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The ECHR and the status of religious or belief communities

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Colloquium (09.07.2009) / HRWF (16.07.2009) - Website: <http://www.hrwf.net> - Email: info@hrwf.net - After more than 10 years of proceedings, the European Court of Human Rights reached a fundamental decision regarding the Austrian Law on Religious Communities.^{1[1]}

What is the essential tenor of this decision?

- a) All religious groups must have a fair possibility of reaching the status necessary for accomplishing their religious goals. The criteria established for this must be applied in a non discriminating manner to all religious communities in the same way.

Austria did not grant a fair possibility for legal recognition to the religious communities. Firstly, through general refusal of a right for recognition and, secondly, by legal constriction and the establishment of requirements that are not only impossible to meet but also constitute unjustifiable bureaucratic chicanery.

- b) The unequal treatment of religious communities is discriminating, unless there are objective and reasonable criteria for doing so. Waiting or "observance" periods are only necessary in extraordinary circumstances, for instance in the case of newly founded or unknown religious groups. As to religious groups that have long existed in various countries as well as in the state taking a decision on their recognition and are thus known to the competent authorities - like in the case of Jehovah's Witnesses -, this is not justified.

Austria seriously violated all these fundamental rights and was brought to justice by the ECHR. Austria will have to adjust its entire system of the law of religious communities to these fundamental rights, give up its previous practice of bureaucratic chicanery and act in this entire area in an objective way in future.

Many European models of State-Church-Law also suffer from deficiencies in all these areas - especially those countries that relied on Austria's negative example for justifying their own violation of fundamental rights. Recently the adoption of the Austrian system of discrimination of religious communities was justified as follows: "We compared approaches from European countries and took Austria as a model. ... We looked for the most proper model for Armenia. Austria is a country with a similar model to Armenia."^{2[2]}

^{1[1]} *Religionsgemeinschaft der Zeugen Jehovas and others v. Austria*, no. 40825/98, 31. July 2008

^{2[2]} http://www.forum18.org/Archive.php?article_id=1272

Conclusions

The status provided for religious communities and their particular tasks must be open for all religious communities.

In any case, the collective and individual religious freedom must not be violated by a system of privileged churches and religious communities.

Every classification, systematization or even "quality assessment" of a religious community by a state into "good" or "bad" is unacceptable. A privileged status as an "established church" or "traditional church" etc with an exclusion at the same time of other religious communities of such a status, violates the fundamental right of religious freedom and the principle of religious neutrality.

Linking fundamental rights to a specific status is *per se* untenable. The systems of State-Church-Law in Western Europe show that avoiding this is absolutely possible in a pluralistic and secular society.

Almost all Eastern European states hail the freedom of religion and conscience – they even do so in their constitutions –, but in reality, they attach these freedoms to a form of legal recognition respectively registration and then tie the exercise of religion to such a registration. Just recently the European Court of Human Rights took a very clear stand against such a system and a violation of religious freedom – in a case involving Moldova, because such a system is not compatible with the concept of a democratic society.^{3[3]}

No democratic society without religious freedom

What is in the background of such discriminating regulations which are in force in Austria as well as Eastern European states, is the pressure exerted by traditional religious communities and, to a large extent – even though derelict to any factual justification –, a phobia against new religious communities. The latter is not only fuelled by the dominating traditional churches fearing for their influence but also by an influential lobby of anti sect movements.

All states on their way towards a democratic society are well advised to break free from the influence of the traditional churches as well as from the influence of these anti-sect movements, which constitute a fundamental obstacle for the setup of a democratic-liberal society.

Both contradict the spirit of the European Convention on Human Rights as well as the liberal-democratic social order based on it. In the words of the ECHR:

"...freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it" ^{4[4]} "Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organisational life of the

^{3[3]} *Case of Masaev v. Moldova*, Application no. 6303/05, § 26

^{4[4]} *Case of the Moscow Branch of the Salvation Army v. Russia*, Application no. 72881/01, § 57; und viele andere

community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable." 5[5]

Like Austria, many Eastern European states employ unobjective allegations and bureaucratic chicanery for discriminating religious communities and citizens. Even though this is based on a well-established and practiced tradition, like in Austria, the ECHR clarified that such practices violate fundamental human rights. Just like corruption in all its ramifications they cannot be viable, as they pose obstacles for the development of a democratic-liberal society.

Austria recognizes Jehovah's Witnesses

AP (07.05.2009) / HRWF Int. (11.05.2009) - Website: <http://www.hrwf.net> - Email: info@hrwf.net - Austria on Thursday officially recognized the Jehovah's Witnesses as the country's 14th official religion, ending a decades-long struggle over its status.

The decision gives the Jehovah's Witnesses the right to offer religion classes at schools, although the head of the Austrian branch of the sect said it has no immediate plans to do so.

More than 20,000 Austrians are part of the global movement, which has been pushing for recognition in the Alpine republic since 1978. Its followers are known for distributing religious literature door-to-door.

Austria's Jehovah's Witnesses said the move sent a positive signal about religious freedom and the rights of minorities in the country. "We are very happy about this decision after our decades-long effort," said spokesman Johann Zimmermann.

Nikolaus Pelinka, a spokesman for the Ministry of Education, Art and Culture, said legal issues had caused delays and the group had taken years to meet requirements for recognition.

Austria sentenced in three cases in Strasbourg in March

HRWF Int. (30.03.2009) - Website: <http://www.hrwf.net> - Email: info@hrwf.net - The European Court of Human Rights has condemned Austria in three more cases concerning the discriminatory treatment of a religious minority and their members, the two former cases being in 2008 "Religious Community of Jehovah's Witnesses v. Austria" (Application no 40825/98) and in 1993 Hoffmann v. Austria" (Application no. 12875/87).

Lang v. Austria (application no. 28648/03)

In this case, the applicant, Gerhard Lang, is an Austrian national who was born in 1969 and lives in Altmünster (Austria). He is a Jehovah's Witness and is an elder (Ältester) for the community which involves providing pastoral care, leading church services and preaching. Relying in particular on Articles 4 (prohibition of forced labour), 9 (freedom of thought, conscience and religion) and 14 (prohibition of discrimination) of the European Convention on Human Rights, he complained that he had not been exempt from military service, unlike members of other recognised religious societies holding comparable religious functions. The European Court of Human Rights considered the Austrian Military

^{5[5]} *Case of Hasan and Chaush v. Bulgaria*, Application no. 30985/96, § 62; *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 114, and many others

Service Act discriminatory and held, by six votes to one, that, as a result of the application of that Act, Mr Lang had not been exempt from military service, in violation of Article 14 in conjunction with Article 9. The Court awarded Mr Lang 12,664.36 euros (EUR) for costs and expenses.

See full judgment at

<http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=10182872&skin=hudoc-en&action=request>

Gütl v. Austria (application no. 49686/99) and Löffelmann v. Austria (no. 42967/98)

In these two cases, the applicants are two Austrian nationals: Markus Gütl who was born in 1977 and lives in Belgrade (Serbia); and, Philemon Löffelmann who was born in 1976 and lives in Maissau (Austria). They are members of the Jehovah's Witnesses. Relying in particular on Articles 9 (freedom of thought, conscience and religion) and 14 (prohibition of discrimination) of the European Convention on Human Rights, they complained of having been forced to perform civil service in lieu of their military service while members of other recognised religious societies holding religious functions comparable to theirs were exempted from that requirement. The European Court of Human Rights held unanimously that there had been a violation of Article 14 in conjunction with Article 9 of the Convention on account of discrimination against the applicants on the ground of their religion. The Court awarded Mr Gütl 4,000 euros (EUR) in respect of non-pecuniary damage and 8,462.30 EUR in respect of cost and expenses and Mr Löffelmann 4,000 EUR in respect of non-pecuniary damage and 10,698.53 EUR in respect of cost and expenses (The judgments are available only in English.)

See full judgments at

<http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=10182872&skin=hudoc-en&action=request>