

Faith and human rights - a complex relationship in the context of governmental work

*Sarah is growing up in a deeply religious Christian fundamental group. In her German class, the teacher is planning to read the book "Harry Potter". For religious reasons, her parents do not want Sarah to attend German lessons during this time.*

Cases like Sarah's are rare, but they do occur in the school context due to a society that is becoming increasingly pluralistic in terms of religion and ideology. Above all, they illustrate not only the topicality of the subject, but also the complex relationship between legal interests, in this case religious freedom, the role of the state in terms of the educational mandate and the right to education as a fundamental right.

The public interest in religion - as a subject of longing, curiosity, or uncertainty - has unmistakably increased in recent years. Correspondingly, religious freedom has once again become the focus of public controversies. That religious freedom must be upheld as an inalienable human right is undisputed in Germany and other European countries.

Consequently, the question arises as to who can claim religious freedom for themselves, which practices are covered by its protection, and where exactly the boundaries of religious freedom lie. Do followers of so-called psycho-sects, neo-pagan cults, or fundamentalist movements also have a claim to the recognition of their religious freedom? Can parents, citing religious freedom, refuse participation in certain school events or even in classes?

Let's engage in a comprehensive examination of the relationship between politics and religion and also to consider the limits of religious freedom. The freedom of religious practice is one of the fundamental human rights, enshrined in all constitutions and in the Universal Declaration of Human Rights of the United Nations.

Like all human rights, religious freedom is an expression of respect for human dignity. Human dignity is politically and legally asserted by granting individuals free self-determination. Just as dignity is equally inherent to every individual, so too should freedom rights be shaped in accordance with the equality of all. "All human beings are born free and equal in dignity and rights," programmatically states Article 1 of the Universal Declaration of Human Rights of the United Nations from 1948. Religious freedom is to be interpreted in the light of this postulate.

This means that the state must respect its citizens as individuals, and it does so only if it also respects their religious beliefs. Therefore, Article 4 of the Basic Law of the Federal Republic of Germany states, "Freedom of faith and conscience, and freedom to profess a religious or philosophical creed, shall be inviolable. The undisturbed practice of religion shall be guaranteed." Religious freedom is a highly personal right.

However, this freedom is not without limits. Religious freedom finds its limits in the competing fundamental and human rights of other individuals who feel their fundamental freedoms violated by the exercise of religious practices and beliefs. Today, the state's task is to secure and balance these competing fundamental rights. This is far from easy.

According to the Western constitutional tradition, as well as human rights, fundamental rights can only be restricted when their exercise violates the fundamental and human rights of other individuals.

For example, the fundamental rights of other individuals are violated by forced marriage, the exclusion of women from public life, undue religious and political influence in schools, or the corporal punishment of children.

In Germany, the discussion about the limits of religious freedom is particularly evident today in the context of schools.

Questions arising in this context mainly concern participation in school events, participation in physical education, sex education, but also specific teaching contents such as film and literature. Last but not least, since the pandemic, the compulsory attendance at schools has been questioned by ideological groups: when parents fear state intervention and thus a restriction of parental rights.

The state's tasks, especially in the field of education, are

1. to create an environment that respects and promotes plurality and diversity,
2. providing a safe framework in which everyone feels secure, respected, and equal,
3. to educate people in their professional context, especially teachers, so that they can competently deal with resulting issues.

The boundaries between politics and religion are being redefined time and again due to the increasingly pluralistic society and the associated challenges, necessitating a reconsideration and redefinition of the boundaries of religious freedom.

In the question of dealing with religious plurality in the classroom, the legal concept of practical concordance often arises. It describes the principle of finding a solution for cases in which equally important constitutional norms collide, here: religious freedom and the right to education. The solution sought should take into account both constitutional norms without altering their importance and value. Thus, a balance between both norms should be sought, and a solution or compromise found.

Let me give an example:

*With reference to religious freedom, a female pupil refuses to take part in co-educational swimming lessons.*

Pupils often express the wish to wear special clothing in order to maintain a certain form of etiquette towards the opposite sex in class. The reasons for this may lie in religious or ideological beliefs, which makes the situation challenging for teachers. Teachers are faced with

the question of how to react appropriately when they are confronted with such issues in addition to their regular duties.

In this case study, two fundamental rights collide: the state's educational mandate, set out in Article 7 of the German Basic Law, and the right to the free exercise of religion under Article 4. As already mentioned, both rights are considered equally important. In addition the Baden-Württemberg School Act obliges pupils to attend school, and parents must ensure that this obligation is complied with.

According to the ruling of the Federal Administrative Court, participation in coeducational swimming and sports lessons cannot generally be refused with reference to the right to freedom of religion.

In this context, the school aims to find a balance between the conflicting fundamental rights, as already mentioned at the beginning. This can be achieved, for example, by adapting the organization of swimming lessons or allowing special sports or swimming clothing so that pupils can participate in lessons despite their beliefs

As you can see, the constitutional foundations are formed by our liberal-democratic basic order, the state goals according to the Basic Law, and the fundamental rights resulting from the Basic Law, the European Convention on Human Rights, and the respective state constitution. The relationship with the institution of "school" presents a multi-faceted legal relationship in which the fundamental rights of students, parental rights, state supervision in education, and the fundamental rights of others intersect and overlap.

First and foremost, it is important to clarify that ideological subcultures can initially be understood as an appeal for mutual learning and tolerance, especially in schools. However, tolerance ends where legal interests are restricted, violated, or endangered.

In light of the experiences of recent years, particularly in the face of religiously motivated terrorism, the question of the limits of religious freedom arises with renewed urgency. The issue is not whether there must be such limits but rather by what criteria they should be drawn. According to the prevailing legal opinion, restrictions on religious freedom are only possible if they directly serve the protection of other fundamental rights or similarly high legal interests. It is undisputed, for example, that religious freedom cannot be played off against the human right to life. Therefore, parents are by no means free to endanger their children's lives for religious reasons by refusing urgently needed medical treatment. Since compulsory education also has constitutional status, it cannot be questioned in its entirety on the grounds of religious freedom.

The state's task in this matter is therefore comprehensive and complex. Its task is to protect the high good of religious freedom, while ensuring that it is not exercised at the expense of other rights and public order. Therefore the state must:

- Combat religious discrimination and extremism by enacting and enforcing laws that prohibit and punish such actions.

- Maintain the separation of religion and state to ensure the neutrality and equal treatment of all citizens, while also fostering a partnership between religion and state in the sense of "positive neutrality."
- Protect the individual freedoms and rights of all citizens, regardless of their religious affiliation.
- Promote an open and pluralistic society that values and promotes tolerance and respect for different beliefs and lifestyles.

The correct assertion that religious freedom must have limits should not lead to undermining the importance of this human right. Due to the great importance only other human rights can limit it. The human right to religious freedom therefore remains a challenge for a discrimination-free design of religious and ideological pluralism and is politically highly relevant. By strengthening political education, society should advocate a deeper understanding between different religious cultures and simultaneously make visible and stand up for the values of pluralistic democracy.