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BY Express Mail

Mr. Leandro Despuoy
Special Rapporteur on the Independence of
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Mrs. Asma Jahangir
Special Rapporteur for Freedom of Religion or Belief
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RE: Complaint Regarding Violations of the Right to a Fair Trial and
the Independence and Impartiality of the Judiciary in France.

Dear Special Rapporteurs Despuoy and Jahangir:

I respectfully submit this complaint concerning alleged violations regarding the contravention of the right to a fair trial and the independence and impartiality of the judiciary in cases regarding minority religious associations and their adherents in France.

I am filing this complaint on behalf of CAP (Coordination des Associations et des Particuliers pour la Liberté de Conscience – Coordination of Associations and Individuals for Freedom of Conscience), an association created in 2000 to unite minority religions in France in order to counter discrimination concerning the right to freedom of conscience and belief and to denounce acts and speech violating human rights or which are a threat to fundamental liberties. Members of CAP include adherents to numerous minority faiths targeted for discriminatory measures as "sects" by the government.

This complaint concerns the Prime Minister's appointment in April 2008 of Mr. Georges Fenech, former Magistrate and former President of the Parliamentary Inquiry Commission on Sects and Youth, who, according to press reports, will conduct a study and evaluation of the Judiciary to ensure that it is set up to "fight more efficiently" against "sectarian abuses".

Press reports indicate that Mr. Fenech must issue his report to the Prime Minister by 1 July 2008. On his appointment, Mr. Fenech stated to the press that legal mechanisms created to "fight" minority faiths derogatorily referred to as "sects" are "rarely utilized", notably mentioning the controversial About-Picard law (June 2001) on "weakness of abuse". Mr. Fenech's mission is to evaluate the effectiveness and use of existing legal measures against so-called "sects", to analyze Magistrates training regarding "sects" and their "sensitization to sectarian abuses," the role of private anti-sect associations empowered to incite criminal complaints against religious groups and related issues. M. Fenech specifies that he will work in collaboration with the Ministry of Justice to implement this study. (See enclosed, "Georges Fenech in Charge of a Mission on Sectarian Abuses and Justice," AFP 24 April 2008; "Sects : One Mission for Georges Fenech," Parisien 15 April 2008). .

There is great concern in the minority religious community in France that this evaluation will create undue pressure on Magistrates to prosecute and convict individuals and organizations due to their minority religious beliefs in contravention of fundamental human rights.

Moreover, Mr. Fenech is clearly not an appropriate official to conduct such a study. By way of background, Mr. Fenech worked as a Judge of Instruction from 1984 to 1994. He was President of the Association Professionnelle des Magistrats (APM) from 1996 to 1998, a union of judges. He was elected as an MP on June 16, 2002, for 5 years. Mr. Fenech has a background that makes him an inappropriate official to conduct a neutral and objective study.

- In April 2008, Mr. Fenech was indicted for slander against the political party La France En Action and its Président, a party which Georges Fenech called a "sect". How can Mr. Fenech conduct this study and analyze the conduct of Magistrates when he is a defendant in this case?
- In March 2008, Mr. Fenech was declared ineligible for one year for "*offence*" to articles 52-8 et LO136-1 of the election Code; his mandate as an MP was then cancelled by the Conseil Constitutionnel.
- In April 2007, Mr. Fenech was sent to criminal court by Judge Philippe Courroye in a case concerning sale of weapons to Angola.
- In December 1998, Mr. Fenech's application to the position of First Judge of Instruction in Paris was rejected by the Ministry of Justice because of "words with anti-Semitic connotations" in the magazine managed by M. Fenech as President of APM and "questions generated, from the viewpoint of Magistrates, by his participation to an unofficial mission of observation of the presidential elections in Gabon".

In addition to his controversial background, Mr. Fenech also has taken positions against the rights of religious organizations derogatorily referred to as "sects" in France that contravene the principles of non-discrimination and equality regarding religious organizations. Mr. Fenech has publicly called for draconian measures against such organizations in contravention of the right to religious freedom protected by Article 18 of the International Covenant on Civil and Political Rights.

Since March 2003, Mr. Fenech has served as a member of the Advisory Board (Orientation Council) of MIVILUDES, the French Inter-Ministerial Mission of Vigilance to fight against sectarian drifts. MIVILUDES, a state entity, promotes

religious discrimination through stigmatization of faith groups which are minorities in France. Under the guise of vigilance and battle against vaguely defined sectarian deviations, MIVILUDES targets numerous movements and persons on grounds of their religious beliefs.

MIVILUDES actions include "awareness raising workshops" for Magistrates, health care administrators and workers and school administrators and teachers. MIVILUDES published a 170-page guide for private sector human resource managers on 13 December 2007. It provides language and the rationale to facilitate employment discrimination against persons belonging to belief groups which are minorities in France. This guide is downloadable from http://www.miviludes.org/IMG/pdf/guide_Miviludes_L_entreprise_face_au_risque_sectaire.pdf .

The intolerant position of Mr. Fenech on the subject of religions is also evidenced by his statement that he does not believe in dialogue with groups labelled by him as "sectarian movements" in spite of the fact that there is no definition of this phrase. When interviewed on 8 June 2007 on Sud Radio he stated:

"I have never dialogued with whoever would have ties with a sectarian movement."

This intolerant position of Georges Fenech regarding minority faiths in France is also evidenced in his actions chairing the Parliamentary Commission on Minors in Sects. On June 28, 2006, with only 10 out of 577 members of Parliament present at the French National Assembly, eight of those present appointed themselves members of the third Parliamentary Inquiry Commission in eleven years regarding minority faiths in France, this one focusing on youth.

This inquiry regarding youth and minority faiths is ironic as the United Nations Rapporteur on Freedom of Religion or Belief published a report in March 2006 regarding her visit to France in which she determined that the methods of the first two Parliamentary inquiries and divisive policies adopted by the government at that time has resulted in "*the public condemnation of some of these groups, as well as the stigmatization of their members, has led to certain forms of discrimination, in particular vis-à-vis their children*".

Rather than attempt to repair these human rights shortcomings identified by the UN Religious Freedom Rapporteur, as the foremost UN expert on international human rights law and religious freedom, the new Commission under Mr. Fenech's leadership instead attempted to compound the problem of religious

intolerance directed at children of minority faiths by holding biased hearings to attempt to justify draconian laws and "awareness campaigns" designed to: take custody away from a parent or parents of children of minority faiths; stigmatize and marginalize such children in public educational institutions; subject such children to discriminatory examinations and treatment; refuse to respect the fundamental human right of parents to raise their children in accordance with their own religious beliefs; bias court officials against members of minority faiths; and expand the highly controversial and internationally criticized About-Picard law through further repressive legislation.

The tactics of Mr. Fenech and the Commission were criticized by the United States State Department in its 2007 Human Rights Report. The State Department noted that:

"Members of Jehovah's Witnesses also alleged that during the reporting period the rapporteur and the secretary of the newly convened commission openly attacked them, describing them as delinquents and criminals and labeling their activities as "mafia like." The commission's report also elicited criticism from other minority religious and civil rights groups, which labeled the commission's conclusions an affront to freedom of conscience and religious belief".

The entire approach of this Commission violated fundamental human rights principles. Article 18 (4) of the International Covenant on Civil and Political Rights requires States to "undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions". Likewise, Protocol 1, Article 2 of the European Convention on Human Rights requires States to "respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

Since 1996, repressive measures have been initiated by the French government to target religions derogatorily designated as "sects". These special measures have undermined the general institutional framework and guarantees securing a fair trial, judicial impartiality, and judicial independence in France for religious minorities in France

- Public pronouncements by French government officials that minority religions designated as "sects" must *"be fought against"*;

- Special measures in the form of Ministry of Justice Circulars and the supervision of prosecutor's cases by a "Sect Mission" to pressure prosecutors and judges to initiate cases and investigations against 173 targeted religions.
- "Awareness" sessions for judges, prosecutors and police organized and run by the "Sect Mission" which prejudge entire movements by uniformly portraying targeted faiths in a negative light,;
- "Cells of vigilance" presided over by the chief administrative officer of a French department, bringing together all of the governmental services concerned with the subject throughout the country, *including the judicial services and representatives of the anti-sect associations*;
- Ministry of Justice instructions in the Ministry's 1998 Circular *to prosecutors and judges* to maintain institutional contacts with biased *anti-sect associations* as "*only good can result*" from establishing contacts with groups that "*combat sects*"; and
- Special laws targeting religions and designed to interfere with the right to a fair trial for religious minorities and undermine the impartiality of the judiciary by providing standing in such legal proceedings to blatantly biased groups subsidized almost exclusively by the French government that are committed to "*fighting sects*".

"Awareness" programs for court officials have been condemned by the United Nations Human Rights Committee. In its *Concluding Observations of the Human Rights Committee: Germany. 18/11/96 (CCPR/C/79/Add.73)*, the Human Rights Committee recommended, in strikingly similar circumstances, that Germany discontinue the holding of "sensitizing sessions for judges against the practices of certain designated sects". Otherwise, the right to a fair trial is destroyed for religious minorities.

Such "awareness" programs for court officials are in fact *ex parte* trials, operate to prejudge entire groups, thereby infringing the right of the minorities to be presumed innocent, and contravene the principle of equality of arms since these minorities are not in a position where they can contradict the biased information given to the judges.

As with these ongoing measures which undermine the independence of the judiciary, the study initiated by Mr. Fenech on behalf of the Prime Minister will further erode the independence of the judiciary in matters concerning religious freedom and will put further pressure on Magistrates to bring charges against targeted religious faiths even if the facts do not warrant such charges.

This current study by Mr. Fenech and these measures implemented by the French government to "*fight against*" minority religions in the judicial process represent an unprecedented level of discrimination in contravention of international human rights standards that have indelibly tainted the entire judicial institutional framework and guarantees securing judicial independence in France in cases concerning any of the targeted religions and their adherents. International assistance is necessary to remedy this institutionalized discrimination.

Mr. Fenech has also stated his intention to include in his study how to ensure more effective and regular use of the law of 12 June 2001, known as the About-Picard law. Overall, the About-Picard law allows for the imposition of restrictions on religious groups in France which are unprecedented in Europe in modern times and which include: specifically drafting the law in order to be applied to minority religions only, in a discriminatory manner; the creation of a new offence of fraudulent "abuse of [a person's] ignorance or vulnerability" designed to apply only to disaffected members of targeted religious groups; allowing groups which make it their very business to "fight" minority religions a formal role in the proceedings in which these measures can be imposed; and a provision providing for the dissolution of associations of targeted religious groups when they or one of their leaders has been convicted of certain crimes. Taken together, these matters make the law incompatible with basic principles of religious freedom and the rule of law.

The About-Picard law has been criticized by human rights groups. In an open letter dated June 2000 about the About-Picard law and religious freedom in France, Aaron Rhodes, Executive Director of the International Helsinki Federation for Human Rights (IHFHR), wrote:

"We question ourselves how such a law can claim to guarantee human rights when it goes against the rights of association, expression, religion and conscience; when it puts in danger the right of minorities and maintains prejudices that are so incompatible with the concept of tolerance intrinsic to that of human rights. France must deal with its

responsibilities and obligations as a signatory for the International Conventions and respect the European laws and their interpretation by the Court of Strasbourg, before one of its citizens becomes a victim of discrimination due to the law which you propose."

On 6 October 2000, 14 Members of the Parliamentary Assembly of the Council of Europe signed a proposal expressing their concern with this law and the fact that it classifies 173 religious groups as "sects", a negative term rejected by the Council of Europe in a Committee of Legal Affairs Report in 1999 (Doc. No. 8373). On 26 April 2001, 50 members of the Parliamentary Assembly of the Council of Europe signed Declaration 321, whereby they expressed their concern against this law and recommended that it be withdrawn. (Doc. No. 9064). And on 18 November 2002, the Parliamentary Assembly of the Council of Europe adopted Resolution 1309 (2002) on the About-Picard law, calling on the French government to "reconsider the law".

Under the law, so called anti-sect associations are empowered to incite criminal complaints against religious groups, to represent the complainants using their own attorneys, to appear as private civil parties and thus to control the perversion of the legal system as government proxies to attack religious minorities.

The right to a fair trial is clearly violated in connection with the granting of the status of "civil party" to anti-"sect" organizations in criminal proceedings against minority religious groups or leaders or members of such groups for two reasons.

First, in certain proceedings in which the question of whether the incriminated activities related to a targeted organization designated as a "sect" is likely to be the main question, the *very granting of partie civile status pre-judges this issue.*

Article 2-17 of the French penal code provides that any association recognized as being of public utility and existing for at least 5 years can be a civil party in cases in which offences have been committed by or within a group or organization "*which purpose or effect is to create, maintain or exploit a psychological or physical subjection*". Since the status can only be granted in proceedings concerning acts committed in the context of the activities of an organization designated as a "sect", the granting of this status implies a pre-determination that the group in question constitutes such an organization, rendering the right to be treated as innocent until proven guilty and the right to a fair trial nugatory.

Second, the involvement of such blatantly biased groups in the substance of the determination of a criminal case undermines the right to a fair trial and violates the impartiality of the tribunal - in particular in cases relating to freedom of religion. The European Court of Human Rights has found the involvement of the Greek Orthodox Church in cases regarding house of worship permits for the use of premises by Jehovah's Witnesses to be completely inappropriate as that Church would have interests inimical to the objectivity and neutrality demanded in state interactions with minority faiths.¹ In 2001, in *Metropolitan Church v. Moldova* (44701/99) (13 December 2001), the European Court of Human Rights noted the incompatibility of laws allowing for the inclusion of ecclesiastical authorities in the approval process. The Court stated that:

Similarly, where the exercise of the right to freedom of religion or of one of its aspects is subject under domestic law to a system of prior authorisation, involvement in the procedure for granting authorisation of a recognised ecclesiastical authority cannot be reconciled with the requirements of paragraph 2 of Article 9 (see, *mutatis mutandis*, *Pentidis and Others v. Greece*, no. 23238/94, Commission's report of 27 February 1996, § 46).²

Surely, allowing blatantly biased anti-religious groups to interject themselves into criminal proceedings against religious minorities is *far worse* than allowing a state religion to be part of the administrative process. The inclusion of these groups in criminal proceedings violates the right to religious freedom, contravenes the requirement of strict neutrality in religious matters by the State, and renders the right to a fair trial and judicial impartiality nugatory, transforming the cases into full blown "heresy trials".

This offends UN standards as well. The United Nations Special Rapporteur for Religious Freedom has also expressed concern about the inclusion of ecclesiastical authorities in the decision making process in Greece and has recommended that such laws be amended to exclude them from the process due to concerns regarding the need for impartiality and freedom from religious discrimination.³

These repressive measures cannot be countenanced under UN Basic Principles on the Integrity of the Judiciary, *The Bangalore Draft Code of Judicial Conduct*

¹ *Manoussakis and Others v. Greece*, (59/1995/565/651) (26 September 1996), para. 43.

² *Metropolitan Church v. Moldova*, paragraph 117.

³ Greece Report, A/51/542/Add.1 (7 November 1996).

2001, Guidelines on the Role of Prosecutors, and Article 14 of the International Covenant on Civil and Political Rights.

The Special Rapporteur on the Independence of Judges and Lawyers has noted his increased attention to such discriminatory practices as an essential part of his mandate, including discrimination that amounts to denial of fair trial and interference in the judicial process, in mission reports. (See, e.g. E/CN.4/2003/65). Likewise, the Special Rapporteur has noted that the Human Rights Commission has called upon special rapporteurs to continue to give attention, within their respective mandates, to situations involving religious minorities. (See, e.g. E/CN.4/2002/72). Finally, in its resolution 2002/37 on the integrity of the judicial system, the Commission requested the Special Rapporteur, in the discharge of his mandate and in his reports, to take full account of the resolution which urged States to guarantee fair trial procedures before independent and impartial courts trying criminal offences. This complaint thus concerns matters at the heart of the Rapporteur's mandate.

Likewise, the Human Rights Committee has found that freedom of religion is not limited in its application to traditional religions and that any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community, contravenes Article 18 of the International Covenant on Civil and Political Rights.

Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. 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 reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.*

General Comment No. 22 on Art. 18 (Para 2).

France has ratified international human rights instruments guaranteeing the right to freedom of religion and belief and guaranteeing the principles of non-discrimination and equality. It is therefore bound to uphold these standards as a member of the international community.

The current oppressive measures and actions by the French government to abuse the judicial process to target minority religious groups and their followers and to bias judges against such groups and their members interfere with the independence of the judiciary, contravene the right to a fair hearing, violate the principles of non-discrimination and equality at the heart of justice, and represent an attempt to improperly single out and repress minority religious organizations through bad faith prosecutions and trials steeped in prejudice.

On behalf of CAP, I respectfully request that the Rapporteurs communicate with the French government regarding this matter and investigate the allegations detailed in the enclosed submission in order that the right to a fair trial be restored for religious minorities in France. .

Thank you for your assistance. If you have any questions on the information that we provided to you, or if you need any further information, please do not hesitate to contact me at my above e mail, phone or address.

Sincerely,

William C. Walsh