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Religion in Finnish Schools:

A Human Rights Perspective

University of Helsinki

Faculty of Law

Master's Thesis in Constitutional Law

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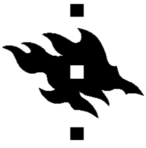

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Tiivistelmä/Referat – Abstract

Tämä pro gradu -tutkielma käsittelee uskonnonvapauden toteutumista suomalaisissa peruskouluissa. Tarkoituksena on selvittää miten Suomi noudattaa kansainvälisten ihmisoikeuksien ja perustuslain vaatimuksia. Tutkielma sisältää tiiviin katsauksen uskonnonvapauteen ihmis- ja perusoikeutena, erityisesti julkisessa kontekstissa sekä kouluissa, jonka pohjalta tutkielmassa arvioidaan Suomen koulujen käytäntöä. Metodologinen lähestymistapa on pääosin oikeusdogmaattinen, jonka rinnalla hyödynnetään kriittisen lainopin lähestymistapaa. Lisäksi tutkielmassa pyritään kartoittamaan mahdollisesti tarvittavia muutoksia nykyiseen lainsäädäntöön tai soveltamiseen (*de lege ferenda).* Päälähteinä käytetään kansainvälisten ihmisoikeuselinten ratkaisukäytäntöä, kotimaisten ylimpien laillisuusvalvojien ratkaisuja, sekä oikeuskirjallisuutta.

Tutkielma koostuu neljästä kokonaisuudesta, joita seuraavat tutkielman tulokset ja päätelmät. Ensimmäinen osio rajaa aiheen käsittelyn ja avaa tutkimusaiheen kontekstia. Tätä seuraa tiivis katsaus keskeisiin valtiosääntöoikeudellisiin perusteisiin, jotka luovat pohjan myöhemmälle tarkastelulle. Kolmas pääluku tarkastelee uskonnonvapautta perus- ja ihmisoikeutena ja pyrkii tuomaan esiin tämän oikeuden sisällön ja vaikutukset erityisesti oikeuskäytännön avulla. Neljäs pääluku käsittelee suomalaisten koulujen käytäntöä uskonnonvapauden toteutuksen osalta ja tarkastelee tätä erityisesti edellisen luvun kansainvälisen oikeuden asettamien vaatimusten sekä kotimaisten laillisuusvalvojien lausuntojen kautta.

Uskonnonvapaus on keskeinen perus- ja ihmisoikeus ja yksi perustavista oikeuksista demokraattisessa yhteiskunnassa. Tämä oikeus asettaa valtiolle sekä positiivisia että negatiivisia toimintavelvoitteita. Uskonnonvapauden sisältö ja vaikutukset määrittyvät vahvasti kansainvälisten ihmisoikeusorgaanien oikeuskäytännössä. Nämä tulkinnat heijastuvat kotimaiseen käytäntöön ja määrittävät uskonnonvapauden sisältöä. Näin ollen tutkielmassa selvitetään uskonnonvapauden ulottuvuuksia sekä Euroopan ihmisoikeustuomioistuimen (EIT) sekä YK:n ihmisoikeuskomitean (KP-komitea) käytännössä ja kiinnitetään huomiota näiden ratkaisukäytännön eroavaisuuksiin. Tutkielmassa pohditaan valtion harkintamarginaalin luonnetta EIT:n käytännössä ja kiinnitetään huomiota harkintamarginaalin ongelmalliseen rooliin erityisesti uskonnonvapauden soveltamisessa.

Suomi on virallisesti sekulaari valtio mutta evankelis-luterilaisella kirkolla on valtion toiminnan piirissä erikoisasema. Ev.lut. kirkolla on edelleen merkittävä rooli yhteiskunnassa, erityisesti kouluissa. Suurin osa kirkon ja ev.lut. uskonnon roolista kouluissa perustuu perinteeseen ja sitä perustellaan kulttuurisilla perusteilla. Julkisuudessa on käyty huomattavaa keskustelua uskonnollisesta sisällöstä koulujen toiminnassa, mutta suurin osa keskustelusta on keskittynyt suvivirteen ja koulujen kevätjuhlaan. Pääasia ja tämän tutkielman aihe on kuitenkin paljon laajempi. Tässä tutkielmassa tarkastellaan uskonnollista sisältöä peruskouluissa kattaen uskonnonopetuksen, aamunavaukset sekä muita uskonnollisia käytäntöjä, joita koulujen toiminnassa ilmenee, sekä arvioidaan näiden toimintojen yhteensopivuutta kansainvälisten ihmisoikeusvelvoitteiden ja näin ollen perustuslain kanssa. Suomessa uskonnonopetus on järjestetty niin, että eri uskontokuntiin kuuluvat ja uskonnottomat saavat opetusta lähtökohtaisesti eri oppiaineissa ja eri ryhmissä. Uskontokuntaan kuuluville oman uskonnon opetus on pakollista. Vaikka lain nojalla tämä opetus on tunnustuksetonta, käytännössä näin ei useinkaan ole. Näin ollen opetuksen pakollisuus on negatiivisen uskonnonvapauden kannalta ongelmallista. Suomen koulujen moninainen uskonnollinen sisältö ja tästä johtuvat, lisääntyneet poikkeusjärjestelyt ovat johtaneet tilanteeseen, jossa kaikkien oppilaiden uskonnonvapauden suojaaminen kouluissa käy käytännön syistä mahdottomaksi.

Tutkielman tulos viittaa suomalaisen käytännön puutteellisuuteen ihmisoikeusvelvoitteiden osalta, erityisesti KP-komitean linjausten osalta. Kristitty uskonto läpäisee suomalaiset koulut tavalla, joka ei vastaa valtion neutraliteettivaatimusta. Vaikuttaa tulosten perusteella siltä, että kotimaiset viranomaiset ja päättäjät ovat taipuvaisia luottamaan EIT:n laajaan harkintamarginaaliin uskonnonvapautta kouluissa koskevissa asioissa. KP-komitean päätöksille annetaan liian vähän painoarvoa, eikä sitä, että KP-sopimuksen soveltamista ei koske harkintamarginaali, juuri huomioida. Tähän tuntuu vaikuttavan se, ettei Suomea koskevia, juuri tätä asiaa koskevia valituksia, eikä spesifisti Suomen olosuhteita koskevia tapauksia ole viime aikoina ratkaistu. Perustuslakivaliokunta on taipuvainen suojaamaan nykytilaa ja perinteitä ja on haluton huomioimaan muutostarpeita huolimatta apulaisoikeuskanslerin viimeisimmistä suosituksista. Nykytilan säilyttämistä perustellaan perinteellä ja kulttuurilla kiinnittämättä juuri huomiota siihen, etteivät nämä ole perustuslain sallimia rajoitusperusteita. Erityishuomioita tulisi kohdentaa näihin ongelmakohtiin erityisesti siksi, että kyse on haavoittuvaisessa asemassa, pakollisen peruskoulun piirissä olevien lasten ihmisoikeuksien toteutumisesta.

Avainsanat – Nyckelord – Keywords
uskonnonvapaus, peruskoulu, uskonto, uskonnonharjoitus, uskonnonopetus, ihmisoikeudet, perusoikeudet, valtiosääntöoikeus

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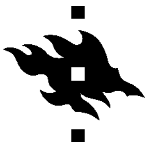

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Tiivistelmä/Referat – Abstract

The aim of this master's thesis is to find how and if Finnish practice in schools regarding religious content is reconcilable with the current requirements of international human rights law and constitutional fundamental rights. This thesis offers a concise view on freedom of religion particularly in the public sphere and in the context of schools as a basis for the further evaluation of possible problems within Finnish practice. The main methodological approach is legal dogmatics with elements of critical legal study. Additionally, an element of *de lege ferenda* is applied. The main sources for this study include resolutions passed by the supreme guardians of Finnish law, jurisprudence of international human rights tribunals, jurisprudential literature and other academic works.

The study is composed of four main segments followed by the findings and discussion. The first section of the thesis presents the framework and context for the study. This is followed by a summary of relevant and fundamental constitutional factors and international human rights instruments that are necessary for the further examination of freedom of religion in particular. The third chapter discusses the content and implications of freedom of religion as a fundamental and human right especially through jurisprudence. The fourth chapter maps out Finnish practice in school and applies the findings of chapter three to these and evaluates stances adopted by domestic authorities.

Freedom of religion is an integral fundamental and human right and is one of the bases of a democratic society. This right imposes both positive and negative obligations on the state. The implications of this right are subject to the interpretations made by international human rights tribunals, which in turn shape the practical requirements at the state level. Therefore this thesis clarifies the contents of freedom of religion as a human right through the jurisprudence of both the European Court of Human Rights (ECtHR) and the United Nations Human Rights Committee (CCPR) and highlights differences in the stances adopted by these two human rights instruments. This study considers the nature of the margin of appreciation doctrine especially in ECtHR jurisprudence concerning freedom of religion and frames the problematic implications of the broad use of the margin in these cases.

Finland is officially a secular country but awards special status to the Evangelical Lutheran Church of Finland. The church maintains a significant position within Finnish society, including schools. Most of this practice is founded on tradition and justified through cultural significance. There has been considerable public debate on the issue of religious content in schools, but this debate has mostly centred on one hymn sung at spring term festivities. The actual issue and subject of this thesis are much broader. This thesis examines religious content in Finnish basic education covering religious education, morning assembly, the Hymn-Quiz and other religious activities that schools partake in and evaluates this practice in the light of human rights jurisprudence and the constitution. Finnish religious education is carried out in a sectarian and segregated manner. Education in the pupils' own religion is obligatory for pupils with officialized religious affiliation. Although this religious education is non-confessional according to law this is often not the case in practice. Therefore the compulsory nature is a problem for the actualization of freedom of religion. The large variety of religious content in Finnish schools and the consequent opt-out schemes have lead to a situation that makes protecting freedom of religion of all pupils equally unfeasible for practical reasons

The results of this study suggest that current Finnish practice is not in line with all the requirements of international human rights law, especially those set by the ICCPR. Christian religion permeates Finnish schools in a manner that does not comply with the requirements for state neutrality. It would appear that domestic authorities are inclined to rely on the broad margin of appreciation evident in the ECtHR's judgments regarding freedom of religion in school. Too little weight is placed on the resolutions of the CCPR apparently because there have been no recent cases brought by Finnish nationals or cases pertaining to the exact issues that are subjects of complaint in Finland. The Constitutional Law Committee is inclined to protect tradition and reluctant to address necessary changes despite of recent suggestions made by the Deputy Chancellor of Justice. Tradition is not on its own a justification for infringement on freedom of religion. Special attention should be paid to these issues especially because of the vulnerable position of children in compulsory schooling.

Avainsanat – Nyckelord – Keywords
freedom of religion, school, religion, basic education, religious practice, religious education, human rights, fundamental rights, constitutional law

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[1] This also includes decisions made by the Commission before the enactment of Protocol 11.

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Leirvåg et al. v. Norway 23.11.2004 (Communication No. 1155/2003).

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Abbreviations

CCPR	United Nations Human Rights Committee
CHR	United Nations Commission on Human Rights, later replaced by the OHCHR
CLC	Constitutional Law Committee of the Finnish Parliament (Perustuslakivaliokunta)
CRC	The United Nations Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EOAM	Parliamentary Ombudsman, Finland (Eduskunnan oikeusasiamies)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
OHCHR	United Nations Human Rights Council
OKV	Office of the Chancellor of Justice, Finland (Oikeuskanslerinvirasto)
UDHR	Universal Declaration of Human Rights
UN	United Nations

1. Preface

1.1. Freedom of religion

Religion and its role in society is a constant point of conversation globally. This is no surprise, as religion has been a point of strife between civilizations throughout history. Religion is central to debates from large-scale international conflicts to mundane, everyday issues. With increasing globalization, cultural and religious pluralism combined with a trend of secularization in previously religious nations, this debate shows no signs of ebbing.

Increasing pluralism in modern society combined with the work of human rights scholars has brought forth the steady establishment of freedom of religion as a central human right. This right is considered crucial for the protection of personal identity, preservation of culture and an important component in the right to freedom of thought and freedom of speech. This freedom protects the faith and conscience of all, regardless of one's religion or lack thereof.[2]

The implications of freedom of religion deserve more scrutiny. Everyone has their own biases and preconceptions on the role and significance of religion. A truly objective view on religion is impossible. This does by no means signify that its study should cease. Scholarship on religious freedom must aim for objectivity while recognizing existing biases.

After the enshrinement of this right in the Universal Declaration of Human Rights, several questions have arisen as to its application in practice. International tribunals have elaborated upon the role and contents of this right and we now have a fairly broad framework to work with.

In the legal sense, Finland is a secular state and does not profess religion[3]. Nevertheless, the relationship between the state and the Lutheran church, which is given special status within the constitution, is very close; so close that Finland has a state church system in practice.[4] An overwhelming majority of the population claim religious affiliation, predominantly with the Evangelical Lutheran Church of Finland. The church is present in everyday life, and the

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[2] Heikkonen 2012, pp. 554–555.
[3] Sorsa 2015, p. 7; This change was made with the passing of the Constitutional Act of 1919.
[4] Sorsa 2015, pp. 7–13; Heikkonen 2012, pp. 555–557.

public school system is not an exception: it is built on tradition and this tradition is steeped in religion.

The role of Christian religious tradition and religious education in comprehensive schools is problematic when it comes to realizing freedom of religion of the pupils. The subject of the role of religion in schools has been under much public debate in Finland, and for good reason. It has become an examination of culture as much as religion and education, and is ongoing both in media and amongst citizens as well as in political debate.

Before the 20th century, freedom of religion has not been the grounds for much debate in Finland, largely because of the homogenous structure of religious affiliation amongst the population. Until the Constitution Act of 1919 and the Freedom of Religion act of 1922, freedom of religion was present in legislation chiefly for the constitutional protection of the Lutheran faith and secondarily to limited protection of other Christian religions.[5] In the last few decades, these topics have become a national and international point of debate, due to increasing secularism as well as increased immigration in concert with active human rights discussion.[6]

In Finnish schools, Christian tradition is present in schools' annual ceremonies as well as in religious education and religious assembly. The Evangelical Lutheran Church holds a strong influence, as it is recognized as a state church and has a public status. Children whose parents are members of a Lutheran parish are to attend classes on religion. Children whose parents subscribe to no religion or are part of a minority religion attend different classes: classes on life philosophy or if it can be arranged, education on one's own religion. Religious affiliation can be decided autonomously when the individual reaches the age of 18. It can also be done at the age of 15 with the parental guardians' written consent.[7] This is justified in part by the right to family and its inclusivity of the parents' right to choose their offspring's religious upbringing and affiliation. What is to be placed under question is whether this constitutes a legitimate reason to segregate children into different religious education in comprehensive public schools. Could religious education be left solely in the charge of the churches and religious communities?

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[5] Scheinin 1998, p. 26.
[6] *Ibid*, pp. 28–37.
[7] Religious Freedom Act §3.

In March 2014, the Deputy Chancellor of Justice gave a critical resolution on the freedom of religion in schools, calling for re-evaluation of religious content in schools.[8] This resolution differed somewhat from the stance the Constitutional Committee had taken several years previously[9], but the Deputy Chancellor noted that there had been substantial societal change and also new jurisprudence on the topic from international human rights tribunals. This resolution led to a public outcry from citizens and politicians, as many took the resolution to mean limitations on traditions followed in schools.[10] What followed was an unusual scene in which the Constitutional Law Committee called a hearing on the subject and heard from the supreme guardians of legality and legal scholars. This is not a common practice and legal scholars deemed it irregular.[11]

These events served as a spark for this study. In it, I shine a critical light on the current practice involving religious education and other religious content in Finnish schools. Through examining the jurisprudence of international human rights institutions I map out a framework from which I proceed to evaluate Finnish practice. This study aims to discover how and if Finnish practices in schools regarding religious content are reconcilable with the requirements of international human rights law.

In Finland, the issue of religious tradition is very much entangled with the concept of culture, and this study argues this produces possibilities for conflict with children's human rights in schools when it comes to religious freedom. The current situation is lagging behind important advances in the application of human rights.

1.2. Framework and adopted methods

This thesis examines the current position of freedom of religion in Finnish schools through jurisprudence, official publications and the work of legal scholars, and clarifies how the current practices of religious education and religious traditions in schools are positioned in this legal framework. The source material for this thesis consists largely of jurisprudence of the European Court of Human Rights and the United Nations Human Rights Committee, and resolutions made by domestic supreme guardians of law and constitutional oversight. This study also utilizes preparatory documents regarding legislation, and an array of written works

[8] OKV/230/1/2013.
[9] PeVM 10/2002
[10] Yle 2014.
[11] HS 2014a.

by legal scholars. In addition to works by legal scholars the source material includes other academic works in addition to news articles published on relevant topics, used here to frame the societal context of the work. This study employs both domestic and international materials.

The main research questions of this master's thesis are:

a) What is the current legal status regarding freedom of religion in schools, both in the national and international framework?

b) Regarding this issue, is Finland currently complying with the demands set by international human rights law and its own constitution?

Both the European Court of Human Rights (ECtHR) and the United Nations Human Rights Committee (CCPR) have substantive jurisprudence on the issue of religious freedom in schools and other public spheres. These human rights tribunals have distinct perspectives on the application of the right to freedom of religion. The aim of this master's thesis is to examine the current state of law and application of the freedom of religion in schools according to international human rights requirements and Finnish constitutional law.

The primary methodological approach is a traditional jurisprudential method of legal dogmatics[12]. This method serves the purpose of identifying the current legal position towards freedom of religion as defined by law and case law: Practice of the ECtHR and the CCPR are analysed and systematized with the aid of previous research in this legal field. The definitions and implications found utilizing the method of legal dogmatics are applied to Finnish constitutional law and current practice. This method offers the means to clarify the legal implications of the practice and rules seen in schools every day.

In addition a method of critical legal study[13] is employed. As this study aims to identify the problems facing basic education and application of freedom of religion, this requires a critical viewpoint on existing jurisprudence and an analysis of required change. Thus this study includes an element of *de lege ferenda*, assessing necessary changes in law and practice.

In Finnish cases examined in this thesis, the problems with freedom of religion in schools have much to do with the distinction between tradition and religion. In Finland, the status of

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[12] Hirvonen 2011, pp. 21–26.
[13] *Ibid*, p. 50.

the state church is strong and so is the church's role in public comprehensive education. This study covers the status of religious freedom specifically in Finnish public comprehensive schools. A large portion of this study is dedicated to international jurisprudence as it is of the greatest significance when evaluating the compliance of national norms and providing insight into the questions regarding freedom of religion in the public sphere. The study approaches Finnish practice within a comprehensive constitutional framework.

1.3. Structure

This master's thesis is divided roughly into five main segments. The first chapter includes the introduction into the topic at hand, clarifies the aims of the study, introduces the methods employed in the study and offers a concise background to the questions dealt with. This includes a brief account of the religious and societal context the legal issues of this thesis are framed in.

The second chapter focuses on the main functions of the Finnish constitution regarding fundamental rights in general and introduces relevant international systems for human rights protection. This segment serves as an introduction into relevant human rights and constitutional law. Greater weight is put on the European convention system, as especially when it comes to ECtHR jurisprudence, this system is of great significance for the research topic of this thesis.[14] I will also briefly present the CCPR system in as it is relevant to the subject at hand.

The third chapter focuses on the right to freedom of religion specifically as a fundamental right according to Finnish law and a human right in international human rights law. The emphasis is on the analysis of relevant case law involving religious freedom in the public sphere. This part of the thesis maps out the *de facto* implications and provisions of freedom of religion as a human right and displays the central issues under legal and political debate. The broad evaluation of freedom of religion in the public sphere is necessary, as it offers a comprehensive view on most issues confronting states regarding freedom of religion in modern day society, and the view taken on these issues by human rights bodies.

The fourth chapter focuses on current national practice involving religious traditions and symbols in Finnish schools and evaluates the consistency of this practice with constitutional

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[14] Evans 2001, p. 2.

and human rights law. The issues facing Finnish schools are twofold: The organization of religious education and issues rising from other religious content in schools.

These are followed by the conclusions (chapter 5) of this study and discussion on the implications for future development.

1.4. Religion in Finland

In the European context, extreme forms of religious integration into national legislation[15] are not seen. Some countries have implemented a system with a state religion given special status. Other states, such as France and Turkey are constitutionally given to a strictly secular point of view.[16] The French constitutional principle of *laïcité* is given much weight and permeates French policy regarding religious symbols in the public space. In the United States the formal separation of state and religion is paramount – religious assembly given by church personnel would be unfathomable in public schools in the USA, even considering the prominent role of Christian faith in US government.[17]

International human rights law does not prohibit state church systems. According to the Human Rights Committee (CCPR) the adoption of a state religion does not on its own constitute a violation of the Covenant. States are however obliged to take particular care that the status of the state church does not impair the freedom of religion of other religious groups or non-believers in any way or lead to discriminatory practice. The Committee requires states to report on the measures states have taken to ensure the rights and freedoms of minority groups. Special focus is also placed on any blasphemy laws.[18]

The overwhelming majority of the Finnish population are members of the Evangelical Lutheran Church of Finland. Despite the clear majority status of the Evangelical Lutheran Church, the Church has seen an accelerating decline in membership. From the 1950's with a 95 % membership rate there has been an emphasized decrease to the 75,3 % indicated in the 2013 census. The Greek Orthodox Church has held a steady membership of 1 % of the population, and does not seem to be subject to change.[19]

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[15] See e.g. Sharia law implemented in Iran and Pakistan.
[16] Akbulut & Usal 2008, pp. 433–434, 438–443.
[17] Scheinin 1998, pp. 26–27.
[18] CCPR General Comment 22, para 9.
[19] OSF, population structure, appendix table 2.

The portion of the population having no official affiliation with any religious communities has dramatically increased. The percentage of the population with no religious membership grew from the meagre 2,8 % in the 1950's to 10,2 % in the year 1990, and in 2013 this number was at 22,1 %.[20] Considered in concert with the statistics on Evangelical Lutheran Church membership above, this is significant, as it shows a decided decline in the popularity of the Evangelical Lutheran Church that used to be virtually the only religion in Finland.

This change will likely continue as more people leave the Lutheran church every year. An additional fall in membership is a result of minors leaving the church with their parents and potential offspring of ex-members being born outside church membership.[21] Finnish society is seeing a large-scale secularization of its citizens.

Even most of the members of the Evangelical Lutheran church do not cite faith as a reason for their maintaining membership the church. A study conducted by the church in 2011 saw that under half of church members cite spiritual reasons as a motive for membership and less than 10% felt that spiritual reasons were central to their membership. Spiritual motives have seen the starkest decline in the past 7 years and are significantly rare with younger generations. A majority of church members obtain or retain membership mainly because of religious traditions and rites such as church weddings or baptism ceremonies. Also, according to the same study, many people saw the church's charitable work and values as a central motive for church membership. This motive was the only one seeing an increase compared to earlier years.[22] Among Finnish children that are members of the church and receive education in the majority faith feelings of ambiguity regarding religion are common. Many state that they are 'officially' Evangelical Lutheran but 'don't really believe in anything' and believe the same is true for their parents.[23]

Religious affiliations classified as *other* have risen from the 0,5 % held in the 50's to the 2013 proportion of 1,5 %.[24] This number is peculiarly low considering the quantity and variety of religious communities has grown greatly during the same time.[25] Presumably, this can be explained by the number of religious people who do not wish for a reason or another to

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[20] OSF, population structure, appendix table 2.
[21] Haastettu kirkko, pp. 77–80.
[22] *Ibid*.
[23] Kallioniemi et al 2016, pp. 2–17.
[24] OSF, population structure, appendix table 2.
[25] OSF, population structure, appendix table 3.

officially obtain membership of their parish and therefore e.g. a large portion of Muslims can be statistically categorized as not being religiously affiliated.[26] It is quite possible that e.g. immigrants do not find it necessary to officialize parish membership to practice religion.

Statistically, Finland is a very religious country with a large portion of the population affiliated with the majority protestant faith. However, in practice it seems Finland is actually quite a secular society with people holding on to church membership for reasons based largely on tradition and historical values.

The state awards the Evangelical Lutheran Church and the Greek Orthodox Church a special status in legislation. Though officially, Finland does not have a state church, the arrangement grants the Evangelical Lutheran Church and the Greek Orthodox Church special status prescribed by law and Evangelical Lutheran customs are observed in state functions (e.g. church service at the opening of parliament ceremony). The current system is a *de facto* state church arrangement, even if this is not explicitly affirmed by law.[27]

The Evangelical Lutheran Church was the state church of Sweden, and therefore Finland, when Finland was under Swedish rule. The Finnish state church remained in place through the period of Russian Empire rule. The traditions of the state church are deeply ingrained. Religious homogeneity was regarded as essential for the integration of state policy.[28] It stands to reason that a people with like faith and values are easier to govern that a similarly diverse one.

The legal separation of church and state came about with the Constitutional Act of 1919 and the passing of the previous Act of Religious Freedom in 1923. It granted religious freedom for the first time; founding religious communities and being a member of such became a fundamental right. In this legislation, the state declared itself neutral in regards to religion and since then the state has not officially affirmed the Lutheran faith.[29]

Despite the official separation, the Evangelical Lutheran Church remains a public organization and its status and functions are affirmed by law. The same provisions apply as well to the Greek Orthodox church of Finland. A separate law is in force governing their

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[26] Kääriäinen 2011, p. 156; Koikkalainen 2010, pp. 47–48.
[27] Sorsa 2015, pp. 7–13.
[28] Kääriäinen 2011, pp. 155–157. A concise but thorough view on the history of the Finnish state church and dismantling of same. A theological perspective.
[29] The Act of Religious Freedom 1922/267.

functions. Also, the church retains significant power with the state, as all changes to the Church Act must be determined by the church assembly, the Synod.

The Evangelical Lutheran Church also maintains the main holidays in Finland. The Church Act states which particular dates based on the Christian faith must be held holy and therefore as holidays in the Finnish calendar. This manifests itself economically and culturally, as holidays affect opening hours of institutions and services both governmental and private. These holidays are shared with the Greek Orthodox calendar so both churches maintain the same status.

In addition, both churches have the right to levy taxes. These tax rates vary on the parish one belongs to, i.e. the location of domicile. Only church members pay church taxes together with their state and municipal taxes. One can opt out of additional taxes levied by the church, simply by quitting the membership of said church. In addition, the state diverts a certain amount of corporate tax income to the church as state subsidies. Corporate taxation cannot be opted out of. Church taxation has been justified on the grounds that some state functions have been delegated to these churches. They are for example largely in charge of burials of both church members and non-members and can legally marry the members of its parishes.[30]

Religious communities can also be granted subsidies to fund their activities. These subsidies are available for all registered religious communities. Other religious communities fund their activities with donations, membership fees etc. but are not granted special rights regarding taxation or holidays as the two main churches.

The Finnish system is not a system of state church per se, but neither is it a model of church and state separation.[31] This model adopted by Finland is not in itself against the right to religious freedom.[32]

1.5. Central concepts

1.5.1. **On the concept of religion and belief**

This study discusses freedom religion and belief as a fundamental and human right. Therefore it is pertinent to frame the concepts of religion and belief within the same scope as relevant

[30] Kääriäinen 2011, pp. 156–169.
[31] Gozdecka 2009, pp. 130–131.
[32] CCPR General Comment 22, para 9.

human rights systems do. Religion and belief are difficult concepts that are prone to subjective interpretation and have never been categorically defined in any human rights treaty.[33] Therefore the scope of belief and religion employed in this study derives from the loose definitions utilized by the ECtHR and the ICCPR in their practice.

The CCPR frames religion in its comments on the application of freedom of religion as follows:

> ‘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. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.’[34]

This broad definition adopted by the ICCPR seemingly imposes no limitations, but indeed, the ICCPR has stated that a group that proclaimed a faith centred around the worship and use of a narcotic cannot receive protection under article 18.[35] This seems to be a stance adopted to avoid including sham religions from receiving protection under art. 18, but does beg the question of where the boundaries truly lie. The practical boundaries of the concepts of religion and belief are still being defined.

Under article 9 (freedom of thought and religion) of the ECHR, the term ‘religion’ can constitute various convictions not limited to religious belief. It has been necessary to define the line between belief as protected by article 9 and ideas or opinions that do not constitute belief.[36] The scope of religions and beliefs that fall within the application of this article are numerous and it also covers non-believers.[37] There is no existing list of which religions are

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[33] Evans 2001, p. 51.
[34] CCPR General Comment No. 22, para 2.
[35] M.A.B and others v. Canada 1993, para 4.2.
[36] Ovey & White 2006, pp. 302–303.
[37] Buscarini v. San Marino 1999; Kokkinakis v. Greece 1993.

covered by article 9, but suffice to say the scope is broad and more subject to additions than reductions.

This study does not intend to define religion or belief or find new perspectives on adopted boundaries. For the purposes of this study the definitions adopted by the ICCPR and the ECtHR are pertinent. These definitions are considered sufficiently broad and flexible.[38]

1.5.2. Basic education and public school

This study is centred on the evaluation of basic and compulsory schooling as defined by the Finnish Basic Education Act. The extent of the compulsory basic education syllabus comprises years one through nine.[39] The issues dealt with in this thesis extend to school systems in general, as they are not restricted to certain grades of schooling but rather permeate the entire public school system from pre-school[40] and kindergarten to primary education and upper secondary schools, and to some extent higher education. Nevertheless, the main focus of this thesis is on the years of schooling that are compulsory in the Finnish context. This is referred to as basic education.[41]

In Finland, all schools are considered public in the legal sense – schools are considered on par with public authorities as they carry out duties assigned by public law. The overwhelming majority of Finnish schools are publicly funded and even when schools are not entirely funded by the state or municipal governments, they are carrying out a function provisioned by law. Therefore in the Finnish legal sphere, schools are considered public functionaries and are subject to legislation as such.[42] The term 'public school' is employed in this study to refer to schools funded by the state or municipalities.

The state must provide basic education for its population. This obligation is enshrined in the Finnish Constitution. According to the Basic Education Act, the responsibility to organize basic education lies with local government in municipalities. Also, the state government and other (private) organizations may organize education in accordance with chapter 3 of the Basic Education Act. Even when education is organized by a private organization, the

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[38] Evans 2001, pp. 51–66. A concise view into the definition of religion and belief in international human rights law.
[39] Basic Education Act 628/1998.
[40] EOAM 4412/4/13.
[41] Basic Education Act 628/1998.
[42] Section 16 of the Constitution. The right to basic education poses positive obligations on the state.

organization must comply with the provisions of the Basic Education Act. In Finland, no concept of autonomous private schools exists. Some exceptions to the provisions of the law can be made in accordance with public authorities and within the restrictions of legislation. There is, however, no mechanism for schools to deviate from the demands of human rights or fundamental rights as defined in the Constitution. The same provisions for limitations that govern deviation from these fundamental rights in general apply to schools as public institutions.

1.5.3. **On elected wording**

Throughout this study the gender-neutral pronoun *they* is utilized when referring to unknown persons in singular as well as plural. This is a conscious choice made to reduce the prevalence of the gender binary and to counteract the overuse of the third person masculine.

2. Protection of fundamental and human rights

In this chapter I outline Finland's Constitution and the main functions of constitutional oversight in Finland. I also examine the relationship between fundamental rights and the international human rights convention systems most relevant to this study. I will briefly present the functions of the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). Beside the ECHR, UN human rights instruments have an important role in the application and interpretation of human rights. Finland is obligated to comply both with the Strasbourg court's rulings as well as requirements made by UN covenants it is party to. I will briefly introduce the margin of appreciation applied by the ECtHR and central jurisprudence outlining the doctrines by which these international human rights systems function. I conclude with comments on the international systems' relevance to case at hand, religious freedom in Finnish schools. This chapter concentrates on international human rights organs as protectors of rights in general and the jurisprudence regarding freedom of religion is further analysed in chapter 3.

2.1. Finnish constitution

The main principles of Finland's constitution are the inviolability of human dignity, protection of the rights and freedoms of the individual, and the promotion of justice in society.[43] These form a constitutional foundation for all legislation; a strong weight is put on the rights and freedoms of individuals. Fundamental rights are specified in the text of the constitution and these rights are consistent with international human rights.

Finland underwent a large-scale constitutional reform in 1995 and the list of fundamental rights was harmonized with the demands of international human rights and included in the constitution. In some respects, the fundamental rights defined by the Finnish constitution are broader and provide more protection than international human rights do.[44] Human rights provide the minimum requirements for the protection of rights, and therefore human rights cannot be utilized as a means to weaken the level of protection granted through fundamental rights.[45]

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[43] Constitution sec. 1, 731/1999.
[44] Hallberg 2011, pp. 29–35.
[45] Lavapuro 2010, pp.170–171.

International human rights conventions have placed demands on the positioning of human rights in national legislation. One of the central aims of the constitutional reform was to meet all demands of human rights law and include a list of fundamental rights in the constitution. The goal was not to define vague goals of the constitution but to specify all protected rights to some detail and make practical application of the constitution easier. One focus was to strengthen the direct application of human rights by defining them in practical terms in the text of the nation's constitution.[46]

International human rights are directly applicable in national law and do not necessarily need to be included as legislation or as part of a nation's constitution, as long as national legislation is not contra human rights law. When the application of a domestic norm is deemed to be inconsistent with international human rights law, this means that the norm or application in question is also inconsistent with the Constitution.[47] Despite this fact there is a point to be made for the written inclusion of human rights law into national legislation. Bringing these fundamental rules into domestic legislation strengthens the practical implications of human rights law. Human rights are not to be regarded as vague guidelines or utopian wishful thinking, but as grounding demands for national legislation and practice. Most European nations include fundamental rights in their constitutions – the United Kingdom seems to be the only nation with no written list of fundamental rights.

In general, fundamental and human rights exist to protect the rights of the individual from infringements by the state. As many subjects besides the state are endowed with public power and can enforce this power in regards to individuals, one must understand references to state (e.g. in the text of the EHRC) to mean all such entities that use such power and realize such functions that appertain to the public authority. This includes national authorities such as municipal government, the Evangelical Church of Finland, schools and universities and public corporations.

The constitution has a primacy in regards to other legislation: In a situation where there are conflicting interests, the one with constitutional protection or in the case of the interest falling under a protected fundamental right, the fundamental right is always supreme.[48]

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[46] Hallberg 2011, p. 34-36; PeVM 25/1994 vp.
[47] Lavapuro 2010, pp. 170–171.
[48] Constitution sec. 106, 731/1999.

According to the constitution, limitations to fundamental rights must always be prescribed by law.[49] Fundamental rights are to be provisioned so that deviation to some extent is possible in certain situations, as long as this deviation does not negate the central content of the right.[50] The legal limitations to fundamental rights are provisioned in accordance with the limitation clauses of international human rights law. Finland is committed to upholding both the ECHR and the ICCPR discussed in chapters 2.3 and 2.4.

2.1.1. **Constitutional oversight**

In Finland, oversight on constitutional issues is placed with the Constitutional Law Committee of Parliament (CLC). This committee operates under parliament and consists of members of parliament. This is a system of advance oversight; the committee is tasked with evaluating the constitutionality of government and other bills and giving a well-founded opinion before plenary parliamentary proceedings. The committee utilizes expert reports in its work. Despite the Committee functioning under Parliament it has an independent nature and is meant to operate outside of political manoeuvring and party politics.[51]

Finland, as an exception to widespread global practice, does not have a tribunal system for evaluating constitutional issues in the form of a constitutional court. Previously, the founding principle of the Constitution entailed that courts do not have the authority to control and evaluate constitutional issues. This principle has altered after the constitutional reform of 1995.[52] Currently, domestic courts are tasked by the Constitutional Law Committee with constitutional interpretation of law, which allows domestic courts to disregard legislation and rules that run counter to the constitution. Courts must take the constitution into count as a part of legal reasoning on any given case where this is pertinent.[53] However, this has not delegated constitutional oversight to courts. Courts do not have the power to propose changes to legislation they deem unconstitutional.

Additionally, Finland has two supreme guardians of law and legality: The Parliamentary Ombudsman of Finland and the Chancellor of Justice. The Parliamentary Ombudsman is elected by parliament and the Chancellor of Justice is appointed by the republic’s President.

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[49] Viljanen 2014, p. 27.
[50] Hallberg 2011, p. 56.; Viljanen 2014, p. 280–283.
[51] Constitution sec. 74, 731/1999;
[52] Hallberg 2011, p. 57.
[53] PeVM 25/1994 vp.

The office of the Parliamentary Ombudsman oversees the public sphere and is tasked with ensuring proper observance of the law by public officials and authorities. The oversight of the Parliamentary Ombudsman covers all public functions. The aim of the Parliamentary Ombudsman is to ensure good administration and the observance of constitutional and human rights.[54] Citizens may petition the ombudsman when they are in doubt as to the legality of the actions or observance of human rights exercised by the authorities or public entities such as schools. The Chancellor of Justice, on the other hand, operates in conjunction with government, and supervises the legality of governmental action, operation of the ministries under government, and also the President of the Republic. The Chancellor of Justice is also tasked with overseeing that authorities and public officials, courts of law, and all operatives in the public sphere adhere to law, and they also investigate petitions made by citizens. To some extent, the duties of these two supreme guardians overlap.[55]

2.2. European convention system as a protector of human rights

The Convention reflects the role of national and European interests. The original text of the Convention has been amended by protocols and many additional aspects of European life have become determined in terms of human rights since its ratification.[56] The Convention is at times significantly lacking in its wording and leaves much interpretation to the European Court of Human Rights (ECtHR).

The ECtHR has jurisdiction on all manners pertaining to the application of the Convention, and judgements made by the Court are legally binding. All signatory states have accepted the binding force of these decisions.[57] The Court may only deal with cases when all domestic remedies have been exhausted (ECHR art. 35 on admissibility). The Convention system is quite effective, as states are compelled to abide by the Court's judgments and the judgments are accompanied by a multi-phased supervision system. States are obligated to make required alterations and report on their progress.[58]

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[54] Parliamentary Ombudsman 2016.
[55] Chancellor of Justice 2016.
[56] Pellonpää et al. 2012, p. 10–12;
[57] ECHR Section II.
[58] Mowbray, 2012 pp. 56–63.

The Court has a pronounced role in the interpretation of the Convention, and it is subject to change in time.[59] This is especially true in regards to religion, as its role is changing in most European societies.

2.2.1. **Limitation clauses**

When it comes to rights defined under articles 8 (Right to respect for private and family life), 9 (Freedom of thought, conscience and religion) and 10 (Freedom of expression) of the ECHR, these articles have provisions on the express limitations on the rights they provide for. These clauses constitute limitations of the scope of the Convention rights and make specific provisions on the conditions for justifiable limitations.[60]

There are two basic principles pertaining to these limitations. Firstly, the limitation must be prescribed by the ECHR. This requirement has much weight and allows the Court direct oversight over alleged infringement on the rights defined by the articles in question. Secondly, and in accordance with article 18 of the Convention, 'restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed'.[61]

When considering the justifiability of a state imposed limitation of a Convention article, the Court operates in three phases: First, the Court must determine whether the limitation is *prescribed by law*.[62] Second, the Court must find that the *aim of the limitation is legitimate*.[63] The most common legitimate aim cited by the Court under art. 9 is the protection of public order. The protection of health and morals is also an often-utilized justification in ECtHR case law[64] as is the protection of the rights or freedoms of others[65]. Lastly, the Court must deem

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[59] Ovey & White 2006, pp. 248, 251–252; Rees v. the United Kingdom 1987; Cossey v. the United Kingdom 1991; Christine Goodwin v. the United Kingdom 2002.
[60] Ovey & White 2006, p. 218.
[61] *Ibid*, pp. 220–223.
[62] ECHR art 8–9; Pellonpää et al 2012, p. 223-225; Ovey & White 2006, p. 223–225; Sunday Times v. the United Kingdom 1979.
[63] Ovey & White 2006, pp. 227–229; Handyside v. the United Kingdom 1976.
[64] Ovey & White 2006, p. 228.
[65] Ovey & White 2006, p. 230; Otto-Preminger Institut v. Austria 1994.

the limitation *necessary in a democratic society*.[66] This entails that the limitation is based on a *pressing social need* and that the limitation is not disproportionate to its aims.[67]

The limitation clauses are drafted so that all three of these requirements should be examined individually. After the Court has established the first requirement of legality it can move on to assess the other requirements in order. Before these steps the Court must of course establish the existence of a violation of a right established by the Convention.[68]

In this consideration the Court the must weigh the *proportionality* of the limitation: If the same effect of the legitimate aim can be attained with a smaller degree of infringement on a Convention article, the limitation is disproportionate and cannot be allowed. As these limitation clauses place much weight on the rights and freedoms of others, these limitations usually have to do with weighing the 'greater good' against the rights of the individual.[69]

The margin of appreciation doctrine and the doctrine of proportionality are essentially interlinked. The doctrine of proportionality is often used to measure whether a state has surpassed the limits of the imposed margin of appreciation.[70]

2.2.2. **The margin of appreciation**

Regarding these same articles of the Convention, the margin of appreciation is a doctrine frequently utilized and referred to by the ECtHR in its case law. It is a somewhat problematic tool. The margin determines to what extent a state can make its own interpretations regarding limitations on articles 8–11. The margin of appreciation doctrine demands closer scrutiny on its own, as its implications are great in cases pertaining to freedom of religion and article 9 of the Convention.

The margin of appreciation was created in the European Court of Human Rights judicial progress. It is not based on any text in the actual Convention, and the origin of the doctrine can be traced by delving into the case law of the ECtHR.[71]

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[66] ECHR arts. 8–11.
[67] Ovey & White 2006, pp. 232–239; Handyside v. the United Kingdom 1976, (48); Silver & others v. United Kingdom 1983.
[68] Viljanen 2003, p. 174.
[69] Ovey & White 2006, pp. 222–223.
[70] *Ibid*, p. 240.
[71] Legg 2012, pp. 1–5.

The goal of the Convention is not to force states into a homogenous system of moral values and culture.[72] This is the main idea behind the margin of appreciation doctrine. Margin of appreciation is applied when the Court considers how far the Convention can be utilized to interfere with the sovereignty of a signatory state. The Court can grant a very broad margin of appreciation or maintain close to no margin, depending largely on the case at hand, mainly the nature or relationship of the human rights in contention. The width of the margin is not determined in any official documentation that could be utilized to foresee the margin awarded in any given case. The methods of measuring the margin have been under considerable academic debate, and no reliable system for measurement has emerged. The ECtHR determines the margin of appreciation given to the government in each case individually, taking all the facts into consideration. Some speculation is possible, but no actual scale for margin exists.[73] The doctrine is by nature convoluted and vague in its outcomes.[74]

Typically, the margin is applied in cases pertaining to articles 8, 9, 10, 11 and 15 of the Convention.[75] For example, in issues pertaining to the care of children and issues of religion and morals, a wider margin is consistently utilized.[76] This is a reflection of the ECtHR's disinclination for forcing a uniform moral and value code on the member states. It allows states a certain amount of leeway in the way they implement the Convention, especially when it comes to matters that deal with morals and culture. This entails that the Court is reluctant to penalize states for restrictions of Convention rights when it comes to matters it has seen more as issues of morals and pertaining to nationally determined values.

Also, when a general European consensus on the question at hand does not yet exist by the Court's standards, the Court has been known to apply a broad margin of appreciation.[77] Even though the Court seems to give a broad margin of appreciation, and lets states limit freedoms, in cases of e.g. distributing pornographic literature, it is reluctant to let states limit the rights of an individual's sexual behaviour, like in the case of *Dudgeon.*[78] State infringement on individual rights seems to merit less margin than the states' limitations to protect their idea of a general social good.

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[72] Handyside v. the United Kingdom 1976.
[73] Yourow 1996; Legg 2012, pp. 3859.
[74] Ovey & White 2006, p. 240.
[75] *Ibid*, pp. 232–240.
[76] Johansen v. Norway 1996.
[77] Pellonpää et al. 2012, p. 231.
[78] *Ibid*.

In all cases, proportionality plays a significant role in the limitation of rights and the margin of appreciation. The posed limitation to a right defined in the Convention must also be proportional as regards to the benefits gained by the limitation of rights.[79]

Landmark cases in the formation of the Court's use of the margin of appreciation include *Handyside*, *Sunday Times*, and *Dudgeon.*[80] In *Handyside* the Court notably argued that the national authorities were in the *best place* to evaluate national morals, since 'it is not possible to find in the national law of the various Contracting States a uniform European conception of morals'.[81] The use of the margin of appreciation does not however entail that decision making power is deferred from the ECtHR to the states in all issues regarding morals.[82] For example, the majority opinion of state citizens cannot define the scope of a human right, even when such legal issues dealing with morals and culture would usually be awarded broad margin of appreciation.

The margin of appreciation in ECtHR practice is regularly seen as problematic and has been under considerable debate.[83] Likely the most substantial critique has been focused on the margin of appreciation diluting the principle of the universality of human rights. Critics have voiced their concern over relativism in the application human rights, and seen that the margin offers a dangerously relativist approach to human rights that is in conflict with universality. [84]

On the other hand, the margin of appreciation has been seen as a useful tool especially in the diplomatic framework an international treaty like the ECHR requires. States are more likely to agree to an international tribunal interfering in state sovereignty if a certain margin exists. This Convention would never have come into being, if the realization of rights had not been left on state level.[85] Also, the ECtHR has expressly stated that it does not aim to create a Europe with homogenous morals.[86] Arguably, the use of this margin has succeeded in maintaining a pluralistic Europe.[87] However, in the case at hand, the margin of appreciation

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[79] Ovey & White 2006, p. 232; X,Y & Z v. the United Kingdom 1997; Goodwin v. the United Kingdom 1996.
[80] Dembour 2006, pp. 35–39; Sunday Times v. the United Kingdom 1991.
[81] Handyside v. the United Kingdom 1976.
[82] Dudgeon v. the United Kingdom 1981.
[83] Legg 2012, an extensive account on critique and defence of the margin.
[84] *Ibid*, pp. 40–42.
[85] Dembour 2006, p. 36; Yourow 1996.
[86] Handyside v. the United Kingdom 1976.
[87] Ovey & White 2006, pp. 2–40.

has created an unwanted incentive for the state to disregard some human rights issues if they might foreseeably fit within the margin, as I will argue.

2.3. The United Nations human rights committee as a protector of human rights

The United Nations offers a universal system for human rights protection with global applicability. The United Nations Universal Declaration of Human Rights (UDHR) has served as a catalyst and model for human rights convention systems: The ECHR is largely modelled after the declaration and the text of the ECHR is more than similar to the ICCPR.

Most UN covenants include individual petition procedures, which offer a similar kind of protection as the ECHR system does. The individual petition procedure is native to the ICCPR in addition to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).[88] This study will concentrate further on the individual petition as it is utilized within the scope of the ICCPR.

The UDHR and under it the ICESCR and the ICCPR form a human rights system sometimes referred to as the 'International Bill of Rights'[89]. When the UDHR was prepared, the aim was to eventually forge the legally non-binding declaration into a binding convention system. This has not come to pass as such for chiefly political motivations, and the declaration continues to exist as a non-binding resolution. Instead, the UN has been the platform for the drafting of several, more specific, binding conventions with systems in place for enforcement.[90] These two covenants part of the 'International Bill of Rights' are legally binding treaties that establish the rights defined in the non-binding UDHR.

The ICCPR imposes obligations on states. According to article 2 of the Covenant:

> 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind,

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[88] Ojanen & Scheinin 2011, pp. 896–897.
[89] Conte & Burchill 2016, p. 2.
[90] *Ibid*, pp. 1–3.

> such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> 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.

Under article 2(2) states are under obligation to ensure the rights protected by the Covenant are guaranteed by domestic legislation. Some legal scholars have taken the position that in place of ordinary legislation these rights should be implemented on the constitutional level[91].

2.3.1. Limitation clauses

The Covenant also allows for restrictions to and other legitimate ways to derogate from the rights determined by its text similarly to provisions made by the ECHR. Restrictions to rights are provided for by the Covenant's text in several cases. The restriction clauses in article 12 regarding free movement are a good example of the wording utilized by the ICCPR:

> 'Art. 12(3). The above-mentioned rights shall not be subject to any restrictions except those which are *provided by law*, are *necessary to protect national security*, *public order* (ordre public), *public health or morals or the rights and freedoms of others*, and are consistent with the other rights recognized in the present Covenant.' (Emphasis by author.)

The provisions made in article 12 regard restrictions imposed on the right to freedom of movement. The committee's comment[92] on the application of these provisions are considered as a general principle regarding restriction clauses in the interpretation of the ICCPR.[93]

The limitations to rights enshrined by the ICCPR must be *provided by law,*[94] have a *legitimate aim* and be *necessary* to that end and be *consistent with other Covenant rights.*[95] The Committee has elucidated that the 'the application of restrictions in any individual case must

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[91] *Ibid*, p. 7.
[92] CCPR General Comment 28.
[93] Hanski & Scheinin 2003, pp. 3–5.
[94] CCPR General Comment 27 para 12-13.
[95] Hanski & Scheinin 2003, pp. 4–5.

be based on clear legal grounds and meet the test of necessity and the requirements of proportionality'.[96] So for a restriction to be *necessary* it must also be *in proportion to* the protection it is meant to provide.[97] This is effectively a ban on any kind of arbitrary application of limitations.[98]

The Committee places specific weight on the protection of the fundamental principles of equality and non-discrimination. All restrictions that are otherwise justifiable must be consistent with these principles. The Committee clarifies that any restrictions otherwise permissible would be considered a violation, if the restrictions were based on e.g. gender, race or religion.[99]

2.3.2. **Individual petition**

The ICCPR includes provisions on a Human Rights Committee (CCPR) tasked with monitoring the implementation of the Covenant.[100] This committee is comprised of human rights experts from signatory states and is not to be confused with the Human Rights Council (HRC) also operating within the United Nations.[101]

The CCPR fulfils its monitoring task through essentially two mechanisms. The first and primary mechanism is the reporting procedure[102]. States are periodically required to report the actions they have taken to give effect to the rights enshrined by the Covenant and the progress they have made in the enforcement of these rights after ratifying the Covenant.[103] The second mechanism is the petition system provided for in the First Optional Protocol to the ICCPR. [104]

The individual petition system is in relatively active use. The application of the individual petition system is not an obligatory part of the Covenant, but has entered into force with the

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[96] CCPR General Comment 27 para 6.
[97] CCPR General Comment 27 para 15; CCPR General Comment 27 para 14: '(limitations) must be the *least intrusive* instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected'.
[98] CCPR General Comment 27 para 16.
[99] *Ibid,* para 18.
[100] ICCPR art. 28.
[101] Lempinen 2005, pp. 1–4; The Human Rights Council (HRC) replaced the United Nations Commission on Human Rights (UNCHR) in 2006. The HRC as the Comission before it is a political body elected by the the General Assembly.
[102] ICCPR art. 40.
[103] Hanski & Scheinin 2003, pp. 8–11.
[104] Ojanen & Scheinin 2011, p. 898; Hanski & Scheinin 2003. A concise elaboration on admissibility. The wording of the Optional Protocol is not perfect in accounting for all conditions of admissibility, the authors offer a clarification on these conditions.

first Optional Protocol of the ICCPR, which has been accepted by 119 states. Finland signed the optional protocol in 1967 and ratified it in 1975.[105] In comparison with other petition systems such as the ECtHR the Committee receives few petitions: Despite being ratified by 119 states[106], only 80–200 petitions are made every year.[107] Relatively few individual petitions have originated in Finland after the implementation of the Optional Protocol. Only 29 cases have been brought to the Committee regarding alleged violations of the ICCPR. Thirteen of these have been deemed inadmissible and in five cases, the Committee has found a breach of rights under the Covenant.[108]

Contrary to the European Convention system, the ICCPR does not require states to legally uphold resolutions made by the CCPR.[109] The resolutions made by the CCPR in the petition procedure are the views adopted by the CCPR, not resolutions or judgements. This is an issue in the credibility of the committee and the Covenant itself.[110] CCPR resolutions may have direct effect in remedying individual cases, but seem to effect substantial legislative change in a less efficient manner that it's European counterpart. In the European context, ECtHR jurisprudence has a more binding role.[111] Europeans have seemingly adopted the ECtHR as a preferred petition system, as it receives multiple times the communications as the CCPR. This is reflected in the primary role given to ECtHR jurisprudence.[112]

Despite this statement, the CCPR resolutions are not to be considered recommendations. Typically, these resolutions include in depth considerations by the committee on how a state should resolve the human rights dispute if an infringement is found according to the ICCPR. The evaluation is made by legal experts in the field of human rights law, and should be considered by states as authoritative.[113] Ultimately, the whole purpose of ratifying the optional protocol would be negated by the states' reluctance to abide by the views of the CCPR in any case at hand.[114]

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[105] Office of the High Commisioner on Human Rights.
[106] 119 states have accepted the Optional Protocol in October 2016.
[107] Ojanen & Scheinin 2011, p. 897.
[108] Office of the High Commisioner on Human Rights: Jurisprudence. The situation as of October 2016.
[109] Ojanen & Scheinin 2011, p. 898
[110] O'Donovan & Keyzer 2015.
[111] ECHR art. 46.
[112] Hakapää 2010, pp.186–194.
[113] Ojanen & Scheinin 2011, p. 898–899; Hakapää 2010, pp.186–194.
[114] Hanski & Scheinin 2003, p. 21–22.

2.4. Concluding comments

The current Finnish Constitution was reformed with substantial effort and is consistent with human rights requirements. The possible problems facing Finnish constitutional oversight lie in the nature of the Constitutional Law Committee. There are obvious merits to well-functioning, advance oversight. This makes it difficult for constitutionally dubious bills to advance in the legislative process and constitutional issues are ideally dealt with long before bills reach plenary sessions in Parliament. However, the Committee functions as well as it does largely out of tradition and convention. If Parliament were to shift strongly to a position less inclined to abide by human rights provisions, the Committee could quite possibly give less weight to expert opinions and function more under political sway. Given that the Committee's stances carry significant legal weight in the interpretation of the Constitution, this kind of shift would be detrimental to the legislative process in terms of constitutionality. At the moment, supreme guardians of Finnish law and the CLC are prone to consult the jurisprudence of the ECtHR and the CCPR amongst other human rights instruments with care. The power to consult or not to consult human right law lies with the legislature and government. If they decide to disregard constitutional points of view or human rights requirements, much could change.

The ECtHR and the Convention it controls is a system of many merits. In Europe, the contents and aims of the UN declaration of human rights have been brought into a legally binding system that is effectively supervised by the Strasbourg Court. The system is effective in that the Court can impose actual sanctions on signatory states, such as monetary compensation and the obligation to report on remedies made. The rulings made by the Court are binding not only regarding the state party of the case but also all state parties to the Convention. The Court has a defining role in the application of the Convention.

Nevertheless, the Court lacks resources to operate to its full potential. The waiting lists for cases are years long, and the development of European human rights law is slowed down by the Court's hampered efficiency. A truly efficient system for human rights protection should operate with much more urgency.

In the Court's power lies its greatest weakness. Member states have effectively agreed to sign away a portion of their sovereignty to the ECtHR as signatories of the Convention. The broad use of the margin of appreciation is utilized in part to appease these signatory states by not encroaching on state sovereignty in matters of morals or religion. This practice of giving

states leeway on core human rights issues is essentially making certain human rights flexible. This runs in counter to the nature of human rights as universal and inalienable. This use of the margin of appreciation is questionable from the perspective of citizens, seeing as the Court awards different kinds of margins of appreciation pertaining to the protection of the same article, depending on the circumstances and its opinion on whether it belongs in a category where the state might have more expertise.[115]

Also, the great weakness of the human rights system lies in the position of state sovereignty in international law and diplomacy. Through treaties, states can give oversight over human rights affairs to international tribunals, such as the ECtHR. This tribunal would never function without a strong mandate from the states. But what should happen if a state declines to abide by the Convention? In 2016, Turkey put the Convention on hold for internal political reasons during the aftermath of the failed military coup in July. This was done by unilateral declaration. The Convention does not allow for the entire treaty to be put aside for a time determined by the state. Human rights are truly not meant to be discarded when a state does not feel like abiding by them. Front row politicians in Britain have threatened to leave the Convention, in the spirit of Brexit. The Convention system becomes essentially powerless when nations decide human rights are no longer a priority.

In the memoranda given by the Finnish CLC and resolutions of the supreme guardians of law, the margin of appreciation is given attention, and often, a domestic practice is justified with the fact that these kinds of issues usually lie within the margin of appreciation in jurisprudence of the ECtHR. Frequently, the requirements of the ICCPR are cited as well, but attention is not really given to the fact that the CCPR does not allow for a margin of appreciation. The ECtHR is given a more binding role.

There is a legitimate risk that the Strasbourg court will allow more margin of appreciation in the future. In these current times of anxiety on the European continent and changing political values, the margin might become wider as states become more wary to protect what they feel is their own and in their power to consider. Political statements about human rights have become relativist indeed, and the need for a strong authority such as the European Human Rights Commission and the ECtHR is needed now. The risk of countries dropping out of the Convention in troubled times is obviously great, and I believe this to be one of the reasons

[115] Z v. Finland in comparison to Dudgeon v. the United Kingdom; Dembour 2006, p. 75.

that the margin cannot currently be abolished or critically assessed in a fruitful manner. The Commission will have to try and hold on to its member states, and a broad margin of appreciation might just be a tool here as well.

3. Freedom of religion as a fundamental and human right

In this chapter I outline the definition of the right to freedom of religion within the scope of domestic law, and further, within the ECHR and the ICCPR, utilizing the text of the relevant legislation and covenant text. I aim to lend insight into the jurisprudence of human rights instruments to illustrate the scope of freedom of religion, especially regarding religion in the public space and schools specifically. The requirements of the ECHR and the ICCPR are paramount when evaluating the compliance of domestic law and authorities.

3.1. Freedom of religion in Finnish legislation

The definition of freedom of religion in Finnish law is primarily made in the constitution of Finland[116], in the Act on the Freedom of Religion[117] and the Non-discrimination Act[118]. Additionally other more specific laws give more depth to the prescriptions made by the constitution. For the purposes of this study the provisions of religion in schools according to the Basic Education Act are especially relevant.[119] I aim to clarify the content of religious freedom in Finnish law, therefore looking into the memoranda of the Constitutional Committee and Government bills and their reasoning is necessary. Fundamental rights defined in the text of the Finnish constitution are largely based on international human rights binding Finland. The constitutional reform brought about in 1999 closely follows the wording of the ECHR when it comes to fundamental rights.

The constitution defines religious freedom (section 11) as follows:

> 'Everyone has the freedom of religion and conscience.
>
> Freedom of religion and conscience entails the right to profess and practice a religion, the right to express one's convictions and the right to be a member of or decline to be a member of a religious community. No one is under the obligation, against his or her conscience, to participate in the practice of a religion.'

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[116] Constitution 731/1999.
[117] Act 453/2003.
[118] Act 21/2004.
[119] Act 628/1998.

The second paragraph in this section defines the rights to positive and negative freedom of religion, respectively. In addition to the constitution securing an individual's right to practice one's religion, it also safeguards the right to not professing any faith. This perspective is affirmed in the government's bill and its explanatory memorandum for the current constitution.[120] According to this memorandum, the most significant aspects of freedom of religion are the right to profess and practice religion, the right to manifest one's faith or convictions, freedom of religious assembly, and negative freedom of religion. Negative freedom of religion here entails the right to refrain from religious assembly. According to the government bill, negative freedom of religion is applicable also to religious practice. No one can be obligated to practice religion against one's conviction. This includes the right to refrain from religious practice even if one is a member of a religious community.

Finnish legislation holds other significant provisions in regards to the subject of this study. Section 6 of the constitution of Finland states defines the right to equal treatment. According to section 6:

> 'Everyone is equal before the law.
>
> No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.
>
> Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.'

Also, according to section 22 of the constitution, public authorities have the obligation to guarantee the observance of basic rights and liberties and human rights. This amounts to a positive obligation of the state to secure all rights mapped out by the constitution. This is also reflected in the Basic Education Act: it stresses that the point of religious education is chiefly to ensure the right to freedom of religion of the pupil.[121]

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[120] Government bill HE 309/1993 vp, p.55–56.
[121] Heikkonen 2011, pp. 38–39, 41–45.

Freedom of Religion is further specified in the Finnish Act on Freedom of Religion. The right to receive religious education is an integral part of freedom of religion.[122] This has been affirmed both by government in its reasoning for the bill for the act of freedom of religion and the constitutional law committee.[123] Freedom of religion requires that pupils have the option to receive religious or secular ethics education according to one's religion. Schools must also take into account and respect individual convictions, children's rights and the right of the parent or guardian to determine their child's religious upbringing.[124]

The practical implications of freedom of religion in schools and the considerations made by domestic authorities are considered in chapter 4.

3.2. Freedom of religion in the ECHR

3.2.1. **Provisions of the Convention**

Religious freedom in Europe is largely defined by the application of article 9 of the ECHR. The Article outlines the freedom of thought, conscience and religion in two parts as follows:

> '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.'

Freedom of religion protects individuals, and is not applicable directly to the protection of religious organizations.[125] If limitations are posed on the workings of an organization, a breach of article 9 usually cannot be found, unless it can be shown that these limitations have

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[122] Government bill HE 170/2002 vp.
[123] PeVL 10/2002 vp
[124] Government bill HE 309/1993 vp, pp. 55–56.
[125] Church of X v. United Kingdom 1968.

in fact breached the rights of individual members of the complaining organization under article 9.

The first part of the article includes the right of thought and conscience. This right is in no manner restricted: Everyone has the right to think whatever they do, with no Orwellian control or sanctions over thoughts. 'Religion and belief' on the other hand are subject to more detailed implications such as the right to manifest one's religion. The right to manifestation does not protect all thought; this applies to religions and beliefs and not all thought constitutes 'religions and beliefs'. There is no exhaustive list of what ideas and philosophies or organized religions are considered the religions and beliefs meant by the Convention. The concept does cover a multitude of beliefs and also the lack thereof.[126]

The second part of article 9 frames the requirements for a justified limitation of the right defined in the first part. Limitations must be *prescribed by law* and *be 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.* These limitations are consistent with the wording of limitations clauses under the ECHR in general.

The actual text of article 9 offers quite little to go on when it comes to perceiving what the function or scope of freedom of religion actually is, and the *travaux préparatoires* of the Convention offer only a limited view into the thinking behind the original drafting of the article.[127]

Freedom of religion is a human right often loaded with subjective values and perceptions, and therefore this right is subject to subjective interpretation. The Strasbourg court has been left with most of the responsibility to elaborate on what freedom of religion actually entails in practice. Especially when it comes to freedom of religion, there is a pronounced risk of perceiving the scope of freedom of religion subjectively, and therefore awarding protection to aspects of religious freedom that are familiar and that we are used to, and on the other hand, a risk of limiting those aspects that are unfamiliar or different. The nature of religious freedom as a controversial and convoluted human right makes its application intrinsically vulnerable to bias.[128] This should be considered when studying ECtHR jurisprudence.

[126] Hill & Whistler 2013, pp. 52–55.
[127] Evans 2001, pp. 38–50.
[128] *Ibid*, p.18.

3.2.2. **Freedom of religion as a ‘foundation of democratic society’**

Kokkinakis v. Greece was the first significant landmark case on the application of article 9 of the ECHR. Greek law awards a special position to the Orthodox Church as the state church and according to Greek law, it was illegal for anyone to proselytize another faith. Mr and Mrs Kokkinakis, Jehovah’s witnesses, were arrested several times for proselytism and ultimately sentenced to imprisonment and substantial fines.

The Strasbourg court in the case of *Kokkinakis* defined the focus of religious freedom within the scope of the ECHR and this same summarization is used in later cases involving religious freedom:

> ‘As enshrined in Article 9 (art. 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, agnostics, skeptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.’[129]

The Court emphasized that the article composed ‘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, agnostics, sceptics and the unconcerned’. The Court also went on to state that even though freedom of religion according to article 9 is principally a question of individual conscience; it implies a freedom to manifest one’s religion in action. Ultimately, the Court found that freedom of religion of the applicant Kokkinakis had been infringed upon more than article 9 of the Convention could allow. The Court stated that the pluralism that was essential to a ‘democratic society’ depended on the freedom to manifest one’s religion. [130] The Court places a very high value upon religious pluralism and sees it as inseparable from the concept of democratic society.

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[129] Kokkinakis v. Greece 1993.
[130] *Ibid*.

After Kokkinakis, the Court has formed a more detailed framework regarding the application of article 9.[131] Despite this, the framework formed by ECtHR jurisprudence is considered somewhat vague at the moment, with the Court not having a defined stance on several crucial issues related to article 9, especially regarding religious symbols in the public sphere.[132]

States are not to show bias in dealing with interdenominational disputes. This qualifies as a requirement of state neutrality. The ECtHR has not held the existence of systems of *de facto* state church in counter to the neutrality requirement, if freedom of religion is nonetheless guaranteed as required by article 9.[133]

Article 2 of the First Protocol defines the right to education. It asserts that 'the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical conviction'. This article adds additional guidelines to the freedom of religion and the application of article 9 when it comes to the education of children. This is especially relevant when considering religious education later in this paper.

According to the ECtHR, freedom of religion is essential in a democratic society. This protection is essentially focused on religious freedom and pluralism over neutrality. The application of article 9 is not focused on protecting religion itself. The state is required to maintain a respect for religious freedom within the limits prescribed by the Convention and the Strasbourg court.[134]

3.2.3. **Religious education**

Article 9 prohibits indoctrination.[135] The consideration of indoctrination is noteworthy when the issues pertain to young school children or other easily affected groups.

States have control over their schools' own curricula and the means by which they give religious education. However, indoctrination of pupils in a specific religion is prohibited; religious education must comply with the parents' wishes regarding the religious or non-

[131] E.g. Otto-Preminger Institut v. Austria 1994.
[132] Ovey & White 2006, p. 300–301.
[133] Pellonpää et al. 2012, pp. 476–477.
[134] Evans & Thomas 2006, pp. 699701.
[135] *Ibid*, p. 480.

religious upbringing of their child. Opt-out systems are in common use in Europe as, contrary to the US, giving religious education in schools is still the norm.[136]

The right to practice or manifest one's religion or convictions is covered by the positive aspect of freedom of religion, and is referred to as active freedom of religion or *forum externum. Forum internum,* on the other hand, refers to so-called internal freedom of religion, or passive freedom of religion. In addition to including the right to adopt a faith or conviction and the right to keep it, *forum internum* has many implications regarding negative freedom of religion. It for example secures the right of the individual to not divulge their religious affiliation in public and the right to change one's religion freely.[137] Evans criticizes the ECHR for not giving enough consideration to the actualization of the *forum internum* aspect in practice. The ECtHR and the Commission have been prone to assess this aspect from a narrow viewpoint.[138]

Most of the central issues when it comes to freedom of religion in schools involve the *forum internum* of pupils, i.e. the right to inner convictions. This is commonly an issue when evaluating the realization of negative freedom of religion and estimating when schools or states intrude into the *forum internum* more than is permitted.[139]

The ECtHR has intended to find a balance between protecting the parents' right to determine the religious upbringing of their child, state discretion involving the curricula set for education, and the rights of the child.

In the Case of Folgerø, several parents brought a complaint against Norway, after the state had implemented a compulsory school subject with religious content.[140] The State claimed that this subject was neutral in regards to religion, but in practice it contained material principally from the viewpoint of the predominant Christian faith. The applicants claimed that this education was in conflict with their wishes to educate their children in a secular, humanistic manner.

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[136] Powell 2015, pp. 600–601.
[137] Hokkanen 2014, pp. 86–87.
[138] Evans 2001, p. 102.
[139] *Ibid*, pp. 88–96.
[140] The facts of the case on Folgerø v. Norway are the same as in the case of Leirvåg v. Norway considered by the UN CCPR. These cases involve several parents who had brought their cases to Norwegian courts regarding the same issue and the Norwegian courts decided these cases together. The parents split up into two groups and brought their complaints separately to be evaluated by two international human rights bodies.

According to the ECtHR, the state must guarantee that the contents of the curriculum are conveyed in an *objective, critical and pluralisti*c manner. States are prohibited to pursue the indoctrination of children within the education system. Parents' wishes are paramount in the evaluation of this indoctrination. Any indoctrination that might be regarded as going against the wishes of the parents regarding religion and other convictions is not allowed.[141] Religious education can be deemed indoctrinating if it includes religious practice or seemingly promotes one religion as superior over others. According to the ECtHR, religious activities encompass 'for example, prayers, psalms, the learning of religious texts by heart and the participation in plays of a religious nature'.[142].

The ECtHR does not view religious education that has a large weight in the nations main religion as inherently problematic. The prominence of one religion in the country can be grounds to include more substance on this religion in education. This cannot however amount to presenting one religion as superior or preferable to others. State neutrality is essential. The case of *Folgerø* culminated not in quantitative but qualitative favouring of Christianity.[143]

Indoctrination of children is generally regarded as markedly objectionable and a tool easily utilized by e.g. totalitarian governments.[144] The ECtHR has emphasized the need to prohibit indoctrination and limit the way governments can influence young children. This is indeed necessary as teachers have significant authority over their pupils and therefore schools are in a unique position to mould young minds in any given direction.[145] Indoctrination does not necessarily entail government or school-system wide curricula with indoctrinating content or intent but can come about in an individual teacher's actions in promoting their own views.[146]

On the other hand, the ECtHR finds that state neutrality does not entail that parents have the right to demand their children be educated without knowledge of religion.[147] Also, merely receiving education on religion that focuses mainly on Christianity, and at a young age, does not, according to the Court, establish indoctrination.[148] This view has received criticism based largely on the risks that such an interpretation poses. If education on religion is given by

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[141] Folgerø v. Norway 2007 (84); The Toledo Guidelines, pp. 68–69.; Evans 2001, pp. 90–94.
[142] Powell 2015, pp 614–617; Folgerø v. Norway 2007 (24).
[143] Powell 2015, pp. 615616; Arthur & Holdsworth 2012, pp. 137–138; Folgerø v. Norway 2007.
[144] Evans 2001, p. 46. Prohibited indoctrination can be religious or for example political.
[145] *Ibid*, pp. 88–96.
[146] Powell 2015, p. 614.
[147] Folgerø v. Norway 2007 (24).
[148] Angeleni v. Sweden 1986.

teachers with substantially more experience of Christian religion in comparison with other religions and a personal background in Christian religion, there is a significant risk that 'objective and critical' education may slide into the territory of indoctrination and proselytism.[149]

The ECtHR has been deemed 'unsympathetic' to atheists or other non-religious citizens in some cases. A lacking understanding of the negative aspect of freedom of religion can be found in the Commission's reasoning.[150] Evans duly points out that the Commission has been unwilling to see past the states' claims of objectiveness and neutrality and assess the practical implications of state practice.[151] The implications of social pressure on the fulfilment of freedom of religion have gone unrecognized.[152] The commission failed to recognize that social pressure can eliminate the nominal voluntary nature of religious education in some cases. Evans calls for a 'higher test of indoctrination'.[153]

3.2.4. **Religious symbols**

The main issues regarding religious symbols in public spaces culminate in two key debates. The first pertains to religious clothing and paraphernalia worn chiefly by immigrant groups such as headdress worn primarily by Muslim women or Sikh men. This question concerns how and if a state can limit the right to wear religious clothing citing the protection of the rights of others. The second issue regards religious symbols used as 'public language' by public authorities.[154] This issue, in contrast, usually involves Christian symbols such as crucifixes or language of the Bible.[155] These are typically symbols of the majority religions in Europe.

The most typical discussion on religious symbols is a part of the aforementioned first debate and regards what Muslim schoolgirls wear when attending public schools. The most prominent example of this is the recent French legislation passed in 2004 based on the Stasi Commission's findings.[156] This law prohibits pupils from wearing religious symbols or

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[149] Evans 2001, pp. 9495.
[150] Angelini v. Sweden 1986; Bernard v. Luxembourg 1993; CJ, JJ & EJ v. Poland 1996.
[151] Evans 2001, pp. 95–96.
[152] Angelini v. Sweden 1986.
[153] Evans 2001, p. 95.
[154] Mancini 2009, p. 2629.
[155] Buscarini v. San Marino 1999.
[156] Law no. 2004-228 of 15 March 2004.

religious clothing in schools. The ban covers all religions but most of the application has focused on Muslim girls. 'Inconspicuous' symbols such as small crosses worn around the neck are not covered by the ban.[157]

The ECtHR has stated that the principle of *laïcité* (French secularism) is a foundation of the French constitution, and therefore represents a substantial public interest. The ECtHR has found these bans on religious dress justifiable in several cases involving pupils and French bans on religious attire.

The cases of *Dogru v France* and *Kervanci v France* both involve young female pupils in French secondary schools who were expelled from their schools after repeatedly attending physical education and sports classes wearing hijab head covering and refusing to remove their headscarves on teacher's request. According to the French authorities, headscarves are incompatible with physical education classes and the girls could not participate in physical activity while wearing headscarves. This was based on health and safety arguments. As the pupils were not permitted to attend physical education classes wearing headscarves, and therefore did not attend the classes in question, they were ultimately expelled for non-attendance. The events of both cases transpired before France enacted the 2004 legislation banning such attire in schools in general. At this time, there was no legislation in force banning religious garb in schools.[158]

The ECtHR did not find a violation of the applicants' right under article 9. The pupils had been able to continue their education in correspondence classes and the Court held that this satisfied the need to balance the rights of others. The Strasbourg court emphasized secularity as an integral part of the French constitution.[159]

The Court held that 'national authorities were obliged to take great care to ensure that, in keeping with the principle of respect for pluralism and the freedom of others, the manifestation by pupils of their religious beliefs on school premises did not take on the nature of an *ostentatious act* that would constitute a source of pressure and exclusion' and held that

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[157] Mancini 2009, pp. 2629–2631.
[158] Dogru v. France 2008, Kervanci v France 2008.
[159] Dogru v. France 2008.

the French authorities in this case had acted accordingly. The Court sees the hijab headscarf as an 'ostentatious' religious act'.[160]

In schools, pupils are in a dependant position brought about by school hierarchy. Schools are charged with educating children and caring for them during the school day. Teachers are in a unique and powerful position to influence and mould their young pupils. It is therefore fitting that the ECtHR has taken indoctrination into consideration with regard to the presence of religious symbols in schools.

In the *Dahlab* case, the Court considered that a teacher wearing Islamic headdress could have a proselytizing effect on the young students. The Court held that Swiss authorities were justified in forbidding the wear of Islamic headscarves in public schools. The Court also speculated that a teacher wearing the headscarf could have a negative effect on students' views on gender equality. The simple act of wearing the headscarf was considered enough to constitute an issue for the neutrality of state schools, even though the teacher had not spoken to her pupils about religion or subjects relating to religion.[161] This decision has received criticism[162] as the Court, for all its concern for the pupils' views on gender equality, did not take into consideration the possible positive message regarding cultural pluralism and the equality of different religious groups that could have been relayed to the children being taught by a person in Islamic dress.[163]

Neutrality, in the eyes of the ECtHR, is a legitimate argument when limiting the dress of women in the classroom.[164] Moreover, the Court has not put weight on any social concerns of Muslim women being marginalized in the workforce, if and when they are not able to carry on their professions. Banning religious dress from the public sphere can undoubtedly have a negative effect on the lives of women committed to their religions. Bans on such wear can also be regarded as substantial impairment of gender equality in their own right.

The *Leyla Şahin* case also involves Islamic headscarves and the prohibition of said headwear in Turkish universities. The applicant, a student at Istanbul university, was prohibited to attend lectures and exams and subjected to disciplinary measures because she continued to

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[160] *Ibid.*
[161] Dahlab v. Switzerland 2001.
[162] Ovey & White 2006, p. 310.
[163] Mancini 2009, pp. 2643–2652.
[164] Plesner 2005, pp. 584–586.

wear a hijab headscarf regardless of a circular issued by the university prohibiting such practice. The university had prohibited the use of a hijab and beards on men referring to the secular nature of the Turkish constitution. The Court could not find a violation of the Convention and placed a large weight on pluralism and the respect for the rights of others. It found that in a society with multiple religions, restrictions on the manifestation of religion are justified. The prohibition of headscarves was justified as imposed by the state within the margin of appreciation. The Court continued to refer to the importance of furthering equality of men and women, and stated that the wearing of Islamic headscarves runs in counter to this aim.[165]

The case went on to the Grand Chamber of the ECtHR, which upheld the previous ruling. The Grand Chamber gave much weight to the Turkish constitutional principle of secularism, and deemed that while wearing of the headscarf was grounded in the applicants religion, the restrictions made by the state university were *prescribed by law* and were made to *protect the rights and freedoms of others* and to *protect public order*. Therefore these restrictions were justified and proportionate with the aim pursued, according to the Court. One judge dissented from the majority opinion on the grounds that she could not find that merely wearing a headscarf could be associated with fundamentalism and radical Islam.[166]

In the cases of *Şahin* and *Dahlab*, the Court has not considered that prohibiting women from dressing as they wish could be tantamount to upholding religious rules that regulate women's dress. In fact, the Court has not placed much weight on the applicants' claim that they wear the hijab of their own free will.[167] The Court seems to have good intentions but it remains to be shown if regulating manners of dress truly has a positive effect on gender equality. In principle, the author of this study cannot find much legitimacy in regulating women's dress, regardless of whether these limitations are posed by religious instructions or by the state. The most recent endeavours of French government to ban the use of 'burkinis' – swimsuits specifically marketed to Muslim women – have been met by public backlash. The French government has based these bans on the need to prevent radical Islam. As the 'burkini' was originally devised to aid Muslim women in attending public beaches and swimming pools with more ease, it is much more a garment representing emancipation than a tool of

[165] Bleiberg 2005, pp. 143–145.
[166] Leyla Şahin v. Turkey 2005.
[167] Mancini 2012, pp. 414–418.

fundamentalist suppression, as some French officials would like the public to believe. The UN Human Rights Office has met these limitations with well-aimed, harsh criticism.[168] The Court's argumentation in the case of *Şahin* bears much resemblance to the latest French substantiation and differs from the stance taken by the UN.[169]

In her dissenting opinion on the *Şahin* case, judge Tulkens states that equality and non-discrimination are subjective rights that must remain under the control of those individuals who are entitled to benefit from said rights. She states that the stance adopted by the Court represents an attitude of paternalism that contradicts relevant ECtHR case law that has developed the right to personal autonomy (on the basis of article 8). She also posits that if the Court truly sees the wearing of a hijab contrary to the principle of gender equality, states would have a positive obligation to control headscarves in all places, private and public.[170] This kind of regulation in turn would be difficult to regard as justifiable and proportionate.

The Strasburg Court has, oddly enough, not considered other implications of gender equality in these cases concerning Muslim women: Expelling a woman from university or dismissing an accomplished female employee solely based on the manner of her dress and its possible religious connotations can hardly be considered as advancing gender equality.[171] The Court has not considered this in the cases of *Dahlab* or *Şahin*. In the cases of *Dogru* and *Kervanci* the Court again failed to consider the possible unequalizing effect of state practice that forces young, female pupils into correspondence school or private, religious school.[172]

In comparison, the ECtHR has passed judgements on Christian symbols: In the case of *Lautsi* v. Italy, the applicant's children attended a public school. In Italy, it is customary to find crucifixes present in classrooms, usually on the wall of the classroom. This is grounded in Italy's Catholic culture.[173] The applicant claimed a breach of article 9, stating that the symbol of the crucifix infringed upon her sons' negative freedom of religion. In this case, the Court rejected the state's claim that the crucifix was a cultural symbol and not a religious one. Initially, the Court found a violation of article 9 and awarded *Lautsi* with substantial damages.

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[168] United Nations News Centre 2016.
[169] Leyla Şahin v. Turkey 2005; Mancini 2009, pp. 2641–2643.
[170] Leyla Şahin v. Turkey 2005, (12).
[171] Mancini 2012, pp. 414–418.
[172] Evans 2006, pp. 63–69.
[173] Arthur & Holdsworth 2012, pp. 139–140. Crosses and crucifixes are common in schools in e.g. Austria, Spain and Germany.

The Court emphasized that the state had a 'duty to uphold confessional neutrality in public education' and gave special weight to the young age and vulnerability of the schoolchildren in question.[174]

The case was referred to the Grand Chamber of the ECtHR after a strong reaction from the Italian Government. The political response that followed this case is considered unprecedented regarding European human rights jurisprudence. The Vatican strongly condemned the judgment, and it was joined by dissenting voices from other European churches. Ultimately, the Italian Government requested a Grand Chamber hearing on the case and several intervening countries were given the right to be represented in the hearing.[175] The Grand Chamber proceedings are not actual appeals but rather, the case is reassessed in its entirety and the judgement of the Grand Chamber becomes final. This time around, the Grand Chamber could not find a consensus amongst the member States regarding religious symbols in schools. Largely because of this lack of consensus the Court held that states were to be awarded a margin of appreciation, and could decide on the issue according to their view. Finally, the Grand Chamber found no violation of art. 9.[176] The application of a broad margin of appreciation apparently erased the violation of the ECHR.

3.2.1. **Secularism vs. Christian tradition**

The *Lautsi* case poses interesting questions regarding European culture and Christianity and their roles within the application of article 9. In the European context, Christianity in its different forms is the predominant faith and European culture is largely steeped in Christian faith and tradition. Will this reality, combined with the Court's current views on the application of article 9, lead into a situation where states do not pose limitations on Christian traditions where they see these traditions as culturally noteworthy, while limitations on other religions, e.g. Islam or atheism are found legitimate? And rather, does this reality reflect a built-in bias of the ECtHR?[177] The stances taken by the ECtHR are founded in an idea of plurality but also in a European consensus. Based on the above case, a bias of this nature should be evaluated. It is also noteworthy that the Court initially did find a violation only to be later reversed by the Grand Chamber. The Grand Chamber proceeding followed an outcry

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[174] Lautsi v. Italy 2011.
[175] MacGoldrick 2011 p. 470–472.
[176] Lautsi v. Italy 2011; McGoldrick 2011, pp. 470–476.
[177] Cebada Romero 2013, pp. 84–94.

from the state of Italy, the Vatican, and other intervening states that had a vested interest in the outcome.[178] This seems to display a vulnerability of the ECtHR.

It can understandably seem like the ECtHR is biased when it comes to religion. Islamic symbols or symbols of other 'immigrant' religions are prone to bans but Christian traditions are upheld.[179] A large part of this problematic culminates in the scope of the cases before the Court, either dealing with bans or existing practice: Because of the margin of appreciation doctrine, states are given leeway in religious issues. The state can decide, in certain bounds, how it deems fit to exercise religious freedom. A ban of Islamic headscarves worn by teachers is seen by the Court as legitimate, to protect the neutrality of the classroom.[180] The same neutrality is seemingly forgotten when states are allowed to keep Christian symbols in classrooms.[181]

The Lautsi case was deemed important for many groups: if the Grand Chamber had accepted Italy's argument that the crucifix is not a religious symbol, many feared it would establish the legal position as preserving Christian symbols while dismissing minority religions' symbols.[182] The Grand Chamber ultimately did hold that the crucifix was a religious symbol. But only two dissenting judges held that the symbol was of such great religious significance that its context in schools should be considered as integral and powerful.[183]

This bias is most probably not an entirely conscious one, and it is not likely that the ECtHR is actively aiding the prevalence of Christian tradition in comparison to other faiths and secularism. The margin of appreciation doctrine combined with member states' inclination to limit manifestations of faiths foreign to the dominant religion and unwillingness to acknowledge problematic religious tradition can lead to an untenable legal space.[184] The nature of the margin of appreciation lends itself to be used as a tool to protect the familiar and stifle the unknown.[185]

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[178] McGoldrick 2011, pp. 476.
[179] Cebada Romero 2013, pp. 94, 100–101.
[180] Dahlab v. Switzerland 2001.
[181] Lautsi v. Italy 2011; Rorive 2009, pp. 2680–2685.
[182] McGoldrick 2011, pp. 476–481; Mancini 2009, p. 2655.
[183] Lautsi v. Italy 2011; McGoldrick 2011, p. 481.
[184] Mancini 2009, pp. 2643–2652.; Rorive 2009, pp. 26852698.
[185] Bleiberg 2005, pp. 151–153.

Member states are as a rule given a broad margin of appreciation on subjects of religious symbols. The Court reasons that states are in the *best position* to evaluate these symbols. This has led to unbalanced case law, where constitutional secularism (Turkey, France) allows states to ban individuals from wearing clothing 'motivated by religion' but also allows states to keep religious symbols in place where it chooses, even if this infringes on freedom of religion in public spaces.

3.3. The CCPR approach

3.3.1. **Provisions of the ICCPR**

The main provisions within the ICCPR regarding freedom of religion are enshrined in article 18 of the Covenant. It is noteworthy that article 18 is one of the absolute rights under article 4.2 of ICCPR; rights that cannot be derogated from even in a state of emergency that threatens the life of a nation. The ICCPR (art. 18) affirms the following:

> '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.'

The wording is quite similar to article 9 of the ECHR. The first and second paragraphs cover the right to have, adopt, and manifest belief or religion. These beliefs and religion cover a very broad spectrum of religion and beliefs.

The third paragraph specifies the limitation clauses for the restriction of rights under article 18: These limitations can only be posed on the manifestation of religion, but again, similarly to the limitation clause in the ECHR, no restrictions can be posed on the freedom to have and adopt beliefs. The right to hold opinions is very staunchly upheld by the Committee.[186]

Religion and belief are specifically under prohibited grounds for discrimination under articles 2 and 26. Also, the human rights treaty system offers special protection to freedom of religion when it comes to rights of the child. The UN CRC (art. 14) confirms the responsibility of state officials to respect a child's freedom of thought, conscience, and religion. Also, the state shall respect the rights and duties of the parents to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child (CRC art. 14 (2)).

Article 14 (CRC) further specifies the legitimate limitations a state can make regarding the right to a child's religious freedom:

> '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.'

Also, according to the Committee, no one can be compelled to reveal their thoughts or adherence to a religion or belief. This is a noteworthy refinement on the concept of freedom of religion involving the *forum internum*. Within the scope of article 18, it is considered a violation of the Covenant to compel individuals to reveal one's convictions or lack thereof. [187] This is something that the scope of article 9 of the ECHR does not similarly encompass.

The CCPR also elaborates more on the concept of manifestation (of belief or religion). [188] A broad definition of manifestation is protected under article 18 and the Committee offers a broad list of acts and expressions regarded as manifestation.

Religious symbols and religious dress are explicitly protected.[189] In addition, the CCPR is wary as to limitations posed on women's dress in general.[190] Here the CCPR's stance differs

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[186] Hanski & Scheinin 2003, p. 255; CCPR General Comment 22, para 3.
[187] CCPR General Comment 22, para 3.
[188] *Ibid*, para 4.
[189] *Ibid*, para 4.

from the ECtHR's attitude to limiting women's dress discussed above. State-posed limitations on dress are regarded sceptically and states are required to report to the CCPR on these practices and their justifications.

The CCPR has adopted a greatly different stance regarding religious garb compared to the ECtHR. In the case of *Singh* a Sikh boy was expelled from French public school for continuing to wear the Sikh *keski.* In contrast to the ECtHR jurisprudence highlighted above, the CCPR found a violation of art. 18. The Committee could not find that the wearing of a *keski* could have posed a threat to the freedoms of others in the way that French authorities claimed. Also, the expulsion from school was deemed disproportionate. The Committee went on to elaborate that French *laïcité* did not 'inherently require recipients of state services to avoid wearing religious symbols but that this regulation was passed in response to contemporary incidents'.[191] The CCPR is critical to restrictions posed on freedom of religion and is apt to doubt the motives of the state parties unlike the ECtHR in similar cases where the states have been allowed a broad margin of appreciation to determine for example the scope of *laïcité.*[192]

3.3.2. Religion in schools

These provisions do not specify how the relationship between state and religious communities must be arranged. Any acts of prohibition aimed at limiting religious practice or religious education would effectively constitute a violation of freedom of religion. However, refraining from limiting religious expression and education does not entail that public schools must be tasked with religious education. Regarding religious education, the states have a negative obligation. Freedom of religion does not require the state to provide education in religions, just that the state refrain from inhibiting education on religious matters.[193]

As to religious instruction in schools, the Committee states that article 18 permits lessons in general history of religion and ethics 'if it is given in a neutral and objective way'.[194] Further, the committee notes that 'public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory

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[190] CCPR General Comment 28, para 13.
[191] Singh v. France 2013.
[192] For example: Cases of *Kervanci* and *Dogru*.
[193] Scheinin 2001, p. 515.
[194] Hartikainen et al. v. Finland 1984, (10.4).

exemptions or alternatives that would accommodate the wishes of parents and guardians'.[195] Therefore freedom of religion can be realized both in school systems of strictly secular states and in states with a state church system when education is arranged in a non-discriminatory fashion.[196]

This principle is illustrated in the CCPR's resolution in the case of *Waldman v. Canada*. The case originates in Ontario, where public schools were tuition free for all pupils. Public schools were not allowed any religious indoctrination of pupils. Parents were also able to opt to send their children to private schools that were allowed religious agenda, instead of the nondenominational public schools. Private schools were mainly funded by tuition fees. For historical reasons, the state of Ontario also substantially contributed to the funding of Roman Catholic Schools, in addition to small subsidies of other private schools. The petition was made by a citizen of the Jewish faith, who found the state practice of funding schools of one denomination over others discriminatory. His children attended a Jewish school with substantial tuition costs. The CCPR agreed with the petitioner and stated that Canadian practice was not in accordance with the demands of art. 18 and constituted a violation of the rights of religious minorities who could not obtain denominational education in publically funded institutions. [197]

Acceptable practice regarding religious education would be to either exclude religious content from all publicly funded schools and limit religious education to homes and religious communities, or provide public funding equally for all denominational education, regardless of faith. In the case of *Waldman*, the state of Canada based its practice on a constitutional obligation. However, the Covenant does not allow for state constitutions to override covenant rights. [198]

The case of Hartikainen and others v. Finland brought to the Human Rights Committee has had great significance in formulation of the CCPR's stance on religious education. The CCPR held that compulsory religious education as a part of basic education was to be permitted, if this education was carried out in a pluralistic way. Also, if parents wished to withdraw their child from religious education on the basis of their own convictions or beliefs, the pupil

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[195] CCPR General Comment 22, para 6.
[196] Scheinin 2001, p. 515.
[197] Scheinin 2001, p. 515; Waldman v. Canada 1999.
[198] Waldman v. Canada 1999; Hanski & Scheinin 2003, pp. 262273.

should be offered alternative, *neutral and objective* education in place of religious education. In this case, the alternative education was to be in accordance of the parents' agnostic views.[199] The CCPR especially cited Art 18(4) of the ICCPR, which determines the parents' right to determine that moral and religious upbringing is in conformity with their own convictions. The arrangement of educating students in separate groups must however be carried out so that students are not treated in a way that causes them inconvenience or stigma. The fact that some students are members of a minority religion or not religiously affiliated must not cause them anything comparable to harm.[200]

This amounts to three outlines of permitted models for religious education in state funded schools. The weight is placed on the parent's wishes. The State can organize:

> 1) mandatory religious education for all, when this education does not conflict with the parental rights;
>
> 2) optional religious education, with an effective opt-out system;
>
> 3) segregated or sectarian[201] and mandatory religious education that guarantee freedom of religion through compliance with parental wishes.[202]

Determining prohibited discrimination is not simple, and therefore schools or school districts might inadvertently adhere to systems that have discriminatory implications, especially in cases of religious education. Schools may refrain from direct and overt discrimination but this is not enough to ensure that actions do not have discriminatory effects. Pupils can feel alienated or be targets of bullying for their religious beliefs or attending exception classes deviating from the majority religion.[203]

As a rule, the evaluation of practice should take in to count whether any religious content within the school context is truly 'neutral and objective' or whether this practice includes 'religious instruction'. Religious instruction is usually considered religious practice, which should always be truly voluntary.[204] The *Leirvåg* case displays some of this distinction. The largest issues behind the violation of art. 18 had to do with the inadequacies of the opt-out

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[199] Hartikainen et al. v. Finland 1984.
[200] Evans 2008, pp.451452.
[201] *Ibid*, p. 491.
[202] Høstmælingen 2005, p. 407.
[203] Leirvåg et al. v. Norway 2004, (e.g. 4.3); Evans 2008, pp.451452.
[204] Plesner 2005, pp. 561–565.

system. Parents had to give detailed reasons as to why they wished to have their children excluded from religious content and in some cases were denied these exceptions or despite having obtained an exception, their children were still required to recite religious texts in school.[205]

The UN system approaches children's rights in a distinct fashion in comparison with the ECtHR. The rights of the child taking into count the development and capacity of the child weigh in significantly with the rights of the parents regarding religious freedom. Since the CRC's entry into force, the child's position in this conundrum is considerably stronger and the parent's role of less importance. Reporting practices under the CRC have shown, that the UN requires that states grant children some separate rights some years before legal adulthood. A specific age at which the state must allow self-determination has not emerged, but since this right is to be extended to children, it would be before the state's age of legal adulthood or majority.[206] The best interest of the child should be the leading factor when considering the practical implications of the freedom of religion.[207]

The main points of the CCPR approach to religion in schools are centred on the requirements of neutrality and objectivity and the ban of indoctrination in concert with the best interest of the child.

3.3.3. **Opt-out mechanisms**

The CCPR has been more critical than the ECtHR regarding opt-out systems schools employ in an attempt to protect freedom of religion of those pupils who do not take part in religious education. This shows a markedly different approach to pupils with atheist or agnostic views. In comparison to the stance taken by the ECtHR criticised above, the CCPR has found that opt-out clauses are not on their own adequate fixes in regards to freedom of religion.[208] For example, in the Irish school system, religion permeates all basic education as aspects of the Catholic faith are present throughout the school day in different subjects. Most religious

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[205] Leirvåg et al. v. Norway 2004, (14).
[206] Temperman 2010, pp. 869–872; Langlaude 2008, pp. 478–492.
[207] Plesner 2005, pp. 585–586.
[208] Temperman 2010, pp. 879–881.

content in Irish schools is unscheduled and continuous in a way that makes effective opt-out schemes unfeasible.[209]

Opt-out schemes can face a few issues regarding freedom of religion. The first central issue has to do with the protection of the *forum internum*. These arrangements for pupils to be able to opt-out essentially force pupils to reveal their religious convictions or lack of such to the school and other pupils.[210] Opt-out schemes should be arranged in a way that does not require pupils or their parents to reveal their reasons for opting out of a class or activity. In practice, this is indeed difficult. This requirement favours arrangements where the right to opt out is not limited to just a certain religious group and could be done freely by anyone, so that this right is sufficiently realized.[211] In any case, it is practically impossible for opt-out systems to exist in a way that truly protects the right to not reveal one's faith or convictions.

Temperman has identified three minimum requirements for opt-out systems to be acceptable within human rights requirements: 1) religious instruction must be limited to one subject or class, not scattered throughout education and the school day, 2) exemptions must be available to all, not just limited to a certain (religious) group and 3) parents and children must be aware of the opt-out systems and they must be available to them.[212] Even meeting all these requirements could cause issues regarding freedom of religion as all of these demands are subject to interpretation and practical difficulties.[213]

3.4. Concluding comments

Freedom of religion is an important right defined by both Finnish and international human rights law. This freedom contains the positive and negative elements that secure the right to determine one's religion, practice religion and also the right to not practice religion or be forced to reveal one's faith or convictions.

As discussed above, freedom of religion is not straightforward in all its implications. The main issues relate to relationships between negative and positive freedom of religion. How much can religious practice or display of religious symbols be limited in the name of the protection of the rights of others?

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[209] Mawhinney 2007, pp. 385–395.
[210] General Comment 22.
[211] Temperman 2010, pp. 879–881; Leirvåg et al. v. Norway 2004, (14).
[212] Temperman 2010, pp. 880–881.
[213] Leirvåg et al. v. Norway 2004, (14).

The jurisprudence regarding these issues reveals an inconsistency with CCPR and ECtHR practice. The ECtHR is of the habit of extending a broad margin of appreciation to cases that involve religion and this makes it possible for states to determine much of their attitudes towards religion. The margin of appreciation doctrine functions to maintain a pluralistic Europe in the sense that states are allowed margin of appreciation in issues that relate to national notions of morals, culture and religion. This idea is to prevent the Court from forcing nations into one mould. This has however led to an untenable legal space where states are able to protect what is familiar at the cost of excluding the unknown – Allowing special status for Christian symbols and traditions is evidently permissible while displaying symbols of minority religion can be controlled. This bias in favour of Christian religion is suspect.

The CCPR on the other hand extends no margin of appreciation and finds violations where the ECtHR cannot. It would seem that the CCPR offers better protection for those of minority faith in the European context and those of no religious convictions. How does this reflect European countries that are party to both of these human rights instruments? It seems as though the tendency is to give ECtHR jurisprudence more weight in these situations, even though there is no official hierarchical difference in the state responsibilities regarding these two separate covenants.

In the context of schools the ban on indoctrination is especially relevant, as children are in a most vulnerable position in schools with teachers holding much authority and influence.[214] As Evans clarifies, children are coerced in many ways while attending school. Students may be legitimately coerced into e.g. doing their homework or learning mathematics. When it comes to religion and religious education, parties offering religious education must be especially mindful of these limits to coercion. Religious education in public schools must not consist of preparing the children to *practice* religion. [215]

Education on religion is to be consistent with the wishes of the parents and carried out in neutral, objective, critical and pluralistic manner.[216] If and when religious education includes religious practice is must therefore be truly voluntary in nature, and opt out schemes must be available to all to guarantee the parents' rights to determine the upbringing of the child.[217]

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[214] Powell 2015, p. 604.
[215] Evans 2008, pp. 463469.
[216] Folgerø v. Norway (84); General Comment 22.
[217] Leirvåg et al. v. Norway, Hartikainen et al. v. Finland.

The right to not divulge ones religion is considered a central element of freedom of religion. States should function so, that individuals are not unnecessarily put in positions where they must reveal their religion or lack of religion. Within schools this causes issues when pupils are segregated by religion due to opt-out schemes or segregated education.

Even if all the conditions outlined by Temperman are met, can opt-out schemes ever be truly unproblematic? Opt-out schemes are apt to cause segregation between pupils according to religion, cause negative feelings and lead to ostracizing or stigmatizing experiences for pupils.

4. Religion in Finnish schools

In this chapter, I examine religious education and religious content in Finnish schools and the curriculum. I assess these practices from a human rights and fundamental rights perspective framed in the above chapters and address the contribution the supreme guardians of Finnish justice have introduced. Finally I put forward some concluding remarks. Schools are providers of a public service and therefore are in charge of securing fundamental rights including freedom of religion in their operation. As basic education is compulsory for all children in Finland, this responsibility is particularly critical.

4.1. Religious education

The actual content of comprehensive education is determined by the National Board of Education in the official curriculum that is to be followed by all schools that are under the application of comprehensive education prescribed by law.[218] A new curriculum was passed in 2014 and entered into force in the beginning of the school year 1.8.2016[219]. The National Board of Education is bound by law and thus must also abide by the prescriptions made by the Constitutional Law Committee when applying the law.

School curricula fall within the scope of the margin of appreciation, and as a rule, states are given the right to exercise their discretion when it comes to what pupils are taught. Human rights however pose certain limitations, such as the indoctrination ban.

The current practice regarding education in religious subjects in Finland is based on a system of sectarian religious instruction.[220] This entails instructing pupils in distinct subjects and dividing the children into separate groups according to their religious affiliation. Pupils with no religious affiliation are given alternative education. According to CCPR jurisprudence, this system is not in itself in conflict with article 18, if the alternative education is given in a *neutral and objective way* and respecting the beliefs or convictions of the children's parents.[221]

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[218] Basic Education Act.
[219] The National Board of Education, Curriculum 104/ 011/2014.
[220] Evans 2008, p. 491.
[221] Hartikainen et al. v. Finland 1984, (10.4).

In Finland, the religious affiliation of children is based on the religious affiliation of their parents or guardians, as is the common practice internationally. Guardians decide on the child's religious affiliation together, and if the guardians cannot reach a decision together, the child's mother may make the determination on her own. At the age of 15 a child may choose to resign the membership of the religious community they have been affiliated to through their parents, but only with written consent from the child's guardian. If no consent is given, the right to religious self-determination can be made at 18, the legal age of adulthood. Regardless of this, a child of 12 years or older cannot be joined into a religious community or be resigned by their guardians without the child's written consent.[222]

There is a perceivable lack of attention given to the self-determination of the child. Only at the age of legal majority, 18, can a child decide to not attend religious education based on their official religious affiliation. This is effectively very late, as most children will have completed all their compulsory studies on religion at that point. This bypasses their own opinions and convictions.[223] This is also in conflict with the requirements of the CRC, especially articles 12 and 14 the Convention. It seems quite unreasonable in regards to the rights of the child that such a meaningful determination can be made by the child's parents for so long.[224] Children also should have the right to self-determination in the scope of freedom of religion.

Even members of the majority religion should have the right to determine when and how they want to practice religion, if at all. The current practice effectively eliminates children's right to religious freedom within schools when they have an official affiliation to the majority religion and does not give weight to the children's own opinions in accordance with their age and maturity. It would appear that pupils receiving education in a minority religion are allowed to move much more freely from religious classes to ethics classes without membership of religious groups being scrutinized.[225]

The principal rule on religious education in Finland is that pupils are taught according to the majority religion of pupils. In most schools this will be the Evangelical Lutheran faith, the overwhelming majority religion in Finland. Pupils that are members of the Evangelical

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[222] The Act of Religious Freedom, section 3.
[223] Scheinin 2001, p. 516.
[224] Temperman 2010 pp. 870–874.
[225] Hokkanen 2014 p. 196–197; EOAM 1705/4/03.

Lutheran church will therefore receive religious education in that faith. Also, pupils who are not members of this majority religion may choose to attend classes on said religion with their guardians' notification.[226]

In addition, if there are more than three pupils belonging to the Evangelical Lutheran Church or the Orthodox Church, they will be offered education in their own faith if it is not the majority religion being taught. Furthermore, the law requires that any pupils, who are members of other religious communities than the aforementioned two with special status, may receive education in their own religion if the amount of pupils requiring education in said different religion exceeds three pupils and their guardians request such education. The three-pupil-rule covers the amount of pupils in a certain school district.[227]

Pupils who have no registered religious affiliation and who do not partake in the majority religion's classes will be taught ethics.[228] Pupils, who are not given religious education of their own religion, may attend ethics classes with the consent of their guardian. The party in charge of education shall organize ethics education when there are at least three pupils entitled to it. Also, a pupil who does not belong to any religious community may, at the request of their guardian, also participate in religious education provided by schools, which in view of their upbringing and cultural background evidently corresponds to their religious beliefs.[229]

The government endeavoured to pass an amendment to the Basic Education Act to change the required limit of three students for the organization of alternative religious education to 10 pupils.[230] This amendment was proposed as a finance act to balance the state budget from the beginning of 2015. This would have made it even more difficult to arrange other religious education than that of the state churches in many schools. Ultimately the bill was not passed after the Constitutional Committee gave its opinion on it.[231] The pronouncement was not favourable to the government's aims to limit pluralistic religious education in practice. The CLC foresaw risks of discriminatory treatment of pupils based on religion.

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[226] Basic Education Act Section 13; The National Board of Education 3/012/2014.
[227] The National Board of Education 3/012/2014.
[228] The National Board of Education, Curriculum 104/ 011/2014; ET-opetus 2016. This subject is usually translated as "ethics" but the subject deals with other themes in addition to ethics such as culture, world religions, philosophy, way of life etc.
[229] Basic Education Act Section 13.
[230] Government bill HE 136/2014 vp.
[231] PeVM 37/2014.

Situations in which only one or two students with minority religious affiliations attend basic education are common. Also, it is common practice that in smaller cities and towns, pupils must commute to another school for ethics class and/or classes on minority religions, if any are available.[232] If no ethics or other religious education can be provided, because of the small amount of children affected, the school must organize other *meaningful* and worthwhile activities for the pupils not participating in the majority religion classes.[233] In practice, these activities vary greatly from school to school and range from watching films to independent study or homework. On the other hand, in the Helsinki metropolitan area there are schools in which religious education is given in five or six different religions in addition to ethics class. This causes problems of its own: for example educational materials are often lacking in the minority religions as resources are stretched thin.[234]

The current religious education system has received substantial critique. The quality of religious education in minority religions is lacking, and school headmasters find it impossible to sufficiently train unprepared teachers in these minority religions. The need to segregate pupils into several groups also causes significant trouble regarding scheduling and leads to religious education being situated at hours that are less than ideal and conflicting with pedagogic aims.[235]

4.1.1. **Religious practice within religious education**

Religious education in one's own faith is not religious practice, according to Finnish law. In the reformation of the Freedom of Religion act in 2002, section 13 on basic education on religion was amended. Previously this section defined religious education as 'denominational' and now this section refers to 'the pupils' own religion'. The government's reasoning for this amendment is based on the intention that religious education does not include promulgation of religion or religious practice in the form of worship. It was also emphasized that religious education had not for some time included declarations of a religious nature.[236] Furthermore, the Board of Education decrees that religious education is not denominational, nor is the purpose of religious education to bind children to any religious community or instruct in the

[232] ET-opetus 2016; The National Board of Education 3/012/2014.
[233] The National Board of Education 3/012/2014.
[234] Kallioniemi 2015, pp. 280–281; Koikkalainen 2010, pp. 47–52.
[235] Kallioniemi 2015, pp. 280–281; Koikkalainen 2010, p. 47.
[236] Seppo 2001, pp. 519–521; Government bill HE 170/2002 vp.

practice of any religion, but instead to familiarize pupils with their own religion and acquaint them with other religions and world views.[237]

The intent behind changing religious education from 'denominational' to 'own religion' is noteworthy. The preparatory documents indicate that the new term was more descriptive of the circumstances that had existed for some time: religious education had not officially, per the curriculum, included confessions of faith or worship. This change in the legal definition of religious education was not meant to have any actual effect on the contents of the curriculum.[238] Martin Scheinin dissented as a member of the preparatory committee: he advocated for religious education remaining denominational, so that pupils could make a real choice between education and ethics education.[239]

The actual implications of this change are a bit complex. The Committee on freedom of religion and other experts held that education was not denominational even before the change they saw mainly as terminological. The amendment to legislation was in effect made to legally ratify the status quo and clarify the situation for all.[240] It has been argued that in fact, the non-confessional content was not actually realized in practice before the amendment, in the way that the Committee found.[241]

The Constitutional Law Committee gave a memorandum regarding the new act on religious freedom and its constitutional and human rights implications before parliament passed the bill in 2002. This memorandum elaborates on what the committee has seen as functions of specific requirements set if the bill is passed.[242] The Committee did not find issues regarding fundamental rights when considering the amendments regarding religious education. The Committee also studied the curriculum for religious education (i.e. one's own religion) and it could not find a conflict with the constitution. It stated that when one is being taught one's own religion, education can include prayer, church visits and participation in church ceremony without being considered religious practice as meant by the constitution. The

[237] The National Board of Education, Guidelines 3/012/2014.
[238] Committee on Freedom of Religion 2001, p. 50.
[239] *Ibid*, pp. 95–99.
[240] Seppo 2001, pp. 519–521.
[241] Koikkalainen 2010, pp. 45–47.
[242] PeVM 10/2002 vp.

committee sees prayer and religious ceremony in religious education solely as educative in the majority religion, and of important informative value for comprehensive education.[243]

The Board of Education refers to the determination made by the legislature and stresses that as a part of pupils' own religious education prayer, religious hymns, excursions into religious communities, or participations in church functions such as religious sacraments are *not considered* religious practice, but a part of the education given.[244]

This interpretation is directly in conflict with jurisprudence of the CCPR. [245] According to the CCPR in the case of *Leirvåg*, learning prayer by heart and or reciting prayers is religious practice. Taking part in a religious act or rite constitutes religious practice. The interpretation of the CLC is apparently based on an understanding that when pupils are being educated in religious rites and ceremony they do not take part in them in a manner that would constitute religious practice.[246] The lines drawn here by the Finnish legislature are vague. Simply declaring that religious content in religious education is not religious practice cannot make it so.

This vagueness gives way to variation in practice and opportunities for schools to stretch the boundaries. For example, reciting prayer in a kneeling position is not permitted religious content in religious education. Some schools have however included this as a compulsory part of religious education and the means for monitoring practice such as this is lacking. The National Board of Education claims that it is not feasible to list all forbidden practice because of its variety.[247]

The current legal position in regards to religious education is elaborated by a resolution made by the Deputy Parliamentary Ombudsman in 2014.[248] The resolution regards the content of textbooks used in religious education in the Evangelical Lutheran faith in basic education (years 1 to 6). According to the complaint, these textbooks were denominational and indoctrinating in content. The complaint stated that the content of these books effectually constituted religious practice and included examples of chapter titles in the book such as 'the Heavenly Father bestows protection', 'the angel walks beside me' and 'God created man'.

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[243] PeVM 10/2001 vp, p.4.
[244] The National Board of Education, Guidelines 3/012/2014.
[245] Leirvåg et al. v. Norway, (14.6).
[246] Hokkanen 2010 pp. 30–32.
[247] EOAM 1705/4/03.
[248] EOAM 1553/2013.

The complaint also criticized the curriculum for religious education on the ground that despite stating that the goals for religious education was to provide pupils with an academically well rounded knowledge of their religion, the specific contents of education under the main theme of 'Protection and Safety' listed titles such as 'God as Lord and Creator', 'The Lord's blessing and Jesus' teachings on grace of God' etc. The main issue according to the complaint was that children were being taught, by means of the content of the textbooks, to trust their safety in religion. The complainant saw this as harmful indoctrination and requested that in the light of this information, religious education should be made voluntary for all pupils, regardless of their religion.

The Ombudsman found that the content of the textbooks in question were indeed denominational in a way that legislation did not permit. He could not, however, address the issues brought up by the complaint involving the very common experiences regarding the inconsistency of school practice and the power lying with individual teachers. It is beyond the jurisdiction of the ombudsman to propose new legislation and they can mainly point out problems.

This complaint raised an interesting question on whether religious education can be compulsory when the religious content is of the pupils' own religion. Negative freedom of religion includes the right to not manifest one's beliefs.[249] In Finnish interpretation, this education can be obligatory for children in their own religion, because the education is not nominally denominational and does not include indoctrination. These principles are further elaborated and defined in the guidelines for the curriculum maintained by the National Board of Education.

The supreme guardians of Finnish law have claimed that the law offers sufficient guarantees of freedom of religion. It is general knowledge in Finland that individual teachers hold much power in how they approach religious education, and many integrate more religious content than is allowed by law. Individual schools might incorporate much more religious practice in their education than others, or employ textbooks that have denominational content. It is therefore difficult to determine how religious this education truly is in every case. This also makes it difficult to single out responsible parties for administrative sanctions.[250]

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[249] Sinan Işik v. Turkey 2010.
[250] EOAM 1553/4/13.

Parliament found in 2001 that religious education was already non-confessional in nature and so the amendment to 'own religion' only affirmed the status quo. In practice much of religious education has been denominational before and after the amendment.[251] The legislature has been unwilling to see that the actual practice regarding religious education can easily deviate from the official curriculum and therefore the law.

Considering that within Finnish law children cannot independently determine their religion until the age of legal adulthood a system for children to be able to opt-out of classes on their own religion should be made available.[252] This requirement is compounded by the fact that the government is unable to efficiently monitor the detailed compliance of the official curriculum school-by-school.[253]

4.2. Religious content in schools

As a principal rule, the Constitutional Law Committee states that no one shall be obligated to participate in church services or religious ceremony.[254] However, it is not entirely clear what constitutes religious ceremony in practice. There has been little to no controversy regarding religious symbols in Finnish schools but other religious content is a common item of debate.[255]

The current guidelines made by the Board of Education concerning religious events in schools state that the normal course of life in schools can include religious events including but not limited to religious morning assembly, service of worship, or religious concerts. For example, most schools participate in Christmas church service at their local Lutheran Church. These events are regarded as religious practice. As such, no one may be forced to participate in these events against one's religious convictions or lack thereof. At their guardians' request pupils can be exempt from these religious events. Schools are obligated to arrange other activities for students who are exempt from religious practice.[256]

The schools are to arrange *alternative and meaningful* activities for these students for the duration of the religious event. These alternative activities are to be similar to those in the

[251] EOAM 1705/4/03.
[252] Scheinin 2001, pp. 516; Nieminen 2004, pp. 292–297.
[253] Heikkonen 2012, pp. 561–562.
[254] PeVM 10/2002 vp, p. 4.
[255] Kallioniemi et al 2016, p. 4.
[256] The National Board of Education 3/012/2014.

main event excluding the religious content.[257] In practice this is very much up to the schools and what they regard meaningful alternatives. The spectrum here is very broad, and these practices are not subject to significant oversight. In addition, schools are tasked with making sure that pupils not taking part in religious ceremonies are not subject to stigmatization or other harmful consequences.[258] The Constitutional Law Committee has not elaborated on how this is to happen in practice. How can a school assure that a pupil is not ostracized by other pupils as a direct result of not attending the same events or that pupils are not subject to bullying because of their faith or lack thereof? The CCPR has taken a critical stance in a case where a pupil had been bullied because they 'did not believe in god' under the Norwegian system of compulsory religious education.[259]

In practice, schools have varying ways of dealing with these practical issues caused by religious content. In some schools, pupils exempt from religious content watch videos, draw or simply wait in school hallways with no supervision. This displays the difficulties schools face when attempting to secure freedom of religion for all pupils, and these arrangements are often unsatisfactory.[260]

4.2.1. **Morning assembly**

A significantly religious element in Finnish schools is morning assembly. According to Finnish law, every school day is begun with morning assembly.[261] These assemblies take place in the school gym, classroom, or other assembly hall. A common practice is to give these speeches through the schools PA system, as not to disrupt the day, and pupils commonly listen while waiting for the first class to begin. These assemblies are commonly spiritual of nature and can include a sermon or short talk given by a local priest or other parish personnel.[262]

According to the guidelines for the curriculum, morning assemblies are part of school activities that are meant to support learning, versatile development and well-being. These elements of the school day are also meant to enhance the experience of a good and safe school

[257] PeVM 2/2014 vp.
[258] PeVM 2/2014 vp; The National Board of Education 3/012/2014.
[259] Leirvåg et al. v. Norway 2004, (4.2).
[260] OKV 230/1/2013, p. 9.
[261] Decree pursuant to the Basic Education Act 852/1998.
[262] Kuusikko 2006, pp. 20–21.

day.[263] According to the National Board of Education morning assemblies can be religious in nature.[264] Current instructions can give pupils with no religious affiliation or affiliation to minority religions the option to sit in the hallway when the speech is given while their peers are seated in the classroom.[265] This does not necessarily prevent the students from hearing the speech, as the PA system, for obvious reasons, reaches the hallways as well. In many cases, the only way for pupils to actually avoid hearing the religious announcements is to exit the school building into the yard.[266] In media coverage on this subject a pupil told that his teacher would just laugh if he stated unwillingness to listen to the assembly.[267] This narrative is not surprising.

When assemblies are held in assembly halls etc., pupils with no affiliation to the majority religion will have the option to stay in the hallway or classroom with no real activity options. This peculiar arrangement seems more of a symbolic gesture, so that pupils who are not members of the majority religion are not *obligated* to sit and listen to these announcements. Pupils are generally not permitted to leave school grounds during the school day, and such an arrangement would also be quite peculiar and again, offer more possibility for ostracizing experiences.

The National Board of Education issues bulletins directed at education officials and institutions to clarify requirements of law regarding religious education and religious content in schools. According to the National Board of Education, schools could continue arranging religious events such as Christian morning assembly and church service in schools. The bulletin acknowledged that events such as these are considered religious practice by the legislature and therefore should be suspect to special care when handling students and their parents. This usually entails opt-out procedures including forms signed by guardians and the like. The schools maintain information on the religious affiliation of the pupils and the wishes of the parents obtained by signed forms.[268]

This is hardly consistent with the requirement for prevention of stigmatization or other harmful consequences. Also, it is difficult to see how the aims of morning assembly are

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[263] The National Board of Education 104/011/2014.
[264] The National Board of Education 3/012/2014.
[265] OKV/230/1/2013.
[266] Helsingin Sanomat 2014b.
[267] Helsingin Sanomat 2014a.
[268]The National Board of Education 3/012/2014.

consistent with the actual practical implications that religious content imposes. When pupils are singled out and separated from their companions, religious morning assembly can scarcely make for a positive and safe experience and a communal school. On the contrary, morning assembly with religious content is apt to foster communality only among pupils and teachers of the majority faith at the expense of others.

As Evans stipulates, arrangements concerning religious education in schools can become discriminatory, if pupils are *de facto* marginalized or the sectarian approach leads to the minority groups' treatment seeming like punishment.[269] One could quite easily see that placing a specific few pupils out into the hallway or yard for the duration of religious morning announcements affectively singles them out and may seem like a punishment for not professing the majority faith. This is especially true if the room non-Christian pupils are placed in during religious activities is the same room used for punishment such as detention.[270] This practice also makes the religious affiliation of students very public. The pupils have no way of keeping their religion or lack of religion private. It is difficult to see what 'special care' as meant by the Board of Education could remedy this shortcoming in practice.

The matter of pupils' religion as private or public is an issue in light of ECtHR practice. Negative freedom of religion includes the right to not manifest one's beliefs.[271] In Finnish schools, pupils have no way of keeping their religious identity or affiliation private. Schools maintain registries of the pupils' religions for the functions of opt-out systems concerning religious events. Grouping pupils for the purposes of segregated religious education would not be possible unless the school maintained this information. In the extreme scenario pupils are segregated each morning according to religious affiliation and placed in different spaces to listen to or to avoid the morning assembly. Even in schools less inclined to religious content religious morning assemblies take place each month or so and Christmas church is a given. Pupils cannot reasonably maintain their affiliation private from the school authorities, teachers or even other pupils. This is hardly a justifiable practice. None of the limitation clauses needed to encroach on negative freedom of religion in this way are applicable here.

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[269] Evans 2008, pp. 466469.
[270] Leirvåg et al v. Norway 2003.
[271] Sinan Işik v. Turkey 2010.

Regardless of the recommendation given by the Deputy Chancellor of Justice, the National Board of Education has not amended its guidelines. The guidelines still state that as clarified by the Constitutional Committee the singing of one religious hymn does not in itself constitute religious practice. Neither has the Board of Education included any mention in its guidelines regarding problematic division of students or considerations of individual pupils' convictions. The guidelines do not advise schools on the matter of religious ceremony in school, and only instruct schools to offer discreet options for students to refrain from religious content during school days. It is obvious that how ever discreet these arrangements may be, within these current practices it is impossible for a school to guarantee the privacy of religious affiliation and sensitivities.

The Board of Education's attitude reflects the majority religion's status in Finland. There is no perceptible will within the legislature to make schools neutral areas in regards to religion, quite the opposite. The majority religion's strong foothold in the school system is based on tradition, and attempts to change the status quo have been summarily dismissed.[272]

4.2.2. **Hymn-Quiz**

In 2015, the parliamentary ombudsman reprimanded the National Board of Education for organizing the Hymn-Quiz at schools in cooperation with an association of the Evangelical Lutheran Church[273]. The Hymn-Quiz is a competition organized every other year and is targeted particularly at pupils of the 3rd and 4th years. The contest begins in the fall and continues throughout the school year. A part of the competition is organized within schools. Although participation in this contest is voluntary, this kind of competition is apt to foster alienation with pupils not affiliated to the church and put pressure on participation in the name of communality, especially since the quiz is organized so that whole classes are meant to participate, put in practice non-Christian students are excluded within opt-out schemes.

The bulletin distributed by the Board of Education also contained tips for the schools on how to integrate hymn knowledge into education in various subjects. For example, the instructions included ways to integrate hymns into arts and music class, even physical education and Finnish language classes. The excluding nature of these activities is displayed particularly well in one of the multiple recommended activities. The activity entails a teacher placing a

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[272] For example: PeVM 2/2014 vp.
[273] EOAM 2469/4/14.

Hymn book in the centre of the floor following this by statements such as ‘I have sung a hymn at a funeral’ or ‘I have sung a hymn at Christmas church’ etc. If a statement applies to a pupil they are to take a step closer to the book. This is jarringly exclusive as pupils who have no experience of singing hymns or attending church are singled out. The event also offers ready-made content for schools to utilize in its morning assemblies, every one involving a different hymn and all very much religious in nature.[274]

The Board of Education claimed it had not violated its constitutional obligation of neutrality. This was based on the voluntary nature of the competition and that participation in the contest was not affiliated to the instruction of any particular subject. The church organisation behind the quiz-event had distributed its own bulletins on the event that differed from the one circulated by the Board of Education. The board of education had modified the bulletin and removed some aspects it perceived in conflict with constitutional requirements. There were in effect two different bulletins about the event.

This reprimand brought up problematic elements of the Hymn-Quiz. Hymns are religious songs by nature.[275] The quiz should be truly voluntary and the instructions should make it possible for pupils and their parents to effectively opt out of the competition in a way that does not put undue pressure on pupils to participate.[276]

The reprimand, however, did not find that in future the Hymn-Quiz should be organized without schools’ involvement. I see this as an issue: Schools cannot effectively ensure that pupils are not ostracized or socially pressured when it comes to this kind of content in schools. This brings just another extra element of religion into schools. This kind of activity is apt to create the image that the state is actively promoting the Evangelical Lutheran faith.

The association behind this quiz states that its mission is to promote the Christian upbringing of children and to strengthen the commitment of children and families to the church.[277] Also, the aim of the Hymn-Quiz is to promote knowledge of hymns in a fun way.[278] In this light, it is quite clear that the motivations behind this event are religious. This event is meant to promote the Evangelical Lutheran faith.

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[274] Virsivisa 2016–2017.
[275] EOAM 2469/4/14; The Evangelical Lutheran Church of Finland defines a hymn as religious song the singing of which is prayer, teaching, preaching and spiritual communion.
[276] EOAM 2469/4/14.
[277] SLK 2016.
[278] Virsivisa 2016–2017.

In the school year 2016–2017 the Hymn-Quiz is running normally, in cooperation with the Board of Education and schools. Over 3000 pupils are enrolled in the contest, according to the organizers. The event includes more than just the contest and it offers schools a variety of activities they can adopt into daily use that are clearly in conflict with requirements of neutrality. These activities are all deeply involved in church activities and not only hymns. The main effect that the reprimand given by the Parliamentary Ombudsman seems to have had has been on the manner in which the National School Board communicates on the subject. The reprimand mainly addressed the incapacity of a School Board administrative in charge of the Hymn-Quiz, who, it turned out, also held an executive position in the association organizing the same quiz.

This is in strong conflict with the neutrality schools should display and is not in accordance with the stance adopted by the CCPR. The kind of activity promoted by the Hymn-Quiz can easily lead to schools being disproportionately suffused in Evangelical Lutheran content. As the Deputy Chancellor of Justice well sums up, the state must be 'transitional, conciliatory, balancing and alleviate conflict'.[279] Allowing the Lutheran church to organize content of public schooling is in stark contrast with the schools' obligation to ensure freedom of religion and does not safeguard the state's balancing role.

4.2.3. Summer Hymn

School events such as the traditional end of semester assemblies and Christmas assemblies are not considered religious ceremonies. These events can contain elements of religious nature without participation in these events being considered religious practice by the state. The Constitutional Law Committee has explicitly stated in its memorandum on the government bill for the Freedom of Religion act that these traditional school events are a part of *Finnish culture* and therefore if a religious hymn is sung in these events that would not imply the event itself has a religious nature.[280]

With the last phrase, the Constitutional Law Committee is referring to a specific hymn that has traditionally been sung in end of semester celebrations in schools, *Suvivirsi*, or Summer hymn. It is a popular and widely known hymn in Finland. This hymn is usually sung by all the pupils and school staff in a celebratory event on the last day of school, when pupils

[279] Helsingin Sanomat 2014b.
[280] PeVM 10/2002 vp.

receive their report cards before summer vacation. Attendance is usually mandatory as these events are organized during school hours.

A hymn is by definition a religious song. The Evangelical Lutheran Church of Finland states that hymns are prayers in the form of song.[281] The Summer Hymn has several verses of significantly religious nature. The hymn dates back to the great famine of 1695–1697[282] and is quite literally a song for giving thanks to God, for the coming of spring and abundance. The Hymn is included in the Church's hymnbook. The public debate on whether or not the Summer Hymn is a religious song is peculiar seeing as the song has obvious religious significance and content.

The custom of singing the Summer Hymn was evaluated by the deputy parliamentary ombudsman in 2013.[283] This legal opinion was based on the context in which this hymn is sung: The end-of-term celebration is not a religious event. He additionally pointed out that usually only the two first verses of the hymn are sung, and these verses mention God only once. Ultimately, the hymn is a religious song, but if only the first two verses are sung at schools' end-of-term events, the nature of the hymn is not 'pronouncedly religious'. Therefore the end-of-term fetes remain legally non-religious events, in the light of this opinion. This is also the basis in the later resolution given by the deputy chancellor of justice.[284] If additional verses are sung or indeed, the whole hymn, this legal position changes.

This is an example of the practical difficulties schools face when enacting freedom of religion. It is indeed difficult to know before attending a ceremony whether the whole hymn will be sung or just the first two verses. Arguably, the customs in different schools can vary and one cannot be sure of the end results when the guidelines on the subject are this vague.

The Summer Hymn has become a source of significant debate in Finland and it has been used as a tool for nationalist populist politics. Those who have endeavoured to dispute the tradition of singing this religious song at school have been branded unpatriotic by members of the populist right-wing party, the Finns.[285] In these debates, and in the stance adopted by the Constitutional Law Committee, the song is attributed strong cultural value.

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[281] EVL Vocabulary 2016.
[282] Lappalainen 2012.
[283] EOAM 2488/4/13.
[284] OKV/230/1/2013.
[285] Ylä-Anttila 2016.

I find that the main reason this hymn is still embedded into the communal cultural mind of Finnish people is because schoolchildren have been obligated to sing it every spring in school. Every pupil knows this song by heart. It should be possible to doubt the legitimacy of traditions and critically assess their religious nature. Especially seeing as removing the hymn to be sung solely in explicitly religious ceremonies, or offering pupils the option to opt out of singing the song in a manner that respects their right to negative freedom of religion would not be a concern for the positive freedom of religion of others.

The difficulty involved of having a legal or societal conversation on the status of religion in schools is well illustrated by the episode that followed the 2014 resolution given by the deputy chancellor of justice. The resolution had very little to do with the Summer Hymn and did not propose banning of this hymn. Nevertheless, the public reaction fuelled in part by media portrayal of the issue was centred on the hymn and concern over a possible ban of singing it in school festivities. The deputy chancellor of justice became the target of abusive feedback.[286]

After this public outcry, the CLC convened a hearing on the subject at the request of some of its members.[287] This was a peculiar and rare measure for the parliamentary committee to take and it received criticism from legal experts. Ojanen opined that some of the members of the CLC felt political pressure to form policy different from the stance the deputy chancellor of justice had made.[288]

Ultimately, the CLC gave a memorandum on the issue and stated that there was no need for any measures to be taken regarding religious practice in Finnish schools.[289] One apparent element of the memorandum was an intention to clarify what the current legal position was, and whether this required a change in stance regarding religious content in schools.[290]

4.2.4. **Other religious content**

In addition to the practices highlighted above, other forms of religious content are often present in schools and are dealt with when complaints are made. Some schools still have

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[286] Helsingin Sanomat 2014b.
[287] Helsingin Sanomat 2014a.
[288] Helsingin Sanomat 2014a.
[289] PeVM 2/2014 vp.
[290] Helsingin Sanomat 2014b.

communal prayer integrated into their schedule although the legal stance on prayer in general school life is slightly clearer.

Teacher-led prayer for example in the form of saying grace before school lunch is not sanctioned practice. This can be replaced with a communal moment for quieting down before the meal. This offers all pupils their own options for quieting down. If an individual pupil wishes to pray this is protected within the positive aspect of freedom of religion and therefore the prohibition of teachers leading prayer is not infringing on the pupils' positive freedom of religion.[291] Leading pupils into prayer within the daily activity of the school is therefore quite clearly prohibited religious practice.

School festivities involving national holidays like Christmas and Easter are also problematic. Most content is again based on tradition such as the playing out or reciting of the Christmas Gospel, which is undoubtedly religious content. The Constitutional Law Committee, however, has defended the traditions of school year festivities. The Freedom of Religion Act does not require changes to schools' festivities.[292] Schools have different ways of trying to make these events inclusive for everyone and some include more Christian material than others. Some schools have put more weight on more secular holiday symbols and have attempted to downplay the religious context.[293] Christmas and Easter have not been the main issue of legal debates but the remain a topic of debate within schools and pre-schools.

4.3. Concluding comments

As discussed above, the religious content in Finnish schools is not limited to religious education but includes a variety of activities. Most of this practice is explained by tradition and culture.[294]

Schools have differing practices that are often based in a lack of understanding of what demands freedom of religion sets on state authorities and schools as such. There is a substantial amount of permitted religious content and practice in schools, especially within religious education. This can lead to some authorities or schools stepping over the line,

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[291] EOAM 3634/4/10.
[292] PeVM 10/2002 vp.
[293] Koikkalainen 2010, pp. 56–60.
[294] Seppo 2003, p. 289.

apparently by accident. This is effectively the consequence of vague guidelines given by the legislature.

Finnish practice effectually complies with art 18 of the ICCPR in as much as the state provides religious education for the majority religion, but offers a possibility to opt out of this education according to the parent's wishes. This is accomplished through official membership with a church. This meets the demands displayed in *Waldman v. Canada*.

However, there are several difficulties that Finnish schools face when it comes to favouring religious practice of the majority religion. These difficulties can easily slip into outright infringements of freedom of religion. Schools and the public in general, including members of the legislature, have difficulty in perceiving this bias.

Special care should be taken to ensure that teaching of the religious subject be done in a neutral and objective manner, as per the requirements of *Leirvåg v. Norway*. The obligatory subject can only remain obligatory if it in fact contains no religious practice. The singing of hymns and learning of prayers should not be included in education of this nature. As discussed above, the supervision of religious education in every school is not possible in a way that can make sure that all religious education is carried out with no religious practice included. This begs for a re-evaluation of the compulsory subject. Options include a free opt-out system for all or significant changes to the contents of the subject.

The oft-cited *tradition* does not constitute legitimate grounds for favouring one religious group over another. Defending religious practice with the grounds that it is tradition is not tenable from a constitutional perspective.

As considered above, equal and non-discriminatory treatment of students is a principle of great importance in the public school system and as a human right in general. When adopting basic education curricula, the state parties must be especially mindful of discrimination issues, so that pupils are not divided into different groups or taught different subjects on any such grounds that are included in the categories of discrimination defined by human rights law.[295] These are pronounced concerns when involving religious education, as religion is one of the categories of prohibited discrimination.

[295] Committee on the Rights of the Child 2001. The CRC has seen that gender discrimination should not be enforced by school curricula in division of education according to gender.

It remains unclear whether it is even possible for schools to include religion in their activities and realize this with no harmful repercussions to pupils. When schools segregate and group their students based on religion and in practice single out the pupils who are part of minority groups, they inherently create an environment that is prone to discrimination and bullying based on religion and can foster experiences of loyalty conflict.[296]

Arguably, religion does have its place in basic education. For children to grow with knowledge and understanding of the world they live in and develop a tolerant and inclusive attitude towards others, learning about religions is essential. The larger question really is about how education on religion is carried out.[297] Children should not be indoctrinated or force-fed beliefs, and religious education should not amount to teaching children how best to practice a religion inherited from their parents.[298]

As indicated above, Finnish schools maintain a special status for the majority religion. This level of religious activities permitted in schools is apt to create a mind-set, in which the majority religion is the norm and exceptions from this are somehow less than. Options given to pupils who are not members of the main church are secondary in nature, in all the scenarios presented above. The nature of the alternative activities offered is loosely controlled and therefore the system offers a possibility and reality for great variance between schools and even classrooms. This lack of uniformity in practice offers more potential for discriminatory practice and makes oversight unfeasible.

The Irish school system has been the subject of substantial worry for the CCPR. The substantial Catholic content in Irish schools is based on the state's concept of 'school ethos and spirit'. Just as the influence of the Catholic faith on Irish culture does not make it acceptable to include practice of Catholicism in Irish school practices, nor should the corresponding case be so in Finland. When religion strongly permeates schools charged with basic education, effective opt-out measures are not possible.[299]

Alternative activities for students deviating from the main religious affiliation can easily resemble punishment. If pupils are made to wait in the hallway or stay at school doing homework during Christmas church, this may certainly seem like punishment to the pupils. In

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[296] Leirvåg et al. Norway 20013, (e.g. 14.7).
[297] Álvarez 2011: On education and pluralism and different models of education.
[298] Evans 2008, pp. 462–465.
[299] Mawhinney 2007, pp. 399–403.

cases where most of the pupil's friends are attending these religious events, there can be considerable social pressure to attend. For young children, the example of teachers and the majority of other pupils can have extraordinary impact. Segregating measures can undoubtedly have *de facto* coercive effects on children.

With falling membership rates, the church will undoubtedly endeavour to include itself in young pupils' education as an attempt to strengthen its role in society. Apparently, schools are more than happy to let the church take over some of the activities of the school day and offer additional content such as church visits, morning assembly, Hymn-quizzes etc. This leads to a myriad of religious activities permeating school life. This in turn is apt to create an environment where pupils are constantly segregated, pupils are singled out, opt-out measures are in frequent use and children are subject to alienation and discrimination.

In light of the above, it is difficult to justify current practice and consolidate it with human rights requirements. As the deputy chancellor stated, religious content in school functions is incompatible with the realization of pupils' rights and current practice should be amended.[300] When practice based on tradition turns out to infringe upon human rights, it no longer fulfils the functions it was meant to serve and should be changed. To guarantee the rights of all pupils, most of current religious practice should be removed from the school context.

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[300] OKV/230/1/2013, p. 10; HS 2014b.

5. Results and prospects

5.1. Findings of the study

The aim of this study was to provide a comprehensive view into freedom of religion as a fundamental and human right in Finnish and supranational contexts, particularly in the school as a public space, and determine how Finland complies with the requirements set by these rights. This study set out to map out what, if any, problems Finnish practice in schools has regarding the guarantee of freedom of religion, and also to put forward possible solutions to these problems.

With the predominant role of the Evangelical Lutheran Church and its undeniable influence on Finnish culture, it is understandably difficult and, in part, inutile to distinguish between religion and culture. These concepts are intertwined. Culture is not a legal concept, and attempting to draw a line between culture and religion is rather fruitless. Nevertheless, some determinations must be made when we observe the legal aspects of religion.

Most of the issues confronting Finnish schools relate to the adequate realization of the negative aspect of religious freedom: The right to not practice religion or practice religion contrary to one's own beliefs; Also, the right to not divulge one's religion (*forum internum*). It seems that the right of pupils to be free of religious content in schools has confronted a surplus of problems with the increasing secularism and multicultural school life. When all pupils no longer represent the same faith, current practices are continually more difficult to maintain.[301]

National authorities and politicians are prone to defending religious practice with the concept of culture. Statements such as 'the crucifix is a part of Italian culture' or 'the Summer hymn is a cultural tradition' are admittedly true. However, the fact that an act or symbol is traditional or part of cultural constructs does not in itself remove the possibility that this element of culture also holds religious significance. Therefore 'the crucifix is a cultural symbol, not a religious one' cannot be held as true. Hymns are undeniably religious songs. The crucifix holds immense religious significance in Christian religions. These traditions and symbols can

[301] Kallioniemi et al. 2016, pp. 1–2.

also be cultural traditions, especially in countries where a religion and its cultural elements have a long tradition and a following encompassing the majority of the people.

This study notes the colourful practices regarding religion that exist in everyday life in Finnish schools. I find that currently freedom of religion is not applied fully to all pupils. The central issue are the practical difficulties involving the segregation of students by religion and arrangement of opt-out systems regarding religious content in schools. Schools have not found truly delicate and neutral ways of dealing with these practices, nor are there any signs of this being accomplished in the future. Pupils are *de facto* forced to hold their religion, or lack thereof, public all through their time in compulsory education. Schools have no real way of making sure that pupils are not bullied or discriminated against by other students because of their religion or lack thereof.

These are the central issues found in this study that are in direct contrast to human rights requirements:

1) The limits to children's self-determination. The state should take moves to facilitate the right of pupils within basic education to make their own decisions on which type of education they wish to attend: denominational religious education or the more neutral ethics education. The age of religious self-determination being set at 18 is too high an age. Children should be able to determine whether they wish to receive denominational or other education according to their own wishes at a much younger age.

2) The segregation of pupils according to religion. The everyday practice of separating pupils into different groups on the basis of religion is directly in contra to the requirements of human rights conventions. One should not have to publicly state one's religion. This is effectively done daily in most Finnish schools. This is related to large amount of religious content, specifically Evangelical Lutheran content, within schools that conflicts with state neutrality.

3) The integration of religion into school year festivities. The nature of the traditions frequently present in school year festivities constitutes an issue. The function of the festivities is to foster communality and good cheer. If the nature of these festivities is apt to promote feelings of not belonging and effectively makes some pupils outsiders, the function of these festivities might be better fulfilled by a different approach. If schools were to drop religious connotations from their festivities, the discrepancy regarding the pupils' rights could be eliminated. On the other hand it is very difficult to see this action doing any damage to inclusiveness or the effectiveness of human rights. This is the sensible action to be taken.

Conservative minded clinging to tradition for the sake of tradition might be appealing to some, but it cannot be satisfactorily justified in relation to human rights.

5.2. Analysing Finnish policy

The ordeal following the resolution made by the Deputy Chancellor of Justice in March 2014 displays just how difficult and delicate the issue of religious content in schools truly is. The text of the resolution was in no way inflammatory, being a matter-of-fact legal opinion. Many took the resolution as a ban of singing the Summer Hymn, which was not indeed the point of the resolution. This led to a strange reaction from the parliamentary Constitutional Law Committee. The hearing held on the subject was indeed a highly irregular procedure that received substantial critique from the leading experts in constitutional law. The result of this hearing was a memorandum that was poorly grounded and peculiar in nature. This memorandum effectively shut down all conversation on the subject, and no move to alter the current practice has been made by the authorities. The guidelines of the Board of Education remain unchanged and therefore so does school practice. It is as if the resolution made by the deputy Chancellor of Justice had no real effect.

In light of this case, as a parliamentary body, the CLC seems to be vulnerable to public and political pressure. The commotion involving the Chancellor of Justice's call for re-evaluation of current practice was met with an effort to appease and calm the objecting public.

This study shows, that within constitutional oversight in Finland, issues regarding freedom of religion in schools have been examined with appropriate diligence. The CLC has evaluated issues utilizing legal scholars, constitutional observation, and relevant jurisprudence of the ECtHR and the ICCPR. However, these issues are not dealt with satisfactorily. The parliamentary CLC is reluctant to offer change to the status quo.

The resolution of the Chancellor of Justice's office made in 2014 was a move in a more human rights minded, progressive direction. This resolution was met with a substantial public outcry, with many interpreting that the Deputy Chancellor of Justice Mikko Puumalainen was on a personal mission to ban the singing of the Summer Hymn.[302] The Hymn carries much significance for many people and it has become some a sort of symbol of Finnish identity for some. The public discussion was focused on the issue of this one song, and mostly bypassed

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[302] Yle 2016.

the other issues brought up by the Deputy Chancellor of Justice. He found this lamentable, as he considered these relevant in regard to human rights requirements.[303]

The CLC however did not find any reason to alter current practice or take any measures whatsoever in response to the resolution offered by the supreme guardian of law. The memorandum given by the CLC in response to the public discussion on the subject of religion in schools seems to have been given as an appeasement after the discussion followed by the resolution. This effectively constituted a burial of the critical resolution, as no measures were found to be necessary. The opposition of change in religious content in schools was very vocal in public, so this debate had to be calmed before the elections.

The CLC is reluctant to recommend measures when current legislation already offers the means to deal with possible issues. The current act of religious freedom is a rather comprehensive one. The current practice in schools is not grounded in law but is instead a result of cultural conventions and tradition. There is no legal obstruction to removing religious content, other than religious education, from schools. Altering religious education would require reforming legislation. Morning assembly, although required by law to begin the school day, should not be religious in content. Nevertheless, the National School Board is unlikely to alter their guidelines or decrees unless the CLC emerges with a clear statement in favour of change. The resolution given by the Chancellor of Justice's office has had no visible effect on the School Board or their guidelines after the CLC memorandum declaring that no measures are needed.

School authorities often cite practical difficulties as the main reason for imperfect compliance with freedom of religion. This is an insufficient justification. Justifiable limitations to fundamental or human rights do not extend to practical difficulties. Most of these practical difficulties could be avoided altogether, if of the amount of religious content in schools were significantly reduced. Seeing as freedom of religion does not require the state to provide religious education and more than anything, human rights law encourages schools to minimize religious content[304], it is difficult to see why these steps are not taken by government.

[303] Yle 2016.
[304] Requirements of state neutrality.

The state of Finland has taken notice of these issues but has not caught up with human rights demands. It is predictably easy not to see problems in what one has a subjective, familiar relationship to. If a person with a Christian upbringing but with a secular identity happens to enjoy morning prayer or singing hymns at school celebrations, it might be difficult to see why these traditions or practices might offend someone else, or why these are even issues that merit discussion. I believe this calls for a change in attitude especially within the legislature. One's own subjective experience or even the experience of the majority is not what defines the implementation of a human right.

5.3. Analysing the practice of human rights instruments

This study also highlights the issues with the European convention system in dealing with value-loaded issues such as religion. Regarding freedom of religion in schools, this study displays the most common issues regarding this human right and it's realization.

As Evans points out, social pressure can have an enormous impact on children, especially when these children are of a young and vulnerable age.[305] The ECtHR has not satisfactorily taken into count these elements of daily life, and what actual implications state practice can have on freedom of religion in cases where the voluntary nature of a certain practice enshrined in legislation is in actuality endangered because of social pressure or other such circumstances. Legislation on its own is not sufficient to guarantee freedom of religion if the practical implications are not also considered.

In its memorandum, the Finnish CLC stated that the ECtHR awards a broad margin of appreciation in cases dealing with article 9 of the ECHR. The state does not have a strong incentive to critically assess its practice in relation to human rights, when it knows that if a case were to be brought before the ECtHR, it would very likely award Finland a broad margin of appreciation. The margin of appreciation doctrine in effect dilutes the effectiveness of human rights requirements, especially in regards to freedom of religion and other issues wound up in national 'moral and values'.

Effectively because of this broad margin, the CLC deemed it unnecessary to effect any change to the status quo. This displays just how problematic the margin of appreciation can be – the state knows it would not be sanctioned under the ECHR because of the broad margin

[305] Evans 2001, pp. 94–96.

in these cases, so it justifies discrepancies with human rights law with the same margin of appreciation. Initially, the function of the margin of appreciation was not to allow states to violate Convention articles with intent. However, this seems to be the effect in this case. The state justifies its lack of positive action with the ECtHR's use of a broad margin of appreciation.

The CCPR on the other hand does not utilize the margin of appreciation. The CLC has not considered the ICCPR in this matter, other than to cite previous case law that has a direct relevance to religion in schools. The fact that the specific practice in effect in Finnish schools has not been the subject of such a case seems to be sufficient justification for lack of action by the government.

The CCPR has dealt with significantly less cases regarding the role of freedom of religion in the public space, compared to the ECtHR. If a case involving e.g. morning assembly practice were brought to the CCPR, the outcome would likely be a call for state action to guarantee religious freedom as a Covenant right. However, even though CCPR resolutions are not recommendations, they lack the legal and diplomatic power of the ECtHR judgements. In general, ECtHR jurisprudence is considered more binding in the European context.

5.4. Future prospects

Most conflicts in schools on religious freedom and especially the application of negative religious freedom boil down to defining what the difference between tradition and religion is, and who gets to determine it. Also, who is to decide if a practice that is not explicitly mentioned in international law is to be considered religious practice? If there is no specific case law making the determination, is there a risk that the majority religion will always take precedent, and if so, is this acceptable?

I would suggest that the state focus on neutrality and the adequate fulfilling of requirements of all pupils' human rights. If a practice can be reasonably determined religious through an evaluation as objective as possible, and the removal of such a practice from schools cannot be deemed harmful to the religious freedom of students, it should be removed. There is no justified reasoning to include religious practice in today's pluralistic schools.

This study shines a light on the multitude of dubious practices of religious nature that Finnish schools engage in. The amount of practical problems schools face in assuring freedom of

religion for all are too numerous to amount to a satisfactory outcome under the current guidelines.

This study shows the active and broad scope of the discussions related to freedom of religion. More research should be dedicated to the study of western inclinations to utilize freedom of religion to protect what is familiar and limit the unknown. The issues that arise in European states' inclination to ban symbols and attire of the Islamic faith and in contrast, to defend Christian traditions and symbols in the name of culture, are especially noteworthy.

Regarding religious education, issues would be resolved with the application of a common subject for all to replace current classes in religion and ethics. This subject should be planned well, as to make sure it does not conflict with the requirements made by human rights law. This would require an objective and neutral subject placing no special weight on any one religion. An arrangement of this kind would dispose of current conflicts involving the denominational nature of religious education and the vagueness involving varied practice among schools. With a clear curriculum for all with no room for deviation into religiously involved education, a new subject would make the segregation of pupils according to religion a non-issue.

In 2015 a group of teachers brought forth a citizens' initiative for new legislation, calling for one, unified school subject dealing with philosophy of life, instead of the segregated subjects currently taught in Finnish schools. The subject this group advocated for would have been a neutral, secular subject teaching pupils about several religions with no particular weight placed on anyone's own religion. This initiative failed to get the required amount of supporters for it to have been brought to parliament. The changes mapped out in this initiative would have been more in line with the requirements of human rights law.[306]

I find that future measures to guarantee a religiously neutral school environment should arise from initiatives made by the legislature. This would require a substantial shift in attitudes which does not seem possible under the current conservative government.[307]

During the last few years under this government, front row politicians have made several statements undermining human rights. According to the Parliamentary Ombudsman, this government is having unprecedented issues with the Constitution and has endeavoured to pass

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[306] Katsomusaloite 2016.
[307] Suhonen 2011, pp. 70–77; Grönlund & Westinen in Borg 2012, pp. 176–177.

bills that have great conflicts with the Constitution and requirements of human rights law.[308] During a political climate such as the one we are experiencing, it is difficult to foresee any significant change in legislation or practice involving this specific issue.

With the Summer Hymn and other traditions being so close to many citizen's hearts as beloved tradition or a signifier of identity, it is obvious any reform would cause a significant uproar. Reform is nevertheless necessary in light of the requirements set by human rights law highlighted in this study.

This study finds that Finland's practice in schools is inadequate. As the office of the Chancellor of Justice has found, there are several issues that should be addressed, especially when it comes to religious practice in schools. The necessary discussion should not be restricted to the Summer Hymn, but encompass all the issues with religion in schools.

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[308] Helsingin Sanomat 2016.