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This contribution for the “Rule of Law” panel at OSCED HDIM 2012, presented by Soteria International - an NGO for spiritual human rights, aims to draw your attention to some outcomes of judicial nature encountered in our research on spiritual movements and their interaction with the society and the state. The observations led us to a supposition that there may be immanent shortcomings in the judicial system, when approaching matters of non-mainstream spiritual practice. Obvious faults of the judiciary system happen especially in totalitarian regimes or countries transition in transition from it. However, in countries with more developed democratic institutions, the shortcomings are also present and seem to be related to insufficient transparency of the lawmaking process and the quality of the democratic decision making which takes into account the rule of the majority, while abuses, especially in matters of spiritual practice are directed towards minorities. The legislative body lacks proper communication with the grassroots society and in result - the legislative package which is adopted by the state may lead to severe infringements of the human rights, especially in cases that are less typical.

In the case of totalitarian regimes, a notable example is the well-known case of Falun Gong practitioners, who face severe persecutions in China, and which has been described by Amnesty International as a spiritual movement outlawed by the government through propaganda campaign, programs of enforced ideological conversion and re-education, extralegal coercive measures, such as arbitrary arrests and physical torture. Topping the damage produced by these measures, is the practice of legitimizing them in the eyes of society by means of court trials, by and large, orchestrated.

The method of government orchestrated trials was a very common practice also in countries of the Communist Bloc, and apparently the roots of it have not been fully removed. Well known is the fact the judicial systems of Romania and Bulgaria, nowadays, already 5 years after the ascension of these countries into the EU, are being scrutinized by the Cooperation and Verification Mechanism of the European Commission, and shortfalls of justice is still a major issue. The judicial systems of these countries still consent for the violations of fundamental freedoms to be exerted by power structures.

Being particularly interested in violations against spiritual movements, Soteria International has been monitoring the court cases against members of a large spiritual movement in Romania, Movement for Spiritual Integration into the Absolute (abbr. MISA). Formally being an individual court case against the founder of the movement and some members, practically its rulings present a huge potential of collateral impact, given the large number of practitioners who study spiritual disciplines in the

yoga schools all around Romania and also abroad, schools that were created under the aegis of MISA. The MISA case has many signs of being orchestrated (they are extensively detailed in previous Soteria reports presented at OSCE conferences in 2007, 2008 and 2009, so we will not stop upon them here and will mention only aspects referring to recent judicial proceedings). The latest developments in the case indicate that Romanian justice may be applying the recommendations of the international democratic institutions mostly as a façade, maintaining in many cases a dangerous system that allows violations of fundamental liberties.

Coming back to the case - in 2010, after 5 years of court investigation, the defendant, founder of MISA, Gregorian Bivolaru, has been acquitted by the Court of first instance. One year later, in 2011, the Court of Appeal has maintained the acquittal, motivating its decision with the illegalities committed by the prosecutors in obtaining the evidences against the defendant. However, in 2012 the supreme court of Romania annuls previous verdicts, motivating its decision with the legal clause which can only be invoked *ex officio* if previous verdicts were not in favor of the defendant. The case has been set for a retrial in the supreme Court, and thus, *de facto*, the defendant will not have a chance for a positive ruling in the ECHR, should he choose to appeal, since, *de jure*, he has been given a chance to defend his rights in the supreme court.

Such juridical paradox points to possible systemic misuse of the Rule of Law in Romania and Soteria International is seriously concerned whether Romanian authorities can really guarantee the right to a fair trial for its citizens. Our concern is also based on many irregularities committed in this case by the panel of judges of the Supreme Court, and on the observations we have made while monitoring the retrial sessions.

Due to mention that in 2005, the defendant has obtained political asylum in Sweden and in its decision to deny extradition, the Supreme Court of Sweden states that “the defendant runs the risk of being exposed to pursuit of evil character after an extradition”. The same decision quotes an independent expert in matters of religious sectarianism who probes and testifies absence of compulsion within MISA, therefore Gregorian Bivolaru could not be held liable for many of the allegations brought by Romanian justice. In the decision of the Supreme Court of Sweden it is noted the fact that allegations are based on declarations obtained by prosecutors by illegal, abusive means. And indeed, there were numerous complaints filed to the Romanian authorities against the illegal actions made by prosecutors in the MISA case, but they were mostly disregarded or dismissed. An interesting fact is that the main prosecutor in the MISA case has been recently involved in a top-level corruption scandal in Romania, and is investigated on charges of influence peddling and is suspected of negotiating the General Prosecutor’s office. The situation is somewhat similar to the saying “when elephants fight - the grass suffers” and should the MISA grassroots movement been heard by Romanian authorities - perhaps the elephants of Romanian corruption would be easier to neutralize.

The case presented is undoubtedly influenced by the persistence of totalitarian methods in many countries of Eastern Block. However there is a certain deficiency of

the judicial system to address matters of spirituality on a larger scale, and it appears to be a historical pattern. As a general example, let's consider such paradigms as nonviolence, vegetarianism, alternative medicine, wellness, mindfulness, synergy, etc, etc, all this nowadays has become common and generally accepted. However when these paradigms were at incipient stages of their reappearance in modern societies, it was very often the case that active promoters of such values faced criminal charges related directly or indirectly to the choices determined by their conscience. Apparently the judicial system fails to protect those who bring social and spiritual advancement to their societies, and this should be a sign of a certain systemic deficit, which needs to be studied and addressed in a constructive manner. One possible direction is to broaden the notion of the independence of judiciary, from the technical area of its relation to the power structures in a state, to a different area, that of ideological independence of the judiciary in its relation to the mainstream cultural pattern.

Conclusions and recommendations:

- Soteria International recommends OSCE/ODIHR to elaborate and implement an efficient and adequate toolkit of communication between the legislative body and the grassroots society in OSCE member states, and to ensure that the transparency of the legislative process and its feedback is not limited to a set of choices predefined by a majority.
- Soteria International recommends countries that undergo transition from totalitarian regime towards democratic rule of law, to involve actively, *de jure* and *de facto*, civil society in its legislative process and to step out from the totalitarian pattern, that of "the state knows better what is good for its citizens". At the judicial level it may be as well expressed by requesting independent qualified expertise from representatives of the civil society, in such cases as described above, taking the example of the Supreme Court of Sweden which involved an independent expert and took into account his report after he had held a series of interviews with the subject, versus the Romanian Court which relied on the expertise of the psychologist appointed by the state, who did not even meet physically the subject of his expert report.

We would like to invite all participants in the judicial process to seriously consider matters of spirituality and how it can be integrated in their work, as the process of deciding making and ruling addressed to the benefit of many is in essence a deep spiritual process.