



Your Forum for Religious Tolerance & Human Rights

OSCE Human Dimension Implementation Meeting

Warsaw, 7 October 2008

Working Session 12: Freedom of Religion or Belief

**“State Sanctioned Religious Intolerance
in European Countries”**

Statement & Recommendations to the OSCE/ODIHR

RECOMMENDATIONS:

1. **As we celebrate the 60. Anniversary of the Universal Declaration of Human Rights, we should remember, that the ones who drafted the Charta were largely experts of religion. Religious freedom (Art. 18) or freedom of conscience should be regarded as the central human right or “the mother of all human rights”. Appeals to the OSCE (as we heard yesterday) to separate religious freedom & Human Rights should never be taken into serious consideration, since this would pervert the very foundation of human rights.**

2. **FRANCE I:**

We appeal to the French government to stop its massive sponsorship (over 90%) of the European Anti-Cult organisation FECRIS.

Under the banner of human rights, FECRIS has been promoting intolerance & discrimination against religious minority groups throughout the European Union. The association has repeatedly called on EU countries to import the French style Anti-cult legislation known as the Picard law. Over many years this law has been criticised by human rights defenders, since it is clearly violating OSCE standards as well as the Anti Discrimination guidelines of the EU.

3. **FRANCE II:**

FOREF Europe calls on the OSCE/ODIHR to investigate the recent appointment of Mr. Georges Fenech (who is a former MP) to the position of president of MIVILUDES (governmental organisation to observe “sectarian deviations”).

Mr. Fenechs appointment comes as a surprise & shock, since it is known that he is involved with 41 other persons in a criminal proceeding related to the sales of weapons to Angola. Furthermore Mr. Fenech is a hardliner politician, who has had various troubles with the courts in the past. He is known for his extremist positions regarding religious minorities and makes no secret of his desire to see the French approach to be extended to all of Europe. His appointment is bringing a political as well as a highly questionable ideological element to MVILUDES.

4. **AUSTRIA**

We ask the OSCE to appeal to the Austrian Government (Ministry of Education & Cultural Affairs) to grant full recognition to the Jehovah’s Witnesses and to repeal the discriminating 1998 Act on the Legal Status of Registered Confessional Communities.

On July 31, the European Court of Human Rights has rebuked the Austrian Government for their continued refusal to grant recognition to the Jehovah’s Witnesses during the last 30 years (since 1978). Even now, after this judgement, the Ministry seems to be hesitating to grant recognition to the faith community, which counts over 20 000 members in Austria. Why?

The 1998 Act on the Legal Status of Registered Confessional Communities has been criticised by various constitutional experts & human rights organisations to create an

atmosphere of spiritual apartheid and a religious three class society in Austria. The unconstitutional nature of this legislation has been highlighted by the European Court of Human Rights in the case of the Jehovah's Witnesses.

Background Information

FRANCE I:

We appeal to the French government to stop its massive sponsorship (over 90%) of the European Anti-Cult organisation FECRIS. For further details see Human Rights Without Frontiers: <http://hrwf.net>

FRANCE II:

FOREF Europe's position regarding the assignment of Mr. Georges Fenech as president of the MIVILUDES

1. The assignment reveals inconsistencies in the French position on religious freedom

On several occasions, President Nicolas Sarkozy's new approach of religious matters seriously challenged the official French dogma on "laïcité". According to the traditional French approach, the State should remain completely neutral in religious affairs, and religion should remain in the private sphere, never intruding in the public domain. Contrary to this traditional approach, Mr Sarkozy again and again defended an "open" or "positive" laïcité, stressing that religions provide us with meaning and ethical values. Some partnership between State and religion is thus possible. Taking great risks in this sensitive matter, the President did not yield to critiques.

In the wake of his declarations, Mrs Emmanuelle Mignon, his director of cabinet, made her point very clear on February 20, 2008. "Cults are a no problem" she said in an interview to VSD. It was like a bomb.

A few days later, Mrs Aliot-Marie, the minister of interior, even said that she wanted to suppress the MIVILUDES, adding. "The separation of church and State guarantees that no one's belief should be a ground for being penalized. For some people, the separation of church and State allows for some intolerance to certain creeds. This position is not mine." (Michèle Aliot-Marie, February 23, 2008)

If the president and some of his staff are sincere, it means that there is a fight within the French government itself. Mr Fenech illustrates a negative "laïcité"

2. Giving priority to a political and ideological approach

Most people in France would agree that abuses in religion should be watched in a purely administrative ways and reported to courts. This was a tendency observed within the MIVILUDE.

Mr Fenech is a hard-liner politician, who is known for his extremist positions regarding religious minorities and makes no mystery of his desire to see the French approach be extended to all Europe. Mr Fenech is bringing a political and ideological approach at the head of the MIVILUDE.

3. Sectarianism invading the French political discourse

The return to a political and ideological approach is all the more amazing that the adjective “sectarian” is now more and more used by politicians to blame their opponents. Recently, President Sarkozy blamed the Sectarian Socialist party three times in a few sentences. In an interview to a magazine, Mr Claude Alègre, a former socialist minister of education, said that the Greens are “a cult, a real cult”. The reporters of “Le Spectacle du Monde” were so bewildered that they asked him to confirm the choice of the term “cult”. He did confirm. When Ségolène Royal made a show a few days ago, her style was deemed “televangelist” by some and a politician even said, “it is a real cult”

Who is not cultish in France? may become the next report of MIVILUDE under Mr Fenech,

4. Mr anticult, far from being incorruptible

The last problem concerns the profile of Mr Fenech, whose election as an MP was cancelled and whose problems with various courts over the past years have been notorious. It seems that a vacant post as judge of cultish abuses was given to a person who has failed to establish his own legitimacy in terms of being clear with laws. Usually, a person with this profile cannot be given any official position until he has proved to be clean and clear. Clean and clear, this is what most religious minorities are trying to be in France, making greater efforts than average associations to abide by the law; at least the new Mr anticult should appear as above any possible suspicion. The question can be raised concerning Mr Fenech.

AUSTRIA

FOREF Europe asks the OSCE to appeal to the Austrian Government (Ministry of Education & Cultural Affairs) to grant full recognition to the Jehovah’s Witnesses and to repeal the discriminating 1998 Act on the Legal Status of Registered Confessional Communities.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant is a religious community established in Austria, and the second to fifth applicants were born in 1927, 1935, 1927 and 1930 respectively and live in Vienna.

A. First set of proceedings

1. Period before the Constitutional Court’s decision of 4 October 1995

8. On 25 September 1978 the second to fifth applicants and two other claimants requested the Federal Minister for Education and Arts (*Bundesminister für Unterricht und Kunst*) to recognise the first applicant as a religious society (*Religionsgesellschaft*) under the 1874 Recognition Act (*Anerkennungsgesetz*). Since the Minister did not respond, the applicants subsequently filed a complaint (*Beschwerde*) with the Ombudsman’s Office (*Volksanwaltschaft*) about the Minister’s inactivity.

9. On 5 February 1981 the Ombudsman’s Office issued a statement concerning the complaint. It considered that the Minister’s inactivity for almost two years constituted an

undesirable state of affairs in public administration (*Missstand im Bereich der öffentlichen Verwaltung*) even though the authority was not formally obliged under the applicable law to take a decision since recognition of a religious society had to be taken in the form of a decree (*Verordnung*). However, since an agreement had been reached in a meeting between the applicants and the Ministry on 3 December 1980, no further steps were required by the Ombudsman's Office. The contents of this agreement were not disclosed by the applicants.

10. On 22 June 1987 the second to fifth applicants requested the Federal Minister for Education, Arts and Sports (*Bundesminister für Unterricht, Kunst und Sport*) to recognise the first applicant as a religious society.

11. The Minister did not grant the request and, after several reminders, informed the applicants that under the 1874 Recognition Act they had no right to obtain a formal decision (*Bescheid*) on their request.

12. On 25 October 1991 the applicants lodged a direct application (*Individualantrag*) with the Constitutional Court (*Verfassungsgerichtshof*). They requested the court to repeal section 2 (1) of the 1874 Recognition Act, as in their view, this provision violated the right to freedom of religion and to freedom of association. They also argued that they were directly affected by this provision without it being necessary for a formal decision by an administrative authority to be taken (Article 140 § 1 *in fine* of the Federal Constitution (*Bundes-Verfassungsgesetz*)).

13. On 14 January 1992 the Federal Government (*Bundesregierung*) submitted their observations to the Constitutional Court. On 27 April 1992 the Constitutional Court asked the Federal Government to submit supplementary observations, which were filed on 2 June 1992. The Federal Government argued, *inter alia*, that the provisions at issue were in conformity with the Federal Constitution as it was possible for the applicants to found a religious association under the Associations Act (*Vereinsgesetz*).

14. On 25 June 1992 the Constitutional Court rejected the applicants' complaint as inadmissible. Relying on Article 13 of the Convention, the court considered that they were not directly affected by the impugned provisions as, in the light of its judgment of 1988 (*VfSlg* [Judgments and Decisions of the Constitutional Court] 11.931/1988), they had a right to have their case determined by an administrative authority. However, they had not exhausted the legal remedies available to them since they had failed to lodge an application under Article 132 of the Federal Constitution with the Administrative Court (*Verwaltungsgerichtshof*) against the Minister's failure to give a decision (*Säumnisbeschwerde*).

15. On 30 July 1992 the applicants lodged such an application with the Administrative Court. They asked the court to decide on their request for recognition of the first applicant as a religious society under the Recognition Act.

16. On 22 March 1993 the Administrative Court rejected the applicants' request as inadmissible. Referring to its previous case-law on the matter, it found that under the 1874 Recognition Act, a positive decision had to be taken by the competent minister in the form of a decree (*Verordnung*), whereas under Article 132 of the Federal Constitution, the Administrative Court was only competent to deliver individual decisions (*Bescheide*) and not decrees in the place of an administrative authority.

17. On 12 October 1993 the applicants again lodged a direct application under Article 140 § 1 *in fine* of the Federal Constitution with the Constitutional Court, seeking to have sections 1

and 2 of the 1874 Recognition Act repealed. Relying on Article 13 of the Convention, they argued that they had no effective remedy against the authority which had arbitrarily refused to determine their case.

18. On 10 March 1994 the Constitutional Court dismissed the applicants' complaint as inadmissible. It found that it had already decided the matter in its decision of 25 June 1992. As an *obiter dictum* the court indicated, however, that the second to fifth applicants might request the Constitutional Court to examine a complaint under Article 144 of the Federal Constitution against the Minister's failure to decide on the request for recognition. Once the Constitutional Court refused this request, they could apply to the Constitutional Court under Article 138 of the Federal Constitution for determination of a case where two courts (namely the Administrative Court and the Constitutional Court) declined jurisdiction (*negativer Kompetenzkonflikt*).

19. On 9 May 1994 the second to fifth applicants lodged such a complaint, which the Constitutional Court on 21 June 1994 rejected as inadmissible for lack of jurisdiction. It held that there was no legal provision entitling it to decide on applications about an authority's failure to give a decision.

20. On 16 November 1994 the applicants requested the Constitutional Court under Article 138 of the Federal Constitution to determine the conflict of jurisdiction between the Administrative Court and the Constitutional Court.

21. On 23 June 1995 the Constitutional Court held an oral hearing. On 4 October 1995 the court quashed the Administrative Court's decision of 22 March 1993 and decided that the Administrative Court had jurisdiction to decide on the applicants' complaint of 30 July 1992. The Constitutional Court found that under the 1874 Recognition Act a religious body had a subjective right to recognition as a religious society provided that the conditions laid down in that Act were met. The rule of law required that such a right be an enforceable one, in other words, that refusal to grant recognition should be subject to review by the Austrian courts and not left to the sole discretion of the administrative authorities. In order to guarantee such a review it was necessary for a negative decision refusing recognition to be taken in the form of a written decision (*Bescheid*). Under the Austrian legal order, only when taking such decisions were the competent authorities bound to deal with a request by a party, whereas no such obligation existed with regard to decrees (*Verordnungen*). A positive decision had to be taken in the form of a decree as it not only had effect *vis-à-vis* the parties but also *vis-à-vis* the general public.

2. Period after the Constitutional Court's decision of 4 October 1995

22. On 18 December 1995 the Administrative Court ordered the Federal Minister for Education and Cultural Affairs (*Bundesminister für Unterricht und kulturelle Angelegenheiten* – "the Minister") to submit the case file within two months and to communicate the arguments in favour of and against recognition.

23. On 13 February 1996 the Federal Minister submitted observations to the Administrative Court, arguing that under the hitherto existing law, a decision was not required and requesting a three-month extension of the time-limit for submission of the case file and detailed observations.

24. On 25 March 1996 the Administrative Court opened preliminary proceedings (*Vorverfahren*) and ordered the Minister to decide within three months on the applicants' request for recognition. The Federal Minister failed to do so.

25. On 28 April 1997 the Administrative Court issued a binding decision (*Erkenntnis*) to the effect that the Minister had a duty to decide on the request for recognition within eight weeks and set out the principles which the Minister had to take into account when taking this decision. On 3 June 1997 the applicants submitted further observations and arguments in their favour to the Minister.

26. On 21 July 1997 the Minister dismissed the applicants' request. It found that the Jehovah's Witnesses could not be recognised as a religious society under the 1874 Recognition Act because of their unclear internal organisation and their negative attitude towards the State and its institutions. Reference was further made to their refusal to perform military service or any form of alternative service for conscientious objectors, to participate in local community life and elections and to undergo certain types of medical treatment such as blood transfusions.

27. On 3 September 1997 the applicants lodged a complaint against the Minister's decision with the Constitutional Court.

28. On 11 September 1997 the Constitutional Court communicated the complaint to the Minister and requested him to submit, within eight weeks, the case file and any observations he wished to make. The Minister did not respond.

3. Period after the entry into force of the Act on the Legal Status of Registered Religious Communities (*Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften*)

29. On 11 March 1998 the Constitutional Court quashed the Minister's decision of 21 July 1997 and referred the case back to the Minister. It noted that the Minister had neither filed submissions nor submitted the case file, with the result that the decision had to be taken on the basis of the complainants' submissions. The court noted that they had, *inter alia*, argued that the Minister had taken his decision without a proper investigation, basing it on documents of which the complainants had not been informed and on which they had not been given the opportunity to comment. Since the case file was not available to the Constitutional Court, this allegation could not have been refuted. The Constitutional Court therefore concluded that the Minister's decision was arbitrary and violated the principle of equality (*Gleichheitsgrundsatz*).

30. Meanwhile, on 10 January 1998, the Act on the Legal Status of Registered Religious Communities (*Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften*, hereafter referred to as "the 1998 Religious Communities Act") had entered into force. Thus, the Minister found that he had to deal with the applicants' request for recognition under the 1874 Recognition Act as a request under section 11(2) of the 1998 Religious Communities Act. On 20 July 1998 the Minister decided that the first applicant had acquired legal personality as a registered religious community within the meaning of the Religious Communities Act as from 11 July 1998. That decision was served on the applicants on 29 July 1998.

B. Second set of proceedings

31. On 22 July 1998 the applicants submitted another request to the Federal Minister for recognition of the first applicant as a religious society under the 1874 Recognition Act.

32. On 1 December 1998 the Federal Minister dismissed the request. It found that, pursuant to section 11(1) of the 1998 Religious Communities Act, a religious community could only be recognised as a religious society under the 1874 Recognition Act if it had already existed as a registered religious community for a minimum of ten years. The first applicant, however, did not meet this requirement at the time when the request for recognition was submitted on 22 July 1998.

33. On 21 January 1999 the applicants lodged a complaint against that decision with the Constitutional Court.

34. On 14 March 2001 the Constitutional Court dismissed the complaint. It found that the ten-year waiting period for registered religious communities as a precondition for a successful application for recognition under the 1874 Recognition Act was in conformity with the Federal Constitution and referred to its previous decision of 3 March 2001 (*VfSlg. 16.102/2001*) on that issue. The decision was served on the applicants' lawyer on 29 March 2001.

35. Further to a request by the applicants, the case was referred to the Administrative Court in April 2001.

36. On 14 September 2004 the Administrative Court dismissed the applicants' complaint, finding that it concerned in essence questions of the constitutionality and interpretation of section 11(1) of the 1998 Religious Communities Act, which, in the light of the Constitutional Court's ruling of 14 March 2001, did not raise a problem in terms of the Federal Constitution. The Federal Minister had therefore correctly applied that provision. The decision was served on the applicants' lawyer on 25 October 2004.

For further details see FOREF Europe: www.religionsfreiheit.at & ECHR Portal: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=838821&portal=hbkml&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>



Your Forum for Religious Tolerance & Human Rights

The Role of Religion in the Protection of Human Rights and Human Dignity

Statement presented by
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Geneva Conference on Interfaith Cooperation
and the Protection of Human Rights and Dignity

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The Role of Religion in the Protection of Human Rights and Human Dignity

1. The power of true religion

Mr. Chairman, your Excellencies, Distinguished guests, Ladies and Gentlemen: in 1948, exactly 60 years ago, the United Nations adopted the Universal Declaration of Human Rights which operates as an authoritative guide in the field of human rights. FOREF Europe seeks to promote the vision of religious freedom found in Article 18 of the Declaration:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, alone or in community with others, and, in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

As his Excellency Ambassador Makarim Wibisono has correctly stated: the Universal Declaration of Human Rights has largely been drafted by experts of religion.

Religion has always played a central role in the protection of human rights and especially in the promotion of human dignity. For example the abandonment of slavery was inspired by the biblical concept of “Imago Dei” (Genesis: All men are created in the image of God).

What makes religion strong in the protection of human rights and human dignity is:

- Its emphasis on man’s spiritual and eternal nature and dignity as a child of God.
- Its rejection of hatred and violence
- Its obligation to practice love by living for others
- Its power to forgive and reconcile
- Its vision for a world of peace, harmony and mutual prosperity

2. Abuse of Religion as violation of basic human rights

Sadly, throughout history - even until today, religion has often been misinterpreted, misunderstood and misused for hegemonial interests, discrimination and even violence. (crusades, inquisition, religiously motivated wars until today).

If a particular religion claims to be exclusively assigned by divine providence to be the only one, the human rights of people of other faiths or convictions can be severely endangered.

As Rev. Dr. William McComish stated: Never quote a spiritual source to justify discrimination or violence!

That is the very reason why true religious leaders and defenders of religious freedom always emphasise the importance of religious tolerance.

3. Religious Freedom as a fundamental human right

"The right of freedom of conscience and belief ... religious freedom constitutes the very foundation for the other fundamental freedoms of man!" Cardinal Franz KÖNIG (Austria)

For a religious person, can there be any other right more important than the freedom to worship your creator and follow his will in the way your conscience commands you to do? Mr. Chairmen, your Excellencies, the importance of religious freedom has been dismally neglected by political leaders! On the contrary, great human rights defenders have always regarded the freedom of faith and conscience as the "mother of human rights". Therefore, the significance of religious freedom for creating social harmony and world peace cannot be emphasised enough.

4. Religious Freedom in Europe under threat

"Each civilisation should be judged by the way it treats her minorities!"

Mahatma Gandhi

The escalation of religious intolerance and discrimination throughout the new Europe should be a matter of great concern to our political leaders, the European Union and the United Nations.

- Anti-Semitism is on the rise again.
- Islamophobia is spreading throughout Western - and Eastern Europe.
- Sectophobia – the irrational fear of so called "sects" or religious minority groups has been rising during the last 40 years in Western Europe and since the fall of the iron curtain is now also manifesting in Eastern-Europe.

This is not just a mere assumption. Even governments and powerful state sponsored organisations are still supporting the agents of intolerance and discrimination (of minor religions and new religious movements).

Mr. Chairmen, your Excellencies, Ladies and Gentlemen: It is exactly this kind of religious discrimination that Article 18 was designed to prevent. This is made clear by the UN Human Rights Committee, which in its Comment 22 states:

Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established or represent religious minorities that may be the subject of hostility by a predominant religious community.

Various European governments have created "black lists" of religious minority groups. Sadly, according to the motto "big fish eats little fish", even main stream Churches are often promoting state sponsored discrimination of so called "sects" or small religions. This has been possible through their powerful constituencies in most European countries.

5. The case of Austria

In Austria, we have over 80 percent Catholics. Islam, with 400 000 Muslims constitutes the second largest faith community. There are approximately 600 religious minority groups. Only 13 faith communities enjoy special privileges by the state. With a population of 8.2 Million Austria has no less than 34 Anti-Sect offices operating in the country. Proportionally, this marks an unmatched record in Europe and even on a global scale.

- Including the Federal Sect Observatory, there are six (6) state sponsored sect-observation offices
- Nine (9) Catholic Sect Offices
- Seven (7) Protestant Sect Offices
- Four (4) Private Sect Offices
- and eight (8) Family Counselling Offices with special emphasis on “Sectarian issues”.

Austria’s constitutionally granted neutrality of the state in religious matters is torpedoed by these facts. Members of religious minorities from Austria and neighbouring countries report numerous cases of religious discrimination in schools, communities and in their workplace. Even established NGOs with a consultative status at the UN (ECOSOC), who are running peace initiatives or relief projects in line with the UN-Millennium Development Goals reported to FOREF, that their work has been severely hampered by the interventions of the so called “sect experts”. Victims especially hold the state responsible for creating an atmosphere of religious intolerance and spiritual apartheid. As a result, in July the European Court of Human Rights has rebuked Austria for its discriminating legislation against non-traditional faith communities.

6. Institutionalised discrimination of religious minorities in Europe

In spite of many objections by faith communities, the Council of Europe granted FECRIS (*Fédération européenne des centres de recherche et d’information sur le sectarisme*) consultative status in 2005. The named organisation - under the banner of human rights - promotes discriminating anti-cult legislation throughout Europe. FECRIS receives substantial funding (over 90% of its annual budget- as quoted by the SG of the organisation) from the French government. Numerous protests of human rights defenders in the OSCE, COE, the UN and other Institutions have yet to bear fruits.

7. FOREF recommendations to religious leaders, NGO representatives and human rights defenders

- Appeal to governments to stop funding prejudiced public and private organizations which promote and propagate defamatory statements about faith communities and religious organisations. Such activities infringe the principles of tolerance and integration promoted by the UN, OSCE, COE and the European Union.
- Appeal to religious leaders to promote tolerance toward all religious groups, regardless whether they are weak or strong, large or small.
- Appeal to religious leaders to invoke the great power of religion for reconciliation and peace building. After all, we are one family under God.

"We must learn to live together as brothers and sisters or perish together as fools."
Dr. Martin Luther King Jr.

End of statement

Brief history of FOREF Europe:

1998: FOREF (Forum for Religious Freedom) & Religious Freedom Website (www.religionsfreiheit.at) was initiated by Peter Zoehrer (Austria) "out of necessity", since the government has just introduced two new laws, severely curtailing the rights of religious minority groups: 1) the establishment of a "federal sect observatory office" (annual budget over €500 000), 2) the introduction of a law for "confessional communities".

2002: Zoehrer, the initiator of FOREF got enlisted in Who is Who- Austria as human rights activist.

2003: FOREF regularly reports to the media, OSCE, US-State Department, Human Rights Without Frontiers and various other human rights organisations on religious freedom violations in Austria & other European countries.

2006: FOREF-Europe registered as an official Association (NGO). Prof. Dr. Christian Bruenner, a renowned constitutional expert becomes president & Mr. Zoehrer takes on the job of secretary general.

2007: FOREF establishes an international scientific board of experts & a religious board.

2008: The website counts 100 000 to 150 000 hits per month and has become a respected religious freedom monitor and medium-forum for members of religious minority groups, their opponents, public media, legislators, government agencies and Human rights defenders.

During the past 8 years FOREF scored over 30 victories in helping victims of religious intolerance to regain their rights, get vindicated from injustice, discrimination or persecution.