

RELEVANT HUMAN RIGHTS LAW

HUMAN RIGHTS ACT 1998

3. - (1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section-

(a) applies to primary legislation and subordinate legislation whenever enacted;

6. - (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right. . .

(3) In this section "public authority" includes-

(a) a court or tribunal, and

(b) any person certain of whose functions are functions of a public nature . . .

(6) "An act" includes a failure to act . . .

Article 9 - Freedom of Thought, Conscience and Religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. 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.

Article 14 - Prohibition of Discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

RELEVANT COURT CASES UNDER ARTICLE 9 OF THE ECHR

"As enshrined in Article 9, freedom of thought conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, sceptics and the unconcerned." - *Kokkinakis v Greece*: (1994) 17 EHRR 397, para 31

"The right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether

religious beliefs or the means used to express such beliefs are legitimate." - Manoussakis v Greece: (1996), EHRR 387, para 47

Belief means "more than just 'mere opinions or deeply held feelings'; there must be a holding of spiritual or philosophical convictions which have an identifiable formal content." - McFeeley v UK: (1981), 3 EHRR 161

"In its ordinary meaning the word "convictions", taken on its own, is not synonymous with the words "opinions" and "ideas", such as are utilised in Article 10 (art. 10) of the Convention, which guarantees freedom of expression; it is more akin to the term "beliefs" (in the French text: "convictions") appearing in Article 9 (art. 9) - which guarantees freedom of thought, conscience and religion - and denotes views that attain a certain level of cogency, seriousness, cohesion and importance." - Campbell and Cosans v. UK: (1982), 4 EHRR 293 para 36 – (this case related to Article 2 - right to education).

"[T]he difficult question of the criteria to be applied in deciding whether a belief is to be characterised as religious . . . will seldom, if ever, arise under the European Convention. . . it does not matter whether the . . . beliefs . . . are categorised as religious. Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic, and the sceptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by article 9 a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs. - R v Secretary of State for Education ex parte Williamson [2005] UKHL 15 Per Lord Nicholls at paragraph 24 (See more extensive extracts at Annex to Appendix 2.)

In *Arrowsmith v United Kingdom* (1981) 3 EHRR 218, 'convictions' were defined as "those ideas based on human knowledge and reasoning concerning the world, life society etc, which a person adopts and professes according to the dictates of his or her conscience. These ideas can more briefly be characterised as a person's outlook on life including, in particular, a concept of human behaviour in society".

In *re Crawley Green Road Cemetery, Luton - St Alban's Consistory Court*: Dec. 2000 - it was taken held without argument that Humanism was a belief within the meaning of the Human Rights Act.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

COMMENTARY

- from the UN Human Rights Committee on Article 18 of the International Covenant on Civil and Political Rights:

“Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.” - Human Rights Committee, 1993 (General Comment no 22(48) (Art. 18) adopted on July 20th 1993, CCPR/C/21/Rev.1/Add.4, September 27th 1993, p1.)

- from the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE):
The “belief” aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Thus, atheism and agnosticism, for example, are generally held to be entitled to the same protection as religious beliefs. - Guidelines

for Review to Legislation Pertaining to Religion or Belief (2004)
Section A, Paragraph 3.

- from Professor Malcolm Evans, Professor of Public International Law, Bristol University:
“As far as international human rights are concerned, religious beliefs present competing universalist ideologies which, by posing alternative approaches, do indeed threaten the universalist of the idea of human rights. Religious belief must therefore be made subordinate to the human rights framework.”
- Evans, M.D., ‘Human Rights, Religious Liberty and the Universality Debate’ in O’Dair, R., and Lewis, A., (eds) Law and Religion (2001, Oxford) 226

NOTE BY THE BRITISH HUMANIST ASSOCIATION:

A broad interpretation of the English word “belief” is inconsistent with the meanings of the corresponding words in the French and German versions of the Universal Declaration and the European Convention on Human Rights. The French term is conviction and the German (in the ‘manifest’ clause) is Weltanschauung. The use of “conviction” in English is problematic because it has penological associations, which the French word lacks, but the word “conviction” without this unfortunate association expresses a significant aspect of what is required. Both “conviction” and Weltanschauung suggest deep or ultimate beliefs which are parallel to those of a religion. It is proper, therefore, that “religion or belief” should be so interpreted. The BHA uses the term “lifestance” - a concept that encompasses both religious and non-religious beliefs.