freedom of conscience is also apparent. It seems that the only difference in this war against freedom is that today there is still an upper limit on the punishments written in the codes. As correctly observed, questioning is good for freedom of conscience, freedom of opinion and its expression, but deep mistrust can be as corrosive for freedom as blind faith (Alegre 2023, p. 86).

1.3.7. Interim findings

Conscience is a person's belief about what is right and what is evil, and freedom of conscience, which is at the heart of human autonomy and identity, is the core human right in a democracy. However, restriction, prosecution and oppression, or a war against freedom of conscience, has been part of human history for aeons. Indeed, freedom of conscience as a human right has received its fullest expression in Western societies; however, the contemporary western approach that freedom of conscience is equal to conscientious objection is too narrow, and does not enable the full concept of freedom of conscience to be revealed. Conscientious objection makes a person's conscience open and public in the sense that one is dissenting from what secular law expects them to do as an obligation. Thus, freedom of conscience is broader than conscientious objection.

Although freedom of conscience is enshrined in contemporary law alongside clauses relating to freedom of thought and freedom of religion, freedom of

conscience is interrelated with these two other legal concepts, yet inevitably they each have unique meanings and content. Conscience is a more universal part of human nature than religion; thus, conscience cannot be limited to or mixed with religious conscience. The very basis for religious freedom in the secular age is the idea of the liberty of conscience. The amount case law of the ECtHR regarding Article 9 cases has been and continues to be on the increase. Cases in which secular beliefs come to be under protection via the application of Article 9 imply that freedom of conscience receives a greater amount of attention.

One long-term purpose of a war waged by one country against another is the creation of a considerable shift in the collective conscience of a society or of particular groups of people. A war against freedom, including freedom of conscience, has been waged by Russia against Ukraine by trying to instil a particular ideology which is hostile to both the idea of Ukraine as a sovereign state and the Ukrainian people as a society. Moreover, the freedom of conscience of people in Russia has also been profoundly transformed throughout the regime of president Putin. Today, those who oppose the war in Ukraine experience harsh punishments enshrined in the newest amendments to the CC, which was issued ten days after the invasion of Ukraine. The very aim of the Kremlin regime, via the means of new legislation, is to instil fear in Russian society and to paralyse its will to challenge the regime.

By adopting new criminal and administrative laws, Russia has criminalised war reporting, protesting the war, and expressing or even holding any personal beliefs or convictions regarding the war in Ukraine, the Russian state authority or the army. A resemblance between the new criminal norms in Russia and the CC of Stalin is evident in the general and vague terminology of both sets of legal norms, which provide vast room for manoeuvre when applying them. It is very likely that the only thing which separates the criminal laws of Stalin and Putin is that under the authority of the latter, punishments still have upper limits, at least in the text. However, all other aspects of their texts bear an uncanny resemblance to one another.

1.4. Perspectives on Ukrainian Constitutional Aspirations Regarding European Identity After the War of aggression

1.4.1. The 2019 Constitutional Amendments Introducing Ukraine's European Identity

Recent geopolitical history can be split into two periods: pre- and post-24 February 2022. On that day, the largest ground war in Europe since World War II was launched by the Russian Federation against the independent and

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