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Illegal activities of sects

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Adrian Nastase, Romania, Socialist Group

Summary

Whatever the beliefs held by certain groups of a religious, esoteric, or spiritual nature, one should only consider the activities carried out in the name of these beliefs.

Freedom of conscience and religion is guaranteed by Article 9 of the European Convention on Human Rights. However, the activities of groups of a religious, esoteric or spiritual nature must be in keeping with the principles of our democratic societies.

Information is of prime importance and must be directed in particular towards teenagers within the framework of school curricula. The protection of the most vulnerable members of society, in particular the children of followers of groups of a religious, esoteric or spiritual nature, is another priority.

Therefore it is recommended to support the creation of national or regional information centres and non-governmental organisations for the victims, or the families of the victims, of religious, esoteric or spiritual groups. Finally the creation of a European observatory, to make it easier for national centres to exchange information, is called for.

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I. Draft recommendation

1. The Assembly recalls its Recommendation 1178 (1992) on sects and new religious movements, in which it considered that major legislation on sects was undesirable on the grounds that such legislation might well interfere with the freedom of conscience and religion guaranteed by Article 9 of the European Convention on Human Rights as well as harm traditional religions.

2. The Assembly reaffirms its commitment to freedom of conscience and religion. It recognises religious pluralism as a natural consequence of freedom of religion. It regards state neutrality and equal protection before the law as fundamental safeguards against any form of discrimination and therefore calls upon the state authorities to refrain from taking measures based on a value judgment concerning beliefs.

3. In Recommendation 1178 (1992), it simply recommended that the Committee of Ministers take measures to inform and educate young people and the general public and requested that corporate status be granted to all sects and new religious movements which had been registered.

4. Since that recommendation was adopted, a number of serious incidents have taken place which have prompted the Assembly to study the phenomenon once again.

5. The Assembly has come to the conclusion that it is unnecessary to define what constitutes a sect or to decide whether it is a religion or not. However, there is some concern about groups which are considered as sects, whatever religious, esoteric or spiritual description they adopt, and this needs to be taken into account.

6. On the other hand, it takes the view that it is essential to ensure that the activities of these groups, be they of a religious, esoteric or spiritual nature, are in keeping with the principles of our democratic societies.

7. It is of prime importance to have reliable information on these groups that emanates neither exclusively from the sects themselves nor from associations set up to defend the victims of sects, and to circulate it widely among the general public, after those whom it regards have had the chance to be heard as to the objectivity of such information.

8. The Assembly reiterates the need to include specific information on the history of important schools of thought and of religion in academic curricula, especially those for teenagers.

9. The Assembly attaches great importance to protecting those most vulnerable, and particularly the children of members of religious, esoteric or spiritual groups, in case of ill-treatment, rape, neglect, indoctrination by brainwashing and non-enrolment at school, which makes it impossible for welfare services to exercise supervision.

10. Therefore, the Assembly calls on the governments of member states:

i. where necessary, to set up or support independent national or regional information centres on groups of a religious, esoteric or spiritual nature;

ii. to include information on the history of important schools of thought and of religion in general school curricula;

iii. to use the normal procedures of criminal and civil law against illegal practices carried out in the name of groups of a religious, esoteric or spiritual nature;

iv. where necessary, to encourage the setting up of non-governmental organisations for the victims, or the families of victims, of religious, esoteric or spiritual groups, particularly in eastern and central European countries;

v. to encourage an approach to new religious groups which will bring about understanding, tolerance, dialogue and resolution of conflicts;

vi. to take firm steps against any actions which are discriminatory or marginalise minority groups.

11. Furthermore, the Assembly recommends that the Committee of Ministers

i. where necessary, provide for specific action to set up information centres on groups of a religious, esoteric or spiritual nature in the countries of central and eastern Europe in its aid programmes for those countries;

ii. set up a European observatory on groups of a religious, esoteric or spiritual nature to make it easier for national centres to exchange information.

II. Explanatory memorandum by Mr Nastase

A. Introduction

1. Why write a report on the illegal activities of groups of a religious, esoteric or spiritual nature only six years after the Assembly adopted Recommendation 1178 (1992) on sects and new religious movements?

2. The substance of the Recommendation, which has been used and quoted in most national reports on sects, is still relevant and it would be advisable for the member governments to implement it. However, there are two important reasons why the Assembly is re-examining this phenomenon. The first is that the number of people joining sects is rising constantly (by 60% in France between 1982, the date of the Vivien report, and 1995, the date of the Guyard report) despite the information provided on the activities of certain sects - in particular serious disturbances of law and order (the carnage caused by the Order of the Solar Temple and by the Aoum Sect in Japan and the fact that members of sects have been found guilty of rape, fraud, etc) or the accusations of religious intolerance and racism made against the German Government by the Church of Scientology (see for example, the report drawn up by the *Landesamt für Verfassungsschutz of Baden-Württemberg, "Scientology – ein Fall für den Verfassungsschutz"*). The second reason is the establishment of sects in central and east European countries where the corollary of the rediscovery of freedom has been the emergence of a large number of groups proposing spirituality, esotericism or religion to individuals long denied access to them.

B. Work on which this report is based

3. First of all the present report takes account of the report by Sir John Hunt (Doc 6535), whose conclusions are still entirely valid and which led to Recommendation 1178 (1992). However, in the light of developments in the meantime, certain points need to be clarified and others studied in greater detail.

4. This report is also based on the report by the consultant, Mr Francois Bellanger [see doc. AS/Jur (1998) 5], which is appended to and is an essential part of this document.

5. It is also based on the information provided at the hearing held in Paris on 8 April 1997 by the Sub-Committee on Human Rights in co-operation with the European Association of Former Parliamentarians of the member States of the Council of Europe [see document AS/Jur/DH (1997) 2].

6. Following this hearing, which provided an opportunity for a certain number of the parliamentarians present to become aware of the reality of the problems posed by certain groups, the Committee was instructed to prepare a report and appointed me as its rapporteur on 13 June 1997. It thus took two years to finalise the present report, which was the subject of many highly interesting discussions within the Committee on Legal Affairs and Human Rights. All the members of the Committee were invited to put forward proposals for amendments, and almost all of these were taken into account.

7. It has taken account of the following national parliamentary reports: the report of the French National Assembly (the Guyard Report) of 1995, the report of the Belgian

Parliamentary Committee of Enquiry, entitled "Sects in Belgium", of April 1997 (Rapporteurs: MM Duquesne and Willems), the report of the German Bundestag of July 1997 as well as the audit on the excesses of sects by the Geneva group of experts of February 1997. Finally the rapporteur had at his disposal the European Parliament's draft report[1] on this subject and held an exchange of views with the Parliament's rapporteur, Ms Berger. It should be noted that the European Parliament had already devoted a previous report to sects in 1984 (the Cottrell Report).

C. Definition

8. The first problem that arises when tackling the question of sects is that of definition, for there is no generally accepted definition of the term "sect". All the definitions that have been suggested have been criticised either because they were too wide and necessarily included movements which should have been left out or, on the contrary, because they were too restrictive and left out groups which should have been included.

9. The risks inherent in lumping all sects together derive principally from the generalised use of the term "sect" to define a multi-facetted phenomenon.

10. For nowadays the word "sect" has taken on an extremely pejorative connotation. In the eyes of the public, it stigmatises movements whose activities are dangerous either for their members or for society. The triple drama of the Order of the Solar Temple and the collective suicide of members of a Californian group also reinforced this view and gave rise to great anxiety or intolerance as reactions to the world of sects.

11. Today, this world contains dozens, perhaps even hundreds, of larger or smaller groups, with various beliefs and observances, which are not necessarily dangerous or prejudicial to freedom. It is true that among these groups are some which have committed criminal acts. Nevertheless, the existence of a few dangerous movements is not enough to condemn all the rest.

12. The first danger facing authorities wishing to reduce the risks associated with sects' activities is the temptation to lump harmless and dangerous groupings together. An approach which lumped all groups together, whether dangerous or not, would be manifestly either disproportionate in the context of freedom of belief, if it was too restrictive, or an open door to every abuse if it allowed dangerous groups to carry out their activities in an uncontrolled way on the same basis as innocuous groups.

13. The second pitfall which state authorities should avoid is making a distinction between sects and religions[2]. A perfect illustration of this potential risk, linked to the term "sect", is the attitude of certain groups who claim religious intolerance, or even racism, as soon as a state plans measures. These groups assert, expert reports at the ready, that they are not sects but, in fact, religions and that consequently the state has no right to act against them. Confronted with such allegations, if the state enters into the debate by trying to demonstrate

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1 This report was withdrawn on 13 July 1998.

2 On the use of this false argument by or against "sects", see in particular C. ERHEL and R de la BAUME (ed), *Le procès de l'Eglise de Scientologie*, Paris 1997; M. INTROVIGNE and J. GORDON MELTON (ed), *Pour en finir avec les sectes – Le débat sur le rapport de la Commission parlementaire, Turin, 1997.*

that the group in question is not a religion, it fails in its duty to maintain neutrality and participates directly in a spiritual or religious controversy.

14. These two dangers can be avoided easily by state authorities, provided that they are prudent in their use of vocabulary and in their choice of action concerning the acts of such groups.

15. Of course, it is clear that it is very tempting for state authorities to use the term "sect", given that it is easily understood by everyone. However, state authorities would be well advised to forgo using this term since there is no legal definition of it[3] and it has an excessively pejorative connotation. In the public mind today, a sect is extremely evil or dangerous. There are three possible ways of avoiding use of the term "sect".

16. Firstly, definition as a sect could be eliminated by classifying all such groups as religions. Nevertheless, in our opinion, this approach would be misguided because it would be unduly restrictive, the world of sects being so diverse. A group based upon an esoteric doctrine is not necessarily a religion founded, in theory, on the relationship between individuals and a supreme being or force.

17. Secondly, the state could agree to adopt the course suggested by certain groups and distinguish between religions – by definition good – and sects – necessarily dangerous – or even between good and bad sects. Once again, we do not think such an approach is acceptable. Under Article 9 of the ECHR, states are prohibited from distinguishing between different beliefs and from creating a scale of beliefs, which is, in our view, unacceptable. Merely making such a distinction would constitute a disproportionate violation of the freedom guaranteed by Article 9 of the ECHR, because the very basis of this freedom is the absence of distinction between beliefs, which explains the state's duty to maintain neutrality.

18. Moreover, such an approach is dangerous because in the event of a dispute, the debate would focus not on the activities of the groups concerned but on the nature of their beliefs. The first means of defence for some groups is to seek to demonstrate that their beliefs constitute a religion, so that they can then claim to be acting accordingly, even if that entails the commission of illegal acts. In these circumstances, if state authorities agree to enter into an ideological discussion they are obliged to determine the classification of the beliefs concerned and will find themselves in an inextricable situation. Either they have to accept that the belief concerned is not a religion and are accused of violating religious freedom and of persecuting the group concerned. Or alternatively, they consider that the beliefs of the group effectively constitute a religion, and the latter takes advantage of state recognition to justify all its actions, even illegal ones. In both cases, the state authorities take part in a religious controversy and therefore fail in their duty to observe neutrality, under the terms of Article 9 of the ECHR. This kind of debate is therefore a trap in which some groups systematically try to ensnare the authorities and which the latter must be at pains to avoid.

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[3] The traditional definition of the term "sect", according to the 1996 Petit Larousse is "a group of people who profess the same philosophical or religious doctrine" or "a religious group closed in on itself and established in opposition to the prevailing religious ideas or practices". Although this definition contains several relevant elements, it does not encompass the whole modern world of sects: numerous movements have nothing in common with traditional religious ideas and propose a syncretic doctrine which combines elements of various religions or they advocate scientific or esoteric theories.

19. In reality, the only means of avoiding this trap is to eschew any kind of classification of the beliefs concerned as non-religious beliefs or as religions. This brings us to the third and final possible course which in our view is the only acceptable one.

20. It allows us to avoid the pitfalls outlined above by adopting a more descriptive approach to the world of sects and by concentrating not on the classification of beliefs but on the acts committed in the name or under cover of these beliefs.

21. Hence we can refer to groups of a "religious, spiritual or esoteric" nature. Thus the various facets of beliefs are accommodated in a general formula which is not negative per se.

D. Freedom of thought, conscience and religion

22. Most religious, esoteric or spiritual groups claim the right to freedom of religion and describe themselves as religions. Although there is no accepted definition of religion, freedom of religion is guaranteed and safeguarded in particular by Article 9 of the European Convention on Human Rights.

23. Determining whether or not religious, esoteric or spiritual groups are religions is not the problem. Freedom of thought, conscience and religion are rights guaranteed to every human being and these rights cannot be restricted other than for the reasons stated in the second paragraph of Article 9 of the Convention:

> "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society 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".

24. The European Court of Human Rights has given judgment in several cases concerning the extent of such restrictions.

25. Contrary to the claims of some groups, which would like to enjoy total freedom of action under cover of their faith, like all individual freedoms, religious freedom is not limitless (see Article 9 § 2 of the ECHR quoted above).

26. The European Court of Human Rights gave a judgment on this notion in a case concerning the Jehovah's Witnesses. In Greece, following a complaint, two members of the Jehovah's Witnesses were convicted of proselytism. The case was referred to the European Court of Human Rights which, following the Commission's report, considered that this conviction violated Article 9 of the ECHR because the prohibition on proselytism in this specific case was not a necessary measure in a democratic society, within the meaning of Article 9 para 2 of the ECHR.[4] However, the Court accepted that improper proselytism should be prohibited or restricted, sometimes taking "the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need", and sometimes even entailing "the use of violence or brainwashing".

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[4] Judgment of 25 May 1993 in the case *Minos Kokkinakis v. Greece,* Revue universelle des droits de l'homme, 1993, pp. 251/254-255.

27. In the same sense, Article 9, para 1 of the ECHR does not always guarantee the right to act in public in a manner dictated by one's religious beliefs. Thus, the fact of disseminating religious ideas against abortion near a clinic carrying out abortions is not an expression of belief within the meaning of Article 9, para 1 of the ECHR[5]. Similarly, a restriction on some public manifestations of religious freedom is admissible for planning reasons, provided that it is in proportion and corresponds to a legitimate interest.

28. It is also admissible, within the meaning of Article 9, para 1 of the ECHR, to require motorcyclists to wear a crash helmet for safety reasons, even though this means that practising members of certain religious have to remove their turbans[6]. Likewise, the Swiss Federal Court recently upheld the withdrawal of an operating licence from a private security company on the grounds that the managers of the company had sworn allegiance to a group whose ideas appeared to be manifestly dangerous[7].

29. Lastly, it should be borne in mind that the Commission has accepted that there may be an incompatibility between religious activity and holding a civil service post. Thus, ecclesiastics in a state Church have both religious obligations and obligations to the state. If the state's requirements conflict with their beliefs, they are free to relinquish their office as clergy in the state Church. The European Commission of Human Rights regarded this "as an ultimate guarantee of a person's right to freedom of thought, conscience and religion".[8]

30. The name of the belief in whose name this or that activity is being carried out is irrelevant to the problem we are studying; what we are interested in is those activities which properly count among the activities restricted by law.

31. As stated in the Hunt report, are not religions simply sects which have succeeded? Beyond the formula which can appear provocative, one can observe that society has generally been hostile towards any religion originating around one or more individuals who preached new ideas, precisely because of this innovative and thus disturbing attitude.

32. Bearing this in mind, it is consequently important to take care not to let discriminations be exerted against groups whose ideas may today be perceived as disturbing or shocking. Only acts committed in the name of these ideas, if they are illegal or anti-democratic, may influence the attitude to be adopted in their respect.

E. Proposals made in various national and international reports

33. **The Guyard Report (France)** proposes that:

- an interministerial observatory should be set up to gain more knowledge of sects and make the public more aware of them;

- the arrangements for studying groups of a religious, esoteric or spiritual nature in each of the ministries concerned should be improved;

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5 DR 1995/80B, pp. 147/150-151, *Mr van den Dungen.*

6 DR 1979/14, pp. 234/236, *X.*

7 Unpublished ATF of 2 September 1997 in the case *U.SA v. Department of Justice, Police and Transport of the Canton of Geneva.*

8 DR 1985/42, pp. 247/268, *Borre Arnold Knudsen.*

- young people should be informed through their schools;

- a public information campaign should be organised, in particular using public television channels;

- training for persons (such as civil servants) who, in the context of their work have to deal with the problem of groups of a religious, esoteric or spiritual nature should be extended and improved.

34. **The report by the Belgian parliamentary committee** proposes to:

- introduce special new criminal measures relating to abuse of persons in situations of weakness and active provocation of suicide;

- amend existing measures for the protection of young people and on the status of associations;

- step up supervision of the status of non-profit making associations;

- set up an independent observatory.

35. The European Parliament's motion for a Resolution on sects in the European Union, tabled by Mrs Bergen, observes that there is continuing concern that the activities of cults and their attendant dangers may be increasing and that a Europe-wide survey of quantitative data and more detailed investigation into these phenomena (therefore) appear desirable and justified; it goes on to say that "whereas the Central and Eastern European countries now also increasingly face the problem of cults, and whereas these measures should also be extended to them and they should be helped in the context of PHARE and TACIS to deal with such problems in a way which is compatible with fundamental rights…".

36. At the Conference on "Adolescence – a challenge to the family" held in Vienna in June 1997, the Ministers responsible for family affairs of the member States of the Council of Europe proposed that a European centre be set up to monitor the activities of sects that could psychologically indoctrinate vulnerable young adults.

F. Conclusions

37. In light of the foregoing, the following measures - all of which are recommended in all the above-mentioned reports and most of which appear in Recommendation 1178 - could be proposed. The reason it is now once more necessary to make recommendations is because States have often refrained from taking action owing to their concern to respect fundamental freedoms. In this connection Recommendation 1178 considered that major legislation on sects was undesirable since it might well interfere with the freedom of conscience and religion safeguarded by Article 9 of the European Convention on Human Rights. The sects have benefited greatly from this tolerance and taken full advantage of the door left open to them. To use the words of the expert, the attitude of the state authorities ought to be tolerance on the one hand and vigilance on the other.

38. Although there is still no question of advocating major legislation, it is possible to propose a number of measures which would protect the more vulnerable members of society

and make it possible, as a last resort, to ban certain groups which are known to shelter the perpetrators of criminal activities.

- <u>prevention</u>:

39. Prevention can be achieved through the dissemination of information and through education.

40. National information centres should therefore be set up, as already advocated in Recommended 1178. Such centres should be independent of the State. They would also be more effective if they were brought together in a European Observatory on groups of a religious, esoteric or spiritual nature.

41. Education should be aimed at adolescents in particular, and curricula should include information on the history of important schools of thought, with due regard for the neutrality of the State.

42. Emphasis should be placed on protecting children with a view to exercising more control over the living conditions and schooling of children living in communities. School attendance is compulsory for children in all the member States; only the minimum school-leaving age differs from one State to the next. We must therefore ensure compliance with this obligation.

43. The establishment of non-governmental organisations which collect and disseminate information on religious, esoteric or spiritual groups should be encouraged, particularly in the countries of central and Eastern Europe.

- <u>limitations</u>:.

44. The social welfare services should intervene in cases where children are not attending school.

45. It appears that the illegal practice of medicine is frequent; such practice must be punished.

46. It would be necessary to reflect upon the legal consequences of the indoctrination of members of sects, often called "mental manipulation".

47. A particular effort should be made in central and east European countries where there are, as yet, no information centres or even associations for the victims of groups of a religious, esoteric or spiritual nature. Information and education are even more urgently required in these countries.

Reporting committee: Committee on Legal Affairs and Human Rights

Budgetary implications for the Assembly: none

Reference to committee: Doc. 7826 and Reference No. 2192 of 28 May 1997

Draft recommendation adopted by the committee on 29 March 1999 with 24 votes in favour, 1 vote against and 3 abstentions

Members of the committee: MM Jansson (*Chairperson*), *Bindig*, *Frunda*, *Moeller* (*Vice-Chairpersons*), Mrs *Aguiar*, MM *Akçali*, *Arzilli*, *Attard Montalto*, Bartumeu Cassany (alternate: *Alis Font*), *Brand*, *Bulic*, *Clerfayt*, *Columberg*, Contestabile, *Demetriou*, *Dreyfus-Schmidt*, *Enright*, Mrs Frimansdóttir (alternate: Mrs *Ragnarsdóttir*), Mr *Fyodorov*, Mrs *Gelderblom-Lankhout*, MM *Holovaty*, *Jaskiernia*, Jurgens, Mrs *Karlsson*, MM *Kelam*, *Kelemen*, Lord Kirkhill (alternate: Ms *McCafferty*), Mr Kresak (alternate: *Fico*), Mrs *Krzyzanowska*, Mr *Le Guen*, Ms *Libane*, MM *Lintner*, *Loutfi*, *Magnusson*, *Mancina*, Mrs Markovic-Dimova, MM *Martins*, *Marty*, McNamara (alternate: Ms *Cryer*), *Mozetic*, Mrs *Näslund*, MM *Nastase*, *Pavlov*, Pollo, *Polydoras*, Mrs Pourtaud, MM Rippinger, *Robles Fraga,* Rodeghiero (alternate: *Speroni*), *Roth*, *Schwimmer*, Shishlov (alternate: Mrs *Pobedinskaya*), *Simonsen*, *Solé Tura*, Solonari, Staciokas (alternate: *Dagys*), Sungur, Svoboda, Symonenko (alternate: *Khunov*), *Tabajdi*, Verivakis (alternate: *Liapis*), Vishnyakov (alternate: *Glotov*), Vyvadil, *Weyts*, Mrs *Wohlwend*.

N.B. The names of those members who were present at the meeting are printed in italics.

Secretaries to the committee: Mr Plate, Ms Coin and Ms Kleinsorge