Religion and human rights

SUMMARY

Although on the EU agenda for decades, recent events, such as the migration crisis and the issues with the rule of law in some Member States, have brought the issue of values back into focus. EU values are those of equality, freedom and respect for human rights. Freedom of religion and belief has significant protections in the EU and under the international legal framework.

Religion, represented by churches, religious communities and other actors, is also a significant factor in the protection and promotion of human rights, both in the world and in the European Union. International human rights bodies have even formalised the participation of religious actors, mostly through exchanges and dialogues, and the European Union is no exception. Its Article 17 Dialogue with churches, religious, philosophical and non-confessional organisations offers an opportunity for those groups to make their voices heard at EU level. Religious actors have made significant contributions in, for example, migration, deradicalisation, social justice and education for tolerance.

However, the role of religion in the human rights arena is sometimes perceived as challenging, since some religious actors and some secular human rights actors may not see eye-to-eye in some areas. Experts therefore suggest that it is important to maintain that all human rights have equal worth, that everyone who may be affected by the issue is included in the dialogue, and to try to find a compromise that will not alienate any party from further cooperation.
Introduction

Recent events, such as issues stemming from the migration crisis and the problems with the rule of law in some Member States, as well as current debates – those on the Future of Europe for example – have brought the importance of shared EU values back into focus. At a 2016 high-level meeting with religious leaders from across Europe, Commissioner Dimitris Avramopoulos emphasised the importance of reaching out to all communities as a prerequisite to creating and maintaining a cohesive and inclusive society for all. Commission First Vice-President Frans Timmermans also acknowledged the importance of religious leaders as playing a pivotal role in encouraging the integration and participation of all their members in Europe as ‘full Europeans’. In 2015, Vice-President Timmermans also warned that a lack of understanding of each other’s religious beliefs is one of the problems European society must face.

The discussion on the topic of religion and human rights often focuses on two potential roles played by religion in relation to human rights: as a beneficiary of human rights legislation, with freedom of religion or belief for individuals being one of the basic human rights; and as a human rights actor holding different ideas about human rights to secular human rights activists in some areas.

However, surprisingly, there is less discussion on the role of religion as an ally of human rights defenders, given that certain religious teachings have been recognised as being similar to the values of the modern human rights system. Although actors and activists from the religious end of the spectrum may not agree on all matters with actors and activists at the secular end, this does not exclude common action on points where they do agree.

Freedom of religion and belief as a human right

After providing a source of conflict and war for centuries, and abandoning principles such as cuius regio eius religio, which made the religion of the ruler the religion of the territory, the 20th century brought a codification of the individual’s right to choose, manifest and change their religion and belief. Globally, these rights are set out in the framework of the United Nations, in particular in the 1948 Universal Declaration of Human Rights, the 1959 Arcot Krishnaswami Study, the 1966 International Covenants on Human Rights (specifically the International Covenant on Civil and Political Rights), and the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.1

The international community usually classifies human rights as first, second or third generation rights. First generation rights are civil and political rights, which emerged during the 17th and 18th centuries, with ideas of personal liberty and the protection of the individual against the state dominating. They are enshrined in the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Second generation rights are social, economic and cultural rights, enshrined in the International Covenant on Economic, Social and Cultural Rights and the European Social Charter. Third generation rights are solidarity rights, which should enable societies, especially developing societies, to be able to achieve first and second generation rights.

At European level, the Council of Europe swiftly followed the United Nations in developing its protection of individuals’ right to freedom of religion and belief, set out in the 1950 European Convention on Human Rights, specifically Article 9, which grants freedom of thought, conscience and religion, and Article 14, which prohibits discrimination based on, inter alia, religion and opinions. Additionally, Article 2 of Protocol No 1 to the Convention concerns the right of parents to ensure the education of their children in accordance with their religious convictions.

Under this body of human rights law, freedom of religion or belief has two components:

- The freedom to have or not to have or adopt (which includes the right to change) a religion or belief of one’s choice, and
• The freedom to manifest one’s religion or belief, individually or in community with others, in public or private, through worship, observance, practice and teaching. This freedom can be restricted, but only if the restriction is prescribed by law and is necessary in a democratic society for the protection of public safety, public health or morals or for the protection of the rights and freedoms of others.

More specifically, according to international human rights law, individuals are free from coercion, can have places of worship, display religious symbols, observe holidays and days of rest, appoint clergy, teach and disseminate materials and claim conscientious objection. Parents have the right to ensure the religious and moral education of their children. However, this right also means that individuals do not have to profess any religion at all.

It is important to emphasise that the beneficiaries of the protection of freedom of religion and belief are individuals, not religions. This has particular relevance in restrictions to freedom of expression. For example, according to the 2008 OSCE Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation, restrictions on freedom of expression should be limited in scope to the protection of overriding individual rights and social interests, and should never be used to protect particular institutions, or abstract notions, concepts or beliefs, including religious ones.

It is also important to stress that there is no hierarchy of rights in human rights law, which means that one right cannot ‘trump’ another. International human rights law provides a framework for the practical resolution of situations where freedom of religion or belief appears to conflict with other rights, such as the rights to freedom of expression, freedom of assembly, and to be protected from discrimination and hate speech, or where there are competing claims for the protection of freedom of religion or belief.

The roles of religious organisations in human rights bodies

The importance of the role of religious organisations in the work of human rights bodies has been recognised by several international organisations. The United Nations, for example, has an Inter-Agency Task Force on Engaging Faith-Based Actors for Sustainable Development, which brings together several UN entities. As part of this framework, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has included religions in the promotion of human rights, and the High Commissioner has stressed the importance of religious leaders as human rights actors due to their potential to influence millions of people. In 2012, the Rabat Plan of Action engaged religious leaders in combating intolerance, discrimination and hate speech, which resulted in several initiatives, including the Beirut Declaration and its 18 commitments on ‘Faith for Rights’. The Beirut Declaration reaches out to people of all religions and beliefs, with a view to promoting human rights.

The Council of Europe has also engaged with religious organisations. Following the 2005 Warsaw Summit of Heads of State and Government of the Council of Europe, at which members expressed their support for intercultural and interfaith dialogue to prevent conflicts and ensure integration and cohesion in society, the Council of Europe undertook several actions in this field. Notably, since 2008, on the basis of the 2007 San Marino Declaration, the Council of Europe has organised annual exchanges on the religious dimension of intercultural dialogue with the representatives of religious and non-religious groups. The topics dealt with during these exchanges have ranged from migration and refugees; preventing radicalisation leading to terrorism and violent extremism; the role and place of religion in public space; interaction between culture and religion; freedom of religion in the world; the role of young people in the religious dimension of intercultural dialogue; the role of the media; and education. The 2010 white paper on intercultural dialogue ‘Living together as equals in diversity’ also argues that our common future depends on our ability to safeguard and develop human rights, democracy and the rule of law, and to promote mutual understanding and respect.
However, it is also acknowledged that a number of potential problems need to be negotiated, notably around which religions or representatives within individual religions are able to participate in dialogues and initiatives, and how conflicting views between faith-based and other human rights actors should be addressed.

On the one hand, there is controversy over the special status accorded to certain religions, which gives them more space and power to influence policies to be more in line with their teachings and interests. One example of this is the permanent observer status of the Holy See at the UN, the only religion-based organisation with that status. On the other hand, the landscape within individual religions is far from monolithic. Groups and individuals may express a diverse variety of alternative doctrines and readings, but some of these voices may not be represented in human rights fora. For instance, the voices and perspectives of women of faith advocating for human rights are not yet sufficiently taken into account.

Furthermore, in spite of the many points where the interests of religions and human rights coincide, there are areas where this becomes more complicated. Within the UN framework, contestation over the promotion of women's rights and sexual and reproductive rights is longstanding and ongoing. In the context of implementing the UN Sustainable Development Goals, for example, the role of religious and faith-based organisations has been recognised as having the potential for both a positive and a negative influence, especially in specific areas such as sexual and reproductive health and gender equality. Scepticism also persists among many activists that freedom of religion or belief can fit with demands to recognise people of diverse sexual orientation or gender identities.

The relationship between religion and women's rights has also been complicated in a European context. These tensions are manifested, inter alia, around the ratification of the Council of Europe's Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which takes a gender equality perspective. In 2018, the European Parliament published a study on the backlash against gender equality in selected Member States, which shows, for example, the case of Slovakia, where the Catholic Church argued against the Istanbul Convention on the basis that it potentially discriminates against religious freedom. In February 2018, the representatives of all 13 Christian churches called on the government to withdraw its support for the Istanbul Convention. In another example, a letter signed by 333 organisations (150 from Romania) with a traditional/religious orientation was sent to the Secretary-General of the Council of Europe, requesting changes to the text of the Istanbul Convention, especially the parts on gender ideology and the teaching of sexual orientation.

Representatives of various religious communities have also campaigned publicly against same-sex marriage or anti-discrimination laws that prohibit discrimination on the grounds of sexual orientation and gender identity.³

**Religion and human rights in the EU**

**Religion and EU citizens**

The relationship between EU citizens and religion is not entirely straightforward. Opinion polls show that, although a majority identify as belonging to a religion, only a minority rank religion as one of the personal values that is most important to them. According to a 2017 Eurobarometer 88 survey, religion is the value that was least selected by the respondents as one of the most important values to them personally (6 % EU average). In the 2018 Eurobarometer 89, religion was also least selected as the value that best represents the EU (3 %), and as an issue that most creates a feeling of community among EU citizens (8 %). However, according to research carried out by Pew in 2017 (central and eastern Europe) and 2018 (western Europe), the majority of Europeans still identify as Christian (even though few of them regularly attend church). The Pew Research Center estimates the Muslim population in Europe at 5 % and the Jewish population at 0.2 %. While research on Europe has shown that each generation is less religious than the last, the Pew Research 2015
projections see the proportion of Christians in the population dropping in future from 74.5% in 2010 to 65.2% in 2050, with a rise in unaffiliated (from 18.8% to 23.3%), Muslims (from 5.9% to 10.2%), Hindus (from 0.2% to 0.4%), and Buddhists (from 0.2% to 0.4%), as well as a slight fall in the proportion of Jews (staying around 0.2%).

The legislative framework in the EU

The European Union is founded on respect for human rights and the rule of law (Article 2 TEU). The EU Charter of Fundamental Rights is the legal framework for the protection of human rights in the EU when Member States are acting within the scope of EU law. Outside the scope of EU law, the Council of Europe's European Convention on Human Rights applies. Freedom of religion and belief is guaranteed in the European Union by these instruments. With the adoption of the 2013 EU Guidelines on the promotion and protection of freedom of religion or belief, the EU has also committed to advance freedom of religion and belief in its external action, including through its financial instruments.

**Article 10 Charter of Fundamental Rights: 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.

**ARTICLE 9 ECHR: 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 of the Charter also gives parents the right to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions in accordance with national laws.

The EU Charter of Fundamental Rights also forbids discrimination on the basis of religion, with secondary legislation against religion-based discrimination existing in the area of employment owing to the Employment Equality Directive (2000/78/EC). Offences against persons based on religion have been made punishable in criminal law by the Council Framework Decision (2008/913/JHA), and minimum standards of rights, support and protection of victims of hate crime were established by the Victims of Crime Directive (2012/29/EU). However, there is still no secondary legislation to deal with discrimination on the basis of religion in other contexts, despite the Treaties giving the Council licence to legislate in that area (Article 10 and Article 19 TFEU).

2018 Equinet data on the legal framework and case law in the EU show that states still have difficulties with striking a balance between an individual or a group's right to freedom of thought, conscience and religion, against public safety, public order, health or morals, or the protection of the rights and freedoms of others. The majority of cases were in employment, the only area where the EU has secondary legislation against discrimination based on religion and belief. There were discrimination cases in the area of recruitment and selection, wearing of headgear and religious symbols, religious harassment in the workplace, justified occupational requirement, opting out of certain tasks, work patterns, and conflicts of rights. In education, an especially sensitive area, the majority of cases refers to the Muslim religion, especially Muslim women's dress, and in access to goods and services, where a thorough examination of justifications for discriminatory behaviour is
needed. The report also criticises the European Court of Human Right's acceptance of the 'living together' justification for a blanket ban on the full-face veil, because it does not contribute to legal certainty, insufficiently delineating what it means in respect of restricting fundamental rights, including the right to freedom of religion.

The role of religious organisations in the EU

The Treaty on the Functioning of the European Union mandates regular dialogue between the European Union and churches, religious associations and communities, as well as philosophical and non-confessional organisations (Article 17 TFEU). This offers an opportunity for these organisations to engage with and be included in EU policy-making.

With the first formal links between the European institutions and religious and non-confessional organisations being established in the 1990s, the 2001 white paper on European governance mentioned the 'particular contribution' of churches and religious communities, as part of civil society. After some debate on the topic during the drafting of the later-rejected Constitutional Treaty, where the need for a special dialogue between the institutions and confessional or non-confessional organisations, on top of the dialogue with civil society, was questioned, Article 17 was adopted in its current form as part of the Lisbon Treaty. High-level meetings as part of the dialogue have been hosted since 2007, and have covered topics such as radicalisation, discrimination, the future of Europe, among others.

There are several areas where various religious communities have made significant contributions and where they can develop further action and offer support. One of the most obvious is fighting religious intolerance, regardless of whether it is directed at their own or other religions. Here, the role of Christian religious communities is especially important, because as a majority in Europe, they can help change Islamophobic and anti-Semitic attitudes among the population. To this end, for example, the Conference of European Churches, Churches' Commission for Migrants in Europe, Diocese of Zagreb and Ljubljana of the Serbian Orthodox Church, and the European Parliament Antiracism and Diversity Intergroup issued a communiqué on religious minorities as part of culturally diverse societies, in which they express unease with the increase in crimes against minorities in Europe and call attention to the incompatibility of hate crime with the core values of Europe. They also urge recognition, respect, equal treatment and protection for all minorities.

Religions can also help to counter terrorist attacks. They can offer and help spread alternative, peaceful and tolerant narratives, as opposed to those of radical and violent leaders. Since radicalisation is best fought in local communities, the role of religious leaders, who have daily contact with those who may be most vulnerable to suggestion, is indispensable. The EU has provided an EU-wide forum for these practitioners, the Radicalisation Awareness Network, where they can connect and exchange best practices.

In a time of high unemployment, especially in the south of Europe, the involvement of religion as an advocate of labour and social rights for everyone can provide much needed support. Italy provides an example, where the teachings of the Catholic Church support labour rights. Cardinal Bagnasco, for instance, has mentioned several issues that need to be tackled by the government: poverty, unemployment, temporary employment, and the lack of a stable income. Additionally, the Vatican II Constitution Gaudium et Spes (GS) acknowledges that the right to work is a fundamental right for all human beings. The Catholic Church places emphasis on the dignity of the human being, which is connected to the right of workers to keep a job, the right of young people to work, and the right to equal access to the labour market for the weak and marginalised in society. Eurodiaconia, a European network of 47 churches and Christian NGOs providing social and health care services and advocating social justice is another example of a faith-motivated organisation fighting for social justice for all, based on their belief in the inherent worth and dignity of all people.

Another current issue where religion can play, and where it has played, a significant role, is immigration and the integration and acceptance of immigrants. For example, there is space for
religious houses of worship to become a place for welcoming and integrating migrants, as well as intercultural and interreligious dialogue. Religious leaders could be better informed of the needs of migrants and the potential cultural and religious hurdles to their integration into European societies, and help them face their fears and misunderstandings of the local culture in a calm and controlled manner. An example of this is the role of a local Muslim religious leader in explaining to shocked newly arrived Muslim immigrants that there was nothing wrong from a religious perspective in being welcomed by a mixed group of men and women. Likewise, some local religious leaders invited LGBTI persons to speak to the new arrivals in their mosque. As part of its Article 17 dialogue with churches, religious, philosophical and non-confessional organisations, the European Commission's 2016 annual high-level meeting with religious leaders discussed the topic of migration, integration and European values.

The Catholic Church has also expressed support for the right to migrate for several decades. The Constitution Gaudium et Spes mentions the 'personal right of migration'. Pope Benedict XVI called for an orderly migration policy which would combat human trafficking, but would not close the borders. In the more recent migration crisis, Pope Francis also expressed support for migrants and refugees, and asked that they be welcomed, protected, promoted and integrated.

Greater attention and understanding of the issue of religious persecution is also important, because it is often the reason why people flee their home countries. Working on making religious persecution one of the foci of EU external policy, as well as informing national immigration authorities and raising awareness of the issue would help the authorities make better informed decisions.
MAIN REFERENCES


ENDNOTES

2  The agreement was signed by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information.
4  This is over such values such as peace, human rights, respect for human life, democracy, etc.
5  The EU Charter is consistent with the European Convention, and when the Charter contains rights that stem from the Convention, their meaning and scope are the same. All EU Member States have ratified the Convention and are obliged to respect it. According to the Treaty of Lisbon, the EU has a legal obligation to accede to the European Convention on Human Rights, which would give citizens individual recourse against the actions of the Union, but this has so far not happened.
7  ibid.
8  ibid.