

Forum Internum & Forum Externum in Freedom of Religion and Belief (FoRB)

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Version No.	Author, institution	Date/Last Update
1	<i>Tim Jensen, University of Southern Denmark</i>	<i>December 3rd 2018</i>
2	<i>Mette Nøddeskou, University of Southern Denmark</i>	<i>December 11th 2018</i>

FROM THE FORUM INTERNUM TO THE FORUM EXTERNUM IN FREEDOM OF RELIGION AND BELIEF (FoRB)

All FoRB core articles differentiate between a so-called 'forum internum' and a 'forum externum'. The forum internum seems to be the starting point and so does the subjectivity (but at the same time universal subjectivity) of the individual human being(s). The right to freedom of thought, conscience and religion, later religion and belief, including the right to choose or change one's religion is *absolute*. It cannot and must not be limited by the state or any other agent.

Second to this right come the rights linked to the forum externum, namely the right to manifest one's thoughts, conscience, religion and belief, alone or with others, in private and public.

Here it is important, primarily, to become familiar with the texts where this right is spelled out in a more detailed way than in the UN 1948 Declaration Article 18, and we can quote, respectively, the 1966 International Covenant on Civil and Political Rights (ICCPR) 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.

And, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms ('Convention'), Article 9:

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.

Secondly, one must note that this right is, in more than one way, 'secondary' to the first absolute, and it is not absolute. It can, as is evident from the texts, be limited by the state with reference to what is deemed 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 freedom of others. However, the right to limitation is a right that cannot be exercised except if prescribed by law'.

To be noted, thus, is the fact that even though religion and/or belief has a special status and is specifically protected, the human rights articles also indicate that religion and/or belief must be subordinate to something else, something even more 'common', valuable, and important to the individual, the state and the well-being of the individual, society and the state: (non-religious) law, (non-religious) democracy, (non-religious) public safety, (non-religious) public order, (non-religious) health, (non-religious) morals, and - not least - the rights and freedom of others, - be it religious or non religious rights of others.

The secular law of the state, thus, no doubt, is above religion and whatever religious 'law' that may be linked to religious belief and practice. Or, whatever religion and religious law, belief and practice: it must find its subordinate place within the framework of the secular law and state and the totality of human rights.

As for the definition of what constitutes manifestations, often differentiated as well as linked by the mentioning of, respectively, 'teaching', 'practice', 'worship', and 'observance' (the four most commonly terms used to somehow encompass the so-called manifestation of religion), we can only refer to General Comment 22 and the EU Guidelines.

As for the way the Court and the individual states within e.g. the EU handle and administer freedom of religion as spelled out in e.g. the Convention - including how the Court and national courts apply their legal traditions and ways of reasoning to the many cases where the right to manifestation is contended, be it by the state or by individuals or groups - reference can be made to also other works on this, not least to Evans 2009.

In the preface mention has been made of a few cases, some of them also dealing with ways in which the religion, religious beliefs, religious sensitivities and the right to freedom of religion or belief conflict with e.g. the equally important right to freedom of expression (including freedom of the press), and we cannot but refer to such cases as described in the relevant literature. It is clear, however, that this is one of the most contested areas: when majority religions as well minority religions are to be practiced, are to live together - and must do so within the framework of a secular state.

This is where we find the debates and discussions and conflicts linked to e.g. the expressions not just criticising religion but maybe even offending, ridiculing, blaspheming that what is seen by some religious people as 'sacred', be it objects, images (gods, founders, etc.), buildings, rituals, or even religious feelings and beliefs.

An example could be the drawings of Muhammad in what is called the Danish 'cartoon affair', lots of movies and paintings of Jesus and Mary (his mother according

to Christian mythology), the Russian political action by Pussy Riot, and the like; everything pertaining to blasphemy laws (still in place in some European states, abolished in many others), to international and UN discussions about certain Muslim wishes to protect religion and religious feelings against all kinds of criticism.

This is, moreover, where one finds all the cases related to prohibitions (or wishes for prohibition) of the kind of manifestation that shows in the wearing or building of something that is seen as linked to religion and religious practice and observance: the wearing of head scarfs, and (to avoid accusations of discrimination) all other visible religious symbols, as in in public schools and, e.g. in Danish courtrooms; the building of minarets on mosques in Switzerland or elsewhere; the call to prayer from similar buildings with minarets, the wearing of burqas, and (again to avoid accusations of discrimination) similar clothing and headgear covering the face in public space (and on public beaches, cf. the French 'burqina' debate). Allowing or not allowing a Sikh to wear a turban in working places where a hard hat (helmet) is otherwise a must, is but another example.

On top of this we have the cases linked to e.g. the wearing of the Sikh 'kirpan' (knife/small dagger - one of the obligatory five 'k's to be worn by an initiated Sikh) in public places where the carrying of knives are otherwise prohibited for the safety of other people (cf. Jensen 2011). Ritual circumcision, of not just girls and women (considered as FGM: female genital mutilation, and thus detrimental to the health of girls and women) but also of Jewish and Muslim boys, is yet another hotly debated issue.

In the last mentioned case, the rights of the child (to choose his/her own religion, to be in control of his/her own body and its integrity and to not suffer unnecessary pain), furthermore conflicts with the right to the manifestation of religion in the shape of this ritual practice, and with the right of the parents to bring up their child within their religious tradition.

The last mentioned, of course, cf. the final paragraph in the ICCPR article 18, is a right of the parents that not rarely plays a crucial role when states handle religious education in regard to both private and public schools. Wherever the state protects and maybe promotes confessional religious education, there must be - with reference to the freedom of the child and the parents in regard to religion - an opt-out possibility or some alternative subject offered (e.g. non-religious religious education, philosophy and/or ethics).

Wherever states do offer compulsory non-religious and non-confessional religious education, the state must either make sure that there is an opt-out possibility or that the religious education offered is in line with judgments issued by the Court as to how religious education must be in order for it to be compulsory: "objective, critical and pluralistic" (cf. Jensen 2005), i.e. the way it is normally practised if based upon the academic study of religion. And, the way also prescribed by the US Supreme Court in regard to religious education in public schools in the US.

In regard to what we last mentioned, the possible conflict between the right of parents and the wish of the state to use schools and religious education to pave the way for tolerance in regard to religion, to combat stereotypes linked to religion, and to

establish a peaceful and human-rights based civil society and a well-educated citizen, becomes evident.

Last but not least, mention may of course be made of the discussions linked to the religious practices within many religions linked to food: the rules and practices regarding the slaughtering of animals in both Judaism and Islam are seen as violations of the 'rights' of animals to not suffer, and the eating of halal or kosher food in kindergartens, schools, hospitals and prisons are often discussed.

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