

# **The Legal Challenge to Ensuring Freedom of Religion and Belief in Europe**

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# Legal Challenges in Broader HR Perspective

- International Perspective
- Comparative Perspective
- Enforcement of Human Rights

# Comparative Perspective

- Comparative law contributes to better mutual understanding among peoples, and better understanding of diversity (Glendon).
- One cannot transplant a single foreign concept into domestic law without undermining the coherence of its conceptual scheme, which ultimately causes confusion and inconsistency (Collins)

# Developments

- Individual and/or Collective Rights?

For example, Nickel has pointed out that one of the differences between contemporary human rights and natural law is that contemporary human rights are more willing to recognise the importance of family and community in the lives of individuals.

# Rights and Duties

- “Some may say it is *obvious* that human rights are defined as rights exclusively applicable against the State, but no international definition states this in these terms. In fact...the Universal Declaration was carefully drafted to avoid suggesting that the state has specific duties, the rights are written in the form ‘everyone has a right to...’. The focus is on the inherent possession of the right, and references to duties can be found to society, the state, groups and individuals.” (Clapham)

# Rights and Duties

- Article 2 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states that no one shall be subject to discrimination by any State, nor by any institution, group of persons or person on grounds of religion or other belief.

# Developments

- Negative and Positive Rights and Duties

# Duties

- Respect
- Protect
- Promote/Fulfill (affirmative action)



# Conflicts of Rights

- Gender and Belief Related Discrimination at the Workplace
- Religious Freedom at School: Rights of Children, Parents, Teachers and Schools
- Autonomy of Religious Organisations versus Security and Privacy
- Freedom of Expression versus Freedom of Religion
- Etc.

# Conflicts of Rights

- There is increased attention and pressure at least by part of the human rights community to protect human rights and liberal values within religious communities or in their affiliated institutions. This in turn presents the challenging question as to how far the State needs to go in protecting individual rights.
- What is the (justified) interest of states in restricting or protecting collective or individual autonomy in the case of a conflict?

# Conflicts of Rights

- For some time the approach taken by the ECtHR indicated that individual rights, in the case of conflict were primarily protected by leaving the community (let's call it the principle of **voluntarism**).
- It could be argued that there is evidence of a new **contextual (substantive) approach** in Strasbourg, which does not focus on voluntarism, but on the **balancing of different rights in given factual circumstances**.

**THANK YOU!**