

The right to freedom of expression and religion

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The Right to Freedom of Expression and Religion This chapter includes two rights: a) the freedom of opinion and expression and b) the freedom of conscience and religion. Although these are two distinctive rights, they are in the same group as they both entail essential conditions for individual personal development. These rights are juxtaposed because freedom of expression is a quintessential aspect of the freedom to hold, practice and share one's religious beliefs. It is important to note, however, that the freedom of expression is subject to more restrictions than the freedom of religion.

A. The right to freedom of opinion and expression The freedom of expression is a right without which other rights are difficult to acquire and defend. The right to freedom of expression is rooted in the 17th century struggle of European legislators for freedom of speech. The world has seen a continuing struggle for the freedom of expression, including the freedom of speech and freedom of the press, often going hand in hand with the endeavour to limit the power of governments.

The freedom of expression can be considered an essential aspect of the individual's defence against government, just as the suppression of the freedom of expression is essential to tyranny. Human rights defenders also rely heavily on this right to challenge government indifference to or infliction of human rights abuses. As freedom of expression is a foundation for religious and political activities, it is often exercised in concert with the right to freedom of thought and assembly. Under present international Conventions, state obligations in relation to freedom of expression are absolute and immediate.

At the same time, as with other forms of liberty, completely unrestricted freedom of expression may lead to the infringement on the rights of others. The freedom of expression has been hedged in by a number of limitations and restrictions, often more extensively than other rights. Historically, most limitations have dealt with the expression of sentiments contrary to prevailing institutions or religious, political or other beliefs. In addition, in times of war, governments often restrict the freedom of expression in the interest of national security.

Like in the US Supreme Court decided in the Schenk vs. United States- case. As a cornerstone of democracy, the complexity and importance of freedom of expression has lead to extensive case-law before national courts and international supervisory mechanisms. Standards International human rights law recognises a spectrum of expression, ranging from those forms that must be protected to those that must be punished. Article 19 of both the UDHR and the ICCPR establish the freedom of opinion and expression.

Article 19 UDHR stipulates: ‘ everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. ’ The regional Conventions also contain provisions regarding the freedom of expression: Article 10 ECHR, Article 13 ACHR and Article 9 ACHPR. The freedom of expression and opinion is a complex right that includes the freedom to seek, receive and impart information and ideas of all kinds through any media.

The exercise of this right ‘ carries with it special duties and responsibilities’ (see Article 19 ICCPR and Article 10 ECHR). Therefore, in general, certain

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restrictions or limitations on the freedom of expression are permitted under human rights law. Thus, Article 20(2) of the ICCPR requires states parties to prohibit 'advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.' CERD also requires states parties to prohibit certain hostile expressions.

Article 19 ICCPR stipulates that these limitations 'shall only be such as are provided by law and are necessary: a) for respect of the rights or reputations of others; b) for the protection of national security or public order (ordre public), or of public health or morals'. In addition, Article 10 ECHR explicitly gives the state broad discretion in licensing of the media. In the Inter-American system, the Inter-American Court has dealt with freedom of expression in Advisory Opinion No. 5 on 'Membership in an Association Prescribed by Law for the Practice of Journalism'.

A strong correlation between freedom of expression and the right to gain access to information in order to form and express opinions has been recognised in the Inter-American System. In June, 2006, the OAS General Assembly adopted a Resolution that 'urge[d] the States to respect and promote respect for everyone's access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.' In the African system, the 'Declaration of Principles on Freedom of Expression in Africa' was adopted by the African Commission in 2002.

It stresses the 'fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms'. The Danish Cartoon <https://assignbuster.com/the-right-to-freedom-of-expression-and-religion/>

Controversy What has become known as the Danish cartoon controversy exemplifies the precarious balance between freedom of expression and the repression of expression. In 2006 a Danish newspaper published a series of cartoons depicting the prophet Mohammed as a possible terrorist, in one instance with a bomb in his turban.

Many Muslims were outraged because depictions of Mohammed are prohibited in the majority of Muslim communities and likening Muslims to terrorists could incite discrimination and prejudice. Other factions upheld the right of the paper to publish the cartoons as a freedom of expression issue. The Danish cartoon incident sparked mass demonstrations throughout the world resulting in death and extensive damage of property in addition to sparking a fiery debate on international law, freedom of expression and permissible limitations of this right. * Supervision

The freedom of expression is reduced by possible limitations under several international standards mentioned above. Moreover, freedom of expression and its internationally accepted limitations can be distorted by government initiatives through propaganda, control of the media and various other measures aimed at restricting the press, e. g. , licensing requirements, economic measures or restrictions on access to information. The right to freedom of expression has engendered a substantial body of case-law, in which both the right itself as well its limitations have been further defined.

Under the auspices of the European system, the European Court has stated that freedom of expression: [C]onstitutes one of the essential foundations of such a (democratic) society, one of the basic working conditions for its progress and for the development of every man. [...] It is applicable not only

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to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.

Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society' (*Handyside v. The United Kingdom*). Many cases have been brought before the former European Commission and the Court regarding the freedom of expression; several deal with the rights of journalists to freedom of expression. Case law zoeken!!! In the *Chorherr* judgment of August 1993 the Court dealt with an application concerning the applicant's arrest, detention and conviction for breach of the peace after he had refused to stop distributing leaflets and exhibiting placards at a military parade.

The Court held that the interference was "prescribed by law" and that there were legitimate grounds based on Article 10 §2 (prevention of disorder) for regarding the interference as "necessary in a democratic society". The Court has established that, according to the protection granted by the American Convention, the right to freedom of thought and expression includes 'not only the right and freedom to express one's own thoughts, but also the right and freedom to seek, receive and impart information and ideas of all kinds' (*Lopez Alvarez et al. v. Honduras*). On this note the Court has held that the state has a positive obligation to ensure that laws and regulations governing restrictions to access to state-held information comply with the Convention's parameters and restrictions may only be applied for the reasons allowed by the Convention; this also relates to the decisions on this issue adopted by domestic bodies (*Claudio Reyes et al. v. Chile*). In the

African system, the African Commission on Human and Peoples' Rights has addressed the right to freedom of expression in diverse realms.

It has, *inter alia*, found the detention of members of opposition parties and trade unions under legislation outlawing all political opposition during a state of emergency a violation of the freedom of expression; it has found that the failure of a state to investigate attacks against journalists violates their right to express and disseminate information and opinions and also violates the public's right to receive such information and opinions (*Sir Dawda K. Jawara v.*

The Gambia, Communications 147/95 and 149/96). The Commission has held that state harassment with the aim of disrupting legitimate activities of an organisation that informs and educates people about their rights constitutes a clear violation of the right to freedom of expression. Recognising the importance of freedom of expression, international fora and national governments have sought to promote additional standards to protect particular elements of this right.

Several governments have enacted legislation to improve access to information; to provide adequate access to media; to protect employees from reprisals for disclosing illegal activities of their employers; and to provide data protection so that individuals have access to their personal files held by public authorities and to ensure that such information is withheld from all persons not expressly entitled to it. International organisations have addressed the implementation and supervision of the right to freedom of expression by, for instance, appointing experts on the issue.

B. The right to freedom of conscience and religion The guarantees of freedom of conscience and religion are closely related to other substantive rights. For instance, the rights to freedom of expression, assembly and association are fundamental to holding religious beliefs and practising one's religion. Thoughts and views are intangible before they have been expressed, and convictions are valuable for a person only if he or she can express them. The private freedom of thought and religion is an absolute right that does not permit any limitation.

The guarantee of the value of freedom of thought and religion implies that one cannot be subjected to treatment intended to change one's process of thinking, be forced to express thoughts, to change opinion, or to divulge a religious conviction; thus, the right to freedom of thought, conscience, religion, belief and opinion is closely associated with the right to privacy. No sanction may be imposed for holding any view, or for changing religion or conviction; and the freedom of thought and religion protects against indoctrination by the state.

The public aspect of the freedom, the right to manifest one's belief in worship, observance, practice or teaching, is subject to limitations and defining the meaning of the freedom is complex; for instance, may refusal to serve in the military or pay taxes be justified on grounds of religion? Many states include guarantees for the right to freedom of thought, conscience, religion and belief in their constitutional traditions; in laws and regulations provisions are incorporated to prevent and punish interference with legitimate manifestations of religion or belief.

Nevertheless, violations of the principles of non-discrimination and tolerance in the area of religion or belief are extensive; millions of people enjoy the freedom of thought, conscience, religion and belief only to a limited extent. Most human rights Conventions do not allow governments to impose as many limitations on freedom of religion as on comparable rights such as freedom of assembly and freedom of expression.

In the last decades increasing political attention has been given to the freedom of religion, notably in Europe, in the light of religious intolerance. 1. STANDARDS One of the first standards for protection against religious intolerance was the founding document of the Republic of the United Netherlands, the Union of Utrecht from 1579, which stipulated that no one will be persecuted because of his religion. With the founding of the United Nations, protection against religious intolerance found its way into modern international standard setting.

All regional Conventions contain provisions regarding the freedom of thought and religion: Article 9 ECHR defines the right to freedom of thought, conscience and religion in the same words as Article 18 ICCPR. The First Protocol to the ECHR includes a provision ensuring education and teaching in conformity with the parents' religious and philosophical convictions. Supervision The international supervisory bodies have dealt with a number of communications regarding violations of the freedom of thought and religion.

The Human Rights Committee has dealt with several individual communications regarding freedom of thought and religion. For instance, the Committee has found forbidding prisoners wearing a beard and worshipping at religious services and taking away their prayer books a violation of this <https://assignbuster.com/the-right-to-freedom-of-expression-and-religion/>

right. The Committee affirms that: '[T]he freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts and that the concept of worship extends to ritual and ceremonial acts giving expression to belief, as well as various practices integral to such acts' (Boodoo v.

Trinidad and Tobago). The Committee has, however, found that requiring a Sikh who wears a turban in daily life to wear a safety-helmet at work does not violate his right to religious freedom (Singh Bhinder v. Canada). Similarly, the European Court of Human Rights held that refusing a Muslim medical student entry into classes and examinations in accordance with a school ban on head scarves upheld the principles of secularism and equality between men and women and was necessary in a democratic society (Leyla Sahin v.

Turkey). In recent years the Committee has departed from its previous jurisprudence, stating that conscientious objection to military service can be derived from Article 18 ICCPR (General Comment 22). In this General Comment, the Committee, inter alia, 'views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community'.

The Committee states, inter alia, that Article 18(2) bars coercion that would impair the right to retain one's religion or belief, including threats of violence and that designated state religions may not serve as justifications of violations of the right to freedom of religion. The 'Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on

Religion or Belief' stipulates that all states must take effective measures to prevent and eliminate discrimination on the grounds of religion or belief.

Within the regional systems several cases regarding freedom of thought and religion have been brought before the supervisory mechanisms. The European Court of Human Rights has decided numerous cases regarding the right to freedom of conscience and religion, many of which have dealt with the freedom of religion in Greece. Article 9 protects non-religious beliefs; the Court has said that the values of the article are the foundation of a democratic society: ' It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but is also a precious asset for theists, agnostics, sceptics and the unconcerned' (Kokkinakis v. Greece). Further to indoctrination, the Court has made a distinction between ' improper proselytism' and ' bearing witness to Christianity', the former possibly entailing brainwashing or violence (Kokkinakis v. Greece). Finally, in a controversial communication regarding assisted suicide, it was stated that freedom of thought under Article 8, that had hitherto included beliefs such as veganism and pacifism, could be applied to the applicant's belief in and support for the notion of assisted suicide for herself.

This was rejected by the Court as her claims did not involve a form of manifestation of a religion or belief, through worship, teaching, practice or observance as described in the ICCPR (Pretty v. The United Kingdom), citing, inter alia, a case where the European Commission had found that not all acts which are motivated by religion or belief constitute ' religious practice' (Arrowsmith v. The United Kingdom).

In regard to the right to freedom of conscience and religion under the Inter-American system, the Commission has ruled on a number of cases concerning Jehovah's witnesses and legitimate limitations of the right. The Commission has found that prosecuting members of that religion for refusing to swear oaths of allegiance, recognise the state and its symbols and to serve in the military is a violation of the right (*Jehovah's Witnesses v. Argentina* (Case 2137)). *Case of Plan de Sanchez Massacre v. Guatemala* (Series C No. 105)). The African Commission has also dealt with the freedom of religion; it has, for instance, found harassment of Jehovah's witnesses and religious leaders, assassinations and death threats aimed at them and destruction of religious structures in violation of the right (*Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Temoins de Jehovah v. Zaire*, Communications 25/89, 47/90, 56/91, 100/93). It has also stipulated that the expulsion of political activists was denying them, inter alia, the right to freedom of conscience in violation of Article 8 ACPHR (*Amnesty International v. Zambia*, Communication 212/98).