

### Introduction

European history is marked by many conflicts among followers of various religious and non-religious beliefs. However, the idea that individuals should enjoy freedom of thought, conscience and religion is now universally acknowledged in different international legal texts such as the European Convention on Human Rights.

Cultural diversity of European societies is rapidly growing and creating new challenges for the protection of human rights, including the right to publicly manifest one's religion. The regulation by states of the wearing of religious symbols in public areas in particular has caused intense controversy and debate in recent years.

In November 2008 the Council of Europe is launching a **Manual on the Wearing of Religious Symbols in Public Areas** which aims to clarify this concept and provide guidance to policy makers, experts and others on the criteria used by the European Court of Human Rights in its case law. The author is Professor Malcolm Evans, Dean of the Faculty of Social Sciences and Law of the University of Bristol, who was commissioned by the Council for this project.<sup>1</sup>

In its case law, the Court has established that states enjoy a broad margin of discretion in determining how to fulfil their responsibilities as "neutral and impartial" regulators of religious life. However, it has also stressed that they must ensure the full enjoyment of the freedom of religion or belief while respecting the rights and freedoms of others.

### Questions and Answers

#### 1. Does the European Convention on Human Rights set limits to freedom of religion?

The modern system of human rights protection seeks to protect the individual from overly intrusive state activities, whilst at the same time requiring that the state provides a balanced framework that permits everyone to enjoy their rights to the fullest extent that is compatible with the rights and freedoms of others.

The European Convention on Human Rights provides that everyone has the right to freedom of thought, conscience and religion, which includes freedom to manifest one's religion or belief in teaching, worship, practice and observance. This freedom should 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.

#### 2. What are the aims of the manual?

The manual analyses how the European Convention on Human Rights relates to freedom of thought, conscience and religion. It identifies key concepts of the jurisprudence of the European Court of Human Rights, in particular the principles of respect, individual and community autonomy and non-discrimination. It also examines the role and responsibilities

<sup>1</sup> The views in this manual are those of the author and do not necessarily reflect those of the Council of Europe.

of the state (neutrality, impartiality, fostering pluralism and tolerance, and protecting the rights of others) and those of individuals.

The manual aims to clarify concepts related to the visibility of religions and beliefs in the public sphere and the notion of wearing religious symbols. It also analyses the essential questions policy makers need to ask when addressing issues concerning the wearing of religious symbols. Finally it applies these principles and approaches to the key areas such as state employment, medical services, military settings, public educational institutions, the private sector and the criminal justice system.

### **3. What is a religious symbol?**

There is no universal definition. There are different approaches to understanding religious symbols. One approach is to consider religious symbols as limited to figures of religious devotion, while another approach defines religious symbols as including everything which forms an element in the religious life of a believer. This may include, for example, forms of clothing, utensils, written materials, pictures, and buildings. The Court seems to favour a flexible approach whereby it is for the individual, rather than for the state or the Court itself, to determine whether something is, for them, a religious symbol. However, it is also made clear that this does not mean that it may not be subjected to restrictions.

### **4. What is a public area?**

There is no generally agreed understanding of what is meant by public area in the European Convention system. However, the manual highlights that the Court has interpreted that rather than emphasising the physical dimension of the public sphere, the focus should be on what might be called the “public life” or areas of public engagement which are conducted or regulated by the state.

### **5. What criteria should restrictions on the wearing of religious symbols meet?**

According to the Court’s case law, restrictions on the wearing of religious clothing and objects should reflect a general approach which is neutral and impartial between all forms of religion or belief. Restrictions can also be aimed directly at the protection of the rights of other people.

Policy makers should make sure that the restriction of the freedom to manifest one’s beliefs through the wearing of religiously-inspired clothing or artefacts is prescribed by law, pursues a legitimate aim (e.g. the rights and freedoms of others or public security) and be necessary in a democratic society, notably by being proportionate to the legitimate aim pursued. More generally, they should be compatible with the principles of respect and the need to foster tolerance and pluralism.

### **6. In which cases can restrictions on the wearing of religious symbols be imposed?**

The Court has accepted that restrictions on the wearing of religious symbols may be imposed when there is a need, for example, to preserve public safety, public security or public order, provided they have a legal basis and are proportionate to the legitimate aim pursued. The state may make adjustments in order to accommodate the needs of believers, but it has to give similar consideration to the needs of believers of all religious persuasions.

The manual identifies particular contexts where the Court has interpreted that more general restrictions may be legitimate and analyses some principles it has followed, such as the following:

## **- Restrictions on the wearing of religious symbols by general state employees**

Individual state employees are free to manifest their religion or belief through the wearing of religious symbols, to the extent that the duty of discretion imposed by their status permits it. Indeed, it may be legitimate to restrict their freedom if this is necessary in order to ensure a general confidence in the state acting objectively in its functional capacity. General appeal to secularism may not be sufficient to justify a general restriction upon state employees manifesting their beliefs in dress.

When determining the legitimacy of any restriction, the focus should be on the state employee's function rather than on the fact of being a state employee. For example, the state is certainly entitled to ensure the absence of any perception of religiously motivated bias when a judicial function is involved.

## **- Restrictions on the wearing of religious symbols by employees in medical services**

Medical workers must not allow their personal beliefs to influence their clinical judgement nor affect the carrying out of their professional responsibilities. Although the Court has not pronounced on such cases yet, they might be required to refrain from wearing religious symbols or clothing which might legitimately cause the sick and their relatives to be apprehensive as to their professionalism and objectivity.

However, while the Court has not examined this question, it may be assumed that the state may employ, or permit access to, clergy or other religious personnel and since their function is religious in nature there ought to be no restrictions upon their wearing or displaying religious clothing or symbols. The state should also not prevent patients from displaying religious symbols which may be a comfort to them, though some restrictions may be necessary in order to ensure mutual respect and the rights of other patients.

## **- Restrictions on the wearing of religious symbols in military settings**

Members of armed forces may be subjected to more stringent limitations on their freedom to manifest their religion or beliefs than civilians. As in hospital settings, it can be assumed that the state may also employ staff to fulfil the spiritual needs of its security forces and such staff is allowed to wear and display religious clothing and symbols. This would only be at issue if the state were to respond to the spiritual welfare of only one group of its employees and by doing so discriminate against members of other religions and the non-religious.

## **- Restrictions on the wearing of religious symbols in public educational institutions**

Children enjoy freedom of religion or belief and the state must ensure that knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. Teachers may manifest their religion or belief, but they must not exploit their position to impose personal beliefs that are inconsistent with beliefs of their pupils.

A range of restrictions may legitimately be placed upon teachers when they are working in the classroom in order to ensure that an appropriate educational environment is maintained and that the human rights of children and parents are respected. Any restrictions on the manifestation of religion or belief by pupils have to be strictly necessary and in the pursuit of legitimate aims of public safety, health, order, or the protection of the rights of others.

## - Restrictions on the wearing of religious symbols in the private sector

Where the private sector is being used by the state to fulfil what would otherwise be state functions the same considerations as are relevant to the public sector will apply in equal measure. Otherwise, private employers normally enjoy a greater degree of latitude when formulating their policies on religious symbols in the workplace than the public sector. However, the state is obliged to ensure that restrictions placed upon the employees by their employers are compatible with domestic law and the European Convention on Human Rights.

## - Restrictions on the wearing of religious symbols in the criminal justice system

Individuals brought into contact with the criminal justice system as suspects, witnesses, the accused and the convicted enjoy the right to manifest their religion or belief which includes the wearing of religious symbols. However, this may be restricted in the interests of national security. Security forces are often allowed to remove objects or items of clothing in order to take a person into custody if they are resisting arrest, or if it hampers identification. However, it is not permitted to use the removal of, or restrictions upon, the wearing of religious symbols or clothing as a means of coercing or punishing a suspect, witness or prisoner.

## 7. Has the Council of Europe made any recommendations to member states on how to legislate on this issue?

The Council has not adopted any legal texts nor made any specific recommendations on this issue, due to its complexity and to the Court's approach that it is necessary to assess each situation carefully and in the light of the overall context.

In February 2007, the Committee of Experts for the Development of Human Rights of the Council published a report on the issue entitled "**Human Rights in a multicultural society. The wearing of religious symbols in public areas**". In the report, the committee did not find that a normative instrument would be appropriate at this stage. However, it drew principles and factors from the relevant case law of the Court in order to offer guidance on how to approach such questions, which served as basis for the manual.

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*Updated: November 2008*