

## The Koran in Sweden

The recent Koran-burnings in Stockholm have given rise to a heated debate, as in Sweden, burning the Koran has even been found to fall within the scope protected by freedom of expression in such cases.

The issue arose from a series of requests for permission for public events during which the Koran would be burnt: on 1 February, a cultural association asked the police in the Swedish capital for permission to organize a demonstration on 9 February 2023 in front of the Turkish embassy; on 6 February, a private citizen and political activist asked the police for permission for a demonstration on 13 February in front of the Iraqi embassy: both events were planned for a small number of participants.

In both cases, however, the police refused permission on the grounds of public order and security, as the public burning of the Koran could inevitably increase the threat of terrorist attacks in Sweden and against Swedish interests abroad.

The Administrative Court in Stockholm, called upon to judge the refusal of authorizations, upheld the two appeals (Förvaltningsrätten i Stockholm, Nos. 2741-23 and 2925-23), despite the fact that the deadlines had passed, to protect legitimate interests against abuses by the police authority.

The administrative judges, after analyzing the specific cases, state that the freedoms of expression, assembly and demonstration are some of the fundamental freedoms and rights guaranteed to all by Chapter 2, Section 1 of the Constitution *Regeringsformen* ([https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/kungorelse-1974152-om-beslutad-ny-regeringsform\\_sfs-1974-152/#K2](https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/kungorelse-1974152-om-beslutad-ny-regeringsform_sfs-1974-152/#K2); Sweden, in fact, has four constitutional documents: the *Regeringsformen*, on the organization of the Government, the *Successionsordningen*, on succession to the Throne, the *Tryckfrihetsförordningen*, on freedom of the press, and the *Yttrandefrihetsgrundlagen*, on freedom of expression, to which must be added, in addition, also the *Riksdagsordningen*, on the organization of Parliament, which is a middle way between a constitution and an ordinary law).

These constitutionally protected freedoms and rights, however, are not absolute, but may be limited by law, according to Chapter 2, sect. 20 of the *Regeringsformen*, in the ways permitted by sections 21, 23 and 24: we thus see that, firstly, according to sect. 21, these limitations:

- (a) are only possible to satisfy acceptable purposes in a democratic society,
- b) they may not go beyond what is strictly necessary in relation to the purpose which determined them,
- c) they may not go so far as to constitute a threat to the free formation of opinions, which is one of the foundations of democracy,
- d) the restriction may not be decided solely on the basis of political, religious, cultural or other opinions.

Chapter 2, sect. 24 of the *Regeringsformen*, moreover, adds that freedom of assembly and demonstration may be restricted for reasons of order and security of the assembly or demonstration; otherwise, these freedoms may only be restricted for reasons of national security or to prevent an epidemic; finally, according to sect. 25, foreigners may be subject to special restrictions, provided these are laid down by law, with regard to freedom of expression, freedom of information, freedom of assembly, freedom of demonstration, freedom of association and freedom of religion.

In the case of applications for authorizations for public demonstrations, Law No. 1617/1993 on Public Order (<https://lagen.nu/1993:1617>) also applies, Chapter 2, § 10 of which stipulates that authorization for a public gathering may only be refused for reasons of order or security of the gathering or, as a direct consequence, its immediate surroundings, or to prevent an epidemic, while refusal for reasons of national security is not contemplate.

It is apparent from the contested police decisions that the main reason why the authorizations were refused was the fear that, according to the police, public order and security could not be guaranteed because of the planned gathering, and that a demonstration in front of the Turkish and Iraqi embassies during which a copy of the Koran was burnt would increase the risk of terrorist attacks in other parts of Sweden or against Swedish interests abroad.

The Administrative Court, however, considers that, on the basis of precedent, legislation and *mens legislatoris*, verifiable in the preparatory work for the revision of the *Regeringsform* (Act No. 1986/87, para. 151, pp. 182 ff., <https://lagen.nu/prop/1986/87:15>), and in that for the revision of the Public Order Act (Act No. 1992/93, para. 210, pp. 80 ff. and 249 ff., <https://lagen.nu/prop/1992/93:210>), the concept of ‘order and security during the event’ has always been used in a restrictive sense, i.e. referring only to the order and security of the participants, as well as to the problems of order and security arising in the immediate vicinity of the event and which were a direct consequence of it.

The increased risk of terrorist attacks, either in Sweden or against Swedish interests abroad, is therefore purely hypothetical, and the Administrative Court is of the opinion that, in order to authorize the restrictions, there must be relatively concrete circumstances indicating the occurrence of disturbances or security risks during the gathering.

The Administrative Court examined the documents on which the Police Authority’s decision was based, including the assessment carried out by the Swedish Security Service: the fact that the Swedish Intelligence Service had assessed that the public burning of the Koran could in itself lead to an increased risk of future terrorist attacks is undoubtedly relevant and to be taken into account, however, the Administrative Court notes that the public order and security problems cited by the Police Authority had no clear connection to the planned rally or its immediate surroundings. Nor was there any more detailed information about the threat, e.g. about where or when a possible terrorist attack might have occurred.

The Stockholm Administrative Courts therefore held that the police authority did not have sufficient elements to reject the applications for permission to organize a public rally submitted by the association and the private citizen political activist, and the contested decisions are therefore annulled: a certain and immediate restriction on a constitutional right for merely hypothetical and future reasons is not permissible.

But the Stockholm Administrative Court also stated that there was no violation of the Muslims' religious sentiment, since the two demonstrations that had requested authorization, which was then denied, were not directed against Islam, but rather, according to their organizers, against the political use that some countries, although proclaiming themselves to be Islamic, make of Islam, and, with specific reference to Turkey, the attitude it was showing towards Sweden's membership of NATO: firstly, taking into consideration the location, the two demonstrations were not planned to take place in front of some mosque, but in front of the embassies of Turkey and Iraq; Secondly, then, the message of the two demonstrations was neither directed against Islam, nor against Muslims in general, nor even against Swedish Muslims, but against two countries (i.e., against the governments of two countries) which, according to those who requested authorization for the demonstrations, are instrumentalizing the Islamic religion and its global reach, thanks to the Ummah, for political purposes considered to be petty.

This important distinction, in fact, made it possible to exclude the application of Section 16(8) of the Swedish Criminal Code (<https://lagen.nu/1962:700>), which provides for the punishment of 'anyone who, in a statement or other public message, threatens or expresses disrespect for a group of people or another similar group of people with allusions to race, skin color, national or ethnic origin, creed, sexual orientation or gender, shall be sentenced for incitement against a group of people to imprisonment for a maximum of two years or, if the offence is minor, to a fine.

If the offence is serious incitement against a group of persons, it is punishable by imprisonment for a minimum of six months and a maximum of four years. In assessing the seriousness of the offence, particular consideration must be given to whether the message has a particularly threatening or offensive content and has been distributed to a large number of people in such a way as to attract significant attention': this is an article of the criminal code that has always been applied against neo-Nazi anti-Jewish propaganda until now, with the exception of a single case, however, relating to a Facebook post *expressis verbis* contempt for all Muslims in general and as Muslims (Svea Hovrätt, judgment no. B4509, 20 December 2016).

Then, at the beginning of July, with regard to the burning of religious symbols, two permits had been requested for demonstrations in front of the Israeli Embassy, during which it had been announced that copies of the Torah would be burned. However, following the decisive intervention of the Israeli Ambassador to the King of Sweden, communicated by a tweet

<https://twitter.com/zivnk/status/1618554571126870017>, the demonstrations were held without burning copies of the sacred Hebrew text.

In the three cases in question, however, as confirmed to us by email and telephone by the Stockholm police, the organizers of the demonstrations had declared that they did not want to express contempt either towards Muslims or Jews in general, or towards Swedish Muslims or Jews, or even towards Islam or Judaism, but rather to substantiate a political criticism against three very specific governments: an objective therefore that in se ipso does not violate religious freedom, which is constitutionally protected, and is legitimate and equally constitutionally protected by the guarantee in favour of freedom of speech and expression, and precisely this constitutional legitimacy also extends to the - albeit admittedly highly deplorable - means used to achieve the greatest possible media prominence for the political criticism in question, i.e. burning a copy of a sacred text, reaching the paradox, one might add in conclusion, of giving rise to a certain media instrumentalization of religion to protest against its alleged political instrumentalization.

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