

Religion and the Rule of Law: Towards a Harmonious Relationship in the Era of Globalization



**Neutrality of the law and
indirect discrimination on the
exercise of religious freedom**

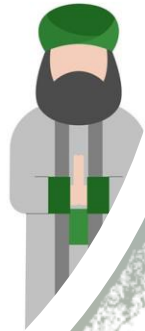
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Neutrality of the law

- Norms of general applicability
- Principle of equality and non-discrimination
 - Neither favoritism nor persecution
- "Neutral" laws may interfere with religious practice



Interferences on the exercise of religious freedom



❑ Declared to limit religious manifestation

- Religious clothing in French public schools
- Prohibition of religious services during the pandemic

q Rule of **general applicability**

- Public tenders and the keeping of holy days
- A law prohibiting animal cruelty

Interferences on the exercise of religious freedom

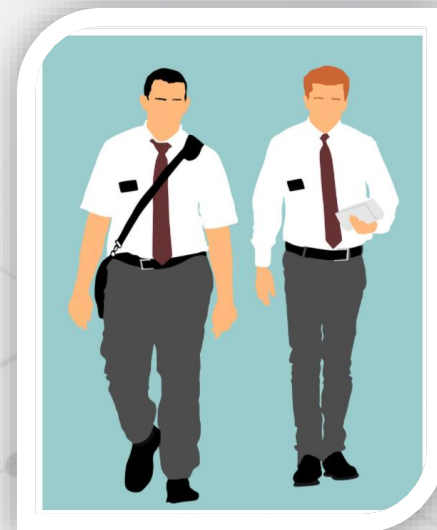
❑ Rule of **general applicability**

➤ **Prohibit** or **limit** behaviours (-)

- Acoustic limits and religious cults

➤ **Requires** the practice of acts (+)

- Compulsory military service and the Jehovah's Witnesses





International Covenant on
Civil and Political Rights

- **CCPR General Comment No. 18: Non-discrimination** (§ 7°)
- **Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief** (Art. 2°, n. 2)
 - ✓ *"intolerance and discrimination based on religion or belief"* means **any** distinction, exclusion, **restriction** or preference based on religion or belief and having as its **purpose** or as its **effect** nullification or **impairment** of the recognition, enjoyment or **exercise of human rights** and fundamental freedoms on an equal basis.

Discriminations

➤ Direct Discriminations

Persons in **analogous situations** are **treated differently** without objective and reasonable justification

➤ Indirect Discriminations

Without a justifiable reason, **it fails to treat differently** persons whose situation are **different**



Indirect Discriminations

ECtHR, *Thlimmenos v. Greece*,
App. n. 34369/97

- ✓ Freedom of religion and Prohibition of discrimination (Articles 9^o and 14, ECHR)
- ✓ A religious group committed to pacifism
- ✓ Equate persons convicted of a serious crime and conscientious objectors
- ✓ Failing to introduce appropriate exceptions to the rule





State obligation to give effect to the rights



International Covenant on
Civil and Political Rights

Article 2

(...)

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes **to take the necessary steps**, in accordance with its constitutional processes and with the provisions of the present Covenant, **to adopt such laws or other measures as may be necessary to give effect to the rights** recognized in the present Covenant.

References

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Thanks!

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