

In the name of religion

What is at stake as Norwegian lawmakers discuss a possible ban on conversion therapy?

Candidate number: 8010

Submission deadline: 1 June 2020

Number of words: 19.993



Acknowledgements

First, I would like to thank my supervisor Stener Ekern who welcomed my thesis idea from the beginning and helped me look at the subject from a different, highly valuable perspective that made the research a lot more interesting. Thank you for encouraging me and challenging me along the way. I am particularly grateful to all my informants who wanted to participate and were brave enough to share some of their thoughts and beliefs on such a contested subject. I would also like to thank my fellow students and the staff at the Norwegian Centre for Human Rights and my coworkers at the newspaper *Vårt Land* for giving me two arenas where I have been able to challenge myself, learn things I never would have otherwise, and be inspired by the competent people around me. I never would have thought of this research subject if it was not for you. I also want to thank the Fritt Ord Foundation for believing in my idea and granting me a scholarship. Thank you to all my friends and family for valuable input and rooting along the way. Especially thanks to Morten Marius for helping me find relevant informants, my cousin Erik for improving my English, and Sigurd for offering his legal expertise. Finally, thank you Morten for being so patient, understanding and always encouraging – even when this thesis has gotten the best of me.

Abstract

Sexual Orientation Change Efforts (SOCE), also known as conversion therapy, is an umbrella term that comprises several different techniques and practices that aim to «help» people with «unwanted same-sex attraction». The phenomenon poses a threat to a range of different human rights and therefore several US states have banned the practice. Also, as this thesis was being written, Norwegian legislators were set to discuss a potential ban on the practice in Norway. The thesis looks at the phenomenon from a human rights perspective, focusing on sexual freedom as the right to non-discrimination on one hand, and religious freedom as the freedom of religion and conscience on the other. It especially addresses what happens when the morality of human rights clash with the morality of a religious belief system, with a focus on conservative Christians that believe homosexuality is a sin. The thesis finds that both sexual and religious freedom are at stake as Norwegian legislators discuss a potential ban on SOCE and explains how. By interviewing seven young conservative Christians in Norway the thesis describes why this group feel their religious freedom is threatened by a potential ban on SOCE and explores how they define themselves and sexual minorities as they argue their case. The thesis finds that these young conservative Christians see sexual preferences as less important for one's identity than religious belief. In that way it makes sense for them that some might want to live their lives according to their religious belief and not according to their sexual preferences – and they are willing to defend their right to do so.

List of abbreviations

- ICCPR International Covenant on Civil and Political Rights.
- IHRL International Human Rights Law.
- LGBT Lesbians, gays, bisexuals and transgenders. This abbreviation is used interchangeably with «gays», «homosexuals» and «sexual minorities» since this thesis does not consider transgenders.
- SOCE Sexual Orientation Change Efforts. This abbreviation is used interchangeably with «conversion therapy».

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1 Introduction

Sexual Orientation Change Efforts (SOCE), also known as «conversion therapy», was common practice at a time when homosexuality was viewed as an illness.¹ The umbrella term SOCE comprises several different techniques and practices that aim to «help» people with «unwanted same-sex attraction».² When a documentary series published by the Norwegian newspaper *VG* claimed that such practices were currently taking place in Norway in 2019³, many people reacted with shock and rage.⁴ It also initiated a political debate that led the former Equality Minister to send a letter to the Parliament on behalf of the Norwegian Government in November 2019, with a promise to «start an investigation into how practices that aim to change someone’s sexual orientation or sexual identity relates to national legislation and human rights including protection against discrimination and freedom of religion».⁵ The only governing party that did not support the letter, nor a potential ban on conversion therapy in Norway, was the Christian Democrats (Kristelig Folkeparti).

On the other side of the Atlantic Ocean, in 2018, it was estimated that 16,000 teenagers (ages 13-17) in the United States of America would go through SOCE before they turn 18.⁶ This has led several US states to ban the practice for health care professionals – but not for religious or spiritual advisors who engage in SOCE within their pastoral or religious capacities.⁷ Still, some religious groups insist that these bans should be opposed as they pose a threat to people’s freedom of religion and conscience. The opposition against these bans in the US and a potential ban in Norway illustrates how the morality of human rights can sometimes clash with the specific morality of a religious belief system.⁸ It is this societal, political and legal clash that is the basis for this thesis. By using a human rights-based approach the thesis seeks to explore what is at stake, both in terms of protection against discrimination and freedom of religion – here referred to as sexual and religious freedom – as Norwegian legislators are set to discuss a potential ban on conversion therapy later in 2020. Through a theoretical and legal analysis, the thesis will explain what International Human Rights Law (IHRL) says about sexual and religious freedom and explore the contentions arising between them. Further, a discussion on what science, existing US legislation and Norwegian politicians say about SOCE will be offered. Finally, through an interview-based qualitative case study, the thesis

¹ Schumer, «Abusing Our LGBT Youth», p.54.

² Friedman, «The Right to Stay Gay», p.194.

³ [Homoterapi](#), 2019.

⁴ Tjellaug, «[Kirkerådslederen reagerer etter debatt om homoterapi](#)», 2019.

⁵ Innstilling 87 S., attachement 3.

⁶ Scientific American, «[A Nationwide Ban Is Needed for “Anti-Gay Therapy”](#)», 2020.

⁷ The Williams Institute, «[Conversion Therapy and LGBT Youth](#)», 2019.

⁸ Fagan, *Human Rights and Cultural Diversity*, p.182.

will reveal that conservative Christians in Norway feel their religious freedom is threatened by a potential ban on SOCE and explain what makes them worried and why. The circumstances described above form the basis for guiding this research, formulated as two research questions:

1. What is at stake in terms of sexual and religious freedom as Norwegian lawmakers discuss a possible ban on conversion therapy?
2. Why do conservative Christians in Norway feel their religious freedom is threatened by a potential ban on conversion therapy?

This study focuses solely on Christianity and particularly on Christians who believe marriage is between man and woman and consider homosexuality a sin. They are here referred to as «conservative Christians». This is, however, not a belief that all Christians (nor conservatives) hold.⁹ At the same time, all secular belief systems do not negate anti-homosexual views and there are other religions that also have predominantly anti-homosexual views. Still, there were conservative Christians from various congregations that mainly opposed a potential ban on conversion therapy in Norway in 2019, and it is conservative Christians in the US that have brought several cases to court over the last years citing their religious rights.¹⁰ Therefore, they are the subject of this study.

Many factors, not only human rights issues, are at stake as Norwegian politicians discuss a potential ban on SOCE. Considering the scope of the thesis, I do not, for example, address SOCE on children and therefore a discussion on children's and parental rights are not included. Neither do I consider SOCE that aim to change a transgender person's gender identity. Instead, I solely focus on SOCE targeted at people over the age of 18 who experience same-sex attraction. I still use the term LGBT since most relevant research is done on this group as a whole. I do not address other relevant human rights such as the right to privacy, freedom of speech, or the prohibition of torture or cruel, inhuman or degrading treatment, that are all relevant in this sense.¹¹ Instead, I focus on freedom of religion and conscience on one hand, and the right to non-discrimination and equality, on the other. This is primarily because these are the rights that the Norwegian legislators have chosen to focus on in their investigation.¹² Throughout the thesis these rights will be referred to as «religious freedom» and «sexual freedom». These are simplifying terms that both involve sets of different rights

⁹ Bergem, «[Mener tiden er inne for å drøfte samlivsetikk i Erikirken](#)», 2019.

¹⁰ For example, *Burwell v. Hobby Lobby* and *Miller v. Davis*.

¹¹ Nugraha, «The compatibility of sexual orientation change efforts with international human rights law».

¹² Innstilling 87 S., attachment 3.

and factors but chosen here because it makes sense to see them in connection with each other, both as antitheses but also as equivalents. This will be further addressed in Chapter 2.

Even though the research questions focus on Norway, I have chosen to include discussions on the US political, legal, and societal context. This is largely due to the wealth of useful research that has been conducted about the clashes between religious and sexual freedom, SOCE and bans on SOCE in the US. This also helps place the phenomenon of SOCE in a concrete context and move the debate about it forward. Norway and the US are two different countries, but it is relevant to compare them because of the political and social climate that has arisen after discussions on potential and actual bans on SOCE. To find out more about the background for why these bans have been so politically and socially polarizing, the study will look closer at the legal, political and societal contexts in both countries through methods explained in the next section.

1.1 Methodology

This thesis is based on a qualitative research process and consists of empirical discussions of what a ban on SOCE will mean in terms of human rights. Chapter 2 and 3 present the theoretical foundation of the thesis and creates the framework for Chapter 4. These two chapters mainly focus on answering the first research question, namely, what will be at stake, in terms of religious and sexual freedom, when Norwegian legislators discuss a potential ban on SOCE. Chapter 2 explains what IHRL and the two respective states' legal frameworks say about religious and sexual freedom and the clashes between them. The primary focus herein will be on IHRL. Chapter 3 explains what SOCE is and presents a discussion on how these efforts pose challenges to both sexual and religious freedom. For these chapters I conducted a human rights-based textual analysis that includes philosophical, political, societal and legal perspectives heavily relying on relevant primary and secondary literature. I include news reports and texts from the existing legal framework, plus case law. This part of the research started with a literature review searching for relevant literature in different databases such as [Oria](#) and using the bibliographies from the articles and books I found as a way of continuingly finding new and relevant literature. The literature review helped me narrow down the aim and content of the thesis.

Chapter 4 mainly seeks to answer the second research question – why do conservative Christians in Norway feel their religious freedom is threatened by a potential ban on conversion therapy? In order to find answers, I have carried out a small qualitative case study based on semi-structured interviews with seven informants that self-identify as Christians, are of the belief that to live in a homosexual relationship is sinful, and are willing to discuss SOCE and a potential ban on it. The reason for carrying out these interviews was to bring some new perspectives to the study, and shed light on the context these believers find

themselves in. This kind of ideographic case study aims to construe, explain, and describe a case in itself.¹³

1.1.1 Law-in-context method

Since this is a study of both the theory and practice of human rights, I primarily rely on a qualitative law-in-context method that emphasizes the societal and political context that legal concepts appear in. «Law» is in this method understood as a social phenomenon shaped in a social and cultural context and therefore not seen as an independent non-social construct.¹⁴ This kind of method implies the use of interdisciplinary research and also different methodological disciplines which has proven to be a very fruitful way of studying human rights.¹⁵ The flexibility of interdisciplinary research is particularly important for this study as it seeks to look closer at the debate around SOCE – a phenomenon which can be viewed from a societal, political, scientific, philosophical, and legal perspective. This study is therefore rooted in an interdisciplinary law-in-context methodology.

The literature review is based on a textual analysis also rooted in the law-in-context method. It is qualitative in the sense that it is not a series of statistical procedures, but interpretation and analysis based on knowledge of theory and its underlying empirical evidence.¹⁶ Since the literature review also includes legal sources like IHRL, national jurisdiction and various documents from the United Nations (UN), a legal approach is also used to expose the legal scope and application of human rights.

1.1.2 Case study based on interviews

Chapter 4 consists of a qualitative case study as it seeks to explore a social phenomenon (SOCE) in terms of the meaning people bring to it, and tries to systemize and provide insight to some particular human expressions.¹⁷ This provides a way of looking at law in context as it seeks to both explore how a group – in this case young, conservative Christian adults in Norway – gives a law proposal (ban on SOCE) social meaning and how they use their own «laws» to interpret themselves and the society around them.

Case studies are intensive studies of one or a few research units¹⁸ where the aim is not necessarily to develop new theories but use concepts and theoretical contexts to interpret

¹³ Levy, «Case Studies», p.2-3.

¹⁴ Focarelli, *International Law as Social Construct*, p.33.

¹⁵ Langford, «Interdisciplinary research and multimethod research», p.161.

¹⁶ Andersen, *Casestudier*, p.14.

¹⁷ Greenhalgh & Taylor, «How to read a paper», p.740.

¹⁸ Andersen, p.13.

empirical material.¹⁹ As my aim was to get a deeper understanding of why conservative Christians feel the way they do about a potential ban on SOCE, I believe this was the most effective way to answer the second research question. It is said that if the objective of the research is to «explore, interpret, or obtain a deeper understanding» of a specific issue, «qualitative methods were almost certainly the most appropriate ones to use».²⁰ Semi-structured in-depth interviews aim to understand and document the world seen from the informants' point of view. This way, in-depth interviews make it possible to delve deeper into a subject rather than simply scratching the surface. It also allows for complexity, contradictions and ambivalence that informants often articulate in an interview that a quantitative research approach might not catch.²¹ The interviews were semi-structured in order to focus on the main question of my interest and to allow for flexibility for follow up on questions that offered useful opportunities to do so.²²

1.1.2.1 Informants

My data collection consists of seven recorded interviews, including four women and three men from four different Christian congregations or denominations: the Pentecostal movement, the Anglican church, Brunstad Christian Church (BCC) – also known as Smith's friends – and one independent evangelical church (Misjonskirken). They are all between 22 and 30 years old. I wanted to interview relatively young people in order to test the common perception that those who oppose a homosexual lifestyle usually belong to the older generation. This proved not to be the case. The selection of informants for qualitative interviews is usually based on a specific person or group of people that represent a wider population or as Bryman²³ puts it; «sampling» – a small and targeted portion of the bigger population. The main inclusion criteria for me was that the informants believe homosexuality is a sin and therefore one should not freely express one's homosexual instincts or feelings. When I started the research I also included a criteria that the informants had to believe that SOCE could work, but as I started the actual process of interviewing I found that this was a complex subject and therefore changed the criteria to «being able to discuss whether SOCE could have an effect or not».

I recruited my informants through both «convenience» and «the snowball effect». A convenience sample is one that is available to the researcher by virtue of accessibility while the snowball sampling indicates that through the contact with some of the already recruited

¹⁹ Andersen, *Casestudier og generalisering*, p.68-69.

²⁰ Greenhalgh & Taylor, p.741.

²¹ *ibid.*, p.740.

²² Bryman, *Social Research Methods*, p.440-41.

²³ p.186.

informants the researcher comes in contact with further potential informants.²⁴ I first drew on sources I had available through my everyday job as a journalist in the Christian newspaper *Vårt Land*. I asked the leaders of some of the conservative Christian congregations if they could ask their members between 25 and 35 years old if they would be willing to contribute to my master thesis. I informed them about the criteria and the purpose of the study. I also got help from a colleague who knew people in relevant congregations. The recruitment went smoothly as the informants seemed to find the study interesting and felt like it was a good opportunity to explain their opinions on a rather controversial subject. It was also an important criterion for most of them that they remained anonymous throughout the thesis.

1.1.2.2 Data collection and interview setting

Before conducting the interviews, I developed an interview guide consisting of five different categories with open questions, inviting the informants to elaborate on the topic (see Appendix). The interview guide proved to be valuable even though I did not always follow it in the exact order that it was outlined. I did, however, make sure that all informants answered all the questions I had laid out, as I felt the answers were imperative for the purpose of my study. I also asked some questions that were not included in the guide as a follow-up to certain points informants raised – in accordance with the guidelines of a semi-structured interview.²⁵

I waited to carry out the interviews until receiving approval of the project from the Norwegian Centre for Research Data (see Appendix). All informants also received an information letter before the interview took place and signed an informed consent form before or right after the interview was done (see Appendix). This procedure was used to maintain the confidentiality of the participants and it was also important for me to highlight the fact that they could access the reported information at any time or withdraw from the project. None of them did either.

All the interviews were conducted over the period from the 26th of February to the 12th of March 2020. The interviews lasted between 30 to 80 minutes. Four of the interviews were done electronically through FaceTime due to geographical distance and later due to the COVID-19 virus. Though the circumstances were quite different, varying from the informant's home, my office, a café and through FaceTime, I endeavored at all times to make sure that the atmosphere felt safe, so the informants did not feel like I was pressuring or confronting them. The informants were given the choice of where and how to meet. Since faith and homosexuality are quite personal subjects and to some riled with taboo, to talk in a

²⁴ Bryman, p.202.

²⁵ *ibid.*, p.471.

safe environment was particularly important. It is worth mentioning though, the interview that took place in a café was the one which provided me with the least valuable outcome. I believe this had to do with the lack of privacy.

I spent some time explaining the background and aim of my study before I started interviewing the informants. I also explained to them what I meant by terms like conversion therapy, in order to avoid misunderstandings. I started all the interviews by letting the informant talk a little bit about themselves, their background and how they came to faith. This seemed to make them more at ease before going into more challenging topics which I tried to postpone until the informant seemed comfortable in the interview situation.

1.1.2.3 Transcription and coding

I transcribed all the interviews right after I had finished them while they were still fresh in mind. The transcription is done in order to process the raw data and later categorize it, better known as coding, so one can organize the relevant content in a way that makes it possible to identify correlations or a lack of them. How many categories one chooses to create varies and depends on what is relevant and how much material the researcher can handle. As is quite usual for this process, I had to go through the material more than once in order to facilitate the subsequent coding and later analysis. This is also a proof of the method's flexibility.²⁶ It is important to keep in mind that the selection of material and assessment of the analysis is subjective in the way that I, as a researcher, never can be entirely objective, especially since I approached the research with a clear objective.²⁷

After transcribing, I read through the transcripts several times before I excluded information that was not relevant to answer the research question. Then I started the task of identifying patterns²⁸ by highlighting words, sentences and paragraphs that represented similar meanings or answer to the same questions. I used the categories from the interview guide to thematically organize the answers in a way that made sense for further discussions and in that way created codes that reflected the observed meaning of the text. The coding process became just as much a process of narrowing down the data and only including relevant information. I also spent a great deal of time analyzing the material in terms of the theoretical framework I had already outlined. I chose to focus on the material from the interviews that either supported or refuted what the theoretical framework insinuated.

²⁶ Schreier, *Qualitative Content Analysis*, p.170-1.

²⁷ Bryman, p.405.

²⁸ Schreier, p.170-1.

1.2 Validity, reliability and relevance

Validity is here seen as the study's credibility while reliability often refers to the dependability of the process.²⁹ A way that the validity of this study proves strong is through the correlation between the informants' answers and what has been reported in other studies. At the same time, validity also has to do with the integrity of the conclusion of a study which can be impacted on by, for example, the researcher's own set of values and beliefs.³⁰ The fact that I also have a Christian background and work for a Christian newspaper could for example have affected my approach to the research. However, I believe I have managed to keep these out of the research as much as possible, but as already mentioned, one can never be entirely neutral, so this has to be taken into account.

Reliability is not necessarily the strength of qualitative research, especially with such a small sample size as this one. However, the aim has not been to statistically generalize³¹, but to contribute with an empirical discussion about what the bigger policies and jurisdictions mean for individuals. The study can therefore be valuable also for other cases than SOCE and serve as a sample of a broader concept: the clashes between different human rights and in particular, between religious and sexual freedom in a state. Some scholars also argue that country-specific case studies like this can be used to illustrate a larger situation or development.³² The findings from my study can therefore help further addressing the conflict between religious freedom and others' rights.

The thesis is particularly relevant in the sense that it seeks to explore a topic that is currently being discussed among politicians and religious leaders. This has also made it easier to find relevant articles relating to the research and to observe how the topic is being approached in the public domain whilst conducting the research. Another factor that makes it particularly relevant is that it brings a new perspective to the field by interviewing conservative Christians in Norway and attempts to understand the basis for their attitudes, values and beliefs regarding religious and sexual freedom.

1.3 Research challenges, limitations and ethical considerations

To be open and clarify potential weaknesses and challenges of one's own research is crucial in research processes like this.³³ One aspect of the study can be seen as both a strength and a challenge for conducting the research. Namely, that it attempts to explain the relationship

²⁹ Greenhalgh & Taylor, p.740.

³⁰ Bryman, p.47.

³¹ Yin, *Case Study Research*, p.40.

³² Gerring, *Case Study Research*, p.4.

³³ Levy, p.9.

between sexual minorities and conservative Christians from the perspective of the latter. Usually, studies on this subject have (successfully) proven that LGBT rights across the world are threatened by various religious practices, including Christianity. The results of these studies constitute a significant body of reference for this thesis and was one of the main reasons for why it was ever thought of in the first place. That being said, I have not interviewed LGBT people – neither in secular nor religious contexts – and heard their perspective. Instead I have chosen to interview the other side of this complex relationship; the conservative Christians. Even though this poses a challenge to the research, it was a conscious decision made in order to bring new perspectives to the ongoing debate and to try to understand those attitudes and beliefs that have not yet been extensively researched, at least from a Norwegian perspective. At the same time, as already mentioned, the study is heavily based on scientific evidences that conversion therapy equals violations of fundamental human rights. This is a way of meeting that challenge that I believe justifies my choice of group to focus on.

Another challenge that has already been considered a strength, as discussed above, is the relevance of the topic. The fact that so much is going on right now regarding SOCE in both Norway and the US makes it challenging to ensure that the research takes the latest developments on the issue into account. I cannot be entirely sure that I manage to do this, but as a way of meeting that challenge, I concede here the possibility of this shortfall.

In terms of ethical considerations concerning the interviews, I was careful to follow the Norwegian Center for Research Data's guidelines and made sure that the informants felt confident in me as a serious researcher. I also reflected carefully on my role as a researcher and tried to make sure that my own set of values did not influence the resulting analysis.³⁴ Still, the information the informants provided concerning SOCE is based on third person reports and therefore cannot be verified. By interviewing people who has gone through SOCE themselves I could have established a clearer picture of the practice and could have been able to draw other conclusions. This, however, would have taken a lot more time to go through with, and should rather be considered as a potential step forward from this study. Finally, there is a possibility that the informants gave answers they thought I wanted to hear considering how controversial the question of homosexuality and SOCE is today. I perceived my informants as sincere, but I cannot guarantee that all their answers were accurate.

There have also been challenges resulting from the literature review and the textual analysis of the research. These had to do with the selection of secondary sources and the potential bias

³⁴ Bryman, p.405.

in doing so. When it comes to the specific topic of homosexuality and Christianity there is plenty of biased research out there, especially emanating from the US where this is a highly contested issue right now.³⁵ In order to meet this challenge, I have at all times identified the writer, the institution and the publication, and made sure to do proper research on who they represent.³⁶

Bearing these challenges, limitations and considerations in mind, the structure of the rest of the thesis will be as follows: Chapter 2 addresses religious and sexual freedom in terms of IHRL, Norwegian and US legislation and the potential clashes between the two freedoms. Chapter 3 assesses the concept of SOCE in both the US and Norway by looking at relevant legislation, jurisdiction and public and political debate. It also looks at SOCE from an IHRL perspective and how looks at how both SOCE and bans on the practice challenge IHRL. Chapter 4 presents and discusses the findings of the interviews in terms of the theoretical framework that has been laid out. The thesis finishes with a conclusion that summarizes the main findings, concludes the arguments, and points a way forward for further research.

2 Religious and sexual freedom

This chapter addresses religious and sexual freedom relating to IHRL and references the legal framework of Norway and the US on the topic. It also examines the potential conflicts between the two freedoms.

2.1 Religious freedom

As mentioned above, religious freedom is here understood as freedom of religion and conscience, with emphasis on how it is defined in the International Covenant on Civil and Political Rights (ICCPR), but also the European Convention of Human Rights (ECHR) and in Norwegian and US legislation. The main focus will be on the legal framework, but the moral and philosophical grounding of religious freedom will also be touched upon. Dr. Andrew Fagan, director of the Human Rights Centre in London, has focused his research on the normative, political and cultural challenges to human rights. He highlights the fact that religion has not always been IHRL's best friend – nor the other way around: «A commitment to the doctrine of human rights has often been considered and denounced as the latest expression of faith-less secularism».³⁷ Nevertheless, religion has been and still is an integral component of IHRL and human rights norms.³⁸ Fagan also argues that religion is fundamental to many people's identity. He thinks that one of the main differences between human beings

³⁵ Ravitch, *Freedom's Edge*, ix.

³⁶ Yin, p.46-47.

³⁷ Fagan, p.170.

³⁸ *ibid.*

and other animals is our capacity for religious experience. He believes religion is «an indispensable feature for many human beings' sense of their own dignity».³⁹

Legal scholar Megan Pearson has written about the conflict between freedom of religion and equality rights. One of her main arguments is that freedom of religion «protects autonomy, a sense of identity and important relationships, as well as being part of freedom of conscience».⁴⁰ Freedom of religion and freedom of conscience are closely related, illustrated by the fact that they are listed in the same Article of the ICCPR. Religious conscience claims are often a subset of broader conscience claims, but a majority of conscience claims regarding for example reproductive rights, have some kind of religious basis.⁴¹ Theologian and philosopher James Childress has emphasized that conscience function as a sanction, meaning that if one is forced to act against one's conscience one risks losing «integrity or wholeness which is closely linked to the sense of guilt and/or shame».⁴² This is part of the reason why conscience claims have gotten such an important standing, including in various religious contexts.

Pearson also emphasizes religion as a part of someone's autonomy:

«There is an important norm that all should be free to seek their own ultimate convictions without state interference and that they should be able to live in accordance with these convictions, where possible and where compatible with others' rights».⁴³

It is this last part concerning «others' rights» that proves especially relevant in this context. As Fagan writes, «the right to religious freedom lies at a highly important juncture at which many competing forces converge, cross and, on occasion, collide».⁴⁴ Religious freedom can lead individuals and communities to «claim dispensation from the need to recognize others' rights to pursue interest and objectives which are taboo or roundly condemned amongst those claiming their religious right».⁴⁵ And when one's religious commitment affects other people's rights it is no longer that easy to defend those religious practices from an IHRL perspective. For instance, how religious practice can involve discrimination against sexual minorities. As

³⁹ Fagan, p.183.

⁴⁰ Pearson, *Religious Objections to Equality Laws*, p.14.

⁴¹ Ravitch, p.136-37.

⁴² Childress, «Appeals to Conscience», p.322.

⁴³ Pearson, p.12.

⁴⁴ Fagan, p.182.

⁴⁵ *ibid.*

mentioned in Chapter 1, Fagan says that in this way, «the morality of human rights can sometimes clash with the specific morality of a religious belief system which some of its adherents claim cannot tolerate some others' lifestyle choices».⁴⁶ I will address these kinds of clashes and particularly that between religious and sexual freedom in the last section of this chapter.

Article 18 and 27 of the ICCPR both concern religious freedom but in different ways. Since Christians are not a religious minority in neither the US nor Norway, Article 27 is not relevant for this thesis. Article 18 on the other hand, applies to every human being on earth.⁴⁷ Both the US and Norway are party to the ICCPR⁴⁸ which means they have ratified the treaty and are committed to respect, protect and fulfil the human rights stated.⁴⁹ The ICCPR is a legally binding treaty. Article 18(1) states that «everyone shall have the right to freedom of thought, conscience and religion» and is a comprehensive right that involves several different features. The comprehensiveness of it is also reflected through the fact that it is non-derogable – even in times of public emergency.⁵⁰ Even though Article 18(1), which ensures *holding* a religious belief cannot be limited or suspended, Article 18(3), which provides the right to *manifest* one's religion, can, in turn, be limited as long as the limitations meet the conditions of legality, legitimacy and proportionality.⁵¹ The limitations on Article 18(3) have to be prescribed by law and be necessary to protect public safety, order, health or morals – or the fundamental rights and freedoms of others.⁵² Therefore, it is quite clear in IHRL that when one's religious manifestation result in the violation of others' fundamental rights, the latter will be favored.⁵³

The wording of Article 18 of the ICCPR indicates that it is an *individual* freedom. But as this thesis will demonstrate, religious freedom also involves an important collective dimension. UN Special Rapporteur on freedom of religion and belief, Heiner Bielefeldt, talks about the collective dimensions of Article 18 and how individual freedoms often depend on self-defined community commitments.⁵⁴ For example, he points to how most religions have an ambition to shape and affect the societies in which they are situated. In this way, religious beliefs will also shape the way one perceives the rest of the society. Fagan is also quite clear that human rights

⁴⁶ Fagan, p.182.

⁴⁷ Lindholm, «Religious Freedom as a Human Right», p.7.

⁴⁸ UN Treaty Collection, «[4. International Covenant on Civil and Political Rights](#)».

⁴⁹ de Schutter, *International Human Rights Law*, p.280.

⁵⁰ *CCPR General Comment No.22: Art.18*§1.

⁵¹ de Schutter, p.339.

⁵² *CCPR General Comment No.22: Art.18*§8.

⁵³ Fagan, p.200.

⁵⁴ Bielefeldt, NCHR, February 2018.

cannot be reduced to satisfy disparate individual desires. He believes that we are fundamentally influenced by our surrounding social conditions – and not just our actual lives but also how we choose to evaluate others’ lives.⁵⁵ I will return to these collective dimensions in Chapter 4.

Even though there are distinct collective dimensions of religious freedom, some scholars seem to sense that it has become increasingly common to argue against sexual minorities’ rights in terms of one’s *personal* religious freedom.⁵⁶ The American social scientist Howell Williams has looked further into conservative Christians’ argumentations relating to their opposition to LGBT rights over time. He finds that these conservatives, at least in the US, are currently more likely to describe their opposition as a matter of religious freedom or personal conscience today than they were in the past. Earlier it was more common to hear arguments based on collective understandings like «family values» or «tradition».⁵⁷ This contradiction will be further addressed in Chapter 4 when discussing the findings from the case study.

2.1.1 In Norway

The right to religious freedom shall first be enforced by the national authorities of a state, then by IHRL. The Norwegian Constitution ensures all inhabitants in Norway the right to free exercise of their religion.⁵⁸ Article 18 of the ICCPR and Article 9 of the ECHR also ensures freedom of religion in Norway through section 92 of the Constitution and the Human Rights Act of 1999.⁵⁹ When it comes to the correlation between international law and national law, Norway follows the dualistic principle meaning international law is not directly applicable on the national level.⁶⁰ Still, as legal scientist Njål Høstmælingen emphasizes: «Norwegian courts have a long tradition of handling international law in a national law context, establishing as customary law the so-called principle of presumption and the principle of effectiveness».⁶¹ This means, that when interpreting Norwegian law one should, within the scope of a legally acceptable interpretation, assume that national legislation is in accordance with the binding international law. When Norwegian law can be interpreted in several ways, the outcome which is in accordance with international law, binding to Norway, should be chosen unless the interpretation is *contra legem*.⁶² In addition, the Human Rights Act section

⁵⁵ Fagan, p.39.

⁵⁶ Williams, «From Family Values Religious Freedom», p.248.

⁵⁷ *ibid.*

⁵⁸ *Constitution of the Kingdom of Norway*, §16.

⁵⁹ Høstmælingen, «The Permissible Scope of Legal Limitations on the Freedom of Religion or Belief in Norway», p.989.

⁶⁰ *ibid.*, p.990.

⁶¹ *ibid.*, p.992.

⁶² *ibid.*

3 gives international law, listed in section 2, supremacy if national law is in conflict with these international law obligations. These national rules are mechanisms that ensures the effective and enforceable protection of the rights set out in the ICCPR.

Freedom of religion in Norway is also protected through the Equality and Discrimination Act that entered into force in 2018, replacing four previous legislations on the subject. The law is a national implementation of the fundamental human right to not be discriminated against based on group affiliation⁶³ – an issue the thesis will return to in the next section on sexual freedom. It is an especially interesting piece of legislation to consider for the purpose of this thesis as it aims to protect both religious people *and* sexual minorities from discrimination, however it does not state what should be given most weight if the two conflict.

2.1.2 In the US

As Norway, the US is also legally bound to Article 18 of the ICCPR. That being said, religious freedom and freedom of conscience have been given special attention and protection since the founding of the USA⁶⁴ and is therefore seen as a fundamental value in US constitutional law.⁶⁵ The First Amendment of the US Constitution protects «free exercise» and «non-establishment» of religion. However, even though the US Constitution is crystal clear about protecting religious freedom, there have been several outcries over the reality of religious freedom in the US. Many of the outcries have concerned exemptions given or *not* given in terms of generally applicable law when those laws substantially burden religious practice in some way or another. The result of these uproars led to a new law called the Religious Freedom Restoration Act (RFRA) in 1993.⁶⁶ Under RFRA, laws that impose a substantial burden on religious practices are required to be subject to strict scrutiny.⁶⁷ That means that unless the government has a *compelling* (extremely important) interest and the law or government action is the only practical way to meet that interest, the government must provide an exemption for the religious individual or religious organization.⁶⁸ RFRA laws can for example allow business owners to deny service to homosexuals on religious grounds and exempt for-profit entities from regulations that its owners religiously objects to, like for example provide contraceptive coverage to their employees.⁶⁹

⁶³ Ik Dahl, [likestillings- og diskrimineringsloven](#), 2018.

⁶⁴ Ravitch, p.13.

⁶⁵ Wallace, «Justifying Religious Freedom», p.486.

⁶⁶ Ravitch, p.26.

⁶⁷ Pearson, p.10.

⁶⁸ Ravitch, p.26.

⁶⁹ *Burwell v. Hobby Lobby*.

The fact that RFRA was subject to some major resistance only four years after it had passed (the Supreme Court held that Congress had exceeded its authority by imposing RFRA on the states⁷⁰) illustrates quite well how contested the issue of religious freedom is in the US context. The RFRA still applies to federal action and 21 states have passed their own RFRA that apply to their state and local governments.⁷¹ Some of these state laws have been passed as a reaction to the strengthening of LGBT rights and sexual freedom in the US, as will be illustrated in the next section.

2.2 Sexual Freedom

US law professor Frank Ravitch has written a book about the tensions between religious and sexual freedom in the US. In it, he admits that «sexual freedom» is not necessarily the ideal term to employ when discussing the complex relationship between religious freedom on one hand, and LGBT rights on the other.⁷² However, he claims that «gay rights» or «LGBT rights» are not really any better terms as they involve sets of rights like non-discrimination, same-sex marriage, reproductive freedom and broader claims for social recognition. Sexual freedom also encompasses all of these factors and more but is chosen in this thesis because it makes sense to see it in connection with religious freedom. Both freedoms are about, among other things, being who you are without government interference or discrimination in the most fundamental aspects of life.⁷³ There are, as mentioned above, several aspects regarding sexual freedom that could have been looked at here, but for the scope and purpose of this particular study the main focus will be on non-discrimination. This is primarily because it is one of the main principles behind IHRL⁷⁴, but also, as mentioned in Chapter 1, because this is what the Norwegian government has chosen to focus on in their discussions on SOCE.

Discrimination can have serious consequences. As Pearson⁷⁵ puts it, it «undermines a person's sense of self-worth and inclusion and denies equal respect». Continuing discrimination can also lead to a kind of exclusion where a person no longer feels like an equal to others in society and live in fear of being discriminated against in different aspects of life. This can also have a stigmatic effect because other people might perceive this discrimination as acceptable.⁷⁶ This kind of discrimination against LGBT people has led, and still leads, to severe mental illness issues, higher suicide rates and in general lower self-

⁷⁰ *City of Boerne v. Flores* cited in Ravitch, p.27.

⁷¹ National Conference of State Legislatures, «[State Religious Freedom Restoration Acts](#)», 2017.

⁷² Ravitch, p.39.

⁷³ *ibid.*

⁷⁴ Ali & Rehman, «Freedom of Religion versus Equality in International Human Rights law», p.405.

⁷⁵ p.21.

⁷⁶ *ibid.*

esteem.⁷⁷ This bolsters the importance of a clear protection of sexual freedom under IHRL and different national legislations.

While freedom of religion has a long tradition in connection with human rights law, sexual freedom has not gained that much attention until more recently. The protection of LGBT people has substantially improved over the last years but is still contested in many countries all over the world, as well as criminalized in some nation states.⁷⁸ When it comes to IHRL and sexual freedom there is no equivalent to Article 18 of the ICCPR concerning religious freedom. This, however, does not mean that the rights of LGBT people are not protected through international law. The principles of universality and non-discrimination are at the core of both the Universal Declaration of Human Rights and human rights treaties like the ICCPR.⁷⁹ But as the UN High Commissioner of Human Rights itself point out it is not as explicitly approached as for example women's or children's rights, as «sexual orientation and gender identity are not explicitly mentioned among the grounds listed» in the ICCPR nor the International Covenant on Economic, Social and Cultural Rights.⁸⁰ Still, the Human Rights Committee has held that states are obligated to protect individuals from discrimination on the basis of their sexual orientation.⁸¹ That and several other efforts have proved that sexual orientation is included in the «other status» that is held in Article 2(1) of the ICCPR, even though it is not explicitly mentioned.⁸²

Article 26 of the ICCPR is also important in terms of sexual freedom as it states that «the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against any discrimination on any ground (..)». As with Article 2(1) referred to above, sexual minorities are not explicitly mentioned but are included through the «other status» category. In order to call an act *discriminatory*, it has to lack objective reasoning for the difference in treatment.⁸³ But even though equality and non-discrimination are guiding principles in terms of IHRL and are seen as *jus cogens*, there is still no mutual understanding of their meaning and principles for application.⁸⁴ Article 4 of the ICCPR does not list Article 2 or 26 as non-derogable rights like Article 18(1) concerning religious freedom. That means that states can

⁷⁷ *ibid.*, p.22.

⁷⁸ Winer, «Levels of Generality and the Protection of LGBT Rights before the United Nations General Assembly», p.81-82.

⁷⁹ UN General Assembly, [*Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*](#) (A/HRC/19/41), p.3-4.

⁸⁰ *ibid.*, p.4.

⁸¹ *Toonen v. Australia* cited in Winer, p.113.

⁸² A/HRC/19/41, p.5.

⁸³ Skarpeteig, «Grensene for religionsfridomen», p.10.

⁸⁴ Ali & Rehman, p.405.

legally place limitations on the right to non-discrimination. But the limitations must meet the criteria of legality, legitimacy and proportionality⁸⁵ – as mentioned in Chapter 2.1 about religious freedom.

In theory, the right to non-discrimination should be equal to all the mentioned categories in Article 2 and Article 26. In practice, it has been a common perception for a long period of time that the ban on discrimination in terms of sex has weighed less heavily than, for example, discrimination of race and ethnicity.⁸⁶ Sexuality and issues related to it, has been a taboo area for numerous authorities around the world. Therefore, it has taken a notable period of time to come to some kind of consensus in international organs over an upgrade on the right to non-discrimination based on sexual orientation.⁸⁷ However, equality and non-discrimination for LGBT people has become a priority for UN entities and they work in a much clearer sense than just a decade ago.⁸⁸ For example, in more recent time, the UN Human Rights Council resolution to appoint an Independent Expert to protect LGBT people from discrimination and violence is seen as one of the most important developments when it comes to IHRL and the protection of LGBT rights.⁸⁹ It is expected and even demanded by several states that ways to overcome violence and discrimination against LGBT people will continue to be prioritized by UN entities in the future.⁹⁰

2.2.1 In Norway

Homosexuality was forbidden by law in Norway until 1972. Over the last decades, Norway has been working at a rapid pace on the protection of LGBT rights and in 2017 it was ranked the second-best country in Europe on the issue.⁹¹ In 1993, Norway passed a regulation on gay cohabitation (registered as partnership) and was the second country in the world to do so. That law was replaced by a gender-neutral marriage act in 2009.⁹² The Church of Norway adopted a liturgy for same-sex marriage in 2017⁹³ and gay married couples in Norway have the same rights as heterosexuals in terms of adoptions and foster care. Lesbian couples also have the right to assisted fertilization.⁹⁴

⁸⁵ de Schutter, p.339.

⁸⁶ de Schutter, p.406.

⁸⁷ Skarpeteig, p.11.

⁸⁸ A/HRC/19/41, p.3.

⁸⁹ Morello, «[U.N. Council creates watchdog for LGBT rights](#)», 2016.

⁹⁰ UN General Assembly, *Human rights, sexual orientation and gender identity* (A/HRC/RES/27/32), 2014.

⁹¹ NTB, «[ILGA: Norge nest best i Europa på LHBT-rettigheter](#)», 2017.

⁹² Benestad, Arntzen & Almås, «[homofili](#)», 2018.

⁹³ Den norske kirke, «[Ny vigselsliturgi vedtatt](#)», 2017.

⁹⁴ Benestad, Arntzen & Almås, 2018.

As with freedom of religion defined in Article 18 of the ICCPR, both Norway and the US have firstly, a duty to *respect* the right to non-discrimination under Article 2 and 26 of the ICCPR. This means that the state itself cannot discriminate against LGBT people. Secondly, the state has an obligation to *protect* the right to non-discrimination by any non-state third party by intervening in acts considered as discriminatory under the ICCPR. Lastly, the state also has a duty to ensure effective protection against discrimination through positive measures, through for example, effective complaints procedures against discriminations.⁹⁵ A ban on conversion therapy is and would be considered as such a positive measure to avoid discrimination of LGBT people.

Pertaining to international law, Norway has to ensure effective protection of the rights set forth in ICCPR Articles 2 and 26, in addition to Article 14 of the ECHR. The first national legislation concerning LGBT rights was the Norwegian Penal Code section 135a(2). This provision makes the exposure of homosexuals to hatred, persecution or degrading practices subject to criminal liability. Norway was the first country in the world at that time (1981) to introduce provisions protecting LGBT rights.⁹⁶ Since then, more national legislation has been implemented to ensure the rights of sexual minorities in Norway. One of the newest additions is the Equality and Discrimination Act which also protects religious people from discrimination. While previous legislation on discrimination included exceptions *inter alia* related to family life or internal affairs of a religious community, all these exemptions have been removed from the new legislation.⁹⁷

At the same time there are limitations to the right to non-discrimination in Norway. For example, the rules of §135 should be interpreted in a restrictive way and the violations have to be of a so-called «qualified nature», if they are to be affected by the legislation.⁹⁸ Even though discrimination is prohibited under the Equality and Discrimination Act from 2018, direct or indirect differential treatment can be considered as lawful if certain criteria are met. Differential treatment that has an (i) «objective purpose», that is (ii) «necessary to achieve the purpose» and does not have a (iii) «disproportionate negative impact» on the person(s) «subject to differential treatment» is considered lawful if all of the three criteria are fulfilled.⁹⁹

⁹⁵ Skarpeteig, p.11.

⁹⁶ Benestad, Arntzen & Almås, 2018.

⁹⁷ Ikdahl, 2018.

⁹⁸ Skarpeteig, p.12.

⁹⁹ Ikdahl, 2018.

2.2.2 In the US

It is fair to say that Norway has come a lot further than the US in terms of sexual freedom and LGBT rights. As already mentioned, the US is also legally bound by Article 2 and Article 26 of the ICCPR but the US' own legislation relating to non-discrimination for LGBT people has taken some time. Compared to Norway and other western countries, the US protection against sexual orientation discrimination is «extremely limited».¹⁰⁰ Still, there have been some milestones in recent times, such as *Obergefell v. Hodges*, where the Supreme Court held that marriage is a fundamental right that cannot be denied based on sexual orientation.¹⁰¹ Earlier, in 2013, the same court ruled that the Defense Marriage Act prohibiting state governments to recognize same-sex marriage was unconstitutional.¹⁰²

There is no federal antidiscrimination law in the US that ensures that people are not discriminated against based on their sexual orientation. Compared to the protection of religious freedom this seems quite unbalanced. It should be mentioned though, that President Obama in 2014 signed Executive Order 13672 which prohibited discrimination based on sexual orientation by companies and non-profits that contract with the federal government. Even though that did not help the majority of the LGBT community, one could argue that it had a positive impact on LGBT rights. Some courts have also upheld claims based on sexual orientation arguing that discrimination based on sex is prohibited under Title VII of the Civil Rights Act of 1964 and that this should include sexual orientation. It is still unclear though how the Supreme Court would react to these interpretations.¹⁰³ Some scholars also argue that the Equal Protection Clause of the 14th Amendment guarantees protection against discrimination based on sexual orientation.¹⁰⁴ Even so, it does not explicitly mention sexual orientation.

One of the biggest challenges facing LGBT rights in the US right now is the fact that some states have attempted to counter local governments' antidiscrimination legislation that is supposed to protect LGBT people from discrimination. The most recent example is from North Carolina where a law commonly known as HB2 was passed in 2016. The law seemed to target the city of Charlotte where they had passed an ordinance protecting members of the LGBT community from discrimination. HB2 prohibited local governments in North Carolina to give such protection to members of the LGBT community. According to Ravitch¹⁰⁵, this

¹⁰⁰ Pearson, p.19.

¹⁰¹ Ravitch, p.40.

¹⁰² Pearson, p.19.

¹⁰³ Ravitch, p.45.

¹⁰⁴ McStravick, K.R. «Gay Rights versus Religious Freedom», p.411.

¹⁰⁵ p.46

law was almost certainly unconstitutional. The law met enormous resistance all over the US and the world, and in 2017 it was repealed. However, it still stands as an example of the resistance against protection from discrimination based on sexual orientation in the US and an example of what the consequences of this resistance could be.¹⁰⁶

2.3 Conflicting rights

The above review of religious and sexual freedom in IHRL, Norwegian law and US law shows that both freedoms are essential to the people that are supposed to enjoy them. As Pearson¹⁰⁷ puts it, they are worthy of protection in both a moral and a legal sense. I will now have a closer look at the potential conflicts that arises when the two rights collide and how they have been approached from a legal perspective. I will use one example from the US and one from Norway. They both include scenarios where individuals used their religious freedom to justify what some experienced as discriminatory actions based on sexual orientation.

Fagan points out that the decision to legalize same-sex marriage in the US seems to «have sparked something of a backlash across a number of particularly high-density Christian states in the southern United States».¹⁰⁸ One example is the *Miller v. Davis* lawsuit in 2015. The case involved Kentucky Clerk Kim Davis, who refused to issue a marriage license to a same-sex couple. When she was asked on whose authority she made the decision, she replied: «Under God’s authority».¹⁰⁹ Davis ended up being jailed for her refusal and became somewhat of a «martyr» for conservative Christians in the US.¹¹⁰ Davis maintained that her religious beliefs forbade her to issue the marriage license and held that the First Amendment protected her right to do so.¹¹¹ In the complaint, the plaintiffs’ attorney held that they were «suffering and will continue to suffer irreparable harm to their individual dignity, autonomy and familial security, among other harms, because of the Defendant’s infringements upon their fundamental right to marriage for which there is no adequate remedy at law».¹¹² When Davis tried to appeal the case she was denied a stay from both the US Court of Appeals for the Sixth Circuit and the US Supreme Court. There were no dissents. The Court was clear: Davis was only asked to signify that couples meet the legal requirements to marry – she was not asked to «condone same-sex marriage on moral or religious grounds».¹¹³ The Court also

¹⁰⁶ Fausset, [«Bathroom Law Repeal Leaves Few Pleased in North Carolina»](#), 2017.

¹⁰⁷ p.25.

¹⁰⁸ *ibid.*

¹⁰⁹ [«Kentucky Clerk Kim Davis Denies Same-Sex Marriage License»](#), 2015.

¹¹⁰ Williams, p.260.

¹¹¹ *Miller v. Davis* §1.

¹¹² *Miller v. Davis Proposed Class Action* §37.

¹¹³ *Miller v. Davis*, p.27 §3d.

held that «her religious convictions cannot excuse her from performing the duties she took an oath to perform as Rowan County Clerk».114 The outcome of this particular case became a milestone. For the LGBT community and its supporters, it was a victory – for the conservative believers it was just another reason to keep fighting for their right to religious freedom. Since then the Governor of Mississippi has signed a law that enables business owners to deny services to gay couples. Georgia tried the same, but the bill was vetoed by the Governor.115

There have not been many cases in Norway where the right to non-discrimination has been directly tested against the right to religious freedom, but there is one prominent example from 1984. The case in question concerned a pastor, Hans Bratterud, who was convicted by the Norwegian Supreme Court after he had offensively expressed himself towards homosexuals in a prayer on live radio. While the prosecutors emphasized that prohibiting offenses against vulnerable minorities is not a violation of the freedom of religion, the defendants emphasized that the pastor shared his view of the Bible with many other Christians.116 The prosecutors pointed out that it is not punishable to condemn homosexuality in itself, but it was the form and content of the expressions that were problematic.117 The main question in the case was whether the state was entitled to intervene in the pastor's religious freedom and then whether it was compelled to intervene. The Supreme Court analyzed every sentence of the pastor's statement testing the right to non-discrimination under the Penal Code §135a against the right to religious freedom. The case ended in conviction. The court held that the case was difficult and went quite far in defending the pastor's right to express his discriminatory beliefs against homosexuals. Even so, the Supreme Court convicted the pastor and, in that way, illustrated that the state is entitled to limit people's religious practice when it harms others.

The cases above illustrate the ongoing challenges that this study builds upon – and there are many more examples that the scope of this thesis does not allow for. Even though courts will most typically favor those whose lifestyle is affected by the religious practices of others, the dilemmas require careful reviews. The question over conflicts regarding sexual and religious freedom also concern many more rights than just the two addressed in this thesis. There are so many aspects of this particular clash that could have been assessed and the outcomes would differ substantially. It is not possible to definitely state that the rights of sexual minorities should *always* conquer the right to religious freedom, nor the other way around. It depends on the situation, the various rights involved, and several other factors. The purpose of this particular chapter has been to shed light on two of the freedoms at stake as Norwegian

114 *Miller v. Davis*, p.28 §3d.

115 Fagan, p.201.

116 Skarpeteig, p.14.

117 Høyesterettkjennelse Rt. 1984-1359, p.1360.

lawmakers discuss a ban on conversion therapy and to demonstrate the background for the clashes between them. The next chapter will explain how these freedoms are connected to SOCE and have a closer look at what these practices mean in terms IHRL.

3 Sexual Orientation Change Efforts

This chapter addresses the phenomenon of SOCE, explains its prevalence in the US and Norway, and assesses the potential challenges it poses in terms of sexual and religious freedom.

In 1952, psychiatry's first diagnostic manual stated that homosexuality was a form of mental illness. Forced hormone treatments, electroshock, and the hiring of prostitutes for «behavioral» interventions were among the treatments to cure it.¹¹⁸ During the 1960's and early 70's pathologizing psychiatric and psychological conceptions of homosexuality was considered normal.¹¹⁹ This perception drastically changed in the course of just a few years and in 1973, homosexuality was declassified as a mental disorder in the US.¹²⁰ This happened around the same time as LGBT rights became a pressing issue in Norway, as mentioned in the previous section. Although it is now more than 40 years since homosexuality was declassified as a mental disorder requiring treatment, SOCE or gay conversion therapy is still taking place in different forms in most parts of the world.¹²¹

It is common to divide SOCE into two categories: «aversion treatment» and «non-aversive treatments». The former includes treatment in different forms, by for example providing electroshocks or inducing nausea and vomiting. The latter resonates more with what is seen as cognitive therapy, attempting to impact on a person's mindsets, desires and feelings.¹²² One of the premises of SOCE is the assumption that a homosexual orientation is unacceptable and from a conservative Christian perspective, entails «sinful behaviors» that are the result of the «fallen nature» of humankind. From a secular perspective, the premise could be that homosexuality is considered a disease or disorder that stems from, for example, a dysfunctional upbringing or trauma. These different premises also influence each other.

Those who believe in SOCE hope that the individual will begin to identify as heterosexual when going through the treatment.¹²³ Social researcher Jo Fjelstrom has interviewed a group

¹¹⁸ Scientific American, 2020.

¹¹⁹ Friedman, p.194.

¹²⁰ Clucas, «Sexual Orientation Change Efforts, Conservative Christianity and Resistance to Sexual Justice», p.1.

¹²¹ *ibid.*

¹²² Friedman, p.194-195.

¹²³ Fjelstrom, «Sexual Orientation Change Efforts and the Search for Authenticity», p. 802.

of people who went through SOCE and who now self-identify as gay or lesbian. He notes that in certain instances SOCE «resulted in temporary changes to participants' sexual orientation identities (how the participant would have defined himself or herself at the time)». However, it did not result in «changes in underlying sexual orientations (sexual and emotional attraction to persons of the same sex)».124 Therefore, it might be more appropriate to assume that their sexual orientation was repressed – rather than changed. As Fjelstrom puts it: «In effect, they were non-practicing homosexuals».125 It is this effect that motivates many of those who seek SOCE. A significant number of those who turn to SOCE are people who have anticipated or experienced negative family reactions to their sexual orientation, that are recognized as religious fundamentalists and/or people that identify religion as a very important facet of their lives.126 People of many ages and gender identities undergo conversion therapy but «the most common participants are young men from conservative religious backgrounds with families that reject their LGBTQ-identified children».127 Many forms of SOCE also concern transgender people, a subject that deserves just as much attention, but is not part of this particular study. The main advocates of SOCE are conservative religious actors, especially outspoken conservative Christians.

Today, most mental health professional associations and major health organizations reject all forms of SOCE. The World Psychiatric Association has declared that interventions such as conversion therapy are wholly unethical.128 The efficacy of SOCE is highly disputed. Even though there have been some controversial studies showing that gay men and women have experienced change in their sexual orientation after going through different forms of SOCE, health professionals have in large part rejected these types of studies for not being sufficiently grounded in science. They have been clear that there is «little basis for concluding whether SOCE has any effect on sexual orientation».129 Just as importantly, scientific findings have demonstrated that SOCE could have harmful effects on its subject, including stress, depression, or even suicidal ideation.130 One of the consequences of this has been that new forms of SOCE have appeared – forms that initially may seem less damaging, like spiritual counseling, cognitive-behavioral therapy and prayer. However, research show that these kinds of efforts can also cause significant psychological damage.131

124 Fjelstrom, p.822.

125 *ibid.*

126 *ibid.*

127 Streed, Anderson, Babits & Ferguson, «Changing Medical Practice, Not Patients», p.502.

128 *ibid.*

129 Friedman, p.195.

130 APA, [*Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation*](#), p.3.

131 Powell & Stein, «Legal and Ethical Concerns about Sexual Orientation Change Efforts», p.33.

The final form, prayer, evidently takes place in different religious contexts. As already mentioned, religious organizations are also involved in SOCE – either through advertising, statements in the media or through conversion efforts directed by the organization or church itself. The largest organization in the US is the *National Association for Research and Therapy of Homosexuality* (NARTH), since 2014 operating under the name *The Alliance for Therapeutic Choice and Scientific Integrity* (ATCSI). There are also smaller organizations that appeal to specific congregations.¹³² Since these groups often proclaim that homosexuality is a sin, they also risk creating a sense of guilt and in the worst cases, «make already marginalized youth feel even worse about themselves».¹³³ Therefore, religious SOCE has also been subject to harsh criticism.

Before moving on to SOCE in the US and Norway and how it relates to human rights, it is worth noting that the premise underlying all kinds of SOCE is the notion that sexuality can change. Ironically enough, this is also the premise underlying how sexuality is perceived today, by the LGBT community and others; as a continuum on which people can shift over time.¹³⁴ There is however, a crucial difference between the two: the fact that defenders of SOCE are convinced that only heterosexuality is acceptable. Still, medical professionals today have not yet managed to address the underlying cause of homosexuality. Because of this, the practice of SOCE continues to rely on the same premise: that a homosexual orientation can change – just as any other sexual desire can change over time.¹³⁵ For the purpose of this thesis, it is far too complicated to go into this medical and psychological discussion, but the ideological similarities and differences in how one views sexuality and sexual orientation will be important for the discussion in Chapter 4.

3.1 In the US

Despite the fact that both international and American health professional organizations have condemned the use of SOCE it is still a far-reaching phenomenon throughout the US. As noted in Chapter 1, in 2018 it was estimated that 16,000 US teenagers (ages 13-17) will go through such efforts before they turn 18 in the states that currently have no ban on the practice.¹³⁶ The extensiveness of SOCE in the US has resulted in several states and cities passing legislation to ban the practice. According to the independent, nonprofit thinktank Movement Advancement Project (MAP), 20 states have some kind of state law that bans

¹³² For example *Jews Offering New Alternatives for Healing* for Jews and *Evergreen International* for Mormons.

¹³³ Powell and Stein, p.33.

¹³⁴ Schumer, p.56.

¹³⁵ Cruz, «Controlling Desires», p.1303.

¹³⁶ Scientific American, 2020.

conversion therapy for minors. One state, North Carolina, *partially* bans conversion therapy for minors.¹³⁷ In addition to these 20 states, 20 municipalities have also passed conversion therapy bans for minors. When it comes to adult LGBT people, they are not protected to the same extent. In 2018, an estimated 698,000 LGBT adults ages 18 to 59 had received conversion therapy at some point in their lives.¹³⁸ All the state bans are limited to protecting people under 18 but there are examples of city bans that also include adults.¹³⁹ The laws prohibit licensed mental health practitioners from subjecting LGBT minors to harmful conversion therapy practices that attempt to change their sexual orientation or gender identity. The laws do not, however, restrict the practice for religious leaders.¹⁴⁰ An estimated 57,000 youth across all US states will therefore receive conversion therapy from religious or spiritual advisors before they reach the age of 18.¹⁴¹

California was the first state to pass a law prohibiting «a mental health provider» from «engaging in sexual orientation change efforts with a patient under 18»¹⁴² in 2012. Before taking effect, the law was challenged twice in court. In *Pickup v. Brown*, a conversion therapist and spokesperson for NARTH (Mr. Pickup) challenged the constitutionality of the bill. Pickup lost the case all the way up to the Court of Appeals, which unanimously upheld the constitutionality of the law.¹⁴³ There are two factors in particular that make the Californian law important for LGBT rights in the US. One is the acknowledgment that being lesbian, gay, or bisexual is not a disease of any kind and the other is that it cites the American Psychological Association (APA)'s statement that SOCE is a direct contributing factor to social prejudice against homosexuality.¹⁴⁴

It is important to note that neither the Californian law nor the other SOCE bans include practices that seek to «provide acceptance, support, and understanding of clients or the facilitation of clients' coping, social support, and identity exploration and development».¹⁴⁵ Religious organizations like the Norwegian network *Til Helhet* («Towards Completeness») may fall into such a category of organizations that seek to «help» those who struggle with an unwanted sexual orientation or sexual desire – without necessarily aiming to *change* an individual's sexual orientation. I will return to this point in the section on SOCE in Norway.

¹³⁷ Movement Advancement Project, [«Equality Maps: Conversion Therapy Laws»](#), 2020.

¹³⁸ Mays, [«New York City Is Ending a Ban on Gay Conversion Therapy. Here's Why»](#), 2019.

¹³⁹ Movement Advancement Project, 2020.

¹⁴⁰ *ibid.*

¹⁴¹ The Williams Institute, 2019.

¹⁴² Senate Bill No. 1172 Ch. 865§(a) & 865§1.

¹⁴³ *Pickup v. Brown* §1208.

¹⁴⁴ Senate Bill No. 1172, Ch. 835§1(a) & 1(d).

¹⁴⁵ *ibid.* §865(b).

The bans on SOCE might indicate a movement towards banning the practice in its entirety, but it is important to be aware of the fact that 30 US states still allow SOCE – also on children. It is not solely the fact that 30 states allow SOCE that makes the LGBT community worried. In 2014, the Texas State Republican Party included in its party manifesto explicit support for «the legitimacy and efficacy of counseling, which offers reparative therapy and treatment for those patients seeking healing and wholeness from their homosexual lifestyle». On this basis, the party declared that «no laws or executive orders shall be imposed to limit or restrict access to this type of therapy».146

However, it is not only conservative politicians and Christians that have criticized the bans. American psychiatrist and bioethicist Tia Powell and philosopher and author of the book *The Mismeasure of Desire: The Science, Theory, and Ethics of Sexual Orientation*, Edward Stein, have pointed out some weaknesses concerning the law(s): that it fails to prohibit unlicensed individuals to engage in SOCE (a priest or pastor could fall into this category), and that it fails to protect LGBT people over the age of 18. They also emphasize the fact that it can undermine the authority of minors to make decisions over their own mental health, which they are generally allowed to do in other contexts. In addition to these issues, they also point out that there are already sanctions for those who engage in inappropriate treatment practices through other legislation.147 The two are not alone in their skepticism towards bans like the Californian one. Psychiatrist and former president of the APA, Paul Appelbaum, also questions the effectiveness of the ban and suggests that it may have been wiser for the Californian legislature to «allow the tort system, a very effective means of regulating medical and mental health practice, to run its course».148

It is primarily the premise of the law that worry Powell and Stein. They argue that «lack of choice» (about having a particular orientation) is a poor argument for the rights of LGBT people and that it is not the right foundation for prohibiting SOCE or LGBT rights in general. They point to the fact that it is impossible to discern whether an attribute like sexual orientation is present at child's birth or whether it is something that develops later on. This raises the question of whether innateness is a problematic legal criterion upon which to protect someone. The same goes for immutability, in their opinion, as there are «very few human traits that are legally salient and yet cannot be changed». Lastly, they argue that peoples' conscious choices do not play a significant role in the development of sexual orientation. However, choices do play a role in terms of what is legally and ethically relevant

146 Wetzstein, «[Gay Conversion Therapy Moving to Culture War Front](#)», 2014.

147 Powell and Stein, p.34.

148 Appelbaum, «Regulating Psychotherapy or Restricting Freedom of Speech?», p.7.

about being an LGBT person. Engaging in sexual acts, marrying and having children are choices, and LGBT people have a right to make these choices that so many people fight for. Laws like the SOCE ban, which undermines the fact that a lot of what has to do with sexual orientation actually is based on conscious choices, is the backdrop for Powell and Stein's skepticism towards these bans. They doubt that laws banning SOCE provide the best route to promoting LGBT rights. Instead of supporting existing laws, they support a legal strategy that moves away from claims that sexual orientation is innate, immutable and unrelated to personal choice.¹⁴⁹ Their reflections is a lucid example of the complex legal and ethical dilemmas involved in discussing SOCE bans.

The discussion on SOCE bans also present political dilemmas, as demonstrated recently in New York City where the City Council ended a ban on gay conversion therapy only two years after it celebrated the passing of a far-reaching ban on SOCE.¹⁵⁰ The motivation for doing so was to neutralize a federal lawsuit filed against the city by a conservative Christian legal organization challenging the ban. The LGBT community feared that if the case was to be heard by the Supreme Court, the panel could issue a ruling that could severely damage attempts to ban conversion therapy. Supporters of the repealing called it a regrettable but necessary step, «given the Supreme Court's conservative makeup under the Trump administration».¹⁵¹ They also pointed out that, «the current political environment means that activists must be more strategic».¹⁵² The repeal meant the ban on SOCE in New York City became less restrictive. For example, the ban now only applies to minors whereas it originally also prohibited adults from being subjected to SOCE. Even though the law still allows adults who feel duped by the therapy to seek recompense, the repeal in New York City demonstrated how complex an issue it is to prohibit SOCE. It also demonstrates how vulnerable these kinds of laws that aim to protect the LGBT community are to the opponents that argue SOCE bans represent a threat to their religious rights. One could argue that more universal bans on harmful and ineffective treatments would be harder to oppose for these conservative religious communities. However, the fact that 19 states have followed California's ban in 2012 shows these laws might be there to stay in the US.

3.2 In Norway

While one could have addressed several other legal, political, and societal factors regarding SOCE in the US, there is limited information about the practice in Norway. Before the above-mentioned newspaper VG's investigative series «Homoterapi» in 2019, SOCE was an

¹⁴⁹ Powell and Stein, p.34-37.

¹⁵⁰ Mays, 2019.

¹⁵¹ *ibid.*

¹⁵² *ibid.*

unknown phenomenon to most Norwegians. However, the phenomenon has been subject to debate in Norway before. In the beginning of the 2000's there was an increasing concern among Norwegian psychiatrists about the effect of the US SOCE movement, represented by NARTH, and its influence in some Norwegian professional circles. In 2000, the General Assembly of the Norwegian Psychiatric Association, voted overwhelmingly in favor of a statement that declared that homosexuality is no disorder or illness, and therefore cannot be subject to treatment. Therefore, the Association declared that «treatment» that aimed at only changing one's sexual orientation should be regarded as ethical malpractice.¹⁵³

One of the reasons why this statement was put forward was to «counter religious groups seeking support from the psychiatric profession in their charismatic efforts to change sexual orientation through «treatment»». ¹⁵⁴ After this statement, the debate about SOCE in Norway subsided, until VG's series changed the paradigm of the debate around LGBT rights in Norway, almost 20 years later. The series revealed stories about young people in Norway who reported that they had been exposed to different forms of SOCE, either in their own congregation or by being sent from their congregation to various international organizations.¹⁵⁵ The debates that followed after the series were emotional and intense. Several politicians from the political left started talking about banning the practice in Norway even though one could not really prove that the practice was taking place in any Norwegian congregation at the time.

Norway came close to seeing proof of SOCE currently taking place domestically after the conservative Christian network *Til Helhet* was subjected to intense scrutiny following accusations of the practice. The network calls itself a «cross-congregational network for sexuality and faith». One of its aims is to «convey the belief that sexual orientation change is possible, and that one can live meaningful lives in sexual abstinence regardless of sexual orientation». ¹⁵⁶ Some of the men who had received help from the network to live with their homosexual orientation without acting on it came forward and told their stories, voicing strong opposition to a ban on conversion therapy in Norway.¹⁵⁷ In 2019 seven different Norwegian congregations were members of *Til Helhet* – one year later, in 2020, three of them had withdrawn. The four remaining members said in December 2019 that the network would continue its work but would go through «significant changes». ¹⁵⁸

¹⁵³ Kjær, «Look to Norway? Gay Issues and Mental Health Across the Atlantic Ocean», p.65.

¹⁵⁴ *ibid.*

¹⁵⁵ VG, [Homoterapi](#), 2019.

¹⁵⁶ Til Helhet, [«Til Helhets formål»](#).

¹⁵⁷ Andersen, [«Jeg er homofil og lever lykkelig med min kone»](#), 2019.

¹⁵⁸ Gilje, [«Til Helhet legges ikke ned – Laget trekker seg ut»](#), 2019.

While the debate escalated and became subject to policy initiatives in the Norwegian parliament, the question remained as to whether this kind of practice was taking place in Norway or not. Some politicians claimed that no congregation would admit to engaging in such practice but said that «it is happening in a subtle way by having to converse with the priest in the back room and that to be gay is a reason for counseling».¹⁵⁹ It is not within the scope of this thesis to determine to what extent SOCE is taking place in Norway today. What can be determined, though, is that this is unknown at the moment. However, there are definitely those, such as members of *Til Helhet*, who believe that some kinds of SOCE can be helpful for those living with an unwanted sexual orientation and that offering different forms of spiritual counseling to help cope with those feelings is beneficial. Whether these kinds of efforts would be covered by a potential ban on SOCE in Norway is hard to say at the moment. What is certain is that all political parties in Norway, except from the Christian Democrats, want a ban on conversion therapy. This led the former Equality Minister Trine Skei Grande to send the letter mentioned in Chapter 1 that initiated a political process to consider a potential ban on conversion therapy in Norway.¹⁶⁰ The letter also emphasized that an important premise for the further investigation would be to clarify what conversion therapy means, to find an accurate definition, and to find a way to regulate the practice to ensure that a ban help those who are exposed to such practices.¹⁶¹

The only member of the governing coalition that did not support this letter was the Christian Democrats. Since the debate started, they have been clear that they worry a potential ban «would place restrictions on what congregations and individuals are allowed to practice, believe and think». The Christian Democrats has also, like some of the American scholars mentioned above, pointed to the fact that conversion therapy and discriminating practices like SOCE are already illegal in Norway through the above-mentioned Penal Code, the Equality and Discrimination Act, and through legislation on health professionals that forbids harmful and ineffective practices – as SOCE has proven to be.¹⁶² Instead they believe that one can avoid SOCE in Norway by enforcing the already existing legislation and by working systematically with preventative measures aimed at congregations where this takes place. On the other hand, the opposition parties have been clear that this is not a question of restricting freedom of religion. They emphasize that one cannot do whatever one wants in the name of

¹⁵⁹ Representantforslag 174 S, p.2.

¹⁶⁰ Innstilling 87 S., attachement 3.

¹⁶¹ Innstilling 87 S, p.5.

¹⁶² *ibid.*

religious freedom – and that it is the *practice* of conversion therapy that is supposed to be banned – not peoples’ opinions or beliefs.¹⁶³

While the Norwegian government works on a proposal to ban conversion therapy in Norway, the debate around the practice has abated – at least in the public media. At the same time, similar processes are going on in the United Kingdom. The EU parliament has been clear that it welcomes initiatives prohibiting LGBT conversion therapies and urges all EU Member States to «adopt similar measures that respect and uphold the right to gender identity and gender expression».¹⁶⁴ Out of all the EU states only Malta¹⁶⁵ and Germany¹⁶⁶ have passed an official ban on conversion therapy. The bans in the US, the political debate in Norway and the initiative from the EU parliament, all tell that there is a growing concern that SOCE poses a threat to fundamental human rights. The last part of this chapter will look at the practice’s compatibility with human rights with focus on the right to non-discrimination and freedom of religion and conscience.

3.3 In terms of human rights

There are two different dimensions to take into account when considering the compatibility of SOCE with human rights. Firstly, the consideration of the threats to human rights that the practice itself presents, and secondly, the consideration of the threat to human rights that a ban on the practice presents. Bearing the discussions above in mind, it has become quite evident that all forms of SOCE represents a threat to people’s right not to be discriminated against. In my opinion, the concept of SOCE is by definition discriminatory as it stems from a belief that homosexuality is an illness or disorder that needs to be cured. Considering the broad consensus among the vast majority of health professionals today that homosexuality is not a disease, it does not make sense to design a medical therapy to treat it as a physical or mental illness.¹⁶⁷ Therefore, I would say that SOCE represents a clear threat to numerous people’s sexual freedom under the terms addressed in this thesis. At the same time, as also discussed above, there are limitations to the right to non-discrimination. There are cases where the right to not be discriminated against has had to be reduced in favor of another human right. This does not though, in my opinion, change the fact that SOCE represents a clear threat to the right to be treated equally and therefore – at least in theory – is a practice that violates fundamental human rights.

¹⁶³ *ibid.*

¹⁶⁴ European Parliament, *Situation of fundamental rights in the EU in 2016*, 2018.

¹⁶⁵ Henley, «[Malta becomes first European country to ban ‘gay cure’ therapy](#)», 2016.

¹⁶⁶ BBC, «[Germany passes law banning ‘gay conversion therapy’ for minors](#)», 2020.

¹⁶⁷ Kjær, p.65.

Discussions on SOCE becomes a bit more complicated if one accepts the premise that homosexuality is not considered a disease, but as a sinful way of living. It gets particularly complicated if this is not just the perception of the one offering SOCE, but also of the person seeking it. It is here that the term SOCE or conversion therapy falls short. Since the purpose of these actions might not solely be to *change* or *convert* one's sexual orientation, but to learn how to live with it without acting on it. For many conservative Christians, this is considered a highly legitimate aim of, for example, spiritual counseling or prayer. It is, however, still discriminatory to see someone's sexual orientation, feelings or attraction as less favorable (even if it is in the eyes of God) than others. Even though many Christians would argue, as we shall see in the next chapter, that homosexuals are just as valuable to them and to God – there is something fundamentally discriminatory about degrading someone's sexual orientation which is, as discussed above, such an important feature of someone's life and identity. Practices like SOCE, regardless of the shape they take, reflects bias against sexual minorities.¹⁶⁸ The question though remains; is it someone's right to hold discriminatory beliefs like the ones that make up the ground for SOCE on the basis of religion? And if so, does a ban on all forms of SOCE therefore represent a threat to someone's freedom of religion and conscience?

Even if so, one has to ask if this potential threat prevent a state from introducing laws that can end up insulting someone's religious lifestyle. The limitations to freedom of religion discussed in Chapter 2 proves that a state cannot be prevented from introducing such laws. The restrictions to the freedom of manifesting one's religion make it legitimate for a state to sometimes limit one's freedom to act on the grounds of religious beliefs – for example if one's actions pose a threat to the fundamental rights and freedoms of others. Still, as already pointed out, the Christian Democrats in Norway fear that a total ban on SOCE might infringe congregations' and individuals' freedom of religion and not meet the criteria for limitations on the freedom as it is stated in Article 18(3) of the ICCPR. The party believes it would amount to a significant weakening of the right to religious freedom if the state was to regulate spiritual counseling, prayer and preaching in a church or congregation. It would be unwise to completely dismiss these claims.

It would also be unwise not to recognize that there are adult individuals, also in Norway, who feel torn apart by their same-sex attractions because they are convinced that it would be a sin to act on those attractions – and that these people want to be a part of a community where that conflict is recognized. The current situation in Norway is that the vast majority of the wider (liberal and secular) society of Norway have a hard time understanding this conflict. It is

¹⁶⁸ Powell & Stein, p.32.

therefore quite easy to grasp these peoples' wish to seek communities that accept their inner conflicts and support them in their choice to, for example, live in celibacy. If the state of Norway was to introduce a ban that would make it illegal for these people to be prayed for or to receive spiritual counseling, it could definitely be argued from an IHRL perspective that such a law poses a threat to peoples' religious freedom. It is this potential threat that worries conservative Christians in Norway. The last chapter of this thesis presents the findings from the qualitative case study which aimed to recognize and understand where and what these concerns stem from.

4 Interviews with conservative Christians in Norway

This chapter presents the findings from the qualitative case study and discusses the findings in light of the theoretical framework laid out in Chapter 2 and 3. So far, the thesis has provided a theoretical framework and discussion on the potential conflicts between religious and sexual freedom and how SOCE and a potential ban on SOCE relate to those conflicts. The aim of this last part of the thesis is to add new empirical findings that can help move the debate forward.

4.1 Findings and discussion

I have interviewed seven young conservative Christians in Norway that claim that homosexuality is a sin. I have particularly been interested in figuring out (i) what societal and religious contexts the informants put themselves into, (ii) how they see themselves and their beliefs in a larger societal context and (iii) how they interpret the debate about SOCE and how it relates it to their own beliefs.

When interviewing the informants, I used an interview guide consisting of five different categories: (i) background, (ii) faith and conscience, (iii) values and attitudes, (iv) homosexuality and SOCE – and (v) identity and self. First, I will present the informants and provide some general information about their backgrounds. Then the main findings are presented and discussed under four broad themes – the same as the four remaining categories from the interview guide. The themes are interconnected and therefore the discussion will sometimes include more than just a single theme.

4.1.1 Background

The informants are listed in the order that I interviewed them. To keep their identities confidential, I have called them «Informant 1-7».

Name	Sex	Age	Congregation
Informant 1	Female	29	Misjonskirken (independent evangelical church)

Informant 2	Female	22	Pentecostal church
Informant 3	Female	27	Brunstad Christian Church (BCC)
Informant 4	Female	28	Brunstad Christian Church (BCC)
Informant 5	Male	23	Pentecostal church
Informant 6	Male	23	Pentecostal church
Informant 7	Male	24	The Anglican Church

All informants except one grew up in a religious family. Informant 5 was introduced to Christianity in his teens. Five of the informants are from the west coast or southern parts of Norway. Informant 3 is from Denmark and Informant 4 is from the eastern part of Norway. One of the informants (Informant 7) lives in the US. All informants attend church regularly, read the Bible weekly, if not daily, and attend different Christian groups, like Bible studies or other groups where they discuss their faith. In one way or another, all informants take the Bible as a message from God. None of them call themselves fundamentalists, but all of them see what is written in the Bible as «the truth» although a few of the informants make a clear distinction between the Old and New Testament – believing that what is written in the New is more important to follow in their everyday lives. Two of the informants (Informant 6 and 7) study theology and want to become pastors or priests. Two other informants (Informant 2 and 5) work for a Christian organization. The last three informants (Informant 1, 3 and 4) have professional positions that are not related to their faith. All informants have a majority of Christian friends and none of them have any openly homosexual friends (Informant 1 has a close colleague).

4.1.2 Faith and conscience

All informants described their faith as «strong» and as something that shapes their lives. The way they talked about it demonstrated Ravitch's¹⁶⁹ point that «for many people religion is about more than faith [...] it is about how they conduct their daily lives, who they are, and the most fundamental aspects of existence». When talking about their faith and how it shapes their lives, I was interested in finding out how the informants' faith relates to their conscience. As mentioned in chapter 2.1, one of legal scientist Pearson's¹⁷⁰ main arguments for protecting religious freedom is that it is a «part of freedom of conscience». By challenging the informants on how they view their own conscience I found that most of them feel like God to a large extent tells or teaches them right from wrong through their own conscience. Informant 4 explained it like this: «My conscience is God. It is God who talks to me through my conscience and tells me what is right and what is wrong». The close link between the

¹⁶⁹ p.22.

¹⁷⁰ p.14.

informants' faith and conscience makes it even harder for them to imagine acting contrary to either. The above-mentioned theologian and philosopher Childress¹⁷¹ argues that conscience is personal and subjective. Even though a majority of the informants see their conscience as personal they also see it as closely linked to God. When asked explicitly if they separate their own conscience from God's, they found it hard to determine whether they do or not. This illustrates the complexity of how the informants view their own conscience and faith, and that this conflation has consequences for how they legitimize their actions and beliefs. When someone relates their conscience directly to God it makes it harder to separate freedom of religion from freedom of conscience. This is furthermore illustrated through the fact that they are both part of the same Article of the ICCPR. Childress¹⁷² also writes about conscience as a sanction. For the informants it seemed like acting contrary to their conscience would not just involve a personal sanction, but also a sanction towards God. In this case, if the state was to force you to act contrary to your own conscience – the state would also force you to act contrary to God's will.

This is closely linked to one of the next main set of observations, namely how the informants view freedom of religion and conscience. Most of them admitted that they had not given religious freedom much thought during the course of their lives. They emphasized the fact that they have been growing up in Scandinavia where freedom of religion is seen as a given. At the same time, all of them expressed some kind of concern over their religious freedom evolving over the last couple of years and a majority of them link this concern directly to the debate about SOCE in Norway in 2019. Informant 1 put it like this:

«The debate about conversion therapy last fall made it all real. Earlier it had only been theoretical scenarios that I thought the church might have to face at some point. But suddenly it felt like it [restrictions on religious freedom] would happen soon».

She also expressed another concern that many of the other informants also shared with her; concern for the next generation of conservative Christians. Informant 1 asked: «How would it be to raise a child in a society where you can get in trouble with the authorities if you raise it according to a view of life you are convinced is right?» Informant 2 put it like this:

«I started to worry about a potential ban on SOCE and how it would affect our Christian congregations. Suddenly one could be punished for something one has always believed is right.».

¹⁷¹ p.318.

¹⁷² p.322.

None of the informants reflected upon the limitations on religious freedom. At the same time, freedom of religion is, as they said themselves, a right that they have not given much thought to, as they have all felt free to exercise their religion as they please for as long as they can remember. This is, as Informant 1 pointed out, the first time these informants have faced a potential threat to their religious freedom; at least one that is noticeable to them. That they have not given too much thought to the restrictions on religious freedom as it is manifested, might be a consequence of the fact that they have not reflected upon religious freedom from a legal perspective.

Even so, Informant 4 highlighted that «freedom of speech and the Norwegian Equality and Discrimination Act ensures that *both* Christians and homosexuals can live their lives as they please». She referred to the Equality and Discrimination Act mentioned in Chapter 2 and made the point that discrimination goes both ways in that Christians are also subject to discrimination and therefore should be protected just as much as sexual minorities. A similar point has been made by Ravitch¹⁷³, who believes it would benefit both groups if they recognized they were fighting for the same right: the right to not be discriminated against. But, as illustrated in Chapter 2, it is not always that simple, as the two freedoms seem to collide in certain cases. Here, Informant 4 was of the opinion that the Norwegian society as a whole has already chosen who should be given greater credence in such a conflict of rights: «It seems like most people accept the fact that protection of homosexuals is given more weight than protection of Christians. That makes me a bit frustrated».

This feeling of bias from the authorities and the majority of the Norwegian population which Informant 4 expressed is also reflected through the other informants' answers. This serves as a confirmation of the previous statement from Special Rapporteur Bielefeldt on how religion is not just a matter of privacy but also involves community life, relations with others and expectations of those in charge.¹⁷⁴ In a country like Norway, where religion is often perceived as a private matter, it is quite paradoxically to observe the expectations some of the informants have in the form of protection from the state and support from the rest of society. At the same time, they were also very clear that sexual minorities as a group needs protection and should have the same rights as them – as was illustrated when they talked about their values.

¹⁷³ p.12.

¹⁷⁴ Bielefeldt, 2018.

4.1.3 Values and attitudes

As Fagan¹⁷⁵ argues, «a great many of our values and beliefs exert a profound influence on how we engage in the public domain». Most of the informants also appeared to think that religion serves as a guide for individual virtue, rather than having a fundamental public role. A majority also said that they understand and respect those who do not see themselves as Christians or do not believe in what the Bible says about homosexuality – and do not choose to live their lives according to those words. They also understand that Norwegian society, based on secular legislation, allows for same-sex marriages and does not accept any discrimination of someone based on their sexual orientation. Informant 7 for example said: «I do not think that what the Bible says about homosexuality should be normative for the Norwegian society». It is quite conspicuous that this is the way the informants choose to argue, and it is similar to the already mentioned findings by social scientist Williams. He found that opponents of a homosexual lifestyle in the US today are more likely to stress protection of religious freedom to consider homosexuality a sin, whereas a few decades ago Christian conservatives were mainly concerned with promoting «family values» throughout society as a whole when they opposed a homosexual lifestyle or LGBT rights.¹⁷⁶ None of my informants talked about family or traditional values when I asked them about their most important values. They talked about freedom of religion, freedom of speech and freedom of conscience and emphasized that they did not want to force their beliefs on others.

This shift in argumentation also touch upon political philosopher Isaiah Berlin's distinction between positive and negative liberty. Negative liberty refers to «an area within which a man can act unobstructed by others»¹⁷⁷ and therefore is usually a statement about the rights and responsibilities of others. Positive liberty refers to rights and responsibilities of the self – the desire for self-government or as Isaiah puts it «the wish on the part of the individual to be his own master».¹⁷⁸ On this note, Williams makes the argument that the conservative Christian activists in the 1970's and 80's wanted positive liberty: they wanted the state to intervene in the lives of gays and lesbians by, for example, making sure they did not have children in order to protect «family values». But now, his perception, which is backed up by my findings, is that conservative Christians want negative liberty as «a personal zone of freedom in which the state must not act, regardless of the consequences on the individual».¹⁷⁹ That personal zone seems to be extensive in terms of my informants' perception of it. By avoiding the state, they also avoid the consequence that might mean being forced to act contrary to their

¹⁷⁵ p.201.

¹⁷⁶ Williams, p.247.

¹⁷⁷ Isaiah, «Two Concepts of Liberty», p.122.

¹⁷⁸ *ibid.*, p.131-133.

¹⁷⁹ Williams, p.248.

consciousness. While Williams uses the *Miller v. Davis* case as an example of this, one can also use the example of my informants' justification for particular forms of SOCE, that will be illustrated in the next section.

4.1.4 Homosexuality and SOCE

The criteria for being interviewed for this study was a view that homosexuality is a profound sin. All informants were indeed clear about this view in the interviews, but some of them seemed to find it more challenging to hold this belief than others. It was important for most of them to emphasize that having homosexual feelings is not a sin in itself. Informant 3 put it like this:

«There is a difference between having a sexual orientation and choosing to freely express that sexual orientation. I stick to what the Bible says about it, but at the same time I have to acknowledge that I do not really know how it feels».

Informant 5 was the informant that seemed to have spent most time considering the question of homosexuality and found it most difficult to come to terms with. He put it like this:

«I have been looking for loopholes because I find it so hard. I have a co-worker that once said that he wished those verses did not exist in the Bible. I follow him on that because I feel emotionally obliged to think the same. It becomes particularly ironic when we talk about conscience. Because my conscience drags me in two different directions – both that it is right and that it is wrong».

Still, he said that the more he examines the Bible the clearer he thinks it gets that marriage should be between man and woman. Informant 5 said this is an especially tough opinion to have because «it can be experienced as a degradation of homosexual lives». Therefore, he tries not to talk about it too much – also because he does not see it as crucial for whether you can call yourself a Christian or not:

«I have never experienced having a fruitful conversation about homosexuality with non-Christians. No one has ever changed their mind and agreed with my conservative view. Therefore, it does not seem particularly constructive to go into these debates. I think it is okay that some people take these discussions to the public, but I hope that the purpose is not for people to agree on homosexuality – because that is a lost cause».

Some informants were more confident in their argumentation. Informant 6 said that he believes it is not good for anyone to be part of a same-sex relationship. His major point also reflects the majority of the other informants takes on sexual orientation:

«Feelings do not define who we are, and never will. But they can lie to us and trick us. I do not believe that these are feelings we are born with. I believe that it is something that occurs during the course of life and there can be different reasons for why they occur. It could be that you as a young boy had some feminine traits and were called a «faggot» at school. At some point you might have heard it so many times that you started to believe the bullies and define yourself based on their perception».

Though none of the other informants formulated themselves as Informant 6 when they explained their take on homosexuality, all of them except Informant 7, were clear that your feelings do not define who you are, and identity is not based on sexual orientation. Informant 1 put it like this:

«Identity is a social construction. Sexual orientation as an identity marker is a relatively new phenomenon. I do not believe that sexual orientation is as stable as it may seem. We experience sexual orientation as stable because we constructed it that way. I believe sexual orientation is a lot more fluid and undecided».

Informant 2 said almost the exact same thing: «There is a discourse in our society that tells us that sexual orientation equals identity. I principally disagree with that. Your relationship with God is more important for your identity than your sexual orientation». This correlates with the paradox of how both defenders of SOCE *and* the LGBT movement see sexuality as something fluid and changeable. As mentioned in Chapter 3, somewhat ironically, these two seemingly opposing ideological movements share this common perception of sexuality. There is one very important difference though: the fact that conservative Christians believe that only heterosexuality is the right sexuality to act on.

All informants seemed to believe that one has a choice when it comes to sexual orientation, at a minimum one has a choice over whether or not to act on it. This naturally also has an impact on how the informants view different forms of SOCE. As mentioned in Chapter 3, as long as one has not managed to fully explain the cause of homosexuality, the practice of SOCE continues to rely on the same premise: that homosexuality can be changed.¹⁸⁰ This is also the argument that some of my informants turned to when they gave their thoughts on different forms of SOCE. When I asked the informants about SOCE I asked them what they thought about the different forms of conversion therapy like prayer and spiritual counseling which aim to help a person avoid expressing their sexual orientation. Informants 2 and 6 were the only

¹⁸⁰ Cruz, p.1303.

ones who had heard concrete testimonies from people that had experienced a change in their sexuality after they had received help in their congregation. They were quite unclear on what kind of help this involved, but none of them believed that prayer could be enough. Informant 2 said she thought people experienced the change because they found a place (the congregation) where they could talk about how they felt and where someone listened to them and shared with them «who God created them to be». She also said she thought there were different factors that made it happen and emphasized that it was «a long process». Informant 6 seemed quite convinced that one had to get help figuring out «what needs that were not met and to ask for God's help to figure it out in practical ways». As an example of something that could «help», he mentioned «bowling with other boys so that one could experience a loving community and be seen».

Considering the paradox on how one views sexual orientation and identity, it is important to understand that most scholars agree that sexual identity is multidimensional in that it varies both «individually and within different sociocultural and historical milieus».181 The aforementioned researcher Fjelstrom highlights how participants of different forms of SOCE dissociated from their inner feelings in order to adopt «a different identity». Even though the participants' inner feelings did not change, they reported themselves as heterosexual at some point in their SOCE experience. According to Fjelstrom, even though SOCE claims to assist individuals in manifesting their authentic selves, the efforts end up dissociating the SOCE participants from their authentic selves. He argues that the most significant negative impact of SOCE is «a derailment of the individual's personal journey of discovery and development».182 At the same time, Fjelstrom states that individuals who are in conflict about their same-sex attractions should be treated with respect and self-determination.

My informants also stressed respect and self-determination for those who experience same-sex attractions but who are convinced it is wrong. This was also the argumentation most of them used when they argued a ban on SOCE in Norway is a bad idea. They were all positive towards the efforts made by pastors, priests, and congregation members in helping someone not act on their sexual preferences, through prayer and/or spiritual counseling. The majority of them also distinctly dissociated with SOCE that aims to change someone's sexual orientation and emphasized that these kinds of efforts are already prohibited in Norway through various legislation. Informant 1 said she thought spiritual counseling might be just what people need when they experience feelings that do not correlate with their religious beliefs. She said the

181 Fjelstrom, p.822.

182 *ibid.*, p.823.

only thing that would be prohibited with a ban on SOCE that is not already forbidden, would be «to claim something else than the majority's take on sexual orientation».

Informant 7 was the only informant that clearly acknowledged that one's sexual orientation is a part of one's identity and persona. He also said he does not agree with those Christians who say that sexual orientation is something one chooses. But he clearly considered homosexuality a sin and thought SOCE should depend on the motive behind the efforts and who takes the initiative to undertake it. He said it should not be a religious leader initiating prayer or spiritual counseling for someone who struggles with their sexual orientation – but that it should be the person wanting help. He also said that those who want help in these situations should be protected: «The rights of homosexuals who do not want to freely express their sexual orientation should be protected in the same way as those who want to freely express these feelings».

4.1.5 Identity and self

Except from Informant 7 all informants said that they did not believe sexual orientation is necessarily an important feature of someone's identity. On the other hand, when I asked them about faith and Christianity and how important that was to their identity the tone was rather different. Informant 2 put it like this: «My identity has everything to do with my faith». The other informants were also clear that their faith was closely linked to their identity. Fagan and the aforementioned legal scholar Pearson have pointed to religion as a fundamental part of one's identity and confirmed the way the informants feel about their faith and self. This has also been one of the main arguments for protecting people's freedom of religion since it is so fundamentally attached to a person's being. As Pearson¹⁸³ puts it: «For many religious believers it may be nonsensical to attempt to divide religious experience into a privately religious and publicly non-religious identity». At the same time, the identity argument is just as fundamental when protecting the rights of LGBT people. To say that one's sexual orientation is not necessarily an important feature of one's identity is an opinion one is allowed to have, but the fact is all human rights and other legal doctrines are built on what is called «gender identity» or «sexual identity».¹⁸⁴ To some people, their sexual orientation is just as important to their identity as their faith, or lack of it.

The English philosopher Stephen Law has written that «identity» is an ambiguous term. He also has an interesting take on religious and conscientious objections which people seem to blame on their identity-involving religious character: «Are the moral judgments of the

¹⁸³ p.44.

¹⁸⁴ A/HRC/RES/27/32.

religious thereby more identity-involving than those of the non-religious? If not, then the identity-involving character of such judgments provides no basis for giving extra weight to the conscientious objections of the religious over the non-religious».185 Law's take on the conflict between LGBT rights and religious rights is that he does not find a good argument for giving the religious conscience a more privileged treatment because it is more identity-related than other conscience objections. He does not say one should not take these deep commitments seriously, but he finds it hard to see why religion should get what he sees as «special treatment».186 Law's argument is relevant to this thesis because it challenges the informants' take that religion is more identity-related than sexual orientation. It is not within the scope of this thesis to determine whether this is correct or not, but it is important to note that many people would disagree – and a state certainly does not have to agree with it. The state is obliged, though, to compromise between those groups that have different opinions on this subject so that none of them suffer under limitations – as long as their views do not harm other human beings. It is also important to understand the informants' take on the subject. Considering the fact that they view sexual orientation as something not so important to one's identity, it is not really that hard to understand why they support some forms of SOCE. Or, the other way around; it is not so hard to understand why they have to consider sexual orientation as less important for someone's identity as long as they see it as a sin to freely express same-sex orientation.

So far, the discussion of the findings has illustrated what societal and religious contexts the informants put themselves into. When it comes to how they see themselves in a broader context, it became quite evident the informants felt misunderstood or wrongfully represented in some way or another in a wider societal and political context. Informant 1 said that she feels like «an animal in the zoo» and like «a weird outcast that is doing something that everyone else has stopped doing». Informant 6 said he feels his attitudes are represented as «awful, unnecessary and old-fashioned» in the public debate in Norway. The informants all feel like discussions and conversations with non-religious or more «liberal» Christians end the moment they say they see homosexuality as a sin. They feel like they get dismissed.

At the same time as they feel misunderstood and wrongfully perceived in the larger societal context, the informants reported feeling safe and comfortable in their own religious communities. Informant 1 said that in her congregation they talked about how it is to have a view on things that differ from the majority's view and how to live with that: «Our pastor is eager to empower us to stand firm in a society with several different opinions», she said.

185 Law, «Gay Rights versus Religious Rights», p.56.

186 *ibid.*, p.56-57.

Some of the reflections the informants offered when they were asked about their congregation and community demonstrates quite well what Fagan argues about the depth to which religious communities can influence people's very sense of self.¹⁸⁷ Most of the informants seemed to perceive themselves as fundamentally connected to their religious commitments.

Fagan argues that «human identity is not constructed through a succession of radically existential individual choices». How we continuously interact with others has an effect on who we become; he argues.¹⁸⁸ Though it has been argued above that conservative Christians have shifted their argumentation against a homosexual lifestyle towards a more personal, individualistic argumentation, Fagan is quite clear that human rights cannot be reduced to satisfy a collection of individual desires. As mentioned in Chapter 2.1, he believes that we are fundamentally influenced by our surrounding social conditions – and not just our actual lives but also how we choose to evaluate others' lives.¹⁸⁹ So even though my informants, and conservative Christians in the US¹⁹⁰, seem to argue from a more personal religious freedom-perspective, they cannot completely dissociate themselves from their religious communities and commitments and how they are influenced by them. The «self» that my informants referred to throughout the interviews is quite expansive. They defined themselves through their friends, through their congregation and through occurrences in the media and public debate. Their religious lifestyle also defines who they are outside of their religious communities.

Fagan's main argument is that human rights are not committed to «the conservative objective of reinforcing existing social relations for their own sake» or to support an individual's continuing membership of a cultural and political community. He thinks human rights «offer the opportunity for individuals to extend upon, revise or even radically transform existing identities».¹⁹¹ Fagan believes that «simply seeking to afford individuals and communities the opportunity to imprison themselves within their own «gated communities» avoids, rather than confronts, the challenge of diversity». He therefore argues that «while we may continue to refuse to endorse the specific value commitments and choices of others», we nevertheless have to recognize «the basic humanity we all share».¹⁹² A majority of my informants seemed to agree with this final argument as they emphasized the «human dignity» of all people when talking about the subject. At the same time, they all seemed to find themselves in some sort of

¹⁸⁷ Fagan, p.181.

¹⁸⁸ *ibid.*, p.71.

¹⁸⁹ Fagan, p.39.

¹⁹⁰ Williams, p.247.

¹⁹¹ Fagan, p.40.

¹⁹² *ibid.*, p.202-203.

a «gated community». In one way or another, this seems to make it challenging for a majority of them to fully accept the fact that others may value identity-relating characters different from them. This stands out as one of the main findings of the study.

4.1.6 Concluding remarks

The aim of this case study was to figure out why conservative Christians feel their religious freedom is threatened by a potential ban on SOCE. The findings discussed above have clearly demonstrated that there is a concern among conservative Christians in Norway that their religious freedom is under pressure as Norwegian lawmakers discuss a ban on conversion therapy. They all fear a «worst-case scenario» where the authorities through such a ban would dictate that one cannot preach conservative views on same-sex relationships in Norwegian congregations. This concern probably has to do with the fact that they are currently used to enjoying religious freedom to a great extent, not to mention also because of the fact that Norway has officially been a Christian country for a thousand years. When the state then signals the possible erection of boundaries on that freedom, it may feel like a major intrusion and probably a snub on the original social pact between the state and Christian communities in Norway, which have traditionally been afforded so much freedom. It is not that hard to understand why the informants may feel scorned by such a development. The feeling of powerlessness that some of the informants expressed might, at some point, lead to a need for some kind of protest. It is through these junctures that value conflicts, like the ones we see developing at a rapid speed in the US, occur.

Considering the fact that Article 18(1) of the ICCPR which provides the right to *hold* a belief cannot be limited or suspended, it is a very unlikely scenario that Norwegian lawmakers would go to such an extent in a ban on SOCE. But even as a state cannot put restrictions on others' right to *hold* a religious belief, neither can it assure people that they will not be challenged for holding certain beliefs which differ from the majority's beliefs or opinions. The state of Norway can though, according to IHRL, the national Penal Code and the Equality and Discrimination Act, prohibit offending language towards vulnerable minorities, as was the outcome of the aforementioned Bratterud case. It is also important to remember that a potential ban on SOCE would limit peoples' right to *manifest* one's religion as it is stated in Article 18(3) of the ICCPR, but that the state is allowed to do so as long as it meets the criteria considering protecting public safety, order, health or morals or the fundamental rights and freedoms of others – as prescribed by law. The review of SOCE in Chapter 3 made it clear that such restrictions could be met considering the consequences these efforts have in terms of LGBT peoples' right to not be discriminated against. An offer to help, extended by for example a pastor of a congregation to those who have unwanted sexual attractions, therefore has to be free from discriminating attitudes towards LGBT people. What the lawmakers of Norway now have to figure out is whether that is possible.

The findings discussed above have illustrated that religion and religious freedom are fundamental identity-carriers for the informants. Furthermore, they argue from an individual perception of religious freedom, but they are all affected by the collective dimensions of their faith. This in turn affects their perception of self. In this way, the findings also demonstrate the complex relationship between religious freedom and others' rights and have shown that the informants feel like their right to religious freedom should weigh just as heavily as LGBT people's right to not be discriminated against. If a potential ban on SOCE was to change that dynamic it seems likely that they would lose trust in the authorities. It is hard to say what the consequences of such a development would mean, but if one looks to the US one sees that SOCE bans have led to two main developments: better protection of the LGBT community (and especially LGBT youth) but also a backlash in terms of LGBT rights in several states where religious conservatives have felt threatened by these implementations and introduced laws that go further in protection of religiously held discriminatory beliefs.

5 Conclusion

This thesis has addressed several pressing issues surrounding sexual and religious freedom and the potential clashes between them with a primary focus on SOCE. To answer the first research question about what is at stake as Norwegian legislators discuss a potential ban on SOCE, Chapter 2 presented relevant theory on the subject, demonstrating that freedom of religion and the right to non-discrimination are fundamental rights – but with limitations – and sometimes they contradict each other. Chapter 3 illustrated that SOCE still occurs in various forms and to different extents. It also showed that SOCE poses clear human rights challenges that can have fatal consequences for the individuals involved. At the same time, it also illustrated potential challenges of banning the practice when reflecting on, in particular, religious freedom, but also how existing bans in the US can end up threatening the rights of LGBT people, relying on arguments based on innateness, immutability and lack of choice.¹⁹³ This also happens through political backlash to attempts at strengthening laws that protect religious peoples' right to hold discriminatory beliefs.

Chapter 4 answered parts of the first research question by considering what is at stake for conservative Christians' rights and perceptions of the society around them especially on the issue of a potential ban on SOCE. It has also answered the second research question asking why conservative Christians feel their religious freedom is threatened by a potential ban. The small case study showed that there is concern among conservative Christians in Norway over their human rights, as a potential ban is being discussed, and that this concern mainly has to

¹⁹³ Powell and Stein, p.34.

do with their freedom of conscience and religion. The case study also illustrated the complexity of religious identity and how the informants perceive their own and others' key aspects of identity. The fact that most of the informants seem to think religion is more identity-involving than sexual orientation and that their perception of homosexuality is first and foremost a private belief without consequences for wider society, can both explain why they can support some forms of SOCE and why they think a ban on the practice would serve as a threat. A threat not just to their own religious and conscientious freedom, but particularly to those who struggle with unwanted sexual attractions and want help.

All the chapters have in some way or another demonstrated that values are largely experienced as subjectively and individually – even though they have a clear collective dimension in terms of the consequences of how we perceive and shape the society around us. It is in the absence of such an agreement about values that the state becomes the bearer of social order «through the rules it enforces by its various sanctions».¹⁹⁴ Therefore, the legislators of Norway have to think carefully about how a ban on SOCE would affect peoples' right to *hold* a religious belief. Though one can argue that SOCE mainly affects the right to *manifest* one's religion – a right that can be restricted if the requirements are met – this thesis has shown that there is also a concern that the ban will end up affecting one's right to *hold* certain beliefs. I therefore maintain that implementation of such a ban would be unwise if this was to be a consequence.

The purpose of this thesis has been to demonstrate what is at stake, in terms of sexual and religious freedom, as a ban on SOCE is being discussed in Norway. The thesis has shown that the discussion of a potential ban on SOCE in Norway is becoming another complex challenge in terms of the theory and practice of human rights and particularly the one considering «the claim that an individual's religious faith justifies their action in a discriminatory manner towards others on the grounds of these others' sexual orientation».¹⁹⁵ It has shown that the debate about SOCE in Norway and the US has become a deep value conflict between two different groups fighting for two different, yet very similar rights. I hope legal, political and social scholars continue to examine these issues. In particular, the extent, form and consequences of SOCE, more thoroughly than the scope of this thesis has allowed it to. Concerning this, Powell and Stein's¹⁹⁶ concluding argument cannot be emphasized enough: «Attraction to people of the same sex, whether inborn, changeable, or chosen, does not reflect disease or defect and should not serve as the basis of discrimination». It is a state's responsibility to make sure this does not happen.

¹⁹⁴ Childress, p.335.

¹⁹⁵ Fagan, p.200.

¹⁹⁶ p.37.

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Appendix 1: Approval from the Norwegian Centre for Research Data (in Norwegian)

23.4.2020	Meldeskjema for behandling av personopplysninger
 NORSK SENTER FOR FORSKNINGSDATA	
NSD sin vurdering	
Prosjekttittel	
I religionsfrihetens navn: Hva står på spill i utredningen av et forbud mot konverteringsterapi i Norge?	
Referansenummer	
190736	
Registrert	
28.01.2020 av Elise Kruse - elisekru@uio.no	
Behandlingsansvarlig institusjon	
Universitetet i Oslo / Det juridiske fakultet / Norsk senter for menneskerettigheter	
Prosjektansvarlig (vitenskapelig ansatt/veileder eller stipendiat)	
Stener Ekern, stener.ekern@nchr.uio.no, tlf: 41497886	
Type prosjekt	
Studentprosjekt, masterstudium	
Kontaktinformasjon, student	
Elise Kruse, kruseelise@gmail.com, tlf: 99448997	
Prosjektperiode	
01.01.2020 - 15.05.2020	
Status	
21.02.2020 - Vurdert	
Vurdering (1)	
21.02.2020 - Vurdert	
Det er vår vurdering at behandlingen av personopplysninger i prosjektet vil være i samsvar med personvernlovgivningen så fremt den gjennomføres i tråd med det som er dokumentert i meldeskjemaet den 21.2.2020 med vedlegg, samt i meldingsdialogen mellom innmelder og NSD. Behandlingen kan starte.	
MELD VESENTLIGE ENDRINGER	
Dersom det skjer vesentlige endringer i behandlingen av personopplysninger, kan det være nødvendig å melde	
https://meldeskjema.nsd.no/vurdering/5c308596-6085-4837-b3e6-6e49c3250af9	1/3

dette til NSD ved å oppdatere meldeskjemaet. Før du melder inn en endring, oppfordrer vi deg til å lese om hvilke type endringer det er nødvendig å melde:

https://nsd.no/personvernombud/meld_prosjekt/meld_endringer.html

Du må vente på svar fra NSD før endringen gjennomføres.

TYPE OPPLYSNINGER OG VARIGHET

Prosjektet vil behandle særlige kategorier av personopplysninger om religion og filosofisk overbevisning og alminnelige kategorier av personopplysninger frem til 15.5.2020.

LOVLIG GRUNNLAG

Prosjektet vil innhente samtykke fra de registrerte til behandlingen av personopplysninger. Vår vurdering er at prosjektet legger opp til et samtykke i samsvar med kravene i art. 4 nr. 11 og art. 7, ved at det er en frivillig, spesifikk, informert og utvetydig bekreftelse, som kan dokumenteres, og som den registrerte kan trekke tilbake.

Lovlig grunnlag for behandlingen vil dermed være den registrertes uttrykkelige samtykke, jf. personvernforordningen art. 6 nr. 1 bokstav a, jf. art. 9 nr. 2 bokstav a, jf. personopplysningsloven § 10, jf. § 9 (2).

PERSONVERNPRINSIPPER

NSD vurderer at den planlagte behandlingen av personopplysninger vil følge prinsippene i personvernforordningen om:

- lovlighet, rettferdighet og åpenhet (art. 5.1 a), ved at de registrerte får tilfredsstillende informasjon om og samtykker til behandlingen
- formålsbegrensning (art. 5.1 b), ved at personopplysninger samles inn for spesifikke, uttrykkelig angitte og berettigede formål, og ikke viderebehandles til nye uforenlige formål
- dataminimering (art. 5.1 c), ved at det kun behandles opplysninger som er adekvate, relevante og nødvendige for formålet med prosjektet
- lagringsbegrensning (art. 5.1 e), ved at personopplysningene ikke lagres lengre enn nødvendig for å oppfylle formålet

DE REGISTRERTES RETTIGHETER

Så lenge de registrerte kan identifiseres i datamaterialet vil de ha følgende rettigheter: åpenhet (art. 12), informasjon (art. 13), innsyn (art. 15), retting (art. 16), sletting (art. 17), begrensning (art. 18), underretning (art. 19), dataportabilitet (art. 20).

NSD vurderer at informasjonen som de registrerte vil motta oppfyller lovens krav til form og innhold, jf. art. 12.1 og art. 13.

Vi minner om at hvis en registrert tar kontakt om sine rettigheter, har behandlingsansvarlig institusjon plikt til å svare innen en måned.

FØLG DIN INSTITUSJONS RETNINGSLINJER

NSD legger til grunn at behandlingen oppfyller kravene i personvernforordningen om riktighet (art. 5.1 d), integritet og konfidensialitet (art. 5.1 f) og sikkerhet (art. 32).

For å forsikre dere om at kravene oppfylles, må dere følge interne retningslinjer og eventuelt rådføre dere med behandlingsansvarlig institusjon.

OPPFØLGING AV PROSJEKTET

NSD vil følge opp ved planlagt avslutning for å avklare om behandlingen av personopplysningene er avsluttet.

Lykke til med prosjektet!

Appendix 2: Interview guide (in Norwegian)

INTERVJUGUIDE

Innledningsspørsmål

- Hvordan vokste du opp?
- Hvordan var den kristne tro til stede i familien og oppveksten din?
- Fortell om ditt første møte med kristne miljøer

Tro og samvittighet

- Hvordan preger troa di hverdagen din?
- Hvordan vil du beskrive troa di?
- Hvordan ser du på det som står i Bibelen?
- Hvordan skiller du mellom din egen og Guds samvittighet?
- Hva slags tanker har du om begrepet religionsfrihet?
- Hva betyr religionsfriheten for deg?

Verdier og holdninger

- Hva er dine fem viktigste verdier og hvorfor?
- Hvor ofte tenker du over hvordan du og andre lever livene sine?
- Hvem er med på å forme holdningene dine?
- Hvordan vil du selv karakterisere holdningene dine?
- Hvor vanlig er det å ha andre meninger enn det du har i din menighet?

Homofili

- Har du homofile venner?
- Hva tenker du om homofili?
- Hva tenker du om ulike former for homoterapi, slik som forbønn og sjelesorg som har som formål å prøve å endre noens legning?

Identitet og selvet

- Hvordan opplever du selv at du blir representert i storsamfunnet?
- Hvordan tror du andre vil karakterisere holdningene og verdiene dine?
- Har du snakket med noen som ikke deler ditt syn på dette? Vil du fortelle om det?
- Hvor mye tenker du over hvordan holdningene og verdiene dine oppfattes av dem rundt deg?
- Hvor viktig er menigheten din for deg? På hvilken måte?
- Hvordan snakker dere om storsamfunnet i menigheten?

Appendix 3: Interview information and consent sheet (in Norwegian)

Vil du delta i forskningsprosjektet

I religionsfrihetens navn: Hva står på spill i utredningen av et forbud mot konverteringsterapi i Norge?

Dette er et spørsmål til deg om å delta i et forskningsprosjekt hvor formålet er å finne ut hva som står på spill når et forbud mot såkalt konverteringsterapi skal utredes i Norge. I dette skrivet gir vi deg informasjon om målene for prosjektet og hva deltakelse vil innebære for deg.

Formål

Prosjektet er en masteroppgave ved Norsk senter for menneskerettigheter. Oppgaven skal som utgangspunkt ikke brukes til noe annet formål enn som en avsluttende oppgave på studiet. Problemstillingen er å diskutere hvilke rettigheter som står på spill når et mulig forbud mot såkalt konverteringsterapi skal utredes av norske myndigheter i 2020, med fokus på religionsfrihet og seksuelle minoriteters rettigheter.

Hvem er ansvarlig for forskningsprosjektet?

Universitetet i Oslo er ansvarlig for prosjektet.
Professor Stener Ekern fungerer som veileder på prosjektet.

Hvorfor får du spørsmål om å delta?

Intervjuene vil gjøres med kristne mennesker i Norge som opplever at homofili er synd og som har tro på at seksuell reorientering kan være mulig eller er villig til å diskutere dette. Utvalget vil bestå av 6-8 personer i denne gruppen som er blitt spurt ved hjelp av kontakter i de aktuelle kristne miljøene. Etersom din bakgrunn er relevant ønsker jeg at du er et av mine intervjuobjekt til denne studien.

Hva innebærer det for deg å delta?

Hvis du velger å delta i prosjektet innebærer dette at du deltar på et intervju av en time (60 minutter), hvor du besvarer spørsmål angående din tro, din samvittighet, dine holdninger og verdier – særskilt med tanke på religionsfrihet og homofiles rettigheter. Dine svar vil registreres ved lydopptak og lagres av meg frem til mai 2020. Det vil ikke være andre som har tilgang til intervjuet eller dine opplysninger, annet enn det som inkluderes i oppgaven.

Det er frivillig å delta

Det er frivillig å delta i prosjektet. Hvis du velger å delta, kan du når som helst trekke samtykke tilbake uten å oppgi noen grunn. Alle opplysninger om deg vil da bli anonymisert. Det vil ikke ha noen negative konsekvenser for deg hvis du ikke vil delta eller senere velger å trekke deg.

Ditt personvern – hvordan vi oppbevarer og bruker dine opplysninger

Vi vil bare bruke opplysningene om deg til formålene vi har fortalt om i dette skrivet. Vi behandler opplysningene konfidensielt og i samsvar med personvernregelverket.

- Det er kun jeg (student) som har tilgang til intervjuet i sin helhet. Min veileder (professor Stener Ekern) vil underveis i prosessen ha tilgang til utkast av oppgaven, hvor deler av intervjuet som ikke ender opp i det endelige utkastet inkluderes.
- Tiltakene som gjøres for at ingen andre skal ha tilgang til intervjuet er at det kun oppbevares bak kodet tilgang til telefonen tilhørende meg (student).
- Du vil omtales som «informer X» (og et nummer mellom 1 og 6) og vil ikke være identifiserbar.

Hva skjer med opplysningene dine når vi avslutter forskningsprosjektet?

Prosjektet skal etter planen avsluttes i mai 2020. Opptaket av intervjuet og notater knyttet til intervjuet vil umiddelbart bli slettet etter avsluttet prosjekt.

Dine rettigheter

Så lenge du kan identifiseres i datamaterialet, har du rett til:

- innsyn i hvilke personopplysninger som er registrert om deg,
- å få rettet personopplysninger om deg,
- få slettet personopplysninger om deg,
- få utlevert en kopi av dine personopplysninger (dataportabilitet), og
- å sende klage til personvernombudet eller Datatilsynet om behandlingen av dine personopplysninger.

Hva gir oss rett til å behandle personopplysninger om deg?

Vi behandler opplysninger om deg basert på ditt samtykke.

På oppdrag fra Universitetet i Oslo har NSD – Norsk senter for forskningsdata AS vurdert at behandlingen av personopplysninger i dette prosjektet er i samsvar med personvernregelverket.

Hvor kan jeg finne ut mer?

Hvis du har spørsmål til studien, eller ønsker å benytte deg av dine rettigheter, ta kontakt med:

- Universitetet i Oslo ved veileder professor Stener Ekern (stener.ekern@nchr.uio.no) og student Elise Kruse (e.kruse@student.jus.uio.no)
- Vårt personvernombud: Roger Markgraf-Bye (personvernombud@uio.no)
- NSD – Norsk senter for forskningsdata AS, på epost (personverntjenester@nsd.no) eller telefon: 55 58 21 17.

Med vennlig hilsen

Elise Kruse
Prosjektansvarlig

Samtykkeerklæring

Jeg har mottatt og forstått informasjon om prosjektet *I religionsfrihetens navn: Hva står på spill i utredningen av et forbud mot homoterapi i Norge?* og har fått anledning til å stille spørsmål. Jeg samtykker til:

- å delta i intervju

Jeg samtykker til at mine opplysninger behandles frem til prosjektet er avsluttet, ca. mai 2020.

(Signert av prosjektdeltaker, dato)