



The Protection of Digital Religious Practice under International Law

The Digital Turn of Religions: New Challenges for Law in Cyberspace

Prof. Dr. Christine Kaufmann, Prof. Dr. Lorenz Langer, MLaw Cristina Frei

Faculty of Law, University of Zurich

1. Key Issues

How does international human rights law (IHRL) protect digital religious practice? Considering changing risks, our project addresses the extent to which protection for the exercise of religion is effectively and comprehensively ensured on the basis of the prevailing understanding of the protection of rights in the digital context. How should IHRL be applied in the digital context, to protect the practice of religion online effectively and what are the limits of this protection?

2. Research Approach

An analysis of concrete examples of restrictions on human rights regarding the digital religious practice and the elaboration of the prevailing understanding of the protection of rights in the digital context serve as the starting point. In order to answer the question of how human rights are to be applied online, a “translation” of both the scope of protection of the relevant rights and the limits is carried out. Practical examples from the research field of “Digital Religion” serve as illustrations and points of reference for the enquiry. IHRL provides the overarching framework for the discussion of the protection of rights in the digital context. Normative tensions between global and regional approaches, between public and private regulations, and specific examples of national legislation are discussed against this background.

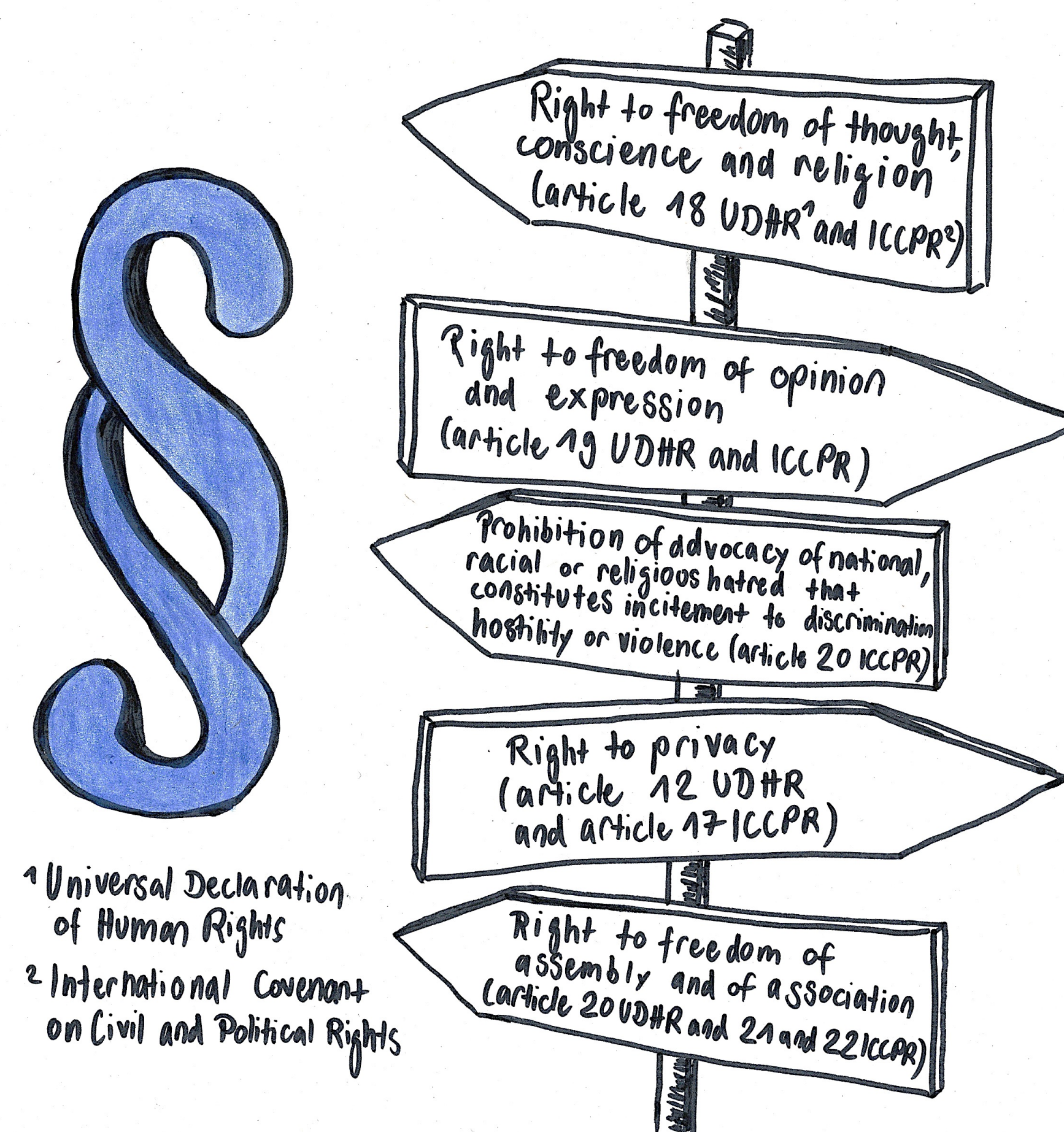
3. Preliminary Findings

Status Quo of the Protection of Human Rights in the Digital Context

- “Normative equivalency paradigm”: as far as human rights guaranteed under international law are concerned, the UN Human Rights Council confirmed in a resolution in July 2012 that the same rights that people enjoy offline must also be protected online (UN Doc. A/HRC/RES/20/8)
- How IHRL applies online is still largely unclear
- The dynamic interpretation of human rights treaties can resolve many questions
- Business and human rights framework may help to bridge the governance gap between the human rights impact of businesses and the state-centeredness of IHRL
- Wide agreement that, in addition to ethical guidelines etc., legal regulation is necessary to protect human rights online

- Currently increasing regulation in the digital context, but at the same time risk of overreaction and abuse by legislators
- Contested understandings of sovereignty online → while IHRL in particular limits national internet policies, sovereignty-oriented states claim a right to exclusively control the content of the “national internet segment”
- Enforcement difficulties regarding rights online

Main Legal Provisions regarding the Digital Religious Practice
Human rights guaranteed under international law that are relevant for the protection of the practice of religion in the digital context:



Restrictions on Human Rights in the context of Digital Religious Practice

Restrictions on human rights regarding the digital religious practice take various forms such as (transnational) surveillance measures, filters and censorship. Laws enacted to improve cybersecurity or to combat terrorism on the internet, which at first glance appear neutral, may have a discriminatory effect on members of religious communities. The so-called “A-B-C-laws” (apostasy, blasphemy, conversion) are now increasingly being joined by information technology laws, which de facto have the effect of blasphemy laws, restricting freedom of expression through vague terminology and creating a climate of insecurity and fear. In his 2019 report, the UN Special Rapporteur on Freedom of Religion or Belief drew attention to the danger of “digital authoritarianism”, which has turned cyberspace to a dangerous place for dissenters and religious

minorities (UN Doc. A/HRC/40/58). Some of the most serious violations of rights related to the digital religious practice in recent years can be traced back to private actors. Our research project, however, focusses primarily on state action.

Examples of specific restrictions:

- Purchase of movement data by US government entities, collected worldwide from Muslim dating apps and prayer apps, sold by data brokers
- Vast cyberespionage operation by hackers most likely linked to the Iranian government, targeting, among others, religious minorities
- Invasive electronic surveillance directed at the Uyghur and other predominantly Muslim populations in China
- Administrative measures for Internet religious information services in China → from March 2022, anyone who wants to publish religious information on the internet will need a state licence
- Content on Facebook inciting violence against religious minority groups, for example in India and Myanmar

Shortcomings of the Prevailing Understanding of the Protection of Human Rights in the Digital Context

- It is difficult to reach international consensus on religion-related issues → achieving the protection of human rights in the digital context through the normative equivalency paradigm alone appears difficult and may need to be discussed and regulated more specifically
- Without a transnationalised interpretation of key concepts of IHRL (e.g. jurisdiction and human rights obligations), it is questionable whether it can retain its ability to address problems effectively in the cross-border digital context
- Given the powerful role of private actors in the digital context and their control over the exercise of human rights, the effective implementation of the state’s duty to protect remains difficult
- The right to freedom of religion has not yet received sufficient consideration when it comes to the digital context, as opposed to the right to freedom of expression and the right to privacy
- The main threats to human rights in the digital context are linked to the flow of data → the impact of data on other human rights besides the right to privacy needs to be clarified in order to determine the scope of their protection
- In light of the blurring of the private and public sphere in the digital context, particular attention should be paid to the right not to be obliged to disclose one’s religion or beliefs

4. A Selection of Open Questions

- Is the «normative equivalency paradigm» suitable as a normative baseline?
- Does the responsibility of states and private actors for protecting human rights in the digital context need to be redefined?
- To what extent do people align themselves online according to their religious convictions also in terms of practical life (lebenspraktisch)?
- How does data on religious belief differ from other (sensitive) data and to what extent should it be protected on the basis of human rights?

Contact

christine.kaufmann@uzh.ch lorenz.langer@uzh.ch
cristina.frei@uzh.ch

Literature

- Altwicker, Transnationalizing Rights: International Human Rights Law in Cross-Border Contexts, 29 European Journal of International Law (2018)
- Ashraf, Exploring the impacts of artificial intelligence on freedom of religion or belief online, 26 The International Journal of Human Rights (2021)
- Bielefeldt/Wiener, Religionsfreiheit auf dem Prüfstand: Konturen eines umkämpften Menschenrechts (2020)
- Dror-Shpoliansky/Shany, It’s the End of the (Offline) World as We Know It: From Human Rights to Digital Human Rights – A Proposed Typology, 32 European Journal of International Law (2021)
- Kettemann, The Normative Order of the Internet: A Theory of Rule and Regulation Online (2020)
- Land, Toward an International Law of the Internet, 54 Harvard International Law Journal (2013)
- Schmahl, Digitalisation and International Human Rights Law: Opportunities and Critical Challenges, in Golia/Kettemann/Kunz (eds), Digital Transformations in Public International Law (2022)