

Recognizing our Neighbors – Religious Tolerance in Shared Societies

Cluj, 21-24 July 2005

Registration of religious communities, categorization of religions and institutionalized discrimination

Willy Fautré, *Human Rights Without Frontiers Int.* w.fautre@hrwf.net

As a result of globalization, the expansion and the diversification of the means of communication, and the increasing freedom of movement of persons and ideas, more and more people, societies and countries become our close neighbors. In Europe, the wound that tore apart the continent has closed up, the scar between West and East is fading in gradually and new blood irrigates the political and social tissues of the new independent and sovereign states that have emerged from the demise of communism.

With the opening of the borders, societies become increasingly multi-cultural and multi-religious. This emerging diversity is a challenge to present-day societies and cultures, to constitutions and legislation carved in other times, in another environment and for other purposes; it is also a challenge to societal attitudes rooted for decades in our minds. Cultural and religious diversity raises the issue of peaceful coexistence between different and even competing groups. In such a context, only tolerance and respect for the other can guarantee social cohesion and peace. This is the first responsibility of the state. That is the reason why states must give the good example if they want their populations to practice tolerance. States must define rules of coexistence which are fair and equitable for all the segments of their societies.

In the religious sphere, states must grant equal rights and equal opportunities to their citizens and residents whatever their beliefs. An area where members of a multi-religious society expect the state to be fair and respectful towards them is the enjoyment of their individual and collective rights to freedom of religion or belief.

Creating a religious association and acquiring a legal personality is of utmost importance for the exercise of the right to freedom of religion or belief. The precise form of legal personality can vary from one legal system to another but the capacity of carrying out the full range of religious activities is vital to compliance with international human rights standards. Not every form of legal personality meets the norms.

In this regard, international standards have been fixed and assistance for their implementation is available from supra-states organizations such as the United Nations, the OSCE, the Council of Europe and EU institutions.

OSCE/ ODIHR: Guidelines for Review of Legislation Pertaining to Religion or Belief

In 1999, the ODIHR/OSCE published a Background Paper drafted by Prof. Cole Durham called “Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities”¹ which constitutes a major contribution to the reflection on registration of religious associations.

Every OSCE participating State has laws and regulations dealing with registration, recognition or incorporation of religious communities and associations. Such laws should facilitate the enjoyment of individual and collective rights pertaining to religious freedom. However, whether in Western Europe or in Central and Eastern Europe, they have too often been designed to favor one or more so-called “historical religions” and to reign in unpopular or competing religious groups or they have been passed more as a means of controlling belief communities than of facilitating their freedom of action.

In many of the legal systems in force in Western, Central and Eastern Europe, there are two or more categories of religious organizations. Prof. Cole Durham calls them “**base level entities**” and “**upper tier entities.**”

The “base level entities” are defined as “entities that religious associations can use to acquire rudimentary forms of legal personality that are sufficient to carry out their affairs, but typically lack significant additional benefits other than the advantages of the entity form itself.” “Upper tier entities”, which are often very country-specific, are eligible for direct and indirect financial benefits from the State, and various other privileges.

In Europe, two-tiered and multi-tiered structures of available entities are the result of historical, cultural and political developments specific to each country. While there is a margin of appreciation for cultural differences in the sphere of relations between states and religions – and this is recognized by the Treaty of Amsterdam -, the types of legal structures made available should not be manipulated in discriminatory ways that make it possible for some but not other religious groups to carry out their activities properly.

U.N.: Concerns of the Special Rapporteur on Freedom of Religion or Belief

Former UN Special Rapporteur on Freedom of Religion or Belief, Mr. Abdelfattah Amor, clearly raised the issue of categorization of religions as potentially discriminatory in his report on his visit *in situ* in Romania in 2003². Quotation:

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, (...) 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, possibly when it adopts the new law on religions, which it is hoping to do in the future. In any case, the Government should ensure that this distinction does not lead to discrimination that is incompatible with international human rights law or to restrictions that might curtail the right to freedom of religion or belief, in violation of international law.

At the 61st session of the U.N. Commission on Human Rights, in March-April 2005, the Special Rapporteur on Freedom of Religion or Belief Asma Jahangir expressed some concerns about various forms of violation of religious freedom through legislation or other forms of regulations related to the question of registration of religious entities.

In her report³, she states that “in many cases, religious communities have encountered difficulties related to the procedure for registration, where such exists, of their community.” She complains that registration appears often to be used as a means to limit the right of freedom of religion or belief of members of certain religious communities.

In her report, the Special Rapporteur selects a number of points that should be taken into consideration with regard to registration:

- Registration should not be compulsory, i.e. it should not be a precondition for practicing one’s religion, but only for the acquisition of a legal personality and related benefits;
- Registration procedures should be easy and quick and not depend on extensive formal requirements in terms of the number of members or the time a particular religious group has existed;
- Registration should not depend on reviews of the substantive content of the belief, the structure, the clergy, etc.;
- No religious group should be empowered to decide about the registration of another religious group.

In a specific section of her report, Special Rapporteur Asma Jahangir also expresses her concerns about the categorization of religions as follows:

61. Without addressing the question of whether a “State religion” is a system that is compatible with human rights, the Special Rapporteur has noted that in a few States, legislation has been adopted that recognizes certain religions and not others and that institutes a different status among certain categories of religions. While the Special Rapporteur has not been provided with sufficient information suggesting that in any of these cases the legislation actually causes violations of the right to freedom of religion or belief, she is of the opinion that the legalization of a distinction between different categories of religion is liable to pave the way for future violations of the right to freedom of religion or for discrimination on the basis of religion or belief.

She then refers to and quotes Mr Abdelfattah Amor’s report on his visit to Romania.

Council of Europe: Monitoring Mechanisms of Religious Freedom, Discrimination and Intolerance

The Council of Europe also deals with the issue of registration of religions and the discrimination related to it by organizing fact-finding missions in its Member States and by assessing the honoring of their obligations and commitments.

On June 22, 2005, the Parliamentary Assembly of the Council of Europe (PACE) had a debate on Russia’s honoring of its obligations in the field of human rights.

The 1997 Federal Law on Freedom of Conscience and Religious Associations in Russia creates a complex form of categorization of religions which has led to various forms of discrimination and to the stigmatization of “non-traditional” religions.

The PACE report stressed that the 1997 Law disregarded the principle of equality of religions by including in its Preamble a statement about “the special role of Orthodoxy in the history of Russia” and about the fact that “Christianity, Islam, Buddhism, Judaism and other religions, constituting an integral part of the historical heritage of the peoples of Russia” should be respected. These provisions inspire a discrimination of those confessions that are not mentioned and hence, federal and local authorities seem to offer a preferential treatment to the Russian Orthodox Church, the PACE commented. In the Russian Federation, minority religious communities must secure permission from the local Orthodox Church before being allowed to operate a house of worship and the local authorities seek the advice of the Orthodox Church before dealing with such religious groups. The PACE found such practices inconsistent with the standards of the European Convention on Human Rights.

Such a policy has also indirectly encouraged acts of religiously motivated violence perpetrated against the representatives of “non-traditional” confessions and their places of worship – physical violence, intimidation and other forms of attacks. Moreover, the passivity of the Russian law enforcement authorities has largely contributed to the aggravation of religious intolerance and to the impunity of their authors.

While the Council of Europe mainly focuses on the honoring of the international human rights standards – including the principles of religious non-discrimination and tolerance - by Central and Eastern European States, it must be stressed that Western European countries are not always in a position to teach lessons to the new EU Member States and to the candidates to the EU membership.

In Western Europe, various forms of registration and state-recognition of religions have also led to the categorization of religious groups and to structural religious discrimination against so-called “non-traditional” religious groups and their members.

Study cases in Western Europe: Greece and Austria

In Greece, the Orthodox Church is the State Church. It plays an important role in the political and parliamentary life of the country. It can be involved by law in political and administrative decisions concerning the basic rights of religious minorities. Due to its status of prevailing religion enshrined in the Constitution, it enjoys considerable privileges and subsequently, other religions enjoy fewer rights.

In Greece, there are two types of religious categorization. The first one distinguishes “legal persons of public law” from “legal persons of private law” and the second “known” religions from others.

The Orthodox Church of Christ, Judaism and the Turcophone Community of Muslims of Thrace are legal persons of public law.

The concept of “known” religion is enshrined in Article 13 § 2 the Constitution but there is no formal mechanism to gain recognition as a “known” religion. It is usually through the granting of a permit to operate a place of worship that the State recognizes the status of “known” religion to a religious denomination. The Orthodox Church, the Old Calendarists, Judaism, Islam, Catholicism, Protestantism, the Church of Jesus Christ of Latter-Day Saints, Jehovah’s Witnesses are considered “known” religions.

This double categorization of religions is in itself discriminatory. Legal persons of public law and “known” religions enjoy a preferential treatment in comparison with other lower categories. Moreover, even in these privileged categories, all religious entities do not have the same rights as the Orthodox Church, due to its status of prevailing religion.

For example, non-orthodox religions are, according to the form of their lower status:

- not eligible to receive state subsidies for wages and education of their clergy or for the maintenance of their buildings, unlike the Orthodox Church (and the Muslim community in Thrace);
- not permitted to teach their religion in public schools as only Orthodox religious classes are authorized (consequently, non-orthodox children are denied appropriate religious classes);
- specifically targeted in practice by the laws on proselytism that were introduced by dictator Metaxas in 1938-1939 to protect the Orthodox Church;

almost 60 years later, they are still used, and even abused by Orthodox believers and priests, to lodge complaints against members of religious minorities trying to legitimately propagate their faith;

- obligated to get a permit from the Ministry of Education and Religion to open a house of worship (operating such a house without a permit is liable of a fine and even a prison term) and by law, the Ministry may base its decision to issue permits on the opinion of the local Orthodox bishop (there have been many cases of non-answer and denial of such a permit, and one of them was successfully introduced with the European Court of Human Rights in Strasbourg);
- not entitled to have chaplains officially accredited in the armed forces, in centers for refugees, hospitals or other health care facilities, and prisons (consequently, non-orthodox believers are denied pastoral care);
- subjected to restrictive visa regulations;
- denied access to public media;
- denied equality of treatment by the tax administration;
- not able to be represented in court as religious entities and cannot will or inherit property as religious entities;

Atheists, unbelievers and people belonging to other religious communities than the Orthodox Church or the Muslim community in Thrace cannot but contribute to the financing of these two denominations (salaries of their clergy, maintenance of Orthodox Church buildings, Orthodox religious classes in public schools, etc.) as there is no mechanism to prohibit the State from using their income tax to that end.

Muslims outside Thrace are not covered by the Treaty of Lausanne and therefore do not enjoy those rights provided by the Treaty.

In Austria, a country where the Catholic Church is the dominant religion, a three-tiered system of relations between the State and religions is in force. The first category comprises 13 state-recognized religious societies, the second category 10 registered confessional communities and the third category non-recognized religious communities registered as ordinary associations.

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

Before 1998, Austria made a distinction between two categories of religions: **state-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**. This law imposed new and stricter criteria on any new applicant to the upper category: a membership of at least 0.2% of the population (appr. 16,000) and a 20-year period of existence with at least 10 as a confessional community.

The 1998 Law aggravates the discriminatory character of the pre-existing legislation. Since 1998, new applicants for state-recognition have had to meet with new obligations while 9 of the 13 state-recognized religious societies registered before were maintained in the first category 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.

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. 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;
- not entitled to have chaplains officially accredited 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.)

It is usual in U.N., OSCE and other international conferences to criticize the registration laws and discriminatory policies of a number of states in Central Europe, Eastern Europe and Central Asia while similar practices by Western European states are never challenged or debated. The categorization of religions is one of those controversial issues. It is however noteworthy that this diversified and well-developed system in Western Europe has been and is being copied in post-communist countries of Central and Eastern Europe which have recently become part of the enlarged European Union.

Conclusions

The UN Special Rapporteur on Freedom of Religion or Belief, the OSCE and the Council of Europe all agree that the categorization of religions through the granting of a legal status to religious associations poses a problem as it is potentially and inevitably discriminatory.

The phenomenon affects Western, Central and Eastern Europe alike as well as other continents.

One of the solutions to the issue of institutionalized discrimination would be to abolish the system of categorization of religions. Yet, there is usually no political will to back such a project because of the pressure exerted by the privileged religions. The only way left is therefore the reform of the existing systems. In this regard, the concept of “base level entities” worked out by the OSCE/ODIHR constitutes a good starting point if it provides ANY religious entity with a wide scope of rights and financial autonomy. This enlarged range of rights could include the freedom of organizing a network of chaplains or religious classes for public school students whether they are state-subsidized or not.

The opening of the space of freedom however needs two fundamental and complementary reforms if the principle of equality between religious entities and their members is to be respected.

First, the legal personality should be available, but not compulsory, to any religious group which does not threaten democracy, the rule of law and public order. In this regard, Norway provides an interesting example of good practice as all religious entities are registered on the basis of that triple requirement, whatever their membership and historicity. This category would comprise the “base level entities” mentioned by Prof. Durham Cole in the OSCE/ODIHR guidelines on registration of religious entities. These religious entities would enjoy the broadest rights to be able to fully carry out their affairs. For example, they should have the right to visit their sick co-believers in hospitals, their prisoners or refugees in closed centers and to care for their members in the military; they would all have the same tax deduction advantages and the same tax obligations. The OSCE/ODIHR could contribute to the conceptualization of the rights to be granted to the “base level entities.”

Secondly, equal financial treatment of all religions and belief systems is a necessary reform as well in a number of states. In countries with a system of strict separation between state and religions, the issue is non-existent. In countries where a church tax system is in force for a limited number of religions, other religions should not be excluded from joining it. In countries where one or a limited number of religions are financed by the state, the subsidizing system should be deeply revised. In this regard, Norway provides again an example of good practice that can be adapted to various contexts. The state grants each of the associations, even if they are not registered, whatever their membership and historicity, an amount of about 40 EUR per member. In other countries, it could be imagined that the budget to be allocated to religious organizations could be calculated on the basis of a fixed amount to be multiplied by the number of taxpayers having opted each of for them.

On these two pillars, religious entities could build up a combination of activities to be carried out both by volunteers and paid staff according to their needs and their priorities of the moment.

What about the “upper level entities”? As far as the “base level entities” can develop a wide range of activities according to their needs, the upper category becomes

irrelevant. It can however be maintained, if some states do want to keep it and include “historical religions” in it for honorific reasons but without prejudice for the other religious entities.

Such reforms need to be first carried out by the states themselves on a voluntary basis through dialogue, regular meetings with and involvement of all religious groups in the reconstruction of the system of relations between state and religions.

Such reforms also necessitate the participation of the U.N., the OSCE and the Council of Europe as they would have

- to identify the constitutional provisions, the laws and practices that are not consistent with the international human rights standards in the current wide range of categorization of religions;
- to urge their Member States to engage in reforms;
- to offer them technical assistance for achieving their reforms and to assess their progress regularly.

State neutrality towards all religious entities and belief systems is an essential prerequisite for guaranteeing non-discrimination, justice, tolerance, religious and social peace. For several years, supra-state actors, academics and religious freedom NGOs have been engaged in a reflection process on all these issues, in the elaboration of international standards, in tentative re-designing of more inclusive and more tolerant societies. My wish is that more events like this one be organized to give an increased impetus to more interaction between these actors and to the blossoming of the values of freedom, justice and tolerance that we all share.

¹ OSCE Review Conference, September 1999, ODIHR Background Paper 1999/4 by Cole Durham, OSCE/ODIHR, Warsaw, Poland.

² Report on the visit of the Special Rapporteur on freedom of religion or belief to Romania (E/CN.4/2004/63/Add.2), par. 94-96

³ Ibid.