

PhD Course 3 ECTS/ Professional Training

**Freedom of Religion or Belief – Legitimate and Illegitimate
Limitations**

Norwegian Centre on Human Rights, 11-13 March 2019

Concept note

Freedom of religion or belief (FoRB) radiates the aura of a well-established “classical” human rights, deeply anchored in national constitutions and enshrined in regional and international conventions. Historians have appreciated its ground-breaking role within the genesis of human rights, and activists like to underline its critical function as a gateway to other rights of freedom. In spite of its “classical” reputation, however, FoRB continues to cause deep controversies and evoke mixed feelings, and it meets with a lot of resistance in theory and – more importantly – in political practice. Apparently, FoRB has an enormous provocative potential, which comes to the fore in different ways and directions. On the one hand, FoRB challenges traditional religious hegemonies, authoritarian monopolies of interpretation and the utilization of religion for political gains. When opening up societies for more religious (and non-religious) diversity, religious pluralism and critical debates, FoRB usually operates in close vicinity to freedom of expression, freedom of association, freedom of assembly and other rights of freedom. On the other hand, FoRB may also harbour provocations for liberal, secular societies, because it acknowledges religiosity (in the broadest sense) as part of the human condition and as a legitimate part of public life. As consequence, not only religious traditionalists, but also some secular liberals raise objections, albeit from opposite motives, against a wide conceptualization and implementation of FoRB. This has resulted in the paradox that FoRB is the only “liberal” right, which currently does not receive unanimous applause among liberals.

While radical critics of FoRB have called for the removal of this peculiar right from the list of legitimate human rights, the usual way of curtailing the scope of FoRB is by invoking limitation clauses. Like most other human rights, FoRB – in its social, external dimension – can actually be limited by the State, provided the criteria set out for the justification of limitations are fully satisfied. These criteria include formal, substantial and procedural aspects, such as e.g. a formal law, a legitimate purpose as well as proportionality testing. Limitations of FoRB have inter alia been proposed for the purposes of liberating women (e.g. by banning headscarves and burkas), saving children from religious

indoctrination, preventing religious extremism and violence, protecting the feelings of others, guarantee the secular nature of public institutions, safeguarding societal “harmony” and many other goals.

The delicate issue of limitations of FoRB, which analogously concerns other rights as well (e.g. freedom of expression, freedom of association, right to privacy etc.), is of enormous significance for human rights practice. There can be no easy solution. It is a truism that no right of freedom can be without limitations, because otherwise freedom would most likely become the “elbow freedom” of those who do not care about the rights of others. That is why limitation clauses form an inherent part of human rights law, including FoRB. At the same time, one cannot ignore the danger that limitation clauses can become the entry point for arbitrary and overly broad restrictions, sometimes by conjuring up alleged normative conflicts, which at closer analysis may turn out to not even exist. The frequent experience of a lax, loose and unsubstantiated use of limitation arguments calls for caution and a high degree of empirical and normative diligence in the interpretation and application of the respective provisions.

The Oslo Coalition on Freedom of Religion or Belief, based in the Norwegian Centre for Human Rights, has embarked on a complex research project, which explores the application of limitation clauses concerning FoRB in different national, European and international contexts: the UN Human Rights Committee, the European Court of Human Rights and countries like Brazil, Denmark, Indonesia, Nigeria, Turkey etc. The purpose is to better understand the practice of handling limitation clauses in order to identify criteria for distinguishing between legitimate and illegitimate ways of restricting certain FoRB manifestations. The PhD seminar will inter alia provide an opportunity to discuss some of the preliminary findings of the research project.

The first two sessions of the seminar are dedicated to exploring the human rights nature of FoRB in general. This implies a clear conceptual differentiation between traditional policies of religious tolerance and the modern human rights approach in handling religious diversity, based on principles of universality, freedom and equality. Using a General Comment of the UN Human Rights Committee, which serves as the monitoring body in charge of overseeing the International Covenant on Civil and Political Rights, we then analyze the criteria for justifying limitations, as set out in international human rights law. One important point in this context is that the onus of argumentation falls on those who deem limitation necessary, not on those who wish to exercise their right to FoRB. Bearing in mind

the criteria for justifying limitations, we subsequently move on to discuss a number of practical examples, cases as well as situations. This covers countries from different parts of the world (Nigeria, Indonesia, Kazakhstan etc.), but not least in Europe. We deal with judgments of the European Court of Human Rights (based in Strasbourg) and hear about recent developments in Scandinavian country, including Norway. One section will focus on blasphemy laws, especially in Islamic countries. The seminar also gives an opportunity to discuss various practical experiences (e.g. from country missions by UN special rapporteurs) and new initiatives.

The Oslo Coalition brings together experts from different disciplines and practitioners with different backgrounds of experience. Accordingly, the PhD seminar will likewise be an interdisciplinary enterprise, with perspectives coming from law, philosophy, political science and history of religion. Participants are expected to prepare the seminar by studying some articles within the reading material provided by the organizers.

Time and venue

The course will take in the premises of the Norwegian Centre for Human Rights from 11 to 13 March, 2019. Participants are expected to study beforehand the course material. These reading materials will be made available upon registration.

Course fee

Participants to the course will be charged a 3,000 NOK (Norwegian kroner) fee, lunches included. PhD candidates from Norwegian universities are entitled to a fee exemption, except for a small payment for lunches of 500 NOK.

Academic assessment

The PhD candidates taking the course are expected to write an essay of 4,000 words on an assigned, or approved topic by one of the course lecturers.

Target group

While the course is primarily aimed at PhD candidates doing research on this area, it is also open to professionals (with different backgrounds) who have an interest or are working with issues concerning religion and violence.

Program Ph.D. Course/ Professional Training

Monday March 11

08:30 – 09:00 Coffee, registration and Welcome

09:00 – 09:15 *Scrutinizing Limitations on Freedom of Religion or Belief* (Lena Larsen)

09:15 – 10:30 *From Tolerance to FORB* (Heiner Bielefeldt and Tore Lindholm)

10:30 – 10:45 Coffee break

10:45 – 12:15 *FORB as a Human Right* (Heiner Bielefeldt)

12:15 – 13:00 **Lunch Break**

13:00 – 14:15 *On Limitations: UN HR Committee's General Comment 22* (Group work)

14:15 – 14:30 Coffee break

14:30 – 16:00 Presentation of results discussion (Heiner Bielefeldt)

Tuesday March 12

09:00 – 10:30 *Limitations of FORB: The European Court of Human Rights* (Thiago Alvares)

10:30 – 10:45 Coffee break

10:45 – 12:15 *SAS vs France*. Case presentation and group work (Thiago Alvares)

12:15 – 13:00 Lunch

13:00 – 14:15 *FORB and non-discrimination in Scandinavia* (Ingvill Thorson Plesner)

14:15 – 14:30 Coffee Break

14:30 – 16:00 The case of Nigeria: Freedom of religion, and current discussions and dilemmas (Gina Lende)

Wednesday March 13

09:00 – 10:30 *Islam, FoRB and Gender Equality* (Lena Larsen)

10:30 – 10:45 Coffee break

10:45 – 12:15 *Experience in the UN: The way towards the Rabat Plan* (Heiner Bielefeldt)

12:15 – 13:00 Lunch

13:00 – 14:30 *Lessons from the field* (Heiner Bielefeldt)

14:30 – 14:45 Coffee break

14:45 – 16:00 TBC

(Persons mentioned in brackets are chiefly, not exclusively, in charge of the sessions.)

Reading materials

General Comment No. 22 of the UN HR Committee (1993).

Heiner Bielefeldt/ Nazila Ghanea/ Michael Wiener, *Freedom of Religion or Belief. An International Law Commentary*, Oxford: OUP, 2016, pp. 1-40 (= introduction, normative profile, facets of the history of FoRB).

Bielefeldt/ Ghanea/ Wiener. *op.cit.*, pp. 551-570 (chapter on limitations).

Guglielmo Verdrame, *Resuing Human Rights from Proportionality*, in: Roman Craft et al, eds., *Philosophical Foundations of Human Rights*, Oxford: OUP, 2015, pp. 341-357.

Heiner Bielefeldt/ Michael Wiener, *Struggling for Religious Freedom. Concepts, Conflicts, Controversies* (to be published by Pennsylvania University Press, early 2019, chapter 8: comparison between UN HR committee and ECtHR).

Lena Larsen:

Justice, Equality and Muslim Family Laws. New Ideas, New Prospects. Ziba Mir-Hosseini

Ingvill Thorson Plesner:

1. Intro on law and religion in the Nordic countries:

Lene Kühle in *Nordic Journal of Religion and Society* (2011)

2. Intro on limitations/regulations in Denmark:

Danish Regulation of Religion, State of Affairs and Qualitative Reflections

3. Intro on law and religion in Norway (legal perspective) Ingvill T. Plesner in Brill

Encyclopedia on Law and Religion, Gerhard Robbers and W. Cole Durham (eds) 2016

4. Articles on Legal Limitations to Freedom of Religion or Belief:

19 *Emory Int'l L. Rev.* 557 (2005)

- including Ingvill T. Plesner on Legal Limitations to Freedom of Religion or Belief in School Education

Gina Lende:

Garba, Ahmed S. (2017) Religious preaching and state regulation of the free exercise of religion by Shi'a Muslims in Kaduna State, Nigeria: A constitutional and human rights discourse in Green MC, Hackett RIJ, Hansen L & Venter F (eds) in *Religious Pluralism, Heritage and Social Development in Africa*. Published by SUN MeDIA Stellenbosch under the Conference-RAP imprint, pp 101-120

Hackett, Rosalind I. J (2015): Traditional, African, Religious, Freedom? In *Politics of Religious freedom* Sullivan, Shakman Hurd, and Mahmood, Chicago University Press. pp 89-99