

REFERENCES ON HUMAN RIGHTS AND RELIGION OR BELIEF**(a) Universal Declaration of Human Rights***Article 18*

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

(b) International Covenant on Civil and Political Rights*Article 18*

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

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. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

(c) Charter of Fundamental Rights of the European Union*Article 10: Freedom of thought, conscience and religion*

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

(d) European Convention on Human Rights*Article 9 - Freedom of Thought, Conscience and Religion*

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching,

practice and observance.

2. 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.

Article 14 - Prohibition of Discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 2 of Protocol 1 to ECHR

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.

(e) Convention on the Rights of the Child

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

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.

(f) Relevant Court Cases under Article 9 of the ECHR

European Court of Human Rights

(i) "As enshrined in Article 9, freedom of thought conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. 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 it is also a precious asset for atheists, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it." - *Kokkinakis v Greece: (1994) 17 EHRR 397, para 31*

(ii) "The right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate." - *Manoussakis v Greece: (1996), ECHR 387, para 47*

(iii) Belief means "more than just 'mere opinions or deeply held feelings'; there must be a holding of spiritual or philosophical convictions which have an identifiable formal content." - *McFeeley v UK: (1981), 3 ECHR 161*

(iv) "In its ordinary meaning the word 'convictions', taken on its own, is not synonymous with the words 'opinions' and 'ideas', such as are utilised in Article 10 (art. 10) of the Convention, which guarantees freedom of expression; it is more akin to the term 'beliefs' (in the French text: 'convictions') appearing in Article 9 (art. 9) - which guarantees freedom of thought, conscience and religion - and denotes views that attain a certain level of cogency, seriousness, cohesion and importance." . . . [philosophical convictions] "denotes, in the Court's opinion, such convictions as are worthy of respect in a 'democratic society' and are not incompatible with human dignity." - *Campbell and Cosans v. UK: (1982), 4 ECHR 293 p304, para 36 and p305, para 36*¹

(v) In *Arrowsmith v United Kingdom (1981) 3 ECHR 218*, a case under Article 9 concerning manifestation of a pacifist belief, 'convictions' were defined as "those ideas based on human knowledge and reasoning concerning the world, life society etc, which a person adopts and professes according to the dictates of his or her conscience. These ideas can more briefly be characterised as a person's outlook on life including, in particular, a concept of human behaviour in society".

(vi) "[F]reedom of thought, conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. 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 it is also a precious asset for atheists, agnostics, skeptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it." (*Erbakan v. Turkey*, 6 July 2006, Application No. 59405/00. para. 17).

(vii) "Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith." (*Otto-Preminger v Austria*, para. 47)

¹ This case was concerned with the meaning of "philosophical convictions" in article 2 of the First Protocol, not with the meaning of 'religion' or 'belief' under Article 9, but:

"The European Court in *Campbell v Cosans v United Kingdom (1982) 4 ECHR 293, 303, para 36*, equated the parental convictions which were worthy of respect under the first Protocol with the beliefs protected under Article 9: they must attain a certain level of cogency, seriousness, cohesion and importance; be worthy of respect in a democratic society; and not incompatible with human dignity. No distinction was drawn between religious and other beliefs." - *R v Secretary of State for Education ex parte Williamson [2005] UKHL 15 Per Baroness Hale of Richmond at paragraph 73.*

United Kingdom House of Lords (Supreme Court)

[T]he difficult question of the criteria to be applied in deciding whether a belief is to be characterised as religious . . . will seldom, if ever, arise under the European Convention. . . it does not matter whether the . . . beliefs . . . are categorised as religious. Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic, and the sceptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by article 9 a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs. - *R v Secretary of State for Education ex parte Williamson* [2005] UKHL 15 Per Lord Nicholls at paragraph 24

Commentary

From the UN Human Rights Committee:

on Article 18 of the International Covenant on Civil and Political Rights (which is essentially similar to Article 9 of the European Convention):

“Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.” - Human Rights Committee, 1993 (General Comment no 22(48) (Art. 18) adopted on July 20th 1993, CCPR/C/21/Rev.1/Add.4, September 27th 1993, p1.)

From the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE):

The “belief” aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Thus, atheism and agnosticism, for example, are generally held to be entitled to the same protection as religious beliefs. - Guidelines for Review to Legislation Pertaining to Religion or Belief (2004) Section A, Paragraph 3.

From an Academic Human Rights Expert:

“As far as international human rights are concerned, religious beliefs present competing universalist ideologies which, by posing alternative approaches, do indeed threaten the universalist of the idea of human rights. Religious belief must therefore be made subordinate to the human rights framework.” - Evans, M.D., ‘Human Rights, Religious Liberty and the Universality Debate’ in O’Dair, R., and Lewis, A., (eds) *Law and Religion* (2001, Oxford) 226