

Contribution by the Council of Europe SOGI Unit towards the UN Report on the freedom of religion or belief and freedom from violence and discrimination based on sexual orientation and gender identity

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Article 9.2 of the European Convention on Human Rights states that, “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.” Multiple bodies of the Council of Europe have commented on the intersection between the freedom of religion or belief and the freedom from violence and discrimination based on sexual orientation and gender identity. In particular, PACE Resolution 1510 (2006) states, “The Assembly is of the opinion that freedom of expression as protected under Article 10 of the European Convention on Human Rights should not be further restricted to meet increasing sensitivities of certain religious groups”, which has been referred to in subsequent PACE Recommendations and Resolutions on this topic. This document contains a compilation of references and links to relevant documents published by the Council of Europe, pertaining to the intersectionality of the freedom of religion or belief and the freedom from violence and discrimination based on sexual orientation and gender identity.

Committee of Ministers

[CM/Rec\(2010\)5](#)

- Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a “dominant culture” can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;”

ECRI

[ECRI Factsheet on LGBTI issues](#)

- “The authorities should discuss with the leadership of religious entities ways in which these entities can use their moral standing to prevent and combat hate speech against LGBTI persons (and ensure that their representatives treat those with different views with respect and refrain from making derogatory comments)”

ECtHR

[Guide to Article 9 of the European Convention of Human Rights](#)

Paragraph 84:

“In the *civilian* field, an applicant’s interest in not having to act contrary to his conscience may be seriously restricted by the public interest in ensuring equal treatment for all users, particularly as regards the treatment of same-sex couples (*Eweida and Others v. the United Kingdom*, 2013, § 105).”

Paragraph 85:

“85. The Court found no violation of Article 9 (alone or in conjunction with Article 14 of the Convention on prohibition of discrimination) in the following cases:

- disciplinary proceedings against a Christian employee of a local authority for refusing to work on registering homosexual civil unions, and her dismissal ([Eweida and Others v. the United Kingdom](#), 2013, §§ 102-106);
- disciplinary proceedings against a private company employee for refusing to provide psycho-sexual therapy for same-sex couples, and his dismissal following those proceedings ([ibid.](#), §§ 107-110).”

Sexual orientation issues – EctHR Factsheet

“Freedom of thought, conscience and religion (Article 9 of the Convention)

Ladele and McFarlane v. the United-Kingdom

15 January 2013

The applicants – respectively a Registrar of Births, Deaths and Marriages and a counsellor with a confidential sex therapy and relationship counselling service – were practising Christians who alleged that domestic law had failed adequately to protect their right to manifest their religious beliefs. They both complained that they had been dismissed for refusing to carry out certain of their duties which they considered would condone homosexuality, a practice they felt was incompatible with their religious beliefs.

The Court found that there had been **no violation of Article 9** (freedom of religion) **taken alone or in conjunction with Article 14** (prohibition of discrimination) of the Convention, as concerned the second applicant, and **no violation of Article 14 taken in conjunction with Article 9** as concerned the first applicant. It held in particular that it could not be said that national courts had failed to strike a fair balance when they upheld the employers’ decisions to bring disciplinary proceedings. In each case the employer was pursuing a policy of non-discrimination against service-users, and the right not to be discriminated against on grounds of sexual orientation was also protected under the Convention.”

***Kjeldsen, Busk Madsen and Pedersen v Denmark* 5095/71, 5920/72 and [5926/72](#); *Jiménez Alonso and Jiménez Merino v. Spain (dec.)* - [51188/99](#); *Dojan and Others v Germany* [319/08](#), 2455/08, 7908/10, 8152/10 and 8155/10**

- Ruled that parents cannot remove their children from sex education lessons in schools based on their religious convictions

A.R. and L.R. v. Switzerland (dec.) - [22338/15](#)

- Ruled that “Article 9 § 1 did not grant parents who adhered to a particular religion or philosophy the right to refuse the participation of their children in public teaching which might run counter to their ideas”

Istanbul Convention

- Article 12:

“5. Parties shall ensure that culture, custom, religion, tradition or so-called “honour” shall not be considered as justification for any acts of violence covered by the scope of this Convention.”

- Article 42:

“1. Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called “honour” shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.”

PACE

Resolution 1510 (2006) – Freedom of expression and respect for religious beliefs

- “12. The Assembly is of the opinion that freedom of expression as protected under Article 10 of the European Convention on Human Rights should not be further restricted to meet increasing sensitivities of certain religious groups...”

Recommendation 1804 (2007) - State, religion, secularity and human rights

- “16. Freedom of religion is protected by Article 9 of the European Convention on Human Rights and Article 18 of the Universal Declaration of Human Rights. Such freedom is not unlimited, however: a religion whose doctrine or practice ran counter to other fundamental rights would be unacceptable. In any case, the restrictions that can be placed on such freedom are those that “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 9.2 of the Convention).
- 17. Nor may states allow the dissemination of religious principles which, if put into practice, would violate human rights. If doubts exist in this respect, states must require religious leaders to take an unambiguous stand in favour of the precedence of human rights, as set forth in the European Convention on Human Rights, over any religious principle.
- 18. Freedom of expression is one of the most important human rights, as the Assembly has repeatedly affirmed. In Recommendation 1510 (2006) on freedom of expression and respect for religious beliefs it expresses the view that “freedom of expression as protected under Article 10 of the European Convention on Human Rights should not be further restricted to meet increasing sensitivities of certain religious groups”.
- 19. While we have an acknowledged duty to respect others and must discourage gratuitous insults, freedom of expression cannot, needless to say, be restricted out of deference to certain dogmas or the beliefs of a particular religious community.”

Recommendation 1805 (2007) - Blasphemy, religious insults and hate speech against persons on grounds of their religion

- “14. The Assembly notes that member states have the obligation under Article 9 of the Convention to protect freedom of religion including the freedom to manifest one’s religion. This requires that member states protect such manifestations against disturbances by others. However, these rights may sometimes be subject to certain justified limitations. The challenge facing the authorities is how to strike a fair balance between the interests of individuals as members of a religious community in ensuring respect for their right to manifest their religion or their right to education, and the general public interest or the rights and interests of others.”

[Resolution 1728 \(2010\) - Discrimination on the basis of sexual orientation and gender identity](#)

- “7. Hate speech by certain political, religious and other civil society leaders, and hate speech in the media and on the Internet are also of particular concern. The Assembly stresses that it is the paramount duty of all public authorities not only to protect the rights enshrined in human rights instruments in a practical and effective manner, but also to refrain from speech likely to legitimise and fuel discrimination or hatred based on intolerance. The boundary between hate speech inciting to crime and freedom of expression is to be determined in accordance with the case law of the European Court of Human Rights.
- 16.14. encourage dialogue between national human rights institutions, equality bodies, human rights defenders working for the rights of LGBT people and religious institutions, based on mutual respect, in order to facilitate public debates and reforms on issues concerning LGBT people;”

[Resolution 1928 \(2013\) - Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence](#)

- “5. It recalls, in particular, [Resolution 1510 \(2006\)](#), in which it stated that “freedom of expression as protected under Article 10 of the European Convention on Human Rights should not be further restricted to meet increasing sensitivities of certain religious groups”. It emphasises that, as a general rule, freedom of expression should not be restricted to meet the sensitivities of any group in a democratic society.”

[Recommendation 2021 \(2013\) - Tackling discrimination on the grounds of sexual orientation and gender identity](#)

- “5.3. ensure that its activities in the areas of youth, equality, human dignity and intercultural dialogue, including its religious dimension, mainstream the issue of non-discrimination on the grounds of sexual orientation and gender identity;”

[Resolution 2076 \(2015\) - Freedom of religion and living together in a democratic society](#)

- “4. Those values and principles, which are non-negotiable, consist mainly of profound respect for human dignity and the fundamental rights protected by our democratic constitutions and by the European Convention on Human Rights (ETS No. 5) and its additional protocols, as well as respect for democratic principles and the rule of law, including the principle of non-discrimination between the different groups which make up our plural societies.
- 5. Religious affiliation is, for many European citizens, a key element of their identities. That affiliation is also expressed through worship and compliance with religious practices. Freedom to live according to those practices is one element of the right to freedom of religion safeguarded by Article 9 of the European Convention on Human Rights. That right coexists with the fundamental rights of others and with the right of everyone to live in a space of socialisation which facilitates living together. That may justify the introduction of restrictions on certain religious practices; however, in conformity with Article 9.2 of the European Convention on Human Rights, the right to freedom of religion can only be submitted to those limitations which, as prescribed by law, constitute necessary measures, 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. States Parties to the Convention

should also strive to find a fair balance between conflicting interests resulting from the exercise of freedom of thought, conscience and religion, and the other human rights and fundamental freedoms, such as the right to respect for private and family life, the right to freedom of expression and the prohibition of discrimination.”

[Resolution 2339 \(2020\) - Upholding human rights in times of crisis and pandemics: gender, equality and non-discrimination](#)

- “8. The Parliamentary Assembly condemns the fact that some political and religious leaders have actively stigmatised and incited hatred against certain groups in the context of this crisis, depicting them as vectors of contagion or even as the cause of the pandemic itself. It deplores the fact that the pandemic has led to increased manifestations of racism and prejudice against many groups, including people of Asian origin, Roma and Travellers, people of African descent, migrants and LGBTI people.”

[Resolution 2395 \(2021\) - Strengthening the fight against so-called “honour” crimes](#)

- “3. The Istanbul Convention unequivocally asserts that customs, tradition, culture, religion or so-called “honour” cannot be used to justify violence. No mitigating circumstance on grounds of so-called “honour” may be enshrined in national legislation or tolerated by courts when passing judgment. The Assembly stresses that so-called “honour” constitutes no ground, excuse or explanation for violating physical integrity and human dignity. Reiterating its Resolution 1681 (2009) “Urgent need to combat so-called ‘honour crimes’”, it emphatically condemns these crimes.”

[Resolution 2417 \(2022\) - Combating rising hate against LGBTI people in Europe](#)

- “2. Recent years have however also seen a marked increase in hate speech, violence and hate crime against LGBTI people, communities and organisations across many member States of the Council of Europe. The Parliamentary Assembly notes with deep concern that a significant proportion of hate speech, vilification and scapegoating of LGBTI people, as well as broad attacks on the exercise of their civil rights, have come from political figures and leaders, including government representatives, and from religious leaders.”