



WHAT FREEDOM OF RELIGION INVOLVES AND WHEN IT CAN BE LIMITED

A QUICK GUIDE TO RELIGIOUS FREEDOM



swedish
mission council

Further information

Further information about the state of religious freedom internationally together with recommendations for Swedish foreign policy and development cooperation can be found in the report “Faith, Freedom and Change: Integration Freedom of Religion and Belief into Swedish Foreign Policy”, published by the Swedish Mission Council in 2009 and updated 2010.

The report can be downloaded from
< www.missioncouncil.se/faith_freedom_change >

The Swedish Mission Council, < www.missioncouncil.se >, is a meeting place for 36 churches, mission organisations and development organisations in Sweden who work for a just world. The Swedish Mission Council prioritises advocacy for international freedom of religion or belief in all its dimensions and for all people.

If you have questions or concerns about freedom of religion or belief you are welcome to contact the Swedish Mission Council:

Eva Christina Nilsson, General Secretary

Katherine Cash, Advocacy officer,

Freedom of religion or belief

Email: < katherine.cash@missioncouncil.se >

Tel: +46 (0)8 453 68 95

Contents

| | |
|---|----|
| About this publication | 4 |
| Which beliefs are protected by freedom of religion or belief? | 5 |
| What does freedom of religion or belief involve? | 6 |
| What does freedom of religion or belief not involve? | 11 |
| How can one assess if a limitation is legitimate? | 14 |
| Freedom of religion or belief in Swedish foreign policy | 17 |
| Further information | 19 |

This report was produced with economical support from Sida, Swedish International Development Cooperation Agency. Sida is not responsible for its content and design.

About this publication

The burka debate, minaret bans, religious schools, persecution of religious minorities. Religious freedom issues 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. However, you will find out what international and Swedish 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.

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 right not to have an opinion on questions of religion or belief, as well as to criticise any or all religious or non-religious beliefs is also protected.

Examples of beliefs that have been denied protection by the European Court of Human Rights are a strong personal motivation to have ones’ ashes scattered at home and a belief in assisted suicide.

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..

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 70 percent of the world's population live in

³ European Convention, article 9, ICCPR, article 18.

⁴ European Convention, article 9, ICCPR, article 18.

countries where the state and/or groups in society severely limit people's religious freedom.⁵

Included among the manifestations which have been internationally recognised 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.

⁵ Pew Forum (independent research institute) report "Global Restrictions on Religion" December 2009,
< <http://pewforum.org/Government/Global-Restrictions-on-Religion.aspx> >

- 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. Freedom from coercion

Freedom of religion or belief provides freedom from coercion that would hinder people from having or adopting a religion or belief⁶. Threats, violence, discrimination and penal sanctions are not permitted. Freedom from coercion also means that individual have the freedom to choose the manner in which they practice their religion or belief for themselves.

4. Freedom 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.

⁶ ICCPR, article 18 (2).

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).

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 which is 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 to 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

Freedom of religion, belief and conscience provides the grounds for conscientious objectors to claim the right to refuse armed military service.¹¹

Internationally several states still imprison conscientious objectors to military service and the position of the European Court of Human Rights on the issue is currently unclear. Other forms of conscientious objection are recognised by many states.

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.

These other forms of conscientious objection are the subjects of debate at the European level, and include matters relating to healthcare (e.g. abortion, contraception and end of life issues) and to same sex marriages. These issues are relatively untested and it is therefore difficult to know what the position of the European Court of Human Rights will be in future.

7. Employers and employees

Employers should provide reasonable accommodation for employee's beliefs and their need to practice their religion in the workplace. The degree of accommodation considered reasonable varies a lot between different types of employer, workplace and occupation, and in relation to different forms of religious practice. The employee's freedom to leave their post is also taken into consideration.

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.¹²

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 violence.¹³ The state has a responsibility to

12 Freedom of Religion: European Human Rights Law and Practice, Paul M. Taylor, Cambridge University Press 2005.

13 United Nations Human Rights Committee General Comment No.22.

prevent 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 9 of the European Convention 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 against 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 they 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 think following a particular religion or belief means. The individual has the right to decide what they think of this, and to act on their decision.

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.”¹⁴

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 seek to abolish or limit the other rights guaranteed by human rights conventions.¹⁵

¹⁴ United Nations Convention on the Rights of the Child, article 12 (1).

¹⁵ European Convention, article 17.

How can one assess if a limitation is legitimate?

Could Sweden forbid teachers, pupils or students from wearing religious clothing that covers the face? During the last few years several suggestions for the limitation of religious practice have been proposed both in Sweden and in other countries. How does international and Swedish law reason in these matters?

There are two stages to think through:

1. Is every suggested limitation a limitation of religious freedom?

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 pages 7–8 give some guidance; however lawyers with appropriate competence should be consulted in each specific case.

In addition to the European Convention, Swedish courts also apply Sweden's discrimination legislation. The relationship between these laws is unclear. It is possible that discrimination law in some cases provides greater protection from discrimination, particular

ly in relation to actions that are only motivated by a religion.

2. Is a limitation legitimate?

The European Convention provides the following framework for assessing if a limitation to religious manifestation is legitimate:

Article 9: *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

The question is therefore not whether a limitation is desirable but whether it 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.

On the basis of the European Convention 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 citizen's freedoms? What experience is available from other countries?
- Does the limitation discriminate against a specific belief or religion or does it apply to all?

Freedom of religion or belief in Swedish foreign policy

»In many countries, religion is exploited for political ends.[...] discrimination based on religion or belief often emanates from deliberate state policies to ostracize certain religious or belief communities and to restrict or deny their access to, for example, health services, public education or public posts.«

Asma Jahangir, former UN Special Rapporteur on Freedom of Religion or Belief

Over 70 percent of the world's population lives in countries where the state or other groups in society severely restrict citizen's freedom of religion or belief.¹⁶ Millions of people of all religions and beliefs are affected by violations of religious freedom. Sometimes, one faith community is affected; most commonly governments repress many groups.

Violations of religious freedom cause suffering for individuals and groups, and contribute to creating tensions, violence and armed conflict at the societal level. Authoritarian states often use the oppression of religious activity as a means to suppress the activities of civil society, in which faith based movements and organisations often play an important role. Discrimination on the basis of religion or belief is very commonplace and affects access to social and economic rights. Women,

¹⁶ Pew Forum (independent research institute) report "Global Restrictions on Religion" December 2009, < <http://pewforum.org/Government/Global-Restrictions-on-Religion.aspx> >

children, migrant workers and refugees are particularly vulnerable.

Defending freedom of religion or belief through foreign policy is important

According to the Swedish government freedom of religion or belief is prioritised within foreign policy together with the other fundamental freedoms.¹⁷ This prioritisation is however not apparent in practice and much work remains to be done before it can be said that issues of freedom of religion or belief are integrated into foreign policy. For example the Swedish International Development cooperation Agency, Sida, lacks tools to analyse and relate to issues concerning freedom of religion or belief in development cooperation; this despite the fact that Sida works in several countries where freedom of religion or belief is severely limited by the state or other actors in society (for example Iraq and Afghanistan).

¹⁷ Carl Bildt, Minister for Foreign Affairs, answer to written parliamentary question 2009/10:421.



Swedish Mission Council

Print: 2010

Cover: A street vendor displays a Hindu religious statue in Dhaka, Bangladesh, July 2007. More than 80 percent of the population is Muslim. Photo: © Manoocher Deghati/IRIN



WHAT FREEDOM OF RELIGION INVOLVES AND WHEN IT CAN BE LIMITED

The burka debate, minaret bans, religious schools, persecution of religious minorities. Religious freedom issues 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. However, you will find out what international and Swedish 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.



swedish
mission council
www.missioncouncil.se/english