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Report on the protection of children against 'sectarian drifts' to collide with the parents' right to religious education of their choice?

By Willy Fautré, Human Rights Without Frontiers

HRWF (04.09.2012) - On 6 September 2012, Rudy Salles, a member of the Parliamentary Assembly of the Council of Europe (PACE), will present a report on « The protection of minors against sectarian influence ». A year ago, Rudy Salles, a member of the French National Assembly, was appointed at the PACE as rapporteur to draft such a report. This issue has been pushed for a long time by French anti-cult groups and MIVILUDES (Inter-Ministerial Mission of Vigilance and Fight against Sectarian Drifts).

Various aspects of France's anti-cult policy have been criticized by the United Nations (See the Report of the UN Rapporteur on Freedom of Religion or Belief after her visit in situ in 2005), by the US State Department (See their annual report) and by human rights NGOs at the OSCE/ODIHR.

The parents' right to educate their children according to their religion is one more area of conflict between France and international standards.

France's attempts to reduce parents' right to educate their children

In a 2008 report by Georges Fenech, the former head of MIVILUDES, for the French Minister, a psychologist, Sonia Jouglu, was quoted to justify special treatment by the Family Matters Judges of cases where a child's parents belong to so-called sects/cults : « It is even more difficult to protect a child from his parents' beliefs than from their beatings or their incestuous sexuality ».

On French TV, Fenech also advocated that governments should « go as far as retrieving the child from a sect and place him in an institution or an external family » and he added « parents are not the owners of their children ».

In a political meeting on 2 December 2010 in Lyon, Fenech said that he regretted the law did not allow putting people under psychiatric supervision because of them belonging to « sectarian movements ».

Today sects and tomorrow mainline religions?

Obviously, Jehovah's Witnesses are one of the targets of France's policy but devout Catholic or Orthodox families and Muslim parents are also at risk. During his mandate, Fenech has not hesitated to warn some Catholic clerics against 'sectarian drifts' in some Catholic communities and prayer groups.

On 3 May 2011, the Presidency of the French National Assembly registered a draft resolution proposing the creation of a parliamentary inquiry commission on fundamentalist and sectarian practices in private schools. The draft resolution was targeting alleged "fundamentalist deviations in private schools" and might be used one day against Catholic, Protestant, Jewish or Muslim schools.

UN Special Rapporteur Report, France's anti-sect policy and children

The United Nations Special Rapporteur for freedom of religion or belief, Asma Jahangir, after her visit to France on 18 to 29 September 2005 made specific recommendations in this regard (See E/CN.4/2006/5/Add.4, 8 March 2006, Mission to France, 18 to 29 September 2005).

Her Report of 6 March 2006 provided:

112. The Special Rapporteur urges the Government to ensure that its mechanisms for dealing with these religious groups or communities of belief deliver a message based on tolerance, freedom of religion or belief and on the principle that no one can be judged for his actions other than through the appropriate judicial channels.

113. Moreover, she recommends that the Government monitor more closely preventive actions and campaigns that are conducted throughout the country by private initiatives or **Government-sponsored organizations**, in particular within the school system in order to avoid children of members of these groups being negatively affected. [emphasis added]

Handbook on European Non-discrimination Law and religious education

In the Handbook on European Non-discrimination Law published by the European Union Agency for Fundamental Rights jointly with the European Court of Human Rights (ECtHR), it is said that the ECtHR has elaborated on the idea of 'belief' in the context of the right to education under Article 2 of Protocol 1 to the ECHR, which provides that the State must respect the right of parents to ensure that their child's education is 'in conformity with their own religious and philosophical convictions'. The ECtHR stated:

'In its ordinary meaning the word "convictions", taken on its own, is not synonymous with the words "opinions" and "ideas", such as are utilized in Article 10 (...) of the Convention, which guarantees freedom of expression; it is more akin to the term "beliefs" appearing in Article 9 (...) which (...) denotes views that attain a certain level of cogency, seriousness, cohesion and importance.' (ECtHR, *Campbell and Cosans v. UK* (Nos. 7511/76 and 7743/76), 25 February 1982, para 36).

International conventions defend parental rights

Many of the international declarations protecting children's rights also guarantee parental rights concerning childrearing matters:

International Convention on Civil and Political Rights (ICCPR), Article 18(4): "The States Parties to the present Covenant 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."

Convention on the Rights of the Child (CRC), art. 29(1)(c) says: "States Parties agree that the education of the child shall be directed to . . . [t]he development of respect for the child's parents, his or her own cultural identity, language and values, for

the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own."

International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 13(3): "The States Parties to the present Covenant undertake to have respect for the liberty of parents . . . to ensure the religious and moral education of their children in conformity with their own convictions."

European Convention on Human Rights (ECHR), protocol 1 art. 2 says: "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

Conclusions

The terminology to be used when discussing human rights issues is of utmost importance. The UN language in this regard is neutral and universal. It is not influenced by the perception in a particular cultural and religious context or in a particular part of the world, such as European and American countries with Christian traditions.

The UN experts and treaty bodies use the term "religious or belief systems" to cover the broad spectrum of religions and worldviews, and the term "religious or belief communities" to encompass the various forms of religious, spiritual and non-religious communities or organizations, whether they are historical or new. The UN language does not endorse or include the terms "sects", "cults" or "sectarian drifts".

The UN treats all religious or belief communities around the world and their members on an equal footing. Therefore, UN member states have a duty to neutrality and should not discriminate against specific religious or belief communities; nor should they adopt a specific law that puts specific mechanisms in place and implements specific policies to target specific groups.

If there is any form of physical, sexual or psychological maltreatment of minors, such acts should be prosecuted in the same way whatever the religious affiliation of the perpetrator but "no one can be judged for his actions other than through the appropriate judicial channels" as the United Nations Special Rapporteur for freedom of religion or belief, Asma Jahangir, said in her recommendations to the French authorities after her visit to France in 2005 (See E/CN.4/2006/5/Add.4, 8 March 2006, Mission to France, 18 to 29 September 2005).

Venice Commission opinion on Russian extremism law

Comment of Human Rights Without Frontiers

HRWF (21.06.2012) - On June 20, 2012, the Council of Europe's advisory body of experts on legislation, the European Commission for Democracy through Law, better known as the Venice Commission, published its Opinion on the Russian Federation Federal Law on Combating Extremist Activity ("the Extremism Law") as to whether the Law, as applied, violates international human rights standards.^[1]

In the first section, the Venice Commission notes why the Chair of the Council of Europe's Parliamentary Assembly's Monitoring Committee requested the Venice Commission to review the law:

"7. The broad interpretation of the notion of "extremism" by the enforcement authorities, the increasing application of the Law in recent years and the pressure it exerts on various circles within civil society, as well as alleged human rights violations reported in this connection have raised concerns and drawn criticism both in Russia and on the international level."

Definitions

The Venice Commission notes that the definitions in Article 1 of the Extremism Law, viz. "extremism," "extremist activity," "extremist organization" and "extremist materials" are too broad, lack clarity and invite arbitrary application through different interpretations in contravention of international human rights standards.

In addition, while the definition of "extremism" provided by the Shanghai Convention, as well as the definitions of "terrorism" and "separatism", all require violence as an essential element, certain of the activities defined as "extremist" in the Extremism Law does not require an element of violence. ^[2]

Extremism Law Article 1.1 point 4: "propaganda of the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion"

The Venice Commission analyzes this section of the Law and determines that if it must be limited to advocacy of violence, otherwise the Law would infringe on the rights to freedom of religion and freedom of expression guaranteed by Articles 9 and 10 of the European Human Rights Convention.

"38. In the view of the Venice Commission, to proclaim as extremist any religious teaching or proselytizing activity aimed at proving that a certain worldview is a superior explanation of the universe, may affect the freedom of conscience or religion of many persons and could easily be abused in an effort to suppress a certain church thereby affecting not only the freedom of conscience or religion but also the freedom of association. The ECtHR protects proselytism and the freedom of the members of any religious community or church to "try to convince "other people through "teachings". The freedom of conscience and religion is of an intimate nature and is therefore subject to fewer possible limitations in comparison to other human rights: only manifestations of this freedom can be limited, but not the teachings themselves.

39. It therefore appears that under the extremist activity in point 4, not only religious extremism involving violence but also the protected expressions of freedom of conscience and religion may lead to the application of preventive and corrective measures. This seems to be confirmed by worrying reports of extensive scrutiny measures of religious literature having led, in recent years, to the qualification of numerous religious texts as "extremist material" (see below point (b)).

40. In the Commission's view, the authorities should review the definition under article 1.1 point 4 so as to ensure/provide additional guarantees that peaceful conduct aiming to convince other people to adhere to a specific religion or conception of life, as well as related teachings, in the absence of any direct intent or purpose of inciting enmity or strife¹⁹, are not seen as extremist activities and therefore not unduly included in the scope of anti-extremism measures."

Extremism Law Article 1.1 point 5: "violation of human and civil rights and freedoms and lawful interests in connection with a person's social, racial, ethnic, religious or linguistic affiliation or attitude to religion"

Likewise, the Venice Commission finds that such activity may not be deemed "extremist" consistent with international human rights standards if there is no element of violence.

"41. Extremist activity under point 5 brings together a collection of criteria, the combination of which may or may not be required before establishing that the Law applies to them. Clarification is required of what is intended here. If violating rights and freedoms "in connection with a personal's social, racial, ethnic, religious or linguistic affiliation or attitude to religion", in the absence of any *violent* element is an extremist activity, it is clearly a too broad category."

Extremism Law Article 1.1 point 10: "public calls inciting the carrying out of the aforementioned actions or mass dissemination of knowingly extremist material, and likewise the production or storage thereof with the aim of mass dissemination"

The Commission finds that the same deficiencies - overbroad and vague definitions not fused to the concept of violence - also exist in this section of the Extremism Law.

"42. Similarly, under point 10 incitement to extremist activity is in itself an extremist activity. This provision is problematic to the extent that certain of the activities listed, as pointed out above, should not fall into the category of extremist activities at all."

Judicial Proceedings Regarding "Extremist Documents"

The Commission also finds that the manner in which information is determined to be "extremist" in judicial proceedings offends human rights standards as there is no clear definition, standards and criteria regarding how documents are categorized as "extremist", inviting arbitrary decisions and abuse.

"48. According to Article 13 of the Law, information materials shall be declared as extremist by court decision, on the basis of a submission by the prosecutor or in proceedings in a corresponding administrative infringement, civil or criminal case. The relevant court decision shall be sent to the federal state registration authority, with a view to the inclusion of the material at issue in a Federal List of Extremist Materials, which is made public on the internet and in the media.

49. Considering the broad and rather imprecise definition of "extremist documents" (Article 1.3), the Venice Commission is concerned about the absence of any criteria and any indication in the Law on how documents may be classified as extremist and believes that this has the potential to open the way to arbitrariness and abuse. The Commission is aware from official sources, that the court decision is systematically based on prior expert review of the material under consideration and may be appealed against in court. It nonetheless considers that, in the absence of clear criteria in the Law, too wide a margin of appreciation and subjectivity is left both in terms of the assessment of the material and in relation to the corresponding judicial procedure. According to non-governmental sources, the Federal List of Extremist Materials has in recent years led to the adoption, in the Russian Federation, of disproportionate anti-extremist measures. Information on how this list is composed and amended would be necessary for the Commission to comment fully."

Venice Commission Conclusions

In its Conclusions, the Venice Commission summarizes the main shortcomings of the Extremism Law which violate international human rights standards: broad and vague definitions that are not fused with the concept of violence and therefore invite abuse and arbitrary application; arbitrary procedures and harsh sanctions that offend the right to freedom of religion or belief and freedom of expression; and the lack of a precise, proportionate and consistent approach required by the European Convention on Human Rights. The Commission calls for adequate amendments of the Law to remedy all these shortcomings:

"74. However, the manner in which this aim is pursued in the Extremism Law is problematic. In the Commission's view, the Extremism Law, on account of its broad and imprecise wording, particularly insofar as the "basic notions" defined by the Law - such as the definition of "extremism", "extremist actions", "extremist organizations" or "extremist materials" - are concerned, gives too wide discretion in its interpretation and application, thus leading to arbitrariness.

75. In the view of the Venice Commission, the activities defined by the Law as extremist and enabling the authorities to issue preventive and corrective measures do not all contain an element of violence and are not all defined with sufficient precision to allow an individual to regulate his or her conduct or the activities of an organization so as to avoid the application of such measures. Where definitions are lacking the necessary precision, a law such as the Extremism Law dealing with very sensitive rights and carrying potential dangers to individuals and NGOs can be interpreted in harmful ways. The assurances of the authorities that the negative effects would be avoided thanks to the guidelines of the Supreme Court, the interpretation of the Russian Institute for Legislation and Comparative Law or good faith are not sufficient to satisfy the relevant international requirements.

76. The specific instruments that the Law provides for in order to counter extremism - the written warnings and notices - and the related punitive measures (liquidation and/or ban on the activities of public religious or other organizations, closure of media outlets) raise problems in the light of the freedom of association and the freedom of expression as protected by the ECHR and need to be adequately amended.

77. The Venice Commission recalls that it is of crucial importance that, in a law such as the Extremism Law, which has the capacity of imposing severe restrictions on fundamental freedoms, a consistent and proportionate approach that avoids all arbitrariness be taken. As such, the Extremism Law has the capacity of imposing disproportionate restrictions of fundamental rights and freedoms as enshrined in the European Convention on Human Rights (in particular Articles 6, 9, 10 and 11) and infringe the principles of legality, necessity and proportionality. In the light of the above comments, the Venice Commission recommends that this fundamental shortcoming be addressed in relation to each of the definitions and instruments provided by the Law in order to bring them in line with the European Convention on Human Rights."

The Extremism Law Violates International Standards

International and legal standards mandate that religious minorities be treated fairly and without discrimination in the same way as other religions. Yet, Russia has contravened these standards through misapplication of the Extremism Law to censor religious materials, to arrest and detain believers for reading or disseminating Scriptures and to liquidate and close down places of worship for targeted religious faiths.

The arbitrary application of the Extremism Law by Russian authorities against religious literature of, for example, Scientologists, Jehovah's Witnesses, devotees of Hare Krishna, Falun Gong practitioners and readers of the Muslim philosopher Said Nursi amounts to religious censorship and suppression in contravention of Articles 9 and 10 of the European Convention on Human Rights and Articles 18 and 19 of the Covenant on Civil and Political Rights (ICCPR).

The Venice Commission findings and recommendations are consistent with other international human rights opinions regarding the Extremism Law. In its Concluding Observations Report Regarding Russia's Compliance with the ICCPR, the Human Rights Committee expressed concern regarding the way the Law was being enforced and made the following recommendation regarding the Extremism Law in 2009:

[T]he State party should revise the Federal Law on Combating Extremist Activity with a view to making the definition of "extremist activity" more precise so as to exclude any possibility of arbitrary application...Moreover, in determining whether written material constitutes "extremist literature", the State party should take all measures to ensure the independence of experts upon whose opinion court decisions are based and guarantee the right of the defendant to counter-expertise by an alternative expert.^[3]

Russia should heed these findings and recommendations and 1) amend the Extremism Law accordingly; and 2) cease and desist filing arbitrary actions to label non-violent materials "Extremist" and subject organizations and individuals to harsh sanctions for possession and distribution of such materials.

See full text of the Opinion of the Venice Commission at [http://www.venice.coe.int/docs/2012/CDL-AD\(2012\)016-e.pdf](http://www.venice.coe.int/docs/2012/CDL-AD(2012)016-e.pdf)

See Federal Law on the Federal Security Service of the Russian Federation & Federal Law on combating extremist activity of the Russian Federation at http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&CID=26

[1] The Opinion was adopted by the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012).

[2] The element of violence or incitement to violence is also the standard and definition of "extremism" articulated in the Shanghai Convention on Combating Terrorism, Separatism and Extremism, which Russia has signed and ratified.

[3] Para. 24, Concluding observations of the Human Rights Committee RUSSIAN FEDERATION

1.CCPR/C/RUS/CO/6 24 November 2009. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/465/50/PDF/G0946550.pdf?OpenElement>.

The right to conscientious objection to military service should be guaranteed in all parts of Europe

CoE (02.02.2012) - People should not be imprisoned when their religious or other convictions prevent them from doing military service. Instead they should be offered a genuinely civilian alternative. This is now the established European standard, respected in most countries - but there are some unfortunate exceptions, says Thomas Hammarberg, Council of Europe Commissioner for Human Rights, in his latest Human Rights Comment published today.

The right to conscientious objection has been endorsed by the Council of Europe ever since 1967 when a first Resolution on the topic was adopted by the Parliamentary Assembly. The recognition of this right later became a requirement for states seeking accession to the organisation.

Recently the European Court of Human Rights recognised in the case *Bayatyan v. Armenia* that the right to conscientious objection was guaranteed by Article 9 of the European Convention, protecting freedom of thought, conscience and religion. This was another important step for many conscientious objectors who are still persecuted in Europe because of their refusal to perform military service.

In fact, the right to refuse military service for reasons of conscience is now recognised in the vast majority of the 47 member states. However, problems remain in some countries, where military service is still an absolute obligation (at least for males) or where the alternative service is under military control or has a discriminatory or punitive character, for instance through the requirement of a much longer service time.

Persecutions, imprisonments and ill-treatment

Among the 15 Council of Europe countries which retain the system of conscription, no less than seven have put objectors in prison in recent years.

In Armenia, for instance, conscientious objectors are still prosecuted, convicted and imprisoned for their refusal to perform military service.

On a visit to an Armenian prison last year I discussed this situation with a couple of young men who belong to the Jehovah's Witnesses community. They explained that they had been sentenced because they could not accept the existing form of alternative service as it was administered by the military - an issue which was also raised by the Venice Commission in its recent opinion on the proposed amendments to the law on alternative service.

Azerbaijan undertook when joining the Council of Europe in 2001 to adopt a law on alternative service. Though the Constitution guarantees the right to conscientious objection, the corresponding legislative framework has not yet been adopted.

There is therefore no alternative to military service. Conscientious objectors have continued to be imprisoned when they have requested to perform alternative civilian service outside military control.

This has recently been the case for Bakhtiyar Hajiyev, a youth activist and candidate in the 2010 parliamentary elections, who was sentenced last year to two years in prison for evading military service, despite his request to perform alternative service.

Turkey is the only country of the Council of Europe that does not recognise the right to conscientious objection for conscripts, and conscientious objectors are prosecuted and imprisoned for their refusal to carry out military service. In several cases they have faced repeated imprisonment until they completed their term of military service. There have also been a number of reports of ill-treatment of conscientious objectors in detention.

In the *Ülke* case, the Strasbourg Court found that the applicant's repetitive convictions and imprisonment for having refused to perform compulsory military service on account of his convictions as a pacifist amounted to degrading treatment (violation of Article 3 of the European Convention).

Limitation of the right to freedom of expression

The problem in Turkey is compounded by restrictions to freedom of expression. The Turkish Criminal Code (Article 318, formerly Article 155) has been used to prosecute non-violent expressions of support for conscientious objection. This has given rise to several judgments of the Strasbourg Court finding violations of Article 10 of the European Convention on free speech.

The Court has held that a newspaper article with such a message cannot be considered as incitement to immediate desertion. However, the Turkish Criminal Code treats dissemination through the press as an aggravating circumstance. Among many others, Halil Savda, himself a conscientious objector, has been condemned several times under Article 318 for speaking in public in favour of the right to conscientious objection.

The agreed standards should be implemented

In a Recommendation on human rights of members of the armed forces, the Council of Europe Committee of Ministers underlined in 2010 that conscripts should have the right to be granted conscientious objector status and that an alternative service of a civilian nature should be proposed to them.

The message from this as well as from the case-law of the Strasbourg Court is very clear: member states which have not done so should introduce a genuinely civilian alternative service, which is not under the control of the military, and of non punitive length and nature.

Conscientious objection is a human right. It is thus high time that all member states complied with their commitments and recognised this right effectively.
