

Muslims in Europe – Religious Freedom in a Secular Society

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On the religious front, along with the continued decline of Christianity as a governing force, there have been two significant trends within Europe since the end in 1945 of the second European Civil War – which perhaps only the far-sighted at that time could have foreseen:

Firstly, there has been a large influx of Muslims from ‘abroad’, who came initially either as cheap labour or as students and who have subsequently settled down along with their families in Europe.

Secondly, there has been a steady increase in the numbers of members of the indigenous populations of Europe who have willingly embraced Islam.

As regards the first group, its members have increasingly become integrated into European society, with the second and now third generations being born and brought up in Europe, an increasing number of whom are well-educated citizens fulfilling responsible roles in society. Their financial savings alone have reached such a proportion that if they as one body were firstly, to withdraw these funds simultaneously from the financial institutions of Europe, and then secondly, to exchange their paper money for golden dinars and silver dirhams – the traditional currency of the Muslims – the whole banking system would collapse.

As regards the second group – who usually know only too well from personal experience the dangers that are inherent in the prevailing secular ideology that consenting adults can do whatever they want as long as no-one else’s freedom to also do whatever they want is unduly affected in the process – its members are living proof that Islam is not ‘just for foreigners’, just in the same way that Judaism and Christianity, whose original roots like Islam’s are also firmly embedded in the Middle East, have in the course of time come to be regarded firstly as ‘European’ and then eventually as ‘global’ religions, intended for and accessible by the whole human race.

Since it has not been as easy, as has been the case with the original teachings of Moses and Jesus, peace be on them, for Europeans to re-define and re-write the original teachings of Muhammad, blessings and peace be on him – although some have tried, notably the perennialists – these two trends have resulted in a unique situation with which current European legal systems are at present trying to grapple:

It is clear that when the *United Nations Declaration of Human Rights* and its offspring the *European Convention on Human Rights* were originally drafted, it was never envisaged that the provisions relating to freedom of religious and political belief and freedom to put those beliefs into practice whether alone or with others would apply to Muslims in Europe in any meaningful way – and yet now, like it or not, they do. In practice this unexpected development has meant that there has been a tussle going on – between Muslims demanding their legitimate rights and non-Muslims trying to deny them. This tussle has manifested in several easily identifiable forms:

In France, for example, it has only recently been accepted that it is unconstitutional to bar Muslim girls from attending school simply because they have chosen to cover their hair with a scarf in accordance with the teachings of Islam – a practice which in fact until relatively recently was commonplace throughout the civilised world.

In England, for example, it has only recently been accepted that, provided the relevant criteria have been met, Muslim schools are just as much entitled to receive government funding as Jewish, Christian and State schools. The point is just about to be reached where it is finally accepted that it is unrealistic to expect a State school to provide daily ‘Christian’ worship when 95% of its pupils are Muslims.

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One of the main arenas in which ‘the tussle’ is still evident concerns the five daily prayers, the weekly Friday *jumu‘a* prayer and the two annual *‘Id* prayers which every sane adult Muslim is required to do, and which often fall due during the course of ‘the working day’. Two distinct scenarios are well-known:

On one hand some Muslims have been fortunate enough to negotiate with sympathetic employers as part of their contract of employment the freedom to do the prayer during their tea or lunch breaks, and perhaps even to take extra time off to be able to attend the Friday prayer, provided that any extra ‘time off’ is accounted for by means of working the equivalent ‘overtime’ in lieu. More enlightened employers have even made things easier for their Muslim employees by providing adequate *wudu* facilities, so that they can do the ritual washing which precedes the prayer with the minimum of difficulty. Provision of *halal* meals in staff canteens has been an added bonus.

Similarly, as regards the two annual *‘Id* prayers which mark respectively the end of the fast of Ramadhan and the climax of the pilgrimage to Makka, tolerant employers have made it possible for their Muslim employees to have these days off as part of their annual holiday quota, rather than resorting to sacking them for not coming to work on these days, or else having to make last minute arrangements to cover for the large number of Muslim staff who have suddenly been laid low by a miraculous one-day flu epidemic.

Where and whenever this more positive scenario manifests, it is usually characterised by good communication, understanding and tolerance. Many employers discover that a Muslim employee who does not drink alcohol or commit adultery and who prays regularly is far more reliable and productive, even if he does not work like clockwork, than a non-Muslim employee who does the opposite.

On the other hand, however, intolerant employers have often been swift to react in a negative manner the minute they realise that they have a ‘religious’ Muslim on their premises – as opposed to the ‘non-practising Muslims’, who have always been perfectly acceptable to such employers. During the last few years, for example, there have been a significant number of cases where Muslim ladies who decided to start wearing a hijab at work were either suddenly or soon sacked, even if they had been employed for several years prior to making this decision. For some apparently ‘inexplicable reason’ their employers were prone to argue, their standard of work had fallen almost overnight to an unacceptable level, sometimes accompanied by a severe ‘personality disorder’.

Similarly, new Muslim employees have often been summarily dismissed whenever they have begun doing the prayer ‘during working hours’ – any interruption of which, even during lunch or tea breaks, has in the secular producer/consumer nexus invariably come to be inflexibly regarded as a sin.

Since there is at present no law which either discourages or penalises discrimination on religious grounds, it has up to now been relatively easy for people to discriminate against others for religious reasons with impunity. Experience has repeatedly shown that religious discrimination cannot effectively be dealt with under the *Race Relations Act 1976*, either as regards Muslims who also happen to belong to an ethnic minority, or as regards Muslims who belong to an ethnic *majority* – that is, Muslims whose skin happens to be ‘white’. Although it can sometimes be tortuously argued that religious discrimination against a Muslim who belongs to an ethnic or racial minority can amount to indirect racial discrimination, in practice this is very difficult, as the provisions in the *RRA 1976* were not drafted with his possibility in mind, nor for this purpose. Thus for example:

In the case of *Safouane & Bouterfas -v- Joseph Ltd and Hannah* [1996], (Case No. 12506/95/LS & 12568/95. Decision entered in the Register: 17th July 1996), the Tribunal concluded *inter alia* that the fact that someone had urinated on the Applicants' prayer carpet did not amount to indirect racial discrimination, partly because although the Muslim Applicants belonged to an ethnic minority, the employers had a good record of employing staff belonging to several other ethnic minorities and could not therefore be regarded as being 'racially' prejudiced!

Similarly, in a case which is currently *sub judice*, the Respondents are arguing that since they are a secular organisation their equal opportunities policy does not apply to acts of discrimination on religious grounds, and furthermore, that since any religious discrimination that may have occurred is not racial discrimination it can therefore be ignored because it is not recognised by law!

As far as Muslims who belong to an ethnic *majority* are concerned, anyone, whatever their colour may happen to be, can at present discriminate against them on religious grounds with complete impunity and immunity since there is no law which forbids this.

Perhaps it should be pointed out to those who blindly persist in trying to either ignore or equate 'religion' with 'race', that they should realise this:

At present the Muslims are a *religious* minority; within that religious minority there are people from practically every racial and ethnic minority or majority under the sun; and whatever the colour of their skin, or the ethnicity of their family, or their country of origin, or the nationality of their passports, they all quote this same passage from the *Qur'an* with equal conviction and delight:

Our colour is from Allah – and who is better than Allah at giving colour? – and we are His worshippers.' (*Qur'an* 2.136-138).

It should also be acknowledged that people whose racial identities are identical may nevertheless discriminate against each other for religious reasons. Motives are often more than skin deep.

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It is clear from the foregoing that the law governing religious discrimination – which at present is conspicuous by its absence – needs to be developed in a positive manner, both at a national level and within the European Union as a whole. It is simply unacceptable, even in this age of ignorance, that human beings should be regarded and treated as second-class citizens simply because they are Muslims.

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At a national level, it is encouraging that the *European Convention on Human Rights* is soon to be incorporated into English domestic law. As regards the religious rights of Muslims and other religious groups, *Article 9* of the *ECHR* guarantees everyone living in Europe including the UK the right to *choose* their religion and the right to *practise* their religion:

- (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- (2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Furthermore, *Article 2* of the *First Protocol* to the *ECHR* guarantees everyone living in Europe including the UK the right to have their children educated in accordance with their religious beliefs:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

As a signatory to the *ECHR*, the British government is under a duty (under *Article 1*) to secure the rights which the Convention seeks to uphold and protect, and it is also under a duty (under *Articles 13 & 14*) to ensure that there is an effective remedy before a national authority for *everyone* whose Convention rights are violated:

Article 1 of the *ECHR* states:

1 The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Article 13 of the *ECHR* states:

13 Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14 of the *ECHR* states:

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

It follows that if the British government does not secure *inter alia* the rights to have religious belief, put that belief into practice, and educate one's children in accordance with that belief – and if it does not ensure that there is an effective remedy for anyone whose rights, including *inter alia* these rights, are violated – then clearly the British government will be in violation of its duties under the Convention, and in effect it will also itself by default be guilty of religious discrimination.

In spite of this inescapable logic the present Home Secretary, like his Tory predecessors, has at present decided that there is to be no law regulating religious discrimination. John Austin, the Labour MP for Erith and Thamesmead, has been attempting to introduce before Parliament under the 10 minutes rule procedure, a private members bill, the *Religious Discrimination Bill*, but it may well be that this turns out to be a ploy, as in the case of fox-hunting, to ensure that such an Act is, at least for the time being, prevented from actually gracing the statute books.

Whatever the outcome, it nevertheless remains a fact that the *Religious Discrimination Bill* which John Austin is seeking to place before Parliament will, if it or its like becomes law, not only help to protect people belonging to the various religious groups – including Muslims – which exist in today's modern multi-faith society from having to endure religious discrimination without any recourse to justice – it will also assist New Labour to fulfil its duties under the Convention to secure these fundamental rights, thereby relieving the British government of the prospect of having at some future date to answer for its failure to do so before the European Court of Human Rights in Strasbourg.

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As regards the European Union itself, it is clear that the European Parliament has been attempting to reach a satisfactory solution concerning ‘the Muslim problem’. This manifested late last year in a draft Recommendation and accompanying Report by Arie Oostlander to the Council, which were and for the time being continue to be considered by the European Parliament’s Committee on Civil Liberties and Internal Affairs. These were to have been voted on in a full session of the European Parliament in Brussels on the 29th January 1998, but as a result of the objections raised from several quarters, including the Islamic Foundation in Leicester and the Association of Muslim Lawyers in London, they were withdrawn in order to be more carefully reconsidered and hopefully more accurately redrafted. The final version remains to be seen and voted on.

The draft Recommendation and Report in their unacceptable form are described as being ‘on fundamentalism and the challenge to the European legal order’ – which as everyone knows is part and parcel of the much vaunted ‘new world order’ – and are worth reading in their entirety (Refs: 16th July 1996 B4-0705/96 and 7th August A4-0000/97). Although they purport to be dealing with the threat of ‘violent religious fundamentalism’, it is quite clear that the main emphasis is simply on ‘Muslim fundamentalists’ who by media definition are usually automatically assumed to be extremely violent. The draft Recommendation and Report, as formulated at the beginning of 1998, contain a curious mix of sound perception and unequivocal prejudice:

The draft Report, for example, recognises not only that the advent of Islam in Europe is a relatively new phenomenon, but also that its Muslims are not always treated fairly. Under the heading *Attitude of European authorities towards the Muslim community*, it has this to say:

Each Member State of the European Union has its own rules on the relationship between government and religion, a relationship which has largely been determined by historical developments. The presence of large numbers of Muslims raised the question of how Islam as a religion was to be integrated with the status quo. An appropriate solution has yet to be found. Governments are reluctant to grant Islam equal status with other religious traditions. (p.13).

Under the heading *Equal scope for Islam in the public domain*, the draft Report states:

In many Member States, the position of Islam in the public domain is not equal to that of other religions. It is very important that Islam should enjoy equal status and that there should be sufficient scope for Muslims to comply with their religious obligations. Government ought also to adopt a more positive attitude towards public expressions of Islam, such as the building of mosques. Conversely, if government dogmatically pursues a secular policy and opposes any reference to or expression of religion in the social and political spheres, this will impede integration and hamper harmonious relations. A more positive attitude towards Muslim citizens on the part of the authorities is urgently called for. (p.14).

As regards *Western media*, the draft Report at least recognises that:

The western media often present violent Islamic fundamentalism as ‘Islam’. It is the eccentric and extreme that attract their attention. This negative portrayal has a major influence on the general image of Muslims in Europe. Many suffer as a result. (p.13).

While under the heading *Educating media workers*, the draft Report goes on to observe that:

It is always a sensitive issue when a democratic political body voices concern about problems in the media, but it would make a significant difference if the media became aware of the social impact of their reporting on Islam and Muslims. Seminars and courses in journalism could be used to make journalists and editors more familiar with the subject (and indeed with religion in general!). More accurate information should also be provided on what Islam and fundamentalism actually are and what proportions their violent manifestations assume. This would encourage more objective reporting, free from stereotypes. (p.14).

It is therefore very disturbing to find that both the draft Recommendation and the Report in fact seem to have a strong tendency to adopt the very stereotypes which the draft Report accepts are in fact unrepresentative of Islam and the Muslims in general. This is done firstly by linking all Muslims to ‘Islamic fundamentalism’, and secondly by linking all Islamic fundamentalism to ‘violent religious fundamentalism’ – thereby implicitly inferring that all Muslims support violent fundamentalism and that the only violent religious fundamentalists are Muslims. The danger with this kind of ‘logic’, if it can be described as such, is that it leads inescapably to the conclusion that all Muslim groups and organisations however peaceful should be subjected to State surveillance. In this context, the conclusion of the draft Report is decidedly ambiguous:

In conclusion it may be said that the phenomenon of violent religious fundamentalism is not of particularly major proportions in Europe. In so far as it exists, it is mainly imported from the Islamic world. However, it is advisable for intelligence services and the police to monitor the activities of the relevant groups in Europe closely. At present, Islamic fundamentalists do not have much of a following among Muslims in Europe, but they are trying to gain greater influence. To prevent European Muslims from being manipulated by them it is desirable mainly to pursue a preventative policy designed to secure acceptance and integration of Muslims in European society.’ (pp.15-16).

Although the draft Report purports to distinguish between peaceful Muslims and violent ones, it would appear that there is a very real danger that if the false stereotype is accepted, then every Muslim group becomes a ‘relevant group’ for the purposes of the police surveillance which the Report recommends – which in turn calls to mind the caption of a cartoon which appeared in *Punch* some years ago in which a man looking worriedly over his shoulder thinks, ‘If only everyone would stop looking at me, I wouldn’t feel so paranoid.’!

Perhaps if the draft Recommendation and Report had in fact been concerned solely with violent religious fundamentalism as they claim to be, rather than with the false stereotype of the ‘Islamic fundamentalist’, this image may not have sprung so readily to mind, especially when we pause to consider what forms of fundamentalism have most typified European history not only during the relatively recent past, but also since 325 AD:

During the course of the last fifty years Europe has witnessed three main types of organised massacre, based respectively on race – the holocaust; on political belief – Stalinism; and on religion – Bosnia. Although Stalinism claimed by far the most victims – at least 20 million – each of these systematic massacres has been equally disgusting and, for anyone singled out as a potential victim, was probably equally terrifying.

It should be noted well that each of these massacres was perpetrated in the name of a particular brand of fundamentalism, and that not one of these forms of fundamentalism had anything to do with Islam – other than the fact that the victims of the Bosnian massacre were mainly Muslims.

It is accordingly rather chilling to note that the Report, after noting the Christian origins of the term ‘fundamentalism’, defines fundamentalism thus:

Over the years, the term ‘fundamentalism’ has come to be defined increasingly broadly. It can now perhaps best be defined in terms of its opposite, i.e. as comprising those ideas and practices that conflict with fundamental values and principles which typify the Western social order. (p. 9).

It need hardly be pointed out that it was this kind of ‘reasoning’, defining a concept ‘in terms of its opposite’, which was used consistently between 381 AD and 1826 by the Theodosian, the Mediaeval and the Spanish Inquisitions to define ‘heresy’ and then eliminate all ‘heretics’ by the simple expedient of killing them. This kind of reasoning is part of ‘the specific history of Europe’ to which the draft Report refers (p.9) and from which the ‘Western model of society derives its characteristics’.

It need hardly be pointed out, furthermore, that the above ‘best’ way of defining things was precisely the one applied by Stalin when formulating, both ideologically and in the direct implementation of government policy, his particular brand of totalitarian secular fundamentalism, backed up by the full might of the State – a form of fundamentalism which was and is far more extreme than any other form of fundamentalism which the draft Recommendation and Report purport to examine. As we have already noted, it was this form of secular fundamentalism which was so rigorously and religiously applied that it resulted in the deaths of some 20 million people – in fact 36 million if you consider the former eastern Communist bloc *in toto* – who did not subscribe to the fundamental values and principles which typified Stalin’s legal order.

Why England declared war on Germany for invading Poland, but not on Russia for occupying it, and why English and American forces were ordered to use force to prevent the very same people whom they had just ‘saved’ from Hitler, and who were now fleeing for their lives from Stalin, to cross the Elbe and Mulde rivers to safety – which for these refugees (now expediently defined as ‘deserters’) meant certain death at the hands of Stalin’s forces – is of course another intriguing story.

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Given the relatively recent history of Europe, as well as its not so recent history, it is disturbing to say the least to find a draft Recommendation and Report which appear to be totally unaware of that history and completely unconcerned with the possibility of this particular history repeating itself. One can only hope that there will be less bias and more balance in them once they have been redrafted prior to their eventually being presented to the European Parliament.

No doubt modern politicians and constitutional lawyers alike will be swift to assert that nowadays the rule of law is such that there are adequate safeguards in place to prevent violent fundamentalism – whether religious secularly applied (as with the Mediaeval and Spanish Inquisitions), or secular religiously applied (as with Nazism and Stalinism) – ever taking hold in Europe again, but as far as Muslims are concerned, the questions which then naturally arise are these: If this rule of law is so complete, why does it permit the media to slander Islam and the Muslims with impunity and to spread unchecked the kind of false stereotype which often result in both direct and indirect acts of religious discrimination against Muslims? Can this really be justified as being ‘in the public interest’? If this rule of law is so just, why do those who experience religious discrimination – and clearly this applies just as much to other religious groups as it does to Muslims – often have no legal means to bring such discrimination to an end or to receive compensation for injury to feelings and pecuniary loss in a court of law, simply because that rule of law does not recognise religious discrimination as even existing?

In other words, how can Muslims be expected to have respect for a rule of law which does nothing or very little to protect the most fundamental of their basic human rights, and which accordingly itself discriminates against them? How can there ever be a true respect for the rule of law if that law enshrines, however subtly, the maxim which, although it may never actually be directly spoken or printed, at present many Muslims in Europe nevertheless actually experience, namely: equal opportunities for all – except for Muslims; human rights for all – except for Muslims; justice for all – except for Muslims?

Since the vast majority of Muslims in Europe are *not* supporters of *violent* religious fundamentalism, as the draft Report itself admits more than once, it follows that all Muslims in Europe should be entitled just as much as anyone else to equal rights, equal opportunities and a legal defence against religious discrimination.

Exactly what, after all, are the fundamentals of Islam? They are, first and foremost, to worship God – Allah – as if you see Him, knowing that although you do not see Him, He sees you. Then they are to believe in Allah, and in His angels, and in His revealed Books, and in His Messengers, and in the Last Day of resurrection, and that everything is by the Decree of Allah, both good and evil. On this inner awareness and acceptance of what is in the Unseen are based five fundamental actions, the five pillars of Islam. They are to affirm that there is only One God and that Muhammad is the Messenger of God, blessings and peace be on him; to pray the five obligatory prayers each day; to fast during the month of Ramadan; to pay the Zakat tax of 2½% on any surplus wealth over a certain amount which has been owned for a full year (to be distributed amongst those in need within the Muslim community); and to go on the pilgrimage to Makka at least once in one's lifetime if one has the means to do so. A Muslim is also obliged to treat as permitted what Allah has permitted, and to treat as forbidden what Allah has forbidden – which in everyday practice principally means that a Muslim is not permitted to murder anyone, may not steal from anyone, may not commit adultery (although a man may have up to four wives, provided that he supports them and their children as equally as possible – thereby avoiding the unnecessary love triangle dramas that politicians, princes and presidents so often seem to suffer most), may not commit sodomy, may not exploit people through usury, may not drink alcohol or consume other intoxicants which might affect the faculty of reason and concentration in the prayer, and may not eat pork or other impure foods detrimental to health. When the Prophet, may Allah bless him and grant him peace, was asked what is the best aspect of Islam, he replied that it is to greet those you know and those you do not know and to feed the guest. He also said that the Muslim is the one from whose tongue and whose hand you are safe. He said that the best of his Companions, may Allah be pleased with them, were the ones who were most gentle with their wives. He also said, 'My Companions are like stars – if you follow any one of them, you will be rightly guided.'

These are the characteristic actions of the true Muslim fundamentalist – in part they are acts of pure worship, and in part they are actions which support and protect the community of those who worship God in accordance with the teachings of the *Qur'an* and the example of the unlettered one to whom it was revealed, Muhammad, may Allah bless him and grant him peace. What on earth, it may be asked, is so terrifying about this particular form of fundamentalism? Exactly what kind of a threat does this way of life pose to the European legal order? With reference to *paragraph 2 of Article 9 of the ECHR* (quoted above), precisely what limitations on the Muslims of Europe (and at present these include the current policy of not granting European Muslims their legitimate rights) can be justified in Europe's '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'?

The truth of the matter is that those who fear Allah, the *muminun* (those who accept), are feared by those who do not, the *kafirun* (those who reject).

Is it not in fact the case that the lifestyle of a practising Muslim – guided as it is by an inner awareness that (unlike the CCTVs blossoming around us) God sees everything, and that our actions will ultimately take us either to the Fire or to the Garden in the world which awaits all of us on the other side of death – is far more refined and 'law-abiding' than the way of life which the European legal order seeks to define and regulate?

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I still recall with amusement the time when, while studying for my Bar Finals back in 1979, I was arrested (without ever actually being charged) for doing the prayer in the shelter of someone's porch on a wet and windy afternoon. Having been detained at Redhill police station for several

hours while my identity was being checked – and while it was being reluctantly accepted that a man who is caught empty-handed with his forehead, his hands, his knees and his toes on the ground can hardly be described as attempting a theft – I was finally released with the warning that I might well have been brought before the local magistrates to be bound over to keep the peace. ‘But that is what I was doing,’ I replied. ‘Doing the prayer *is* keeping the peace.’ To which the police officer in charge responded, ‘But imagine what it would be like if everyone was a Muslim. We couldn’t have everyone praying on each other’s doorsteps now could we?’ To which I replied, ‘If everyone was a Muslim, then we’d all be inviting each other into our houses instead and saying, “Come inside and do the prayer – and do stay for tea when you’re finished!”’

To conclude, it should be pointed out that God tells us in the *Qur’an*, the final revelation from God to man which both confirms and abrogates all the earlier revelations from the same Source, that man was only created in order to worship Him. Accordingly, although in the very nature of things not everyone chooses to exercise this right, it is clear firstly, that there cannot be any right more fundamental than this right – the right to worship God, preferably in the manner in which He has commanded us, and secondly, that if there is any human right which should be protected above all others, then it is this one.

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[Note: The Oostlander Report to which this article refers was eventually rejected by the European Parliament (305 votes to 158) on the 14th July 1998.]