

PREFACE

As I write, Europe finds itself gripped by a new and dangerous terror threat. Dangerous because it is well-organised, technologically savvy and – as has been demonstrated by the recent attacks in Paris and elsewhere – capable of hurting us from within our own cities, at the hands of our own citizens.

At the forefront is a group who refer to themselves as “Islamic State”. But they are not a state, despite the attempts by their leaders to emulate a caliphate. Nor are they Islamic, and this cannot be said enough. The hateful and murderous acts of this organisation find no justification in the Koran or any other religious text. With their brutality they offend millions of peace-loving Muslims, whose religion they appropriate and pervert.

We have a duty to draw this line very clearly: terror has no religion. As European States take the necessary steps to enhance our security, governments must studiously avoid action which maligns or marginalises any religious group. Even policies initiated with the best of intentions can risk such unintended consequences. We have already seen numerous calls by populists and petty nationalists for restrictions on Islamic practice and expression within our societies, as they attempt to exploit the current climate of fear.

Such a backlash will only bring us more violence. If we act in ways which suggest that Islam is the problem, we simply reaffirm terrorist propaganda and provide a boost to the extremists now scouring our communities in the search for angry and alienated recruits. Far better we strengthen ourselves by recommitting to the freedom of thought on which modern Europe has been built, and by defending the pluralism terrorists seek to destroy.

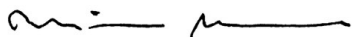
To assist States in this endeavour this overview brings together, for the first time, the legal standards and guidance relating to Article 9 of the European Convention of Human Rights, under which individuals have an absolute and unqualified right to hold any religious belief, which they may then manifest and practice with others and in public. This freedom is essential in democracies in which everyone's rights and beliefs are respected, and it is a precondition for living together successfully in diverse societies.

Sometimes balances need to be struck. Freedom of thought, religion and consciousness must co-exist, for example, with freedom of expression and of association. Very often these liberties complement one and other. However, conflicts can occur. Freedom of expression permits criticism of religious conviction, but this should never cross into stigmatising an entire group on the basis of their beliefs. In other instances it is necessary to impose limitations on freedom of thought, religion and conscience for the sake of public safety and in order to protect the rights of other groups and society at large. The European Court of Human Rights respects the discretion of national authorities to deal with such sensitive matters in ways which reflect their own cultural and historical complexities. However, in order to uphold the Convention, any limitations on religious expression must always be prescribed by a clear and accessible law, have a legitimate aim, and be proportionate and necessary in a democratic society.

In order to help States navigate these dilemmas, the guidance that follows presents the basic principles for action, as enshrined in the Convention and the case law of the Court. These principles have been applied to a number of pertinent issues facing societies, such as the wearing of religious symbols and clothing in public; the manifestation of religion and belief in prisons; the mandatory indication of one's religious affiliation on official documents; the autonomy of religious communities; and the question of how to combat hate speech and hate crime. In addition to existing legal standards, we have also drawn on recommendations to member States adopted by the Committee of Ministers and stemming from monitoring bodies such as the European Commission against Racisms and Intolerance (ECRI), the Advisory Committee on the Framework Convention for the Protection of National Minorities, the European Committee of Social Rights, and other Council of

Europe bodies namely the Parliamentary Assembly, the Commissioner for Human Rights and the European Commission for Democracy through Law (Venice Commission).

I hope all of our States will find it a timely and useful contribution.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke.

Thorbjørn Jagland, Secretary General of the Council of Europe

Strasbourg, 7 December 2015