

Human Rights Without Frontiers Int.

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Fighting religious segregation and discrimination against minority religions and their members in the OSCE space

Cordoba OSCE Conference on anti-Semitism and on Other Forms of Intolerance

Address to the Advisory Panel of Experts

Honorable members of the Advisory Panel,

I am grateful to you for giving me the opportunity to address a facet of discrimination towards religious minorities in the OSCE space that is rarely raised: the categorization of religions.

Former UN Special Rapporteur on Freedom of Religion or Belief Abdelfattah Amor clearly raised this issue in a report about a visit in situ in Romania in 2003. Current UN Special Rapporteur Ms Asma Jahangir confirmed her concerns with that widespread phenomenon in Europe in this year's report.

It is usual in OSCE and other conferences to criticize the legislation and policies of a number of states in Central Europe, Eastern Europe and Central Asia as if countries in Western Europe were without any reproaches. It needs to be stressed that the reality is very different.

In Western Europe, various forms of registration and state-recognition of religions have led to the categorization of religious groups and to structural religious discrimination against so-called second-rank religious groups and their members. Religious bodies registered in an upper category and their members have more rights than others registered in a lower category. Denying equal rights or equal opportunities to individuals and associations on the basis of their religious orientation is a clear case of religious segregation.

What sort of concrete discrimination can be incriminated in the widespread system of state recognition of a limited number of religions in Western Europe ?

For example and according to the country, religious groups which have been granted a lower status are victims of a number of discriminatory practices:

- They are not eligible to receive state subsidies whilst their members have no

other choice than to contribute to the financing of state-recognized religions through the income tax system;

- They are denied the right to engage in a number of public activities;
- They are denied free access to public media;
- They are not permitted to teach religion at public schools; and consequently, children of their members are not only denied appropriate religious classes but in some countries, they are even obliged to follow classes promoting sets of values which are in contradiction with theirs;
- They are not allowed to have chaplains to provide pastoral care to their believers who are in the armed forces, centers for refugees, hospitals or other social or health care facilities, and prisons; and consequently, their members are denied pastoral care on the ground of their religious orientation;
- In some countries, they are denied state recognition of marriage ceremonies;
- In some countries, they are subject to a numerical quota for the issue of visas for foreign religious workers, even if they are volunteers, or they are simply denied any visa;
- In many cases, they are stigmatized as harmful sects/cults and warned against by public and private institutions funded by public powers. In some cases of divorce, child custody has been denied to one of the parents on the ground of his/her religious orientation.

What other name than religious segregation can be used to qualify such practices in force in West European countries such as Austria, Belgium, Denmark, Germany or Greece? Why should the enjoyment of some rights be limited to religions with which a state has concluded specific agreements? Shouldn't a person be allowed to have access to a chaplain in a home for elderly people whatever his/her religious affiliation?

The categorization of religions in Western Europe has unfortunately served as a model for post-communist countries in Central and Eastern Europe which have recently become part of the enlarged European Union.

EU institutions have never questioned the categorization of religions as a source of structural discrimination. EU Annual Reports on Human Rights in the world and in the European Union have always kept silent about the categorization of religions and the related discrimination. Religious freedom is not listed among the eight human rights key-issues that are included in the Action Plans and Strategy Papers of the European Commission for the European Neighborhood Policy. Religious freedom is not an issue per se in the relations between the various committees of the European Parliament with non-EU states. Religious freedom is not taken in consideration for projects funded by the European Commission.

Honorable members of the Advisory Panel,

Considering that at the 61st session of the UN Commission of Human Rights, UN Special Rapporteur on Freedom of Religion or Belief Asma Jahangir urged the international community to commemorate the 25th anniversary of the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, proclaimed by General Assembly resolution 36/55 of 25 November 1981, by publicizing it more widely and by enhancing its implementation;

I want to draw the attention of the OSCE to the existence of laws and practices that are not consistent with its standards;

I urge the ODIHR to identify the laws and constitutional provisions that lead to various forms of discriminatory categorization of religions;

I also urge the OSCE

- to open a dialogue with the concerned member-states, including in Western Europe,
- to offer them technical assistance to achieve a number of reforms,
- to assess its own strategies, its own actions and the achievements of the concerned member-states,
- to be result-orientated.

Willy Fautré

Annex I

Categorization of religions

Statement UN Special Rapporteur Abdelfattah Amor

Excerpt from his report following his visit in situ in Romania in 2003

94. (...) the Special Rapporteur considers that the principle of freedom of religion or belief, as enshrined in international human rights law, is difficult to reconcile with a formal or legal distinction between different kinds of religious or faith-based communities insofar as such a distinction in their status must imply a difference in rights or treatment, which may, in some cases, constitute discrimination that is incompatible with the exercise of human rights.

95. The Special Rapporteur notes that this distinction between two kinds of religious or faith-based communities means that the financial contributions made to recognized religions are not available to non-recognized religions, that non-recognized religions, unlike recognized religions, (...) non-recognized religions cannot provide religious instruction in State schools in the same way as recognized religions. The problem is not just that such discrimination may be contrary to international human rights law, particularly since it is not certain that the criteria used by the authorities to decide whether a religion should be recognized are objective from the viewpoint of international law, but that such discrimination amounts to restrictions that may, in certain circumstances, constitute a violation of the right to freedom of religion or belief.

96. In the light of this, the Special Rapporteur would like to encourage the Romanian Government to abolish the distinction between recognized and non-recognized religions (...).

Annex II

The right to freedom of association and the registration issue

The right to freedom of religion covers the right of individuals to associate with others and to assert their religious freedom “in community with others”, whether in public or in private. In this regard, religious groups are also protected by freedom of association. Therefore, laws affecting the structuring of religious communities are to be in full conformity with Art. 22 of the ICCPR, Art. 20 of the Universal Declaration and other international instruments, and to facilitate the access of religious groups to a legal status. This is however not the case in a number of emerging democracies in Central and Eastern Europe as well as in Central Asia.

In Slovakia, the 1991 Act on Freedom of Religious Faith and Status of Churches and Religious Societies (No. 308/1991) provides the overall framework for the enjoyment and protection of religious freedoms, as well as addresses registration and religious entity legal status. Notably, the Act did not establish numerical thresholds for registration. However, the Slovak National Council in 1992 issued regulations (Act on the Registration of Churches and Religious Associations – No. 192/1992) addressing this question, declaring that an applicant group must submit a petition with the signatures of 20,000 adult permanent residents stating they share the beliefs of the community.

The 20,000-person threshold is the highest numerical threshold for registration of any of the 55 participating States of the OSCE.

In Serbia, a draft law is a source of concern to the OSCE and religious freedom watchdogs. Indeed, 700 signatures are needed to register a new religious community. .

Vidan Hadzi-Vidanovic, a researcher at the Belgrade Centre for Human Rights, declared to Forum 18 in Belgrade on 10 May: "Under our legal system, groups not registered as religious communities – since they have fewer than 700 members or object to reporting themselves to the state – have no legal status."

In Moldova, the True Orthodox Church (a branch of the Russian Orthodox Church Abroad based in the United States), the Mormons and two Muslim organizations have up to now failed to be registered.

Moldova has been used to registering one denomination per religious family while denying accreditation to the others. In the case of Orthodoxy, the government led by the Communist Party has first recognized the sole Moldovan Orthodox Church, which is linked to the Moscow Patriarchate, and has denied registration to the True Orthodox Church as well as to the Bessarabian Church, which is linked to the Romanian Patriarchate. A decision of the European Court of Human Rights has forced however Moldova to register the Bessarabian Church. More religious groups in the same situation have lodged a complaint in Strasbourg. It must also be stressed that in the breakaway state of Transnistria, the Baptist Church and the Methodist Church remain unregistered while Jehovah's Witnesses have been de-registered.

Annex III

Categorization of religions and institutional discrimination in Austria

General overview

Legislation:

- Constitutional Act on General Human Rights of Citizens provide for freedom of religion (Articles 14 and 15)
- Law on Recognition of Churches and Religious Communities for state-recognized churches and religious communities (1874)
- Law on the Status of Religious Communities for confessional communities (1998)
- Law creating a Documentation and Information Center on Sects (1998)
- Law on Associations (2002).

Main requirements of the 1998 Law for new applications for category 1:

- Membership of at least 0.2% of the population (appr. 16,000)
- 20-year period of existence with at least 10 as a confessional community.⁽ⁱ⁾

Categorization

Category 1: 13 state-recognized religious societies ⁽ⁱⁱ⁾

Roman Catholic Church	5,915,421
Islamic Religious Community	338,988
Protestant Churches (Augsburger and Helvetic Confessions and some others)	376,150
Greek Eastern Orthodox Churches (Russian, Greek, Serbian, Romanian and Bulgarian)	174,385
Old Catholic Church	14,621
Austrian Buddhist Religious Association	10,402
Jewish Religious Association	8,140
New Apostolic Church	4,217
Church of Jesus Christ of Latter-day Saints (Mormons)	2,236
Armenian Apostolic Church	1,824
Coptic Orthodox Church	1,633
Syrian Orthodox Church	1,589
Methodist Church	1,263

Category 2: 10 registered confessional communities ⁽ⁱⁱⁱ⁾

Jehovah's Witnesses	23,206
Federation of Free Christian and Pentecostal Congregations	7,186
Federation of Evangelical Congregations	4,892
Church of the Seventh-Day Adventists	4,220
Hindu Religious Society	3,629
Federation of Baptist Congregations	2,108
Christian Movement for Religious Revival	1,152
Baha'i Religious Community	760
Mennonite Free Church	381
Pentecostal Community of God	

Category 3: Associations

Non-recognized religious communities can register as associations.

Institutional discrimination

The 1998 Law aggravates the discriminatory character of the pre-existing legislation as the legislators created a new intermediary category for non-recognized religious groups that had applied and were qualifying for state-recognition according to the regulation then in force. Since 1998, new applicants for state-recognition have had to meet with new obligations and wait for 10 years in category 2 while 9 of the 13 state-recognized religious societies registered before were maintained in category 1 with far less than 16,000 members. Noteworthy is also the state-recognition of the Coptic Orthodox Church with only 1,633 members in 2003, outside the realm of the new regulation normally imposed to new candidates.

State-recognized religious societies have a preferential treatment in comparison with confessional communities and other religious groups registered as mere associations.

The new requirements to be fulfilled by new religious movements particularly impair the ability of their members to fully enjoy their individual and collective rights. The denial of state-recognition can therefore seriously hinder their ability to practice and manifest their faith in community with others. For example, confessional communities and other religious associations are:

- denied the right to engage in a number of public or quasi-public activities;
- not eligible to receive state subsidies for the wages and education of their clergy;
- not permitted to teach religion at public schools (consequently, children of members of confessional communities and other religious associations are denied appropriate religious classes);
- not eligible to get state-funding for religious instruction of their children in places of worship;
- refused access to co-religionists as chaplains in the armed forces, centers for refugees, hospitals or other social or health care facilities, and prisons (consequently, members of confessional communities and other religious associations are denied pastoral care);
- subject to a numerical quota for the issue of visas for foreign religious workers;
- in many cases stigmatized as harmful sects/cults and warned against by public and private institutions (such as The Federal Office of Sect Issues, the Society against Sect and Cult Dangers, etc.) funded by public powers such as the State, the Ministry for Social Security and Generations, the City of Vienna, provinces, etc. (consequently, members of stigmatized confessional communities and other religious associations have been reported to be discriminated against at school, by courts, etc. / see child custody in the case *Hoffman v. Austria* at the European Court in Strasbourg.)

Human Rights Without Frontiers Int. recommends

to the Austrian Government

- to revise the system of registration of religious communities so as to facilitate greater enjoyment of religious liberties instead of limiting them;
- to give equal opportunities to all religious communities and their members;
- to abrogate any discriminatory regulation;
- to put an end to the public funding of institutions stigmatizing minority religious groups.

Willy Fautré

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Suggested reading

Religionsfreiheit, Intoleranz und Diskriminierung in der Europäischen Union (Österreich 2003-2004), 32 p, August 2004, Human Rights Without Frontiers Int. (Brussels), <http://www.hrwf.net>

International Religious Freedom Report 2004, Austria, Released by the Bureau of Democracy, Human Rights and Labor
<http://www.state.gov/g/drl/rls/irf/2004/35439.htm>

ⁱ⁾ Before 1998, Austria made a distinction between two categories of religions: **legally recognized religious communities** and **non-recognized religious communities**. This system flouted the fundamental principle of equal opportunities for religious communities and citizens. Even so, after many years of fighting legal battles, some religious communities managed to qualify for state recognition, but in 1998, Austria hastily revised its legislation and created a third intermediary category for the non-recognized religious groups that had applied for the higher status: **religious confessional communities**. Only 4 of the 13 recognized religious groups and only 1 of the 10 new applicants meet the membership requirement.

ⁱⁱ⁾ (Source: Statistik Austria, national census 2001).

No religion (963,263) - Religion non stated (160,662)

ⁱⁱⁱ⁾ A minimum membership is required: 300.

Six of these confessions show a higher membership than the smallest legally recognized church (Methodist Church: 1,263).

Annex IV

Categorization of religions and institutional discrimination in Slovakia

General overview

Legislation:

- Act on Freedom of Religious Faith and Status of Churches and Religious Societies (No 308/1991)
- Act on the Registration of Churches and Religious Associations (No 192/1992)

Main requirement: Membership threshold: 20,000 permanent residents

Categorization

Category 1: Religious communities registered with the Governmentⁱⁱⁱ

Registered prior to 1992/ Membership: More than 20,000ⁱⁱⁱ

Roman Catholic Church (68.9%)
Evangelical Church of the Augsburg Confession (6.9%)
Greek Catholic Church (4.1%)
Reformed Christian Church (2%)
Orthodox Church (1%)

Registered prior to 1992/ Membership: Less than 20,000

Evangelical Methodist Church (7,347 members)
Christian Corps in Slovakia (6,519 members)
Baptist Churches (3,562 members)
Seventh-Day Adventist Church (3,429 members)
Brethren Church (3,217 members)
Jewish Faith Union (2,310 members)
Old Catholic Church (1,733 members)
Czechoslovak Husite Church (1,696 members)

Registered since 1992

Jehovah's Witnesses (20,630 members)
Apostolic Church (3,905 members)ⁱⁱⁱ

Category 2: Non-registered religious groups

Religious groups not eligible to be registered as "religious communities" are estimated to range from 30 (Department of State International Religious Freedom Report 2004) to 50 (Slovak Ministry of Culture).

Some religious groups have registered as "civic associations".

Non-traditional religions

Ananda Marga
Hare Krishna
Osho
Raelians
Rosicrucians
Sahaja Yoga
Shambaola Slovakia
Sri Chinmoy
Yoga in Daily Life
Zazen International Slovakia
Zen Centermyo Sahn Sah

Religious societies termed "syncretic" by the Government

Baha'i Faith
Church of Scientology
Movement of the Holy Grail
Unification Church

Christian religious societies

Brothers in Christ (Christadelphians)
Church of Christ
Church of Jesus Christ of Latter-day Saints (Mormons)
Free Peoples' Mission
International Association of the Full Gospel
Manna Church
Nazarenesⁱⁱⁱ
New Revelation
Presbyterian Church Emmanuel
Society of the Friends
Universal Life
Word of Life International

Institutional discrimination

The system of registration introduced in 1991-1992 is basically discriminatory as it establishes a double standard mechanism of selection. Since 1992, new applicants have had to meet with the 20,000 membership obligation while a number of religious groups registered under Communist rule were re-registered with less than 8,000 members. Noteworthy is also the registration of the Apostolic Church with only 3,905 members in 2001, outside the realm of the new regulation imposed to new religious movements.

Religious communities registered with the Government have a preferential treatment in comparison with other religious groups.

The high numerical threshold (20,000) imposed to new religious movements particularly impairs the ability of their members to fully enjoy their individual and collective rights. The denial of registration can therefore seriously hinder

their ability to practice and manifest their faith in community with others. Religious groups not registered as “religious communities” with the Government are:

- denied legal personality as a religious organization;
- prohibited from building a house of worship, such as a church or mosqueⁱⁱⁱ;
- not permitted to teach religion at state schools;
- refused access to co-religionists in the armed forces, hospitals or other social or health care facilities, and prisons;
- denied state recognition of marriage ceremonies;
- denied state recognition of priest-penitent confidentiality;
- not eligible to receive state subsidies for the wages and education of their clergy; and
- excluded from the exemption to pay taxes and import custom fees.

Moreover, state financing of officially registered religions requires members of other religions, non-believers and atheists to finance the religious practices of faiths they do not adhere to.

Human Rights Without Frontiers Int. recommends

to the Slovak Government

- to revise the registration requirements so as to facilitate greater enjoyment of religious liberties instead of limiting the range of religious activities;
- to put an end to the discriminatory state financing of religions;
- to abrogate any discriminatory regulation.
- to treat all religious communities and their members equally.

Willy Fautré

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