

# **An Analysis of the French Law About-Picard on religious cults in the scope of the ECHR**

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During the first half of the nineties, the world was shaken up and horrified by a series of collective suicides-homicides and attacks that were perpetrated in America, Europe and Asia at the initiative of leaders of religious movements or movements claiming to be religious.

On 19 April 1993, eighty-eight Davidians committed mass suicide or died from confrontations with the police in Waco (Texas). On 4 October 1994, a mass suicide-homicide took the lives of fifty-three members of the Order of the Solar Temple (OST) in Switzerland and Canada. On 5 March 1995, about five thousand people were injured and eleven killed in a gas attack perpetrated by Aum in Tokyo's subway. In December 1995, another suicide-homicide of sixteen members of the OST took place in the Vercors in France. Since then, one more homicide-suicide claimed almost a thousand lives in the African state of Uganda in March 2000.

## ***The Member States of the European Union and the Cults***

The European Union<sup>1</sup>, the Council of Europe<sup>2</sup> and a number of member states<sup>3</sup> have expressed their concern about that phenomenon in various ways. The issue is whether a specific policy should be designed and carried out with regard to unconventional religions in order to prevent the repetition of such tragedies. The responses have been varied.

The position of eleven member states of the European Union was that "cults" do not harm the individual, the family, society or their democratic institutions to the point of necessitating that new institutions or organizations were required to combat them<sup>4</sup>. In their view, just as in past

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<sup>1</sup> In 1997, the Committee on Civil Liberties and Internal Affairs appointed a rapporteur, Mrs Maria Berger (Austria, Socialist Party), to draft a *Report on cults in the European Union* (11 December 1997, A4-0408/97). A majority could never be found in the European Parliament to adopt the draft report. It was finally sent back to the Committee on July 14, 1998 where it died a natural death.

<sup>2</sup> Recommendation 1412 (1999), *Illegal activities of cults*, published in the Official Gazette of the Council of Europe, Assembly debate on 22 June 1999 (18<sup>th</sup> sitting) (See Doc. 8373, *Report of the Committee on Legal Affairs and Human Rights, Rapporteur : Mr Nastase ; Doc 8379 : Opinion of Social, Health and Family Affairs Committee, Rapporteur : Mr Hegyi ; and Doc. 8383, Opinion of the Committee on Culture and Education, Rapporteur : Mr de Puig*). Text adopted by the Assembly on 22 June 1999 (18<sup>th</sup> sitting).

<sup>3</sup> For France : See *Rapport fait au nom de la commission d'enquête sur les cultes, Assemblée nationale, Commission d'enquête, Rapport n° 2468 (Report drafted on behalf of the enquiry commission on cults, National Assembly, Enquiry Commission, Report nr 2468), December 20, 1995.*

For Belgium : See *Enquête parlementaire visant à élaborer une politique en vue de lutter contre les pratiques illégales des cultes et le danger qu'elles représentent pour la société et pour les personnes, particulièrement les mineurs d'âge. Rapport fait au nom de la commission d'enquête par MM Duquesne et Willems (Parliamentary enquiry commission aiming at working out a policy in order to fight against the illegal practices of cults and the danger that they pose to society, persons and particularly to minors. Report drafted on behalf of the enquiry commission by Mssrs Duquesne and Willems), April 28, 1997.*

For Germany : See *Endbericht der Enquete-Kommission « Sogenannte Sekten und Psychogruppen » (Final Report of the Enquete Commission on « So-called Cults and Psychogroups »), June 9, 1998.*

<sup>4</sup> In the Netherlands, the 1996 Annual Report of the Internal Security Service published in 1997 says in § 2.8.3, under the heading « Religious cults » : « Because of incidents in foreign countries where religious cults were involved, it has been looked into how far these cults in The Netherlands are a serious threat. Sofar, it has not appeared that in The Netherlands religious movements are a serious threat for the security of the state, the

years, problems posed by certain religious movements could be resolved using the existing legislative arsenal, or where necessary, by resorting to normal legal methods. Consequently, they did not take any political or legal measures that might have encroached on international human rights norms pertaining to freedom of religion or belief, such as the provisions of ICCPR art. 18.3 which specifies the extent of permissible limitations and the grounds for imposing these limitations and ICCPR art. 4.2, which makes freedom of religion or belief a unencroachable right.

However, four EU member states decided to work out and implement a specific anti-cult policy: two German-speaking countries (Austria and Germany) and two French-speaking countries (France and Belgium).

### *France and the Cult Issue*

A few landmarks in the long march to the drafting of the About-Picard Law are worth mentioning.

On 29 June 1995, the National Assembly unanimously adopted a resolution creating an inquiry commission “to study the cult phenomenon.” The Commission, chaired by the National Assembly representative Alain Gest, carried out its work in strict secrecy (conducting 20 interviews over a total of 21 hours) and published a report entitled *Cults in France*. By listing 173 movements as constituting potentially harmful cults, the Commission gave legitimacy to the investigations carried out by the *Renseignements Généraux*<sup>5</sup>. In its report, the Commission advocated increasing information about such groups and administrative repression of cults<sup>6</sup>, including small Evangelical churches. Anti-cult activists encouraged not only increased administrative and legal repression, but also, from 1996 on, the consensual and unanimous adoption of a series of political measures against cults.<sup>7</sup>

On 9 May 1996, Prime Minister Alain Juppé decided, by means of a decree, to create an Interministerial Observatory on Cults. Commissioned to analyze the phenomenon of cults, to inform the Prime Minister of its work and to make recommendations so as to provide better tools to fight cults, the Observatory did not survive the publication of its first report of activities in 1998. It seems that some members, notably the Communist Member of Parliament Jean Pierre Brard, wanted to go further than simply studying and “observing” the cult phenomenon.

On 7 October 1998, by a decree presented to the Cabinet and signed by both the President of the Republic and the Prime Minister, the *Mission interministérielle de lutte contre les cultes* (MILS - Interministerial Mission to Combat Cults) was set up.

The momentum created by the anti-cult lobby drew the authorities and politicians into its wake, prompting the creation of another commission on 15 December 1998, this time to look into the finances of the targeted groups. That led to the creation of the Parliamentary

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democratic order or other important interests of the state. » This was only a confirmation of the stand taken by the Dutch government in 1984 (Dutch Government Report on New Religious Movements) : « In general, new religious movements are no real threat to mental public health . »

<sup>5</sup> France’s Intelligence Service, the security branch of the police force

<sup>6</sup> Report No. 2648, National Assembly, rapporteur Jacques Guyard. Academics took a position only in 1999 and proposed a group to act as a mediator between the National Assembly and the anti-cult movement

<sup>7</sup> On the militancy and success of so-called anti-cult associations, read Alain Garay, *L’activisme anti-culte: de l’assistance à l’amalgame*, The Edwin Mellen Press, New York, 1999, (in French), 230 pages.

Commission of Inquiry into the finances, property and fiscal standing of cults<sup>8</sup>, as well as their economic activities and their relations with economic and financial circles.<sup>9</sup>

On 16 December 1999, the French Senate unanimously approved a draft bill introduced by Mr. About under the heading “Fighting Cults”. This draft bill allowed the government to dissolve groups and organizations that had been found guilty, at least twice, of a variety of criminal offenses and that were “regarded as interfering with public policy or posing a major danger for the individual’s personality.” The draft bill was abundantly criticized by many quarters, including representatives of the French Catholic and Protestant Churches. There was strong political controversy about the concept and use of the term of “mind control”, which was finally replaced by an offence already existing in the Criminal Code known as “abuse of a person’s state of weakness”<sup>10</sup>. After being sent forwards and backwards between the Senate and the National Assembly, the Law was ultimately adopted, with minor amendments, under the name About-Picard Law by the French Senate on 30 May 2001 and signed into law on 12 June 2001.

The About-Picard Law aims at strengthening preventive and punitive measures against groups with a sectarian character. The law pretends to identify the groups to be targeted. It provides for the dissolution of a sectarian group and the closing down of its premises. It criminalises continuing religious practices by members of a dissolved organisation. It penalises the propagation of “promotional messages” and the offence of “abuse of a person’s ignorance or vulnerability”.

Under the provisions of the European Convention, this law raises a number of questions.

Is it compatible with the rule of law? Does the law serve a “legitimate aim”? Are the measures contained in the law “prescribed by law”? Are they “necessary in a democratic society”? Are the proceedings fair?

### *Is the About-Picard Law compatible with the rule of law?*

The question can legitimately be asked as a number of characteristics of the Law are rather disturbing.

Firstly, the Law applies to organisations described as follows: “ Any organisation, whatever its legal form or aim, which engages in activities that have as their aim or effect the creating, maintaining or exploiting the psychological or physical subjugation of those who participate in its activities...”. Such a definition is vague and opens a wide margin of arbitrariness in the identification of the groups to be targeted. It is also not clear how “organisations with a sectarian character” are to be distinguished from mainstream religious organisations or sub-groups within them. What is clear however is that the drafters of the Law do want to destroy or paralyze new and non-traditional religious movements such Scientology, Jehovah’s Witnesses and others. Indeed, the same acts carried out or committed by the traditional

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<sup>8</sup> See the text of the report on Cesnur’s website [http://www.cesnur.org/testi/fr99/fr\\_summary.htm](http://www.cesnur.org/testi/fr99/fr_summary.htm)

<sup>9</sup> For the first time, a parliamentary commission has listed individuals as « notorious cultists » although they have not been personally accused of any wrongdoing. This is clear intrusion on their privacy.

<sup>10</sup> For a description of the bill and its effects, see the excellent paper by Hannah Clayson Smith, “Liberté, Egalité et Fraternité at Risk for New Religious Movements in France”, Brigham Young University Law Review, Vol. 2000, No. 3, 1099-1151.

Christian Churches, Jewish or Muslim groups, Freemasonry lodges, atheist or non-religious associations do not fall within the scope of the About-Picard Law. This is obviously discriminatory and incompatible with the fundamental principles of the rule of law.

Secondly, the basic freedoms of individuals and associations are jeopardized by the repressive measures introduced in the Law

- the expedited proceedings on the dissolution of a religious organisation and the impossibility to re-establish it;
- the criminalisation of continued manifestation of personal religious beliefs by members of a targeted group;
- the criminalisation of the dissemination of promotional messages directed at young people by a targeted organisation;
- the creation of a new criminal offence of “fraudulently abusing a person’s ignorance or vulnerability”;
- the closing down of premises used by a targeted organisation;
- the participation of anti-sect groups as “civil parties” in criminal proceedings against a targeted organisation.

Such measures seriously violate the individual and collective rights of believers, which are guaranteed by all major international instruments.

The About-Picard Law puts together all the necessary conditions of incompatibility with the rule of law. The first reason is that it does not serve a “legitimate aim”. The second reason is that the measures contained in the law are not “prescribed by law” in the sense that the About-Picard Law does not conform to the requirements of precision and foreseeability inherent in the term “law” as delineated by international instruments of the European Court of Human Rights and the Human Rights Committee. The third and last reason is that the About-Picard Law is not “necessary in a democratic society”.

This is what I am now going to develop.

### ***The French Law About-Picard on religious cults in the scope of the ECHR***

#### ***Does the About-Picard Law serve “legitimate aim”?***

As explained above, the Law is aimed at discrimination or has a discriminatory effect, as it selectively targets a certain category of religious organisations instead of criminalising specific acts independently of the persons or groups that commit them. The Law cannot therefore be said to serve a “legitimate aim”. In other words, restricting the right to freedom of expression and to freedom of assembly, the right to manifest one’s religion or belief or to educate one’s children in accordance with one’s beliefs is not acceptable.

Even if it could be proven that the Law, in principle, serves a “legitimate aim” – presumably the “protection of the life or health of others” – other fundamental questions should be raised: its compatibility with international standards of legality, its necessity, the principle of proportionality and the fairness of the proceedings.

### ***Are the limitations contained in the About-Picard Law “prescribed by law”?***

For the European Court of Human Rights, the phrase “prescribed by law” means that it does not merely refer back to domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention<sup>11</sup>. Accordingly, this test can be referred to as the “rule of law constraint”. Arbitrary bureaucratic fiat is not sufficient to pass this test. Similarly, rules that are impermissibly vague may fail to meet this test.

The question is therefore to what extent the About-Picard Law conforms or does not conform to such requirements.

As discussed above, the profile of the kind of organisations that are subject to prosecution is vague and open to subjective and discriminatory interpretation.

In a former version of the law, it was specified that the groups to be targeted were “sectarian movements that infringe human rights or fundamental freedoms”. This requirement was removed from the final text although it was kept in the title of the law. It would have been wise to keep it in the body of the law as it was limiting its effects to groups abusing their rights, which would have been considered a legitimate concern. This confirms the prejudice on which the law is based: that “sectarian movements” infringe human rights.

According to the About-Picard Law, criminal penalties can be inflicted to members of a targeted group if they disseminate promotional messages to young people without it being possible for members of possibly targeted (but not dissolved) organisations to predict with certainty whether their actions will be lawful or not.

These major parts of the Law show that the relevant measures, although formally sanctioned by the About-Picard Law, cannot be considered “prescribed by law” in the international-legal sense as they lack accuracy and foreseeability.

### ***Are the measures “necessary in a democratic society”?***

Article 9 of the ECHR allows for a limited set of permissible justifications. Limitations must be “in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”. This list narrows somewhat the range of state interests that can justify overriding religious freedom. The European Court of Human Rights has always been very critical of limitations imposed by states to the freedom of religion and belief on the ground of the constraint “necessary in a democratic society”. In the Court’s view, democratic society implies religious pluralism, tolerance and broadmindedness. The European Court has construed the “necessary in a democratic society” requirement to mean that the limitation in question must be “justified in the circumstances of the case by a *pressing social need*” and that the contested measure must be “proportionate to the legitimate aim pursued”<sup>12</sup>.

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<sup>11</sup> Malone Case, 82 Eur. Ct. H.R. (ser. A) at 32 (1984).

<sup>12</sup> Kokkinakis, A 260-A (1993), paragraph 50

Even if the About-Picard Law was to pass the test of the “precision and foreseeability” to constitute law and the tests of the “legitimate aim” and “prescribed by law”, it should also pass the crucial test of “necessary in a democratic society”.

An analysis of the repressive measures will contribute to the clarification of this requirement.

### **Dissolution of “cults”**

Article 1 of the About-Picard Law allows French courts to dissolve a religious group whose activities aim at creating, maintaining or exploiting the subjugation of its members and which has been found guilty more than once of one of the criminal offences listed in the said article or if the managers or the factual leaders of the religious group have been sentenced on the same grounds. It also makes possible to dissolve, in a joint procedure, other corporate bodies sharing the same aims and interests if they or their managers or “de facto leaders” have been sentenced at least once for the same reason. It is obvious that the drafters of the Law want to equip the courts with legal weapons meant to be used to dissolve of the various corporate bodies of the Church of Scientology.

The criminal offences listed in Article 1 are:

- 1°) threatening voluntarily or involuntarily a person’s life or his/her physical or psychological integrity, endangering a person or a minor, violating the person’s freedoms, endangering human personality
- 2°) illegal practice of medicine or pharmacy
- 3°) misleading advertising, frauds or falsification.

The dissolution of a religious organisation is a very serious measure in terms of international human rights law because it totally deprives a group of believers of the right to freedom of religion. It is similar to a death sentence.

In international law, the dissolution of a religious organisation can only be considered if the group concerned or its leaders systematically commit serious criminal offences clearly linked to the movement’s beliefs and practices, threaten the lives of others or destroy their fundamental rights, and only if other less radical measures are not sufficient. In democratic countries, the problems created by the refusal of blood transfusions for Jehovah’s Witnesses’ children have always been solved while maintaining respect for the creed and beliefs of this minority religion and its members. The About-Picard Law would allow the French courts to dissolve the movement of Jehovah’s Witnesses on the ground that it potentially endangers the lives of its faithful, and especially their children.

Such a dissolution would be disproportionate and not “necessary in a democratic society”, especially if the dissolution leads to the impossibility for the believers to go on practicing their faith.

The dissolution of other corporate bodies not implicated in the criminal offences in question on the sole ground that they share the same aims and interests as the dissolved group would also be disproportionate and not “necessary in a democratic society”.

The dissolution of a religious association can only be legitimately used in accordance with international human rights law, in the most extreme cases of proven serious abuse. This is not the philosophy that underlies Article 1 of the About-Picard Law.

### **The criminalisation of continuing religious practices by members of a dissolved organisation**

Maintaining or re-establishing a dissolved religious organisation is a serious criminal offence for which the sentence is very heavy: 3 to 5 years imprisonment.

If members of the dissolved organisations go on practicing their faith, they fall under the About-Picard Law. The Law allows the criminalisation of the peaceful and in no way unlawful manifestation by a person of his or her religious beliefs in community with other believers. This is a clear violation of the freedom of conscience and of religion.

Moreover, it is unclear what effect the dissolution of a French religious organisation would have on the activities of members of associated but not dissolved organisations in France or of a sister organisation based outside France.

### **The closing down of premises used by religious organisations**

The closing down of premises used by religious organisations is also a measure that affects the free practice of a religion. In the case *Manoussakis v. Greece*, the European Court of Human Rights stated that the closure of a Jehovah's Witnesses place of worship was an undue interference with the right of Jehovah's Witnesses to practice their beliefs.

According to the About-Picard Law, committing minor offences such as misleading advertising can lead to proceedings that could entail the closure of premises used for religious purposes.

Such a measure is not "necessary in a democratic society".

### **Penalising the propagation of "promotional messages" by religious organisations**

According to Article 8, religious organisations or individuals that have been found guilty of an undefined number of criminal offences are punishable with a fine of 7,500 Euros if they "promote" themselves, especially to young people.

The first consideration is that the offence of propagation of messages promoting a targeted organisation, as defined in the Law, does not constitute "law" in the international-legal sense and is therefore not an offence according to international human rights standards.

According to the About-Picard Law, any organisation that has not been dissolved but has committed a number of criminal offences listed in the vague and controversial Article 1 is not allowed to promote itself. This is a clear violation of the freedom of expression, which includes to distribute information, including "promotional messages", and of the freedom of religion which includes the right to make new members in a "proper" manner.

Even if the About-Picard Law could be regarded as “law”, the conviction of a person for the “promotion”, in a not-improper manner, of a not-dissolved and therefore lawful religious organisation would be a violation of religious freedom.

It is obvious that the Law aims at prohibiting missionary activities of targeted religious organisations and at calling a halt to their growth.

### **The offence of “abuse of a person’s ignorance or vulnerability”**

An individual that has been found guilty of abuse of a person’s ignorance or vulnerability may be sentenced to 3 years imprisonment and a very heavy fine of about 370,000 Euros. The potential victims are identified in the Law as minors, old and physically or mentally handicapped people, pregnant women (!) and people in psychological or physical subjugation.

However, the sentences are heavier for the leaders of a targeted religious organisation: 5 years imprisonment and the astronomical fine of 750,000 Euros.

This provision of the Law which is very similar to the anti-proselytism laws in Greece can also be used to criminalise not-improper missionary activities, especially among young people, in homes for elderly people, in prisons, in hospitals, etc.

## ***Conclusions***

All the member states of the European Union, except France and Belgium, have rejected the idea of creating a state agency or of passing a specific law meant to fight against new and non-traditional religious movements but share the opinion that the existing legislative arsenal is sufficient to prosecute religious groups or their leaders who have committed offences.

The About-Picard Law obviously aims at suppressing and paralysing, in a discriminatory way, non-conformist and non-national religious movements and is therefore also a protectionist and xenophobic law. It allows the courts to prosecute peaceful and law-abiding members of such movements with the active collaboration of groups whose objective is the fight against non-historical minority religions.

The About-Picard Law is exaggeratedly vague. It is not consistent with the fundamental principles of the rule of law. It does not serve a legitimate aim. The measures it contains are disproportionate and not necessary in a democratic society.

In conclusion, it is not consistent with modern international-legal standards according to which States must create “favourable conditions” for religious pluralism, religious minorities, inter-religious dialogue and religious tolerance.

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