

# Lecture 6: Religion and human rights

## I. An old problem of mankind raised again by globalization

### 1) The historical tendency of religions and religious denominations to claim absolute truth and demand unconditional obedience

- the claim to absolute truth - in history often accompanied by aggressive proselytising, forced conversion and brutal persecution of dissenters
  - especially a long history of Christian and Islamic militant proselytising of indigeneous people, forced conversion of populations of conquered territories and systematic persecution of intra-religious dissenting groups and beliefs
  - a totalitarian culmination: the Christian inquisition in the late Middle Ages and early modern times
- the demand for unconditional obedience to the religious norms - often without distinction between moral (voluntary) and legal obligations, and also to those who do not follow or not practice the religion
  - example: Christian and Islamic demands for a general legal ban on extramarital or homosexual sex
  - example: demands to ban headscarves for schoolgirls in "Christian" Europe or to impose them even on non-practising Muslim schoolgirls and non-Muslim schoolgirls in Indonesia
- the historical conflict between such claims and demands, if enforced by public authority, and the basic human rights concept of freedom

### 2) The growing awareness of cultural, ideological and religious diversity in the changing society in the globalising world

- due to world-wide development, better education and the international flow of information in the internet and digital media
- due to the growing and deepening cultural, intellectual, scientific and social exchange
  - e.g. the immigration and integration of new citizens from other parts of the world, with a different cultural and religious background
  - e.g. the growing international mobility of businessmen, workers, skilled workers and experts, all of them transporting ideas, concepts, values and attitudes from one part of the world to another and vice versa
  - e.g. the internationalisation of scientific research and debate
- tendencies of *pluralisation in formerly homogeneous societies*
  - the *rise of Islam in Europe*, also in public perception, due to the growing number of Muslims in European societies
  - a growing number of secularised citizens, agnostics and atheists in Muslim societies
  - the emergence of a more free and multicultural modern urban lifestyle in the synthetic social environment of modern megacities
- a development widely accepted but meeting *resistance from less flexible parts of the population and elites* who insist on a homogeneous traditional orientation of the society
  - examples: islamophobia in Europe, anti-Western sentiments in Indonesia, a Russian Orthodox Christian patriarch justifying Russia's war on Ukraine as a "metaphysical" struggle against the corrupted Western values
- no "clash of civilisations" (HUNTINGTON) but the risk of *tensions* in the society *caused by radical groups* fostering foreign ideologies with incompatible values
  - e.g. evangelical Christian missionaries in China and the Muslim countries
  - e.g. salafists in Europe fighting against democracy, human rights and women's rights
  - in some cases such groups are instrumentalised from abroad to manipulate or destabilise the host society

### 3) The importance of pluralism and tolerance in a democratic state committed to human rights

- pluralism - a key feature of a democratic society and inevitable consequence of the commitment to human rights
  - since freedom combined with diversity leads to a *parallelism of different ideologies, religions, philosophies of life and also ways of life* in society
  - therefore, *any assault on pluralism represents an assault on the society*

- tolerance - a key requirement for a functioning pluralistic society
  - since without it tensions will rise and society will break
  - therefore, *tolerance* is a *key obligation of every citizen* in a state committed to h.r.
  - however, the law can only require the citizen to refrain from intolerant (physical) action; real (spiritual) tolerance is not a legal but ethical obligation
- the limits of tolerance - indispensable to preserve pluralism, democracy and the constitutional order
  - no exemption, not even for religion, from the obligation to loyalty to the Constitution (the need to ban religious groups actively fighting the fundamental constit. values)
  - *no tolerance for intolerance* (the need to prevent the abuse of tolerance to fight against it)

#### **4) Religion as enrichment, challenge and threat to a tolerant, pluralistic society**

- the struggle of religions, especially those used to dominance, to find the right role in the pluralistic society in the globalised world

## **II. A fundamental issue: primacy of human rights over religion or of religion over human rights?**

### **1) The position of human rights law and doctrine: Human rights stand above religion, not religion above human rights**

- as universal values of mankind, human rights claim *unconditional validity and primacy* in every state and society, independent from its economic and social, political, historical, cultural, ideological and religious background
- thus, religious rules cannot be made mandatory (as legally binding rules) if they are incompatible with human rights

### **2) The position of religious human rights skeptics: Human rights can only apply as far as our religion and religious precepts allow**

- common among Islamists, Christian fundamentalists and radical Indian Hindu
- unlike some decades ago, human rights are usually not rejected anymore in total but strongly relativised in order to ensure the absolute authority of the religious rules
- example: attempts to weaken human rights in the Arab world
  - the "Cairo Declaration on Human Rights in Islam" of the Organisation of Islamic Cooperation of 1990 that aimed to subject the human rights to the Sharia
  - the controversial Arab Charter of Human Rights of 2004, which falls behind universal human rights standards
    - men and women only equal "within the framework of the positive discrimination established in favour of women by the Islamic Shariah, other divine laws..." (art. 3(3))
    - freedom of expression only if "exercised in conformity with the fundamental values of society" (art. 32(2))
- example: radical anti-abortion laws disregarding mothers' rights pushed through by Christian fundamentalists in Texas and Poland

## **III. Understanding freedom of religion in the globalised world**

### **1) A classical human right, often fought for against the resistance of religion**

- today a generally recognised and guaranteed universal value (cf. art. 18 UDHR, 18 ICCPR)
- the journey of English religious emigrants with the Mayflower to America as a symbol for the thrive for religious freedom

- the long road to freedom of religion in Europe, originally an answer to the long-standing struggle between the Christian denominations
  - previously, according to the principle "cuius regio eius religio", the Prince determined the denomination of his subjects and religious minorities had no other option than to emigrate
- note that in Europe religious tolerance was first granted by Muslims, in fact during the era of the Moorish Muslim rule in Andalusia

## 2) The distinction between respect for freedom of religion and religious neutrality of the state

- the human right, as universal value, demands respect for the free choice, manifestation and exercise of religion but does not require the state to be neutral in religious matters
- even with the pluralising society the *state stays free to define its relationship with religion*, choosing across a broad spectrum from strict separation (laicism) to graduated forms of collaboration while maintaining religious neutrality (a common model) to the model of a moderate religious state that promotes a particular religion or belief but respects the freedom of other believers and non-believers

## 3) Protection of the freedom, not of religion

- the freedom right aims to *protect the religious latitude of the individual*, which is essential for his personal development, but neither to serve nor to protect religion itself
- as a universal value, it implies *neither a recognition nor a rejection of religion as a value in itself*; this would not be the role of a human right
- consequently, it does *not involve a right to considerateness of the fellow citizens or the state for one's own religion* or its exercise; this can cause problems for migrants
  - example: religious school students cannot require meals conform to their religious standards in the school canteen
  - example: religious students cannot require a prayer room in their university
  - example: Muslim workers in non-Muslim countries cannot require their employer to release them from work for the Friday prayer
- it *neither involves a right to be spared from criticism of one's religion* or from non-religious behaviour; this calls for more tolerance and decency in a pluralistic society

## 4) Protection of the followers of *all* religions and beliefs without distinction

- a universal political and legal standard (cf. art. 2 UDHR, 2(1) ICCPR)
  - see also HRC, General Comment no. 22 (1993), no. 2 on art. 18 ICCPR
- not only world, monotheist or traditional religions or those common in the country
- the religion can be abstruse, contradictory in itself, immoral or even evil (e.g. satanists)
- the belief does not need to correspond to an established religion; it can be new, sectarian or a distortion of an existing religion (→ *no persecution of "heresy"*)

## 5) Protection also of the negative freedom of religion (cf. art. 18(2) ICCPR)

- since the right protects freedom, not religion, it necessarily includes the right *not* to have, adopt, manifest or practice a religion
- this includes the right to give up a religion, everywhere in the world, regardless whether the religion allows it or not (→ *no persecution of "apostasy"*)
- as for atheists, it can be doubtful if they are protected by the positive or negative freedom of opinion, since the firm belief that God does not exist is also a form of belief
  - see HRC, General Comment no. 22 (1993), no. 2: art. 18 ICCPR also protects "atheist beliefs"

## 6) The right of young people to leave the religious path of their family in the globalised world

- young people have the right to determine themselves their religious identity, regardless of the religion or attitude towards religion of their family

- in some states, the law grants religious maturity already before the age of majority, also to foreign residents, thus limiting the parental right to child education
- the family must respect the teenager's decision; this causes tensions in migration societies
  - e.g. when the son of a European atheist family chooses to become an Islamist
  - e.g. when a Muslim girl in Europe gives up Islam and follows the free Western lifestyle; in some cases authorities must intervene to prevent a "honour killing"
  - note, however, that the family is *free to take social sanctions*

## 7) On the limits of the freedom of religion

- they can vary from state to state, as long as they meet the universal minimum standard under art. 18(3) ICCPR: only limitations "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others"
- differences can especially result from specific *national constitutional principles* (as part of the public order), which demand restrictions that are not necessary in other states
  - see, for example, the differentiated German regulations on the slaughter of animals without stunning (halal/kosher slaughter), which try to reconcile freedom of religion and the constit. principle of animal protection (art. 20a BL)

## IV. Special problems

- enough subject matter not for one lecture but an entire course...
  - problems discussed both, globally and nationally, as fundamental rights problems under the national constitution, with slight variations due to the different constitutional backgrounds
    - see for Germany my detailed presentation in my guest lecture at UN DIP at 04.06.2021
- 1) **The ban on headscarves for teachers in public schools in states constitutionally bound to religious neutrality**
    - is the hijab compatible with the mandatory religious neutrality of a teacher at a public school as a representative of the state?
      - still controversially discussed in Germany, despite two decisions of the Federal Constitutional Court of 2003 and 2015, both with dissenting votes
  - 2) **The crucifix in the classroom and the freedom of religion of atheist and Muslim school students**
    - originally discussed with regard to atheist students but also relevant with regard to the nowadays numerous Muslim school students in Europe
    - heterogeneous constitutional jurisprudence in various European states
      - see in particular the crucifix decision of the German Federal Constitutional Court of 1994
    - depending on the details of the case, a crucifix installed in a way exerting psychological compulsion can violate the negative freedom of atheist and the positive freedom of Muslim school students who cannot avoid to be exposed to it during the lessons
  - 3) **The ban on headscarves for schoolgirls in European classrooms**
    - common in several European countries (e.g. France)
    - a serious encroachment on the student's right to align her lifestyle to the rules of her faith
    - can, however, be justified under certain circumstances to protect the freedom of religion and free development of schoolgirls with a Muslim background who are *not* willing to wear the hijab but put under pressure by intolerant Muslim classmates
  - 4) **Compulsory headscarves for schoolgirls in Muslim-dominated countries**
    - the controversial decision of the Indonesian Supreme Court of 03.05.2021, 7 P/HUM/2021, striking down a joint ministerial decree prohibiting local governments and public schools from imposing religious clothing on female students, teachers, and staff

## 5) The ban on full-body veiling in the public in non-Muslim countries

- common in several European countries
- can be justified specifically in contexts where the citizen must be identifiable (e.g. court hearings, exams)
- is generally justified for the protection of public security against crime and terrorism (e.g. to identify delinquents, avert camouflage of terrorists or prevent explosive belts underneath clothing)
- must provide for exceptions (where not necessary) and extend without discrimination to non-religious veiling (e.g. wearing of animal costumes or integrated suits with masks or darkened visor)

## 6) A ban on cartoons critical of religion - even across the world?

- the *global controversy over the Muhammad cartoons*
- the *need for a differentiated scientific approach*, retaining the human right to present and publish critical cartoons as part of the freedom of expression but stressing the moral imperative to refrain from cartoons which would hurt religious feelings and the criminal prohibition of cartoons that are insulting, defamatory or incite hatred

## V. Further reading

- *Bielefeldt, Heiner*: Misperceptions of Freedom of Religion or Belief, *Human Rights Quarterly* Vol. 35 No. 1 (2013), p. 33 ff., [www.jstor.org/stable/23352251](http://www.jstor.org/stable/23352251)
- *Huntington, Samuel P.*: *The Clash of Civilisations and the Remaking of World Order*, 1996
- *Ibrahim, Mohammad*: Indonesia's Supreme Court Judgment on Religious Clothing: Failing Women and Girls in Public Schools?, *Oxford Journal of Law and Religion* 10 (2021), <https://doi.org/10.1093/ojlr/rwab019>
- *Juss, Satvinder S.*: Religious Satire, Moral Restraint and the Charlie Hebdo Cartoons, *Human Rights Quarterly* 44 (2022), no. 1, p. 142 ff., DOI: 10.1353/hrq.2022.0005
- *Mohiuddin, Asif*: Globalisation, Human Rights and Islam: Competing Narratives and Discursive Practices in the Muslim World, in: *Islam and Civilisational Renewal* 9 (2018), no. 3, p. 343 ff., [doi.org/10.52282/icr.v9i3.104](https://doi.org/10.52282/icr.v9i3.104)
- *Schmitz, Thomas*: Freedom of Religion and Tolerance in a Pluralistic Society - illustrated by the Example of Germany, guest lecture at UNDIP, 04.06.2021, [www.thomas-schmitz-yogyakarta.id/Downloads/Schmitz\\_Freedom-of-religion-tolerance-pluralism\\_UNDIP2021.pdf](http://www.thomas-schmitz-yogyakarta.id/Downloads/Schmitz_Freedom-of-religion-tolerance-pluralism_UNDIP2021.pdf)