

WHAT FREEDOM OF RELIGION OR BELIEF INVOLVES

AND WHEN IT MAY BE LIMITED



SMC
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About this publication

Debates about cartoons, bans on religious clothing in schools and public places and the persecution of religious minorities – issues relating to freedom of religion or belief increasingly end up in the headlines. Do you wonder what to think about these issues? Do you wonder what freedom of religion or belief really means?

This publication will not tell you what to think about specific issues. You will, however, find out what international law says about freedom of religion or belief and the legal criteria used to judge if a limitation of a religion or belief is legitimate or not.



Photo: Marie Gicquel
Monks of Theravada Buddhism.

Which beliefs are protected by freedom of religion or belief?

Freedom of religion or belief protects people who have and who practice various forms of belief. The European Court of Human Rights defines the term belief as “views that attain a certain level of cogency, seriousness, cohesion and importance”¹ or “a coherent view on fundamental problems”.² Traditional, non-traditional and new religious beliefs are protected as are non-religious beliefs such as atheism, agnosticism, humanism and pacifism. The rights not to have an opinion on questions of religion or belief and to criticise any or all religious or non-religious beliefs are also protected. Examples of beliefs that have been denied protection by the European Court of Human Rights are a strong personal motivation to have your ashes scattered by your home and a belief in assisted dying.

Photo: Joa Souza

Candomblé is an Afro-Brazilian religion that developed in Brazil during the early 19th century. It arose through a process of syncretism between the traditional Yoruba religion of West Africa and the Roman Catholic form of Christianity.



What does freedom of religion or belief involve?

The state has the responsibility to respect, protect and promote the following seven dimensions of the freedom of religion or belief:

1. The freedom to have, choose, change or leave a religion or belief³

This right may never be limited and is sometimes called the internal freedom of religion or belief or *forum internum*. The right is threatened and questioned internationally. Numerous states ban people from belonging to, changing or leaving a particular religion and in many countries people who exercise the right to leave a religion experience threats or violence.



2. Freedom to manifest a religion or belief

Everyone has the freedom to practice their religion or belief alone and together with others, publicly and privately.⁴ The right to practice or ‘manifest’ may in some circumstances be limited (see page 15).

The right to manifest includes rights for both individuals and communities who together practice their religion or belief.

Over 80 percent of the world's population live in countries where the state places high or very high levels of limitations on freedom of religion or belief or where social tensions threaten people's ability to exercise the right. Minorities, freethinkers and those who criticise the state and religious institutions are most severely affected.⁵

Photo: Hilda Wedges

A muslim woman and a Catholic sister in Indonesia.



Included among the manifestations internationally recognised as being protected, are the freedoms:

- To worship or assemble in connection with a religion or belief, and to establish and maintain premises for these purposes.
- To establish religious, humanitarian and charitable institutions.
- To make, acquire and use articles and materials related to the rites or customs of a religion or belief, including to follow a particular diet.
- To write, issue and disseminate relevant publications.
- To teach a religion or belief in places suitable for the purposes and to establish theological seminaries or schools.
- To solicit and receive voluntary financial and other contributions.
- To train, appoint or elect leaders, priests and teachers.
- To celebrate religious festivals and observe days of rest.
- To communicate with individuals and communities on faith issues at national and international level.
- To display religious symbols including the wearing of religious clothing.

3. Protection from coercion

Freedom of religion or belief provides protection from coercion that would hinder people from having or adopting a religion or belief (including the right to leave a belief).⁶ Threats, violence, discrimination and penal sanctions are not permitted. Protection from coercion also means that individuals have the freedom to choose the manner in which they practice their religion or belief for themselves.



4. Protection from discrimination

Discrimination on the grounds of religion or belief is not permitted. This includes discrimination against followers of theistic, atheistic, traditional, non-traditional, minority, and new religious beliefs. The state must take effective measures to prevent and eliminate such discrimination in society.⁷

Internationally, discrimination on the grounds of religion or belief is widespread with serious consequences for people's access to health and education.

5. Parents rights, children's rights

Parents have the right to give their children religious and moral education in accordance with their own beliefs. This should be done in a manner consistent with the evolving capacity of the child.⁸

The practice of a religion or belief may not harm the physical or mental health or development of a child.⁹

Each child has the right to access education on religious and belief in accordance with the wishes of the parents or guardians and may not be forced to participate in education on religion or belief against the wishes of parents/guardians, with the best interests of the child as the underlying principle.¹⁰ Internationally millions of children from religious minorities are forced to participate in confessional education on majority religions.



6. The right to conscientious objection

The right to freedom of thought, conscience, religion and belief provides the grounds for conscientious objectors to claim the right to refuse armed military service.¹¹ This has been affirmed by the European Court of Human Rights in a judgment against Armenia.¹²

Internationally, several states still imprison conscientious objectors to military service.

Other forms of conscientious objection are recognised by many states. These other forms of conscientious objection are the subjects of much debate, and include matters relating to healthcare (e.g. abortion and end of life care) and to same sex marriages. To understand how such issues are handled by the European Court of Human Rights we need to understand a legal term called the ‘margin of appreciation’.¹³ The human rights system is based on States developing national systems of protection tailored to the country’s social, political and legal context, while international conventions and courts guarantee minimum standards for human rights. In order to respect the need for contextually appropriate protections, the European Court shows some flexibility in its judgements.



Foto: Unfiltered Communications
Police surveillance of a Christian baptism in South East Asia.

The degree of flexibility shown is called the ‘margin of appreciation’. For absolute rights, like the ban on torture, there is no flexibility; all forms of torture must be banned everywhere. For rights that are well established, the Court grants a limited degree of flexibility – a narrow ‘margin of appreciation’. For rights that are less well established and where rights are in conflict, the court tends to grant a lot of flexibility – a wide ‘margin of appreciation’. This in effect means that different states can protect the rights concerned to quite different degrees.

With the exception of the right to refuse armed service, the European Court generally applies a wide margin of appreciation to cases concerning conscientious objection. Consequently, Sweden may deny health care workers the right to conscientious objection with the aim of protecting women’s rights, while many other states strongly protect health care workers’ conscientious objection rights.

7. Employers and employees

According to the praxis of many national courts, employers should provide reasonable accommodation for employees' beliefs and their need to practice their religion in the workplace. The degree of accommodation considered reasonable then varies a lot between different types of employers, workplaces and occupations, and in relation to different forms of religious practices as well as the national context. The employee's freedom to leave their post is also taken into consideration.

Photo: Oscar Espinosa

A tailor in Sri Lanka, where Buddhism is the major religion, followed by Hinduism, Islam and Christianity.



What does freedom of religion or belief not involve?

There are often misunderstandings about what freedom of religion or belief means.

FALSE: Special privileges for religious people.

TRUE: Freedom of religion or belief provides a broad protection for people with traditional or non-traditional, old or new, theistic, non-theistic or atheistic beliefs, pacifist beliefs and for those with no interest in belief matters. In other words, it protects everyone.¹⁴

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FALSE: Religions and beliefs have the right not to be criticised.

TRUE: Laws that limit the freedom of expression through banning blasphemy or the defamation of religion cause suffering for religious people and free thinkers in several countries. Freedom of religion and belief and freedom of expression are inseparably linked.

FALSE: You can say what you like in the name of a religion or belief.

TRUE: You may not propagate for war or promote hatred on the basis of nationality, race or religion in a manner that constitutes incitement to discrimination, hatred or violence¹⁵. The state has a responsibility to act to stop all expressions (religious or otherwise) that constitute incitement to discrimination or violence.

• • • • •

FALSE: Freedom of religion means one should not have to see anyone practicing their religion or belief, or hear anyone expressing their religious or belief-based views in public.

TRUE: According to article 18 of the International Covenant on Civil and Political Rights (ICCPR) and article 9 of the European Convention on Human Rights (ECHR), everyone has the right to practice their belief (religious or non-religious) both privately and in public. Everyone also has the right not to participate in the practice of other people's beliefs. In other words, the public expression of religion may be visible but must not be coercive towards others. The boundary between acceptable and unacceptable public practice centres on what is coercive.

FALSE: Religions have the right to control their own followers, whatever the followers think.

TRUE: Each individual has the right to freedom of religion or belief, and may not be subject to coercion by anyone – including leaders and other followers of their own religion or belief. Everyone – including leaders of religious or belief communities – has the right to state what they consider to be the right way to follow a particular religion or belief. The individual has the right to decide what they think of this, and to act on their decision.



Illustration © Majsan Sundell

FALSE: That a person has the right to control another person's religious observation and practice, or that parents have the right to force religious observation upon children without consideration to the growing capacities of the child to decide for themselves.

TRUE: Belief communities and individuals may not coerce an adult and must take due account of the growing capacities of children. As the UN Convention on the Rights of the Child indicates, the state “shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”¹⁶



FALSE: You can violate other human rights by claiming freedom of religion or belief.

TRUE: No-one may use freedom of religion or belief (or any other right) to justify acts that seek to destroy the other rights guaranteed by human rights conventions.¹⁷

A pink speech bubble with a tail pointing towards the bottom right. Inside the bubble is the text: "Learn more about what's true or false on www.forb-learning.org".

**Learn more about
what's true or false on
www.forb-learning.org**

How can one assess if a limitation is legitimate?

May a State or a school governing body ban teachers and pupils from wearing religious dress? Are states allowed to ban religious gatherings or practices during a pandemic? Over the last few years limitations to religious practice have been proposed or implemented in a great many countries. So how do international courts reason on these matters?

The European Court for Human Rights is the regional human rights court with greatest experience of ruling on cases concerning freedom of religion or belief and the Court's praxis has a significant influence on the way other human rights courts rule in similar cases. The following information is therefore largely based on how the ECHR reasons.

THERE ARE TWO STAGES TO THINK THROUGH:

- 1. Is every suggested limitation a limitation of freedom of religion or belief?**

Not everything that a person does with a religious motivation is protected by freedom of religion or belief. The European Court of Human Rights usually differentiates between actions that are intimately linked with the religion or belief (protected) and actions that are only motivated by the same (not protected).

How do we know if an action is intimately linked or merely motivated by a belief? The actions listed under point two on page 8 give some guidance; however lawyers with appropriate competence should be consulted in each specific case.

2. Is a limitation legitimate?

The International Covenant on Civil and Political Rights provides the following framework for assessing if a limitation to religious manifestation is legitimate:

Article 18 (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. The European Convention on Human Rights article 9 add to this the demand that limitations should be necessary in a democratic society.*

The question is therefore not whether a limitation is desirable but whether it has a legitimate ground (e.g. protecting public health), is necessary and prescribed in law. Laws that are specifically directed at the manifestation of one particular religion or that clearly aim to combat a particular religious belief are forbidden.



Foto: Toa Heftiba
Jewish man praying.

Based on the convention texts, it is possible to ask the following questions in thinking through whether a suggested limitation to belief manifestation is legitimate.

- In what way and to what degree does the behaviour to be limited threaten public safety, public order, health or morals? What evidence is available to assess this?
- In what way and to what degree does the behaviour to be limited threaten other people's freedoms and rights? What evidence is available to assess this?
- Is legislation necessary? Are there any existing legal ways of meeting the threat without passing new legislation or regulations?
- Is the proposed limitation proportional to the degree of threat?
- If the aim is to protect other people's rights and freedoms, how effective will the proposed suggestion be in achieving that aim? Are there other methods that are more effective or that do not involve a limitation of people's freedoms? What experience is available from other countries?
- Does the limitation directly or indirectly discriminate against a specific belief or religion or does it apply to all?

Further information

On the Freedom of Religion or Belief Learning Platform **www.forb-learning.org** you can find short films explaining what freedom of religion or belief involves in more detail. You will also find online courses, training resources and additional in-depth material to help you or your organisation work to promote this right.

SMC Faith in Development is a meeting place for around 30 churches, mission organisations and development organisations in Sweden who work for a just world. You can find more information about SMC Faith in Development at **www.smc.global**

If you have questions or comments about freedom of religion or belief please contact us at: **info@smc.global**



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Endnotes

- 1 Campbell and Cosans v. United Kingdom (Ser.A) No 48 (1982) ECHR, §36.
- 2 X. v Germany App. No. 8741/79 (1981) 24 D&R 137.
- 3 European Convention on Human Rights (ECHR), article 9; International Covenant on Civil and Political Rights (ICCPR), article 18.
- 4 ECHR, article 9; ICCPR, article 18.
- 5 Pew Forum report
- 6 ICCPR, article 18 (2), United Nations Human Rights Committee General Comment No. 22, §5.
- 7 ICCPR, articles 2, 5, 26 and 27; 1981 Declaration of the General Assembly article 2, 3 and 4; UN Human Rights Committee General Comment No 22 (2).
- 8 Convention on the Rights of the Child, article 14 (2)
- 9 1981 Declaration of the General Assembly, article 5 (5)
- 10 1981 Declaration of the General Assembly, article 5 (2)
- 11 United Nations Human Rights Committee General Comment No. 22, §11.
- 12 Bayatyan v. Armenia, App. no. 23459/03, ECHR
- 13 Council of Europe, Judicial professions - The Lisbon Network
- 14 Freedom of Religion: European Human Rights Law and Practice, Paul M. Taylor, Cambridge University Press 2005
- 15 United Nations Human Rights Committee General Comment No. 22
- 16 United Nations Convention on the Rights of the Child, article 12 (1)
- 17 ECHR article 17, ICCPR article 5

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