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Freedom of Religion

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Freedom of religion is a core human right. It includes the right to hold a religious belief, or not to hold it, to speak about it, or to refrain from doing so, and to practice one's religion in private and in public without being hindered or force being exercised by State authorities.

1 Historical Background

Freedom of religion as a civil right has been one of the main demands of Enlightenment philosophers (e.g. John Locke) as the vanguard of a movement which led to the American and French revolutions and their human rights declarations. Important for this development was the basic differentiation between the political and the religious which led to a) a struggle of the Church against political interference into her internal affairs (*libertas ecclesiae*); subsequently b) the fight for individual liberty of conscience by Protestant churches and groups (e.g. Hussites, Lutherans, Mennonites, Quakers, Baptists etc.); c) the establishment of a secular State, i.e. a State not legitimised by one religion, after the Wars of Religion (15th-17th century). The inclusion of the right to religious freedom as a basic right in the national constitutions from the 18th century onwards led to a long and ongoing process and to the reduction of discriminations on matters of religion worldwide. Latest events were the Velvet Revolutions against communism in Central and Eastern Europe in 1989 and the revolutions in the Arab world in 2011. Nevertheless, the right to religious freedom and freedom of conscience remains one of the rights most often violated in practice. Discrimination of the believers of other faith communities, heterodox groups of the majority religion or non-believers thus constitutes a widespread human rights violation worldwide.

2 Main Legal Documents and Provisions

The right to religious freedom as a central human right is written down in national constitutions. In international law it firstly appeared in the Universal Declaration of Human Rights (1948). It was confirmed and extended by Article 18 CCPR and reaffirmed by the Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on Religion or Belief (1981). Article 18 CCPR and Article 14 CRC stress the right to manifest one's religion or belief through worship, observance, practice and teaching, individually as well as in community with others, in private as well as in public. The State does not have the right of interference but if such manifestations

violate the laws and so has to protect public safety and social peace. In all other cases the State has to guard neutrality and impartiality *vis-à-vis* the religious practices of its citizens. The provisions of the European Convention on Human Rights (Art. 9) are largely identical, the main difference being that the ECHR guarantees the individual and not only the State the right to complaint. All these documents also assert the right not to profess a religion.

The concrete forms of the separation of State and religion and with it of religious freedom at the national level remain rather diverse for historical reasons. The French tradition of strict *laïcité* practices a form of separation which prohibits religious symbols in public (e.g. headscarves or crosses in schools) and does not give financial support to religious communities. This also holds true for the United States where, however, religion and religious practice plays an important role at the social (and political) levels. In other European countries (e.g. Austria, Germany, Italy), the principle of *benevolent neutrality* is applied: religious communities, recognised by the State as bodies governed by public law, receive financial support on the basis of equality and play an active role in public life, this being justified by their positive contribution to the common good (through education, social services etc.).

3 Some Distinctions

A) *Forum internum/forum externum*: Religious or other beliefs as internal convictions of the individual are absolutely free, i.e. the State has no right to interfere, even in a state of emergency. With regard to the *forum externum*, i.e. the outer (public) manifestations of religion (e.g. the construction of minarets), these may only be restricted provided that such limitations are prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

B) *Positive and negative religious freedom*: The right to religious freedom with regard to the *forum externum* has a *positive and a negative side*. Positive religious freedom is the right to manifest one's religion or belief through worship, observance, practice and teaching in private and in public. *Negative religious freedom* refers to the right not to be disturbed by the religious practices of others. These two sides are of equal importance and can also both be subject to legal restrictions. Thereby the right to religious freedom touches on and can also come in conflict with other legal provisions, e.g. of family law (polygamy), labour law (holidays) and others. The so-called mixed issues have to be regulated cooperatively by the State and the religious communities (religious education in schools, financial contributions to cult buildings etc.). This presupposes congruent forms of religious organisations which can act as partners for the State.

C) *Individual and collective dimension*: The right to religious freedom does pertain to the individual to practise his/her belief as well as to religious communities.

4 The Case Lautsi v. Italy

In many countries worldwide the right to religious freedom and belief is not at all guaranteed (e.g. in *Saudi Arabia is apostasy punishable by death*. In *North Korea exercise of religion in public is forbidden* or only guaranteed at a rather limited scale). The bad human rights situation in countries like e.g. China, Pakistan and Iran has negative consequences for the right to religious freedom, as one of the central human rights, too. (e.g. China: CCPR is not ratified, Art. 36 of the Constitution of the People's Republic of China only protects "normal religious activities", Pakistan: the penal code incorporates a number of Islamic law (*Shari'a*) provision – e.g. for apostasy, and Iran: Islam as State religion under Sharia law; see Marboe, "Islamic Human Rights Regimes").

The following case refers to Italy which has comparatively high standards of religious freedom and shows the difficulty of finding a balance between the positive and the negative side of religious freedom. In the so-called crucifix ruling the question was, whether crucifixes (i.e. crosses with a corpus of Christ) could be displayed in classrooms without violating the negative side of religious freedom. The argument of disturbance was brought forward by Ms. Soile Lautsi. It was dismissed by the Supreme Court of Italy in 2006 which considered the crucifix in Italy as a historical as well cultural symbol. The Chamber of the European Court of Human Rights took the side of the claimant arguing that children might be influenced by it as a religious symbol and that this conflicted with the parental right to teach children in their own belief. The Grand Chamber of the European Court of Human Rights in 2011 overturned this judgment due to lack of evidence.

5 Future Challenges

Due to globalisation, migration and de-traditionalisation religious pluralism is growing worldwide. The revival of religious movements as a political force gives increased momentum to this development. The right to religious freedom and belief and particularly the right to practice one's religion freely in public thus becomes of ever greater importance not only for traditional religious minorities but also for new migrant groups. Traditional forms of toleration based on different sets of rights for different religious communities are no longer deemed to be acceptable. This universal demand for human rights standards including religious freedom leads to a continued struggle against all forms of legal and social discrimination as well as for the respect for religious and non-religious convictions at the level of civil law as a precondition for social peace.

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Further Information

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List of Abbreviations

AAA	American Anthropological Association
ACHR	American Convention on Human Rights
ACP	African, Caribbean and Pacific
AfCHPR	African Charter on Human and Peoples' Rights
AfComHPR	African Commission on Human and Peoples' Rights
AfCtHPR	African Court of Human and Peoples' Rights
AFET	Foreign Affairs Committee of the European Parliament
AFSJ	Area of Freedom, Security and Justice
AHSG	Assembly of Heads of State and Government
AI	Amnesty International
AICHR	ASEAN Intergovernmental Commission on Human Rights
AIDS	Acquired Immunodeficiency Syndrome
AMARC	World Association of Community Radio Broadcasters
AP	Additional Protocol
APRM	African Peer Review Mechanism
ArCHR	Arab Charter on Human Rights (2004)
Art.	Article
ART	Antiretroviral Therapy
ARTIP	Awareness Raising and Implementation of the Istanbul Protocol
ASEAN	Association of Southeast Asian Nations
AU	African Union
AUCCPC	African Union Convention on Combating and Preventing Corruption
BTI	Bertelsmann Transformation Index
CA	Common Article to the Geneva Conventions
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT Committee	Committee against Torture
CCPR	International Covenant on Civil and Political Rights
CDDH	Steering Committee for Human Rights
CDDH-UE	Informal Working Group of the CDDH
CEAS	Common European Asylum System
CED	International Convention on the Elimination of All Forms of Racial Discrimination
CED Committee	Committee on the Elimination of Racial Discrimination
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CEEC	Central and Eastern European Countries
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CERD Committee	Committee on the Elimination of Racial Discrimination
CESCR	International Covenant on Economic, Social and Cultural Rights