Coordination of Associations and Private individuals for Freedom of Conscience

Legal analysis of the report of Mr Fenech, President of the MIVILUDES :

« The justice facing the sectarian drifts »

Legal committee of CAP Freedom of Conscience

Fenech's Report to the Prime Minister: Summary

The mission entrusted to Fenech in April 2008 consisted in the following analysis:

- adequacy of the specialization of magistrates of the General Prosecutors' offices created by the 1st December 1998 Circular,
- scope of the coordination mission entrusted to those sect correspondents, especially towards the actors on the ground such as the investigation services, the decentralized departments of the ministries and the associations of the UNADFI network and of the CCMM,
- the quality of the training on this issue given by the National School of the Magistracy and of the awareness of magistrates dealing with family and youth issues as prescribed by the 2006 Parliamentary Commission,
- the adequacy of the investigation services with the needs of magistrates in charge of criminal proceedings.

Mr Fenech was to consult the competent authorities in order to complete his analysis. It is primarily noteworthy that Mr Fenech consulted, apart from the relevant public authorities, only representatives of the anti-sect fight. He met with 3 anti-sect associations: UNADFI, CCMM and ADFI North and 3 attorneys representing civil parties in trials against so-called «sects».

If it seems legitimate that he had to interview all the relevant authorities, it is on the contrary surprising that he interviewed private associations and attorneys of individuals who all had in common their dedication to fight against certain new religious movements. No attorneys of the targeted groups were met to counterbalance this input of private interests. This alone indicates the aim pursued by Mr Fenech in performing his mission.

Having completed the relevant hearings and investigation, Mr Fenech submitted his report to you with the following recommendations:

- a specific assistance to Judges of Instruction concerning the construction of the offence of "fraudulent abuse of the state of vulnerability» of «a person under psychological subjection», provided by the About-Picard law of 12 June 2001,
- the development of awareness training for the magistrates, especially the ones in charge of family and youth issues, and for the sect correspondents,
- the extension of these awareness seminars to the police and the "gendarmerie",
- a systematic treatment of family matters (divorce, guardianship…) by a magistrate trained in these issues when one of the parents at least belongs to a so-called "sect", and the systematic involvement of the Prosecutor in these civil issues,

- a special control by the youth judge in order to protect children from their parents' beliefs,
- specific awareness internships at UNADFI and CCMM for all students of the National Schools of the Magistracy.

These different points will be addressed below.

A. Specific assistance to the Judges of Instruction

In his report, Mr Fenech explains that magistrates have difficulties to understand or apply the concept of «psychological subjection». He states that the low number of prosecutions is due to the difficulty of investigators and magistrates to gather evidence of the state of regress and dependency created by the subjection, and the impossibility to prove with certainty that the consent of the follower was free in appearance only.

Here we have the core of Mr Fenech's argument. He divides the «victims of sectarian drifts» in three categories: «the followers who are not yet conscious of being victims», the former followers and the victims' families. Concerning the first category, he states that in this case «the followers do not consider themselves as victims and they even demonize those who want to help them as they are under psychological subjection. They become without being aware of it «happy slaves». (report page 42)

For «this category of apparently consenting victims», Mr Fenech wishes that they be deprived of part of their civil rights by having guardianship judges intervene at the request of third parties or families in order to place them under guardianship. In this respect, he recommends a higher sensitization of guardianship judges to «sectarian drifts».

He recommends that, during judicial investigations, a psychiatric examination would confirm if the adherence to the religious minority group constitutes a state of subjection; and that during custody, a special support be organized with a psychologist and anti-sect associations as «followers who are not conscious of living in a situation of dependency» are «susceptible of strong emotional reactions at the time of their arrest and in the following hours». He stresses that the experience of anti-sect associations in the treatment of former members of these groups is important for the outcome of these police interventions.

These views and recommendations are no less than the advocating of deprogramming, a technique formerly used by anti-cult associations in America for which they were convicted in Courts.

The difficulty of evidencing a state of «psychological subjection» already raised concern from the President of the French Conference of Catholic Bishops, Cardinal Billé, and that of the Protestant Federation of France, Pastor de Clermont during the debates on the About-Picard law. The two main leaders of the Catholic and Protestants Churches of France sent a joint letter in May 2001 to Prime Minister Lionel Jospin to inform him of their «reserves» about the draft law which was to be

examined in a second reading by the National Assembly. In this letter, the two signatories expressed concerns regarding the most controversial article of the law, as the text voted by the Senate incriminated placing «a person in a state of psychological or physical subjection resulting from the exercise of grave or repeated pressures or techniques appropriate to alter its judgment, to lead (this minor or) this person to an act or to the non performance of an act that are seriously harmful to her». The religious leaders wondered who would judge of the harmful character of this act or this non performance. For them, the interpretation of this article was left open «to the personal appreciation of the judges»: «judgment will be subjected to the fashions, to the variations of time, or to outside pressure». (Le Monde 22 May 2001)

Since the draft bill was adopted in first reading by the National Assembly in 2000, the representatives of the great religions expressed, repeatedly, their anxieties about the «dangers» that this text would have for freedom of religion. As a matter of fact important questions were raised: when would conversion to a new religion or to new beliefs be considered as psychological subjection, would this apply to nuns and monks who engage in cloisters and then change their minds? And when would religious followers' consent be considered to have been given freely only in appearance due to a purported psychological subjection?

The answer given by Mr Fenech to these questions consists is in the intervention of «experts». On page 21 of his report, after recommending the communication to judges of a guide giving 15 criteria susceptible to identify a «sect» – which are so general that they leave a large scope of interpretation, such as «threat of trouble to public order» or «destabilizing conditions of life» or «indoctrination of children» – Mr Fenech adds that in any case «this identification will always require an expert's viewpoint».

And he recommends the training of expert psychiatrists who would be able to give that special assistance to judges.

The point here is that the «training» provided so far to the magistrates, the police and other officials has consisted in the libel of groups specifically named, who did not have a chance to contradict the false allegations made against them.

In order to make sure that the article of the About-Picard law would apply specifically to new religious movements and non traditional beliefs, and in order to remedy the lack of legal definition of a "sect" and of "sectarian drifts" (page 20 of the report), Mr Fenech intends that judges of instruction be advised on what groups and religious conversions fall under the characterization of abuse of the state of vulnerability of a person under psychological subjection.

This undue pressure and influence on the judges to determine their opinion on such or such religious group violate the most basic international human rights, such as the right to a fair trial and its component the independence of the judiciary.

B "Awareness" sessions for Magistrates, police and other officials

Since 1996, repressive measures have been enacted by the French authorities to make sure that prosecutions were initiated against religious groups derogatorily designated as "sects". A Circular was passed in 1996 by the then Minister of Justice making it mandatory for prosecutors to investigate when they received a complaint relating to such groups and to provide a special detailed motivation in case they decided not to prosecute. The Minister had a list of 173 so-called "sects" concerned attached to the Circular to ensure that the prosecutors knew what specific groups to prosecute. This list included philosophical groups such as Anthroposophy and the Humanist Movement, some Christian groups such as the Pentecostal Evangelist Church, some Buddhist groups …

In 1998, another Circular, referring to the 1996 Circular and its list of sects, created a "Sect Mission" within the Direction of Criminal Affairs and Pardons of the Ministry of Justice, in charge of following the judicial proceedings against such groups and of giving special directions to the prosecutors below them to prosecute and make requisitions for sending the cases to trial. The contacts of the magistrate in charge of the "Sect Mission" were designated as the "sect correspondents" especially appointed amongst the magistrates of the General Prosecutors' offices in each Appeal Court. As Mr Fenech states in his report on page 34:

> «It results from the elements provided to the mission by the Direction of Criminal Affairs and Pardons that those magistrates ensure the follow up of the prosecution and the forwarding of information up to the Ministry of Justice as soon as prosecutors in their jurisdiction inform them of the existence of one or several cases presenting a sectarian character.»

Despite the revocation of the «sect» list by the Prime Minister in 2005 due to its arbitrary and discriminatory character, these Circulars remain in force today, resulting in selective investigations and proceedings brought against targeted religious groups and their members.

In addition, «awareness» sessions have been organized by MIVILUDES (and formerly the MILS) to «educate» officials regarding «sects». The 2005 Guide for Public Agents on Sectarian Drifts notes that each year the National School of the Magistracy (Ecole Nationale de la Magistrature) organizes a one-week seminar on sects for prosecutors, judges, police officers, and government officials from the youth and sports ministry, national education, judicial protection of youth, general direction of competition and consumer offices. Mr Fenech notes in his report that these «awareness» sessions have been held since 1998 and that they gather between 50 and 150 magistrates per year.

There is nothing to criticize in theory about education of Magistrates on sectarian drifts. Except that this training as it is being done actually consists of indoctrination as to what groups should be considered as «sects».

Based on documents released under the Freedom of Information law, the presentations on the targeted religions have been biased and nominative. Far from being general briefings on sectarian drifts or related issues,the seminars delivered to the judges have included specific briefings on

Scientology, Jehovah's Witnesses and other targeted groups, with information provided by speakers of anti-sects associations, UNADFI and CCMM, and without any possibility of contradiction, debate or rebuttal by the concerned groups. As part of the documents distributed to the attending judges, press articles hostile to these groups were provided, as evidenced by the list of documents attached to the programs of the seminars.

Only negative court decisions were provided, and the decisions from higher judicial authorities directly contradicting those decisions were not even mentioned. The mountain of positive jurisprudence and official recognitions regarding these groups has been completely ignored. Objective and scientific information was not included – neither objective scholars nor experts in the field of religion were included in the program, exposing the program as an attempt to prejudice the judiciary against minority religious organizations.

Such «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.

Mr Fenech fully endorses these biased indoctrination programs as stated in his report on page 33: «The subjects treated and the qualities of the speakers are fully satisfactory, but the number of attendants is still too low».

The separation of powers has constituted the pillar of our modern democracies since Locke and Montesquieu and it is guaranteed under international covenants that France has ratified. How can France endorse such an intrusion into the judicial sphere and how can it justify such an undue influence on the judges to mold their intimate conviction during their judiciary offices?

Both the United Nations and the Council of Europe have enacted rules to ensure the impartiality of judges and their independence from the Executive. In spite of these elementary guarantees by which France is bound, the right to a fair trial is seriously jeopardized and Mr Fenech in his recommendations wants to aggravate this situation.

These «awareness» sessions also violate the provisions of the Decree of 28 November 2002 establishing MIVILUDES which read:

> «It is created, under the Prime Minister, an Inter-Ministerial Mission of Vigilance to fight against sectarian drifts which is in charge of:
> (…)
> 2° furthering, in the respect of public liberties, the coordination of the preventive and repressive action of the public authorities against such acts;»

Public liberties, under French law, cover the independence of the judiciary as laid out in the French Constitution in its Article 64:

The Constitutional Council ruled in this regard that «the principle of independence (…) is indivisible from the exercise of judiciary functions». (decision n° 92-305 DC)

This «awareness» campaign has resulted over the years in numerous cases of discrimination against members of stigmatized groups, including economic blacklisting and boycotting, refusal of child custody by Courts to members of the stigmatized groups, refusals of renting premises for conferences or events by religious groups designated as «sects,» prohibitions from distributing or selling religious literature, dismissals from employment and many other forms of discrimination.

This system is clearly unnecessary as no serious problem exists. Indeed, the 1998 Circular recognized that there were very few complaints against minority religious movements:

> «The denunciations or complaints from «victim followers» are yet insufficient in number, and are often imprecise. It is true that the «consent» of the said victims makes it particularly difficult to prove that there has been a violation of a person's integrity, and therefore, does not favor the exercise of prosecution.»

Mr Fenech also states that «The sectarian drifts-correspondents indicate however that the number of these cases remains insignificant». (report page 34)

And the Circular's reference to «**consenting followers**» evidences the complete lack of a criminal predicate justifying investigations, the ideological nature of the fight organized against so-called «sects» and the arbitrary and discriminatory nature of the system put in place against targeted faiths in France. In order to create more complaints and denunciations, the 1998 Circular gave the following instructions:

> «The associations of fight against the sectarian phenomena must, in this regard, be thoroughly involved insofar as they are susceptible to provide elements of appreciation on the concerned organizations.»

The Circular added that «there would therefore only be benefits for prosecutors to contact these associations, in order to discuss with them the wrongdoings of sectarian movements in their jurisdictions.»

Thus, the French government then in power has made sure that «elements of appreciation on the concerned organizations» be provided by private associations - known for their dedication to fight new religious movements - directly to those in charge of initiating criminal proceedings, to ensure that systematic prosecution would occur in order to make up for the lack of complaints against these groups.[1]

Mr Fenech in his report recommends a reinforcement of this situation:

[1] The inexistence of a real "sect" problem in France is tellingly evidenced by the report made on 14 May 2008 by the French authorities as part of the Universal Periodic Review (UPR) by the Human Rights Council of the United Nations. During the UPR session on the situation of human rights in France, no mention was even made by the French representative regarding a problem with so-called "sects". Likewise, the report submitted by France, apart from the mention of the existence of MIVILUDES, was silent on the "sect" issue.

- by establishing a similar "awareness" training in the police schools and "gendarmerie" ones,
- by making it mandatory that all the sect correspondents in the General Prosecutors' offices attend «awareness» sessions, in order to then sensitize the prosecutors below them as to what groups deserve special treatment,
- by creating, in order to remedy the little interest and attendance of awareness sessions by the judges as part of their continuing education as it is done currently, a mandatory training on "sectarian drifts" as part of the initial curriculum of all the magistrates at the National School of Magistracy, with a more comprehensive education for the judges of minors and judges of family matters,
- by proposing internships in anti-sect associations UNADFI and CCMM, as well as MIVILUDES, to the student magistrates.

This last recommendation is the most blatant illustration of the intended indoctrination of magistrates by private anti-religious associations in order to obtain convictions of the targeted minority groups.

1. Involvement of Private Activist Associations

The representatives and members of the above mentioned associations have been regularly convicted of libel, which in itself should disqualify them as reliable references for any officials, in spite of the fact that Mr Fenech found that the qualities of these representatives "are fully satisfactory".

The systematic defamation of minority religious movements has resulted in numerous court cases. Some groups have decided to not let serious libel go unpunished and they have been successful in numerous cases.

«Jehovah's Witnesses are increasingly forced to use all legal means», their lawyer, Philippe Goni, stated to Le Monde on October 23, 2007. «Since 2000, when the Council of State recognized the movement as a 'religious association' (association cultuelle), they have been harassed by anti-sect groups. They have decided to react to each attack.»

And even though «the image of Jehovah's Witnesses remains very negative in public opinion» due to the defamation campaigns that have been running over the years - the number of acts of vandalism against their houses of worship is in constant rise, according to the Ministry of Interior - the latest court decisions have been in their favor.

On July 18, 2007, the Appeal Court of Rouen ruled against Catherine Picard, President of UNADFI, who denied in the media the official status of cult association («association cultuelle») granted to the Jehovah's Witnesses and compared them to Mafia:

> «Undoubtedly, Catherine Picard, by assimilating the movement of the Jehovah's Witnesses to a mafia movement, by imputing them embezzlement of legacies and donations, by accusing them of organizing under the cover of the spiritual adherence of their members a «disguised work» evoking undeclared employment, which has occasioned criminal prosecutions, has in an outrageous manner and through a fallacious presentation discredited the Jehovah's Witnesses and thereby had excessive words exceeding the limits admissible for free expression and exclusive of good faith.»

Jehovah's Witnesses have also won several defamation cases against other anti-sect activists: Janine Tavernier, a former President of UNADFI, Mrs. Ovigneur-Dewynter, President of ADFI North, and Jacky Cordonnier, member of UNADFI.[1]

On 3 April 2007, the Court of Cassation found defamatory the statements which were made by Catherine Picard, then Member of Parliament and currently President of UNADFI, and Anne Fournier, member of the MILS (predecessor to MIVILUDES), against AMORC association, in their book «Sects, Democracy and Globalization» (Sectes, démocratie et mondialisation). In that book, AMORC was accused among other things of pursuing personal interests, of supporting racist theories and threatening freedoms, of being structured like a mafia and of functioning like a criminal organization.

> «Whereas in so deciding, when the reported statements - which compared sects to «totalitarian groups», to «Nazism» or «Stalinism» accused them of obtaining by force the adherence of their followers, on whom they exert means of pressure of such nature that they lose their free will, of creating «out-law areas», comparing them to Mafia -, require evidence and an open debate, the reported statements are defamatory to the whole of the movements qualified as sects and thus to the association AMORC, since it stems from the work done that it is one of them, the Court of Appeals has violated the aforementioned articles of the law.»

In spite of these convictions, Mr Fenech, in his July 2008 report, claims more funds for UNADFI and CCMM. He also accuses the targeted groups who sue the slanderers in Courts of doing «procedural harassment" of these associations. He states that those movements "file at the first occasion defamation complaints with constitution of civil parties" against the concerned associations and they "do not hesitate to manipulate the Courts in an attempt to stop their action". (report page 41)

This assertion of Mr Fenech spreads doubt on the impartiality of the sentences of the French Courts which should not be tolerated. What actually seems intolerable to Mr Fenech is that the targeted groups defend themselves by using the legal remedies at their disposal, thwarting thereby his plans of banning certain religious minority groups from France.

In this view, he proposes that defamation be, in cases related to «sectarian» groups, decriminalized. This way, the anti-sect activists could continue to slander without fear of being criminally charged.

[1] Janine Tavernier, President of UNADFI, 5 February 2003: the Paris Court of Appeal, 11th Chamber/ Section A, confirmed the judgment in civil proceedings against Janine Tavernier and UNADFI (Decision of the Paris Trial Court of 20 November 2001); Mrs Ovigneur-Dewynter, President of ADFI Nord, 15 January 1997: the Douai Court of Appeal, 4th Chamber, sentenced her for defamation regarding the Association of Jehovah's Witnesses - Case 96/02832; Jacky Cordonnier, member of UNADFI, 29 March 2002: criminal conviction for defamation. The Marseille Trial Court sentenced him for libel regarding the Association of Jehovah's Witnesses. Case 2972/02, Decision N° 01207964.

It is particularly inappropriate from a magistrate to uphold such a position: his recommendation amounts to a discriminatory deprivation of minorities of their most basic remedies and defences in Courts.

1. Special Provisions for Youth and Family issues

The protector of youth in danger under French law is the youth judge whose functions are defined at Article 375 of the Civil Code: "If the health, security or morality of a minor is in danger, or if the conditions of his/her education are seriously jeopardized, measures of educative assistance can be ordered by the justice at the joint request of the father and mother or at the request of one of them, of the person or service the child has been entrusted, or of the guardian, of the minor him/herself or of the Prosecutor. The youth judge can take the case on his own decision in exceptional circumstances».

As indicated in Mr Fenech's report, the 1996 Circular already insisted on the necessity to apply the provisions of Article 375 of the Civil Code to prevent that minors «be subjected to a harmful influence or a dangerous indoctrination, even though their application is delicate when both parents are members of a sect».

This recommendation clearly indicated that children could be subtracted from their parents' education because of their adherence to a new religious movement. These provisions are confirmed and reinforced by Mr Fenech.

In his report on page 30, he quotes a psychologist, Mrs Sonya Jougla:

> "Until today, the children victims of sects remained the forgotten of society and of professionals of childhood in danger; maybe because it is even more difficult to protect a child from his parents' beliefs than from their beating or their incestuous sexuality; maybe also because the duress that the parents impose on their child by immerging him into a sect is perfectly legal."

This statement is very clear: the issue at stake is to protect children from their parents' beliefs. This constitutes a blatant violation of the right of parents to educate their children according to their own beliefs, guaranteed by international instruments ratified by France, such as the International Covenant on Civil and Political Rights (Article 18.4) and the European Convention of Human Rights (Protocol 1, Article 2), as already mentioned above.

This violation is also outrageous as Mr Fenech recognizes that the problem of children in «sectarian» movements is quasi inexistent. In the report, he gives official figures from the Ministry of Justice: out of around 60 000 children having close or distant ties with sectarian movements, only a hundred of them are followed by the youth judges. An investigation done in 2003 among 147 youth judges determined that amongst the existing 54 040 cases of educative assistance, only 192 concerned directly or indirectly a sectarian problem, which represents 0.14 % of the entirety of the cases.

Mr Fenech, from these figures, draws the conclusion that there are not enough denunciations of children of people adhering to suspected «sectarian» movements. He states: «There is even a diminution of the number of denunciations concerning children victims of sectarian drifts». (report page 30)

To remedy this lack of complaints, he recommends that a sectarian drifts-correspondent be appointed in each of the nine regional Directions of judicial protection of the youth. He also notes that new programs will include an «awareness» education on «sectarian drifts» in the training of youth workers.

These recommendations and provisions will aggravate the discrimination against minority religious groups by fueling more prejudice and creating more situations of deprivation of child custody on the sole basis of the parents' beliefs.

Further, Mr Fenech recommends that General Prosecutors' offices systematically ask the family judges to forward them the files of any civil case relating to people having close or distant connections with minority religious movements. If the connection is established, an interlocutory order would refer the case to a specialized judge who would then work with social workers and psychologists specially sensitized to «sectarian» movements.

And Mr Fenech concludes that two family judges should receive «awareness» training in each first instance court (Tribunal de Grande Instance) together with specifically sensitized social investigators.

Conclusion

The «awareness» campaign recommended by Mr Fenech is designed to bias court officials against members of minority faiths; take custody away from a parent or parents of children of such minority groups and refuse to respect the fundamental human right of parents to raise their children in accordance with their own religious beliefs.

These repressive measures cannot be countenanced under UN Basic Principles on the Integrity of the Judiciary, The Bangalore Draft Code of Judicial Conduct 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 oppressive measures recommended by Mr Fenech 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.

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