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Belgium

Discriminatory Draft Law Violates Fundamental Religious Rights

Introduction

This submission concerns proposed legislation in Belgium containing provisions designed to discriminate against targeted religions derogatorily designated as "sectarian movements". The proposed provisions are designed to "fight" against religious minorities through the creation of a new penal offence based not on the criminal activities of such groups, but on the character of their beliefs and religious doctrines. An individual's choice to convert to one of these faiths is characterized as "*abuse of weakness*". The draft law would amend the penal code and criminalize the manifestation of religious beliefs by labeling religious practices of targeted faiths as "*psychological subjection*" or "*techniques susceptible to alter one's capacity of discernment".*

The new offense would necessitate an assessment by law enforcement authorities and Courts of the validity of religious practices and beliefs in order to determine whether they constitute an "*abuse*" or not. Such a determination would allow discrimination of minority faiths considered as "sectarian" as opposed to religions with traditional beliefs. This would represent an impermissible violation of the international human rights commitments signed by Belgium, which mandate non-discrimination on religious grounds and freedom of religion and belief for all religions.

The new penal provisions are worded in such an extremely vague manner that they open the door to arbitrary and discriminatory application of the criminal law by officials as a weapon to repress minority faiths. Indeed, as detailed below, the targeting of these faiths was expressly stated during the Justice Commission of the Belgian Chamber of Representatives debates on 9 June 2011. Passage of such legislation would represent a serious impairment of the principle of religious freedom and the principle that the law has to be precise and foreseeable, guaranteed under Belgian law and international legal norms, as the Belgian Council of State noted in its opinion on similar draft laws in 2006 and 2009.

The proposed legislation is inspired by the much-criticized French law of 12 June 2001, known as the "About-Picard Law", which allows for the imposition of restrictions on religious groups based on a new offense of "*abuse of a state of ignorance or weakness"*, an offense unprecedented in Europe in modern times. The French legislation aroused international condemnation from religious, human rights and inter-faith organizations as well as a recommendation by the Council of Europe that France reconsider the law.

International legal standards mandate that new religions or religious minorities that may be viewed with hostility by the majority or by predominant religions be treated the same as other religions. These standards also mandate a spirit of tolerance toward minority movements. Yet, based on discriminatory theories that have been discredited by authorities and scholars around the world, the draft legislation adopts a distinctly unequal and intolerant approach towards religious minorities that would lead Belgium further down a path of intolerance.

I. Background

By way of background, the mental manipulation draft legislation stems from a 1997 report by the Belgian Parliamentary Inquiry Commission on "Sects" that stigmatized 189 religious organizations by labeling them as dangerous "sects". This list included, *inter alia*, Hasidic Jews, Jehovah's Witnesses, Bahais, Zen Buddhists, Scientologists, Seventh-day Adventists, Mormons, Amish, Quakers, five Catholic groups and most Pentecostal Churches. Among those religious groups listed are a number of minority Protestant churches and organizations to which about 50 percent of the Belgian Protestant population belong. Even though this list of minority religions was not ultimately adopted by the Parliament, it received widespread publicity when it was made public by the Commission prior to the vote of the Parliament regarding the report, stigmatizing all the religions included in the list and effectively operating as a blacklist for these religions and their adherents.

The Parliamentary Report recommended that an article be included in the penal code to criminalize the action of "mental manipulation", or the "abuse of a weak person". Subsequently, the then-Minister of Justice in 2006 submitted a bill to the Chamber of Representatives to insert in the Belgian penal code an article criminalizing the abuse of ignorance or weakness.

Five additional draft laws were then filed by other Members of Parliament, who intended to include similar articles. All these bills were cancelled by the end of the legislature in June 2007 as they were not under discussion in the Parliament. These bills were re-introduced at the end of 2007 and the beginning of 2008 and 2009; however, they were cancelled in May 2010 due to the dissolution of Parliament.

As soon as the new Parliament was elected, the attempt to criminalize minority faith practices through the abuse of weakness provision was re-launched on 9 August 2010 due to the insistence of a Member of Parliament, André Frédéric, who has led the "fight against" spiritual minorities he derogatorily labels as "sectarian movements".

Mr. Frédéric has participated in conferences held by the European Federation of Centres of Research and Information on Sectarianism (FECRIS), an organization devoted to targeting minority faiths and financed almost entirely by the French State, where he gave speeches on the need for legislation on abuse of weakness. Describing the "evolution of the sectarian phenomenon in Belgium" in November 2010 in a FECRIS conference in Rijeka (Croatia), he stated "*The groups issued from the North-American Protestantism (Pentecostals, Evangelicals) hold currently an important place in the Belgian sectarian landscape".*

Linking the developments of "sects" to the failure of traditional religions, in particular Catholicism, he explained that in a society in search of new values people are "*drawn towards a new form of pseudo-spirituality*" and only want one thing: to be guided by nice speeches, "*ignoring in their credulity that their mind is going to be formatted".*

In order to combat these new forms of spirituality, Frédéric proposed new penal provisions - even though they contain provisions that infringe on the rights of minorities to freedom of belief, conscience and association - that were voted by the Belgian House of Representatives and the Senate in June and July 2011, and will be examined again by the House of Representatives at the coming fall for final adoption.

The legal defects in these provisions have been clearly articulated at the highest levels of the Belgian Judiciary. In 2006 and 2009, the Council of State provided its opinion, first on the Minister of Justice's draft and then on André Frédéric's draft, pointing out the serious legal defects in the law (discussed below).

II. Draft Law Currently Under Discussion

The proposed bill modifies the penal code in order to incriminate the abuse of a situation of weakness and extend the penal protection of vulnerable people.

It contains 39 articles, out of which 37 are designed for the protection of persons vulnerable due to their age, pregnancy, illness, disability, physical or mental deficiency. The purpose of these 37 articles is highly laudable.

However, two articles have been inserted by André Frédéric to repress the so-called "sectarian movements".

Article 33 proposes the insertion in the Belgian penal code of a new Article 442 *quarter*. Ironically it comes right after the existing Article 442 *ter,* which criminalizes harassment based on the religious or philosophical convictions of the victim. This new Article 442 *quater* criminalizes the Abuse of a Situation of Weakness and provides:

> "§1 - *Will be sentenced to a jail term going from one month to two years and a fine from 100 up to 1,000 euros or one of these penalties only, anyone who, knowing the situation of physical or psychological weakness of a person altering seriously her capacity of discernment, has fraudulently abused of this situation so as to get that person to do an act or refrain from doing an act, this act or omission being highly detrimental to her physical or mental integrity or to her patrimony*."

Then another paragraph follows setting aggravating circumstances:

> "§2 – *The penalties will be of a jail term going from one month to four years and a fine from 200 up to 2,000 euros or one of these penalties only in the following cases:*
>
> 1. *If the act or omission referred to at §1 results from a physical or psychological subjection due to the exercise of serious and repeated pressures, or techniques susceptible to alter one's capacity of discernment.*
>
> *(…)*
>
> 4. *If the abuse referred to at §1 constitutes an act of participation to the principal or accessory activity of an association.*

Pursuant to §4 of the same Article 442 *quarter*, perpetrators can also be liable, under Article 31 of the penal code, to the loss of their right to be a civil servant or to hold any public office whatsoever for 5 to 10 years.

Article 39 of the draft bill provides that any association incorporated for at least five years with the object (*inter alia*) to protect the victims of sectarian deviances can, with the agreement of the said victims, become a party in the proceedings initiated pursuant to Article 442 *quarter*.

These articles contravene the right to freedom of religion and belief and the rule of law under Belgian legislation and the international treaties signed and ratified by Belgium.

III. Compatibility of the Article on Abuse of Weakness with the Right to Freedom of Religion and Belief

During the debates at the Justice Commission, Mr. Frédéric welcomed the interest of the Members of Parliament for the protection of the vulnerable but underscored that their draft legislation did not allow for the sanctioning of abuse of weakness committed against people who do not suffer from physical or mental deficiency since the alleged "sect victims" do not correspond to that definition.

The articles he proposed to remedy this situation are thus clearly designed at repressing "abuse" of people who have their full mental capacities. Although these people are mentally sound and exercised their right to personal autonomy when choosing to convert to a religion, Mr. Frédéric attempted to justify his proposed amendments by arguing that the "victims" of abuse of weakness are not "in possession of the integrality of their own faculties of discernment and reasoning" as far as their adhesion to minority religious movements is concerned.

What is at stake here is the free choice of an individual to convert to new beliefs, which Mr. Frédéric labels as "pseudo-spirituality".

This is particularly visible in the aggravating circumstances he described during the debates:

> The aggravating circumstances provided for at Article 442 *quater*, § 2, 1° et 4°, are specific to the offence and are specifically met with the abuses committed in sectarian movements where the physical or psychological subjection leading to the reduction of the victim's capacity of judgment results from procedures like purification cures, diets, fasts, isolation, physical or psychological bullying…

Under this classification, Ramadan could possibly be included in the "abuses". In the same vein, both an Act of Confession and fasting during Lent could possibly constitute an "abuse". But purification is common to many religions, whether done through fasts or otherwise. The religious rites of purification would be, according to the authors of the law proposal, a means to reduce the follower's capacity of judgment --even though there is no evidence to support this remarkable premise.

Pursuant to the wording of the first aggravating circumstance, Belgian authorities and Courts will by necessity have to improperly assess the validity of the religious practices and doctrine of the targeted religious or philosophical associations. In case the activities of such associations are considered as "*psychological subjection*" or "*techniques susceptible to alter one's capacity of discernment*", the inducement to adhere to such beliefs or participation in such activities will be deemed to represent an "aggravated abuse".

This Article could apply to any religion or philosophic group. Any adherence to a group could be said to constitute "undue influence" or "psychological subjection". What is actually being aimed at is to criminalize an adult's right to personal religious autonomy and the free choice to change one's faith and associate with religious minorities derogatorily designated as "sectarian".

Pursuant to the fourth aggravating circumstance that principally targets "sectarian movements" according to André Frédéric, participating in an association's principal or accessory activity constitutes an aggravated circumstance when said association has been labeled as "sectarian".

Mr. Frédéric explained during the debates that the Members of Parliament who co-wrote the Article intended to target any author or accomplice of allegedly fraudulent abuse of weakness, without regard to their place in the hierarchy of the association so that not only leaders would be prosecuted but any participating member of the group. The purpose here is clearly to repress the right of association for members of religious or spiritual minorities.

During the debates, Mr. Frédéric tried to justify this in the following way:

> The authors do not challenge constitutional liberties of cult and association but they deem it necessary to repress severely abuses committed on persons in a situation of weakness, even more when the manipulation of these persons has been facilitated by the pressure of a group of persons gathered around an ideal or a common vision of spirituality.

This statement is truly remarkable, as the term "manipulation" has *no legal meaning.* The European Court of Human Rights found in a landmark decision *Jehovah's Witnesses v. Russia* of 10 June 2010:

> 128. The Russian courts also held that the applicant community breached the right of citizens to freedom of conscience by subjecting them to psychological pressure, "mind control" techniques and totalitarian discipline.
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> 129. Leaving aside the fact that there is no generally accepted and scientific definition of what constitutes "mind control" and that no definition of that term was given in the domestic judgments, the Court finds it remarkable that the courts did not cite the name of a single individual whose right to freedom of conscience had allegedly been violated by means of those techniques. Nor is it apparent that the prosecution experts had interviewed anyone who had been coerced in that way into joining the community. On the contrary, the individual applicants and other members

> of the applicant community testified before the court that they had made a voluntary and conscious choice of their religion and, having accepted the faith of Jehovah's Witnesses, followed its doctrines of their own free will.

The Court accordingly reasserted the Jehovah's Witnesses' right to freedom of religion or belief under Article 9 of the European Convention on Human Rights (the "European Convention").

Contrary to these findings, Mr. Frédéric included Jehovah's Witnesses in the potentially dangerous sects that use mental manipulation in his book "Conscience Crushers" (Broyeurs de Conscience) published in 2010.

The Article on abuse of weakness introduced in the bill is based on the same assumption of mental manipulation against religious or belief minorities and represents a blatant violation of the right to freedom of conscience. It flies in the face of all international human rights instruments that Belgium has signed and ratified. In furtherance of the policy of "true religious pluralism" stemming from Article 9 of the European Convention, the European Court of Human Rights has instructed governments "*to remain neutral and impartial*" and has struck down measures that vest officials with "*very wide discretion*" on matters relating to religion.[1] The Court held that:

> "*in exercising its regulatory power in this sphere and in its relations with various religions, denominations and beliefs, the State has a duty to remain neutral and impartial"; this duty of neutrality "excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed*."[2]

Yet, the Belgian draft law advocates an interventionist approach by the State to evaluate whether new religious movements' practices constitute "psychological subjection" and to ensure that its citizens' consciences are "protected" from "undue influence" of "groups of persons gathered around an ideal or a common vision of spirituality".

In essence, the draft bill attempts to dissuade people from making particular religious choices and to penalize religious organizations that manifest their religion through proselytism and religious practices based on the State's view on the propriety of those choices.

It is crucial to keep in mind that international law does not establish a place for the State to assume the role of conscience police.

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[1] *Manoussakis and Others v. Greece,* 26 September 1996, §45.
[2] *Metropolitan Church of Bessarabia and Others v. Moldova*, 13 December 2001, §116-117.

Religions are not above the law. However, any legitimate concerns are much more effectively addressed by the enforcement of existing laws on common criminal activities. Special laws against "sects", on the other hand, are discriminatory and endanger the religious liberty of every citizen.

Moreover, these attempts to define and punish "psychological subjection" or "abuse of weakness" are truly remarkable in light of a host of scientific and academic studies unanimously finding that the theory of "mental manipulation" or "religious brainwashing" have no merit. The academic community, including scholars from psychology, sociology, and religious studies, has articulated an almost unanimous consensus that "mental manipulation" and "brainwashing" theories as applied to religious communities are completely lacking in scientific merit. Brainwashing has never gained any scientific credibility.[1]

Major studies by the leading authorities in the field and by organizations such as the American Psychological Association and the American Sociological Association (APA) debunk the myth of brainwashing as it applies to new religious movements.[2] These studies echo the position taken by the Dutch government in 1984 in its Report on New Religious Movements that "new religious movements are no real threat to mental public health". The Swedish government reached a similar conclusion in its 1998 report.[3]

These studies, and the vast majority of government reports on the subject, determine that any issues could be resolved by using the existing legal arsenal and by resorting to normal legal methods. Consequently, they did not recommend taking any political or legal measures that encroach upon international human rights norms.[4] For example, in its Recommendation 1178 (1992), the Parliamentary Assembly of the Council of Europe concluded that legislation on "sects" was undesirable on the grounds that such legislation might interfere with the right to freedom of conscience and religion guaranteed by Article 9 of the European Convention on Human Rights. The Parliamentary Assembly's Recommendation 1412 (1999) encouraged member states to adopt an approach "which will bring about understanding, tolerance, dialogue and resolution of conflicts" and "to take firm steps against any action which is discriminatory or which marginalizes religious or spiritual minority groups".

Yet, this encouragement of tolerance and dialogue in government reports and the rejection of "religious brainwashing" in academic and scientific reports are ignored in these draft laws as a political maneuver to cater to popular prejudice in an attempt to create crimes around a scientifically debunked myth. As a United States Federal Court

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[3] Dick Anthony, "Religious Movements and Brainwashing Litigation", *In Gods We Trust: New Patterns of Religious Pluralism in America,* 2d. ed. (New Brunswick 1990).

[4] APA Memorandum of July 11, 1989

[5] *In Good Faith: Society and the New Religious Movements* (Stockholm, SOU 1998).

[6] See, e.g., Parliamentary Assembly Resolution 1412 (1999) "Illegal Activities of Sects", Council of Europe.

held in denying the major proponent of this discredited theory, Margaret Singer, expert witness status, *"the APA found that Dr. Singer's report lacked scientific merit and that the studies supporting its findings lacked methodological rigor."*[5]

Ironically, even a study commissioned by the Belgian government and conducted by the Catholic University of Louvain concedes that the current conclusion coming both from foreign scholars dealing with sectarian, controversial or simply new religious movements, as well as from researchers in social psychology**, "***is that the concept of mental manipulation is inadequate because it refers to a mysterious and extraordinary reality, a reality that has not received empirical confirmation. More precisely, there are no specific techniques and methods, different from the common methods used in social influence, which could allow for radically changing people's idea, will and concrete everyday life, especially against their own will".*

This research funded and sponsored by the Belgian government has, as noted in Part II of the Study, "*confirmed that specific techniques of sectarian manipulation do not exist".*

The proposed legislation not only represses new religions, it endangers religious liberty for all. As the European Evangelical Alliance (composed of Anglican, Baptist, Brethren, Charismatic, Independent, Lutheran, Methodist and Pentecostal faiths) has noted, terms regarding "mental manipulation" cannot be clearly defined, leading to discrimination and putting "religious freedom in danger":

> "One person's powerful preaching or advice given in the confessional box could be interpreted by someone else as "mental manipulation". Any attempts by society to help victims of this phenomenon must be governed by very strict regulations to ensure that intervention only takes place where there is absolute proof of abuse. Human rights experts, the European Parliament & Council of Europe have decided that existing laws governing the policies of both the social services and police are adequate for these cases. Specific legislation is unhelpful." [6]

Based on Article 18 of the International Covenant on Civil and Political Rights, which guarantees the right to freedom of religion or belief, the United Nations Human Rights Committee has stressed that this right belongs also to unconventional religious creeds and practices:

> "*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*

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[7] *United States v. Stephen Fishman*, U.S. District Court, Northern District of California, April 12, 1990. CR-88-0616-DLJ.

[8] Statement of Julia Doxat-Purser, EEA Religious Liberty Coordinator, on behalf of EEA, June 2004.

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".

Moreover, the right to adopt or change a religious belief is absolute and cannot be subject to any limitation by Belgium. Laws designed to police conversions constitute an improper limitation on freedom of conscience in violation of international law. These laws would serve as a means to intimidate individuals in exercising their freedom of conscience by chilling those rights. As the Advisory Panel of Experts on Freedom of Religion or Belief of the Organization for Security and Cooperation in Europe (OSCE) note in the OSCE publication *Guidelines for Review of Legislation Pertaining to Religion or Belief*:

> "*The right to "change" or "to have or adopt" a religion or belief appears to fall within the domain of the absolute internal freedom right, and legislative provisions that impose limitations in this domain are inconsistent with internal freedom requirements*."[9]

Article 18 of the International Covenant on Civil and Political Rights not only protects the right to freedom of religion, it also states that this right "*shall include freedom to have or adopt a religion or belief of his choice*"**.** This right to change one's religion is emphasized by the UN Human Rights Committee in its General Comment 22 on the scope and interpretation of Article 18:

> "*The Committee observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief. Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert*".

Proselytism, and the decision of an individual to convert to a new faith, is considered a manifestation of religion or belief encompassed within the right to freedom of religion or belief under international human rights law.[10] The European Convention on Human

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[9] *Guidelines for Review of Legislation Pertaining to Religion or Belief*, prepared by the OSCE Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the Venice Commission (2004).

[10] Some activities closely associated with proselytism are also within the ambit of the right to freedom of religion, including the "freedom to prepare and distribute religious texts or publications" as part of religious teaching and practice (General Comment 18), the freedom to "write, issue and disseminate relevant publications" and the "freedom to solicit and receive voluntary financial…contributions" (Article 6, Declaration on the Elimination of Intolerance and Discrimination Based on Religion or Belief).

Rights explicitly guarantees the freedom to change religion or belief. The European Court of Human Rights has also held that proselytism and the right of an individual to adopt a new faith are components of the right to freedom of religion guaranteed by Article 9 of the European Convention on Human Rights. The Court has found in *Kokkinakis v. Greece* that:

> "*According to Article 9, freedom to manifest one's religion (…) includes in principle the right to try to convince one's neighbor, for example, through teaching, failing which, moreover, freedom to change [one's] religion or belief, enshrined in Article 9, would be likely to remain a dead letter*". [11]

Although these rights may be restricted by the state if it can identify concrete and pressing social interests so strong as to override religious freedom, there is a very strong presumption under international law in favor of proselytism and in favor of allowing an individual the freedom to adopt a religion of his or her choice.

In *Kokkinakis*, the Court followed the argument of the applicant, member of Jehovah's Witnesses who had been arrested more than sixty times for proselytism in Greece, that proselytism is not a right reserved to traditional religions. It ruled that it had not been shown that "*the applicant's conviction was justified in the circumstances of the case by a pressing social need*" and found a violation of Article 9 on this ground.

The United Nations Human Rights Committee has also determined that any attempt to limit the right to manifest religion or belief may not be "*imposed for discriminatory purposes or applied in a discriminatory mann*er", and "*any distinction based on religion or belief should be supported by reasonable and objective criteria in pursuit of a legitimate aim under the International Covenant on Civil and Political Rights*".[12]

Distinctions based on classification by the Belgian Parliamentary Inquiry Commission of religions into two groups, one with beliefs considered as acceptable by the State and classified as "religions" and the other considered unacceptable by the State due to their beliefs and classified as "sects" subject to repressive investigation and legislation, has resulted in the stigmatizing and blacklisting of hundreds of religious groups as "sects" in Belgium. Such classification of religious groups into "religions" and "sects" constitutes a violation of religious human rights standards. It is impermissible and arbitrary for the government to confer benefits on groups it classifies as "religions" while denying benefits and enacting oppressive measures against groups it classifies as "sects".

Likewise, the former UN Special Rapporteur for Religious Freedom, Mr. Amor, rejected the type of classification that forms the methodology of the draft law:

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[11] *Kokkinakis v. Greece*, 25 May 1993, §31
[12] General Comment 22.

"*All in all, the distinction between a religion and a sect is too contrived to be acceptable. A sect that goes beyond simple belief and appeals to a divinity, or at the very least, to the supernatural, the transcendent, the absolute, or the sacred, enters into the religious sphere and should enjoy the protection afforded to religions*". [13]

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief is one of the most comprehensive statements regarding religious freedom. Article 2 reads:

1. *No one shall be subject to discrimination by any state, institution, group of persons, or person on the grounds of religion or belief.*

2. *For the purpose of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.*

The jurisprudence based on the European Convention on Human Rights also makes it clear that, in light of the right to freedom of thought, conscience and religion protected by Article 9, any different treatment based on religion – such as different treatment based on arbitrarily classifying certain faiths as "sects" – is inherently repugnant and suspect. That is the very reason why the European Court of Human Rights decided in a case that dealt with minority religious discrimination directed at a Jehovah's Witness, *Hoffman v. Austria* (23 June 1993), that disparate treatment based upon differences in religion violates the right to be free from religious discrimination under Article 14 of the European Convention.

"*Notwithstanding any possible arguments to the contrary, a distinction based essentially on a difference in religion alone is not acceptable*."

All these legal standards are flouted by the Article on the abuse of weakness submitted in the bill. The Belgian Parliament should not pass a law that will entitle law enforcement authorities and the Courts to evaluate the religious practices and beliefs of targeted religious movements in order to determine if they constitute "psychological subjection". This will improperly empower the government with the role of conscience police and will inevitably lead to unfettered discriminatory repression of minority faiths.

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[13] 1996 Annual Report by the Special Rapporteur on Religious Freedom to the United Nations Human Rights Commission.

Likewise, the allowance of so-called "anti-sect" associations to intervene in cases violates fundamental rights. Under the law, these associations are empowered, with the consent of the victim of the alleged abuse, to have criminal proceedings initiated against religious groups, to be represented by their own attorneys, to appear as private civil parties and thus to influence the proceedings 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 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* to associations having as their "object (…) to protect the victims of sectarian deviances" *pre-judges this issue*, by assuming that these activities are "sectarian".

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.[14] 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).[15]

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".

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[14] *Manoussakis and Others v. Greece*, (59/1995/565/651) (26 September 1996), para. 43.
[15] *Metropolitan Church v. Moldova* , paragraph 117.

This offends UN standards as well. The former 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. [16]

IV. Compatibility of the Article on Abuse of Weakness with the Rule of Law

The article tending to criminalize the Abuse of Weakness does not abide with the Rule of Law. The terms used in its wording such as "*situation of weakness*" or "*psychological subjection*" are so vague that they are left to the opinion of the law enforcement authorities or judges for interpretation and so is the notion of "*abuse*". This represents a serious violation of both Belgian and international standards regarding legality of the charges.

In its 10 May 2006 Opinion, the Legislation Section of the Belgian Council of State noted that pursuant to the principle of legality of the charges - the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) - which stems from Article 12§2 of the Belgian Constitution, Article 7 of the European Convention on Human Rights and Article 15 of the International Covenant on Civil and Political Rights, any actions subject to criminal charges must be defined in terms sufficiently clear, specific and foreseeable for the citizens to know beforehand what acts or omissions would involve their responsibility.

The Council added that the principle of legality and separation of the legislative and judiciary powers implied that criminal laws have to be worded in the most precise way in order to avoid that the judges, given vague directives, had to complement the rules to make them effectively applicable and thereby avoid any risk of arbitrary.

In its subsequent decision n° 46.060/2 of 16 March 2009, the Council of State reiterated the same principles.

However, the authors of the bill ignored these principles during the debates of the Justice Commission:

> The authors of the proposed bill do not want that the situation of weakness be too strictly defined. It is only specified in the bill that the situation of weakness can be physical or psychological. Indeed, the biggest latitude should be left to the prosecutors and the judges to appreciate the situation of weakness of a

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[16] Greece Report, A/51/542/Add.1 (7 November 1996).

person, whether it is permanent, temporary, occasional or continuous. Prosecutors and judges can call on experts (medical doctors, psychiatrists or psychologists) to help them establish the situation of weakness of the victim.

This position and the corresponding draft legislation constitute an outright violation of the Council of State findings and the legal instruments they referred to.

In the previous bills submitted in 2006 and 2009 to the Council of State, the articles on abuse of weakness prohibited the abuse of the situation of weakness of minors and people particularly vulnerable due to their age, sickness, disability, physical or mental deficiency, illegal or precarious resident status or pregnancy.

The Council found that there was some question on the link between the notion of *"situation of weakness"* referred to in the Article and the situations or states mentioned, i.e. age, sickness, disability, physical or mental deficiencies, illegal or precarious resident status, pregnancy. It decided that the accusation would have to prove not only that the victim was in one of these situations, but also the fact that being so made one weak or vulnerable. It concluded that there existed no presumption of such a situation of weakness.

Such notion of "situation of weakness" was a concept so vague and subjective that it had to be evidenced in relation with the objective situations listed.

Rather than adhering to the Council's considered conclusions regarding the inherent defects in the 2006 and 2009 draft laws, the current draft bill indeed exacerbates those defects by using even cloudier language.

In the new provision, there is no objective situation – such as disability, age, etc. – that constitutes the first element of the offense and basis for a potential state of weakness.

Although provisions of the former Article providing for objective situations were found by the Council of State to lack precision as they did not evidence any "ignorance" or "weakness", Mr. Frédéric chose in the new draft to not define the "situation of weakness" at all, thus making it a totally subjective situation.

"*Psychological subjection*" due to "*repeated pressures*" is such a vague concept that it opens the door to arbitrary and discriminatory interpretation. Any attempts of recruitment or proselytizing by new religious movements can be claimed to be "*repeated pressures*" or "*techniques susceptible to alter one's capacity of discernment*" by the authorities or opponents to minority faiths. And the authorities can deem as being under "*psychological subjection*" any followers of groups whose beliefs are considered as untraditional and odd.

In its 2009 decision, the Council of State found that:

> 3.1.2. Paragraph 1 above criminalizes also manoeuvres of psychological destabilization of an individual. This notion, contrary to those of violence and threat, has not been defined by the legislator. The proposition should be completed on this point. Such a requirement is all the more so necessary that in consideration of fundamental rights the distinction must be made between this notion and the influence that a person can legitimately exert on another through her power of persuasion, her authority, her charisma, her insistence, etc.

In the current draft, the "manoeuvres of psychological destabilization" have now been replaced by manoeuvres of "psychological subjection" using "techniques susceptible to alter one's capacity of discernment". The same criticism can be made as in 2009 by the Council of State: these notions have not been defined in the law and open the door to violation of the fundamental rights of the followers of religious or spiritual minorities.

The Article on abuse of weakness proposed in the bill under examination by the Belgian Parliament contravenes the Opinions of the Council of State, the Belgian Constitution and international legal norms providing for the need of foreseeability of criminal prosecutions.

The European Court of Human Rights has stressed the important place of the rule of law in the European Convention on Human Rights, particularly in *S.W. v. the United Kingdom* and *C.R. v. the United Kingdom* (judgments of 22 November 1995, §§ 34-36 and §§ 32-34 respectively):

> "*The guarantee enshrined in Article 7, which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 in time of war or other public emergency. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment.*"

It then laid down the fundamental principles stemming from Article 7 of the Convention:

> "*Accordingly, as the Court held in its Kokkinakis v. Greece judgment of 25 May 1993 (Series A no. 260-A, p. 22, § 52), Article 7 is not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage: it also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (nullum crimen, nulla poena sine lege) and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy. From these principles it follows that an offense must be clearly defined in the law.*"

The Court found further that although "*in any system of law, including criminal law, there is an inevitable element of judicial interpretation*" when there is "*a need for elucidation of doubtful points and for adaptation to changing circumstances*". This is under the condition however that "*the resultant development is consistent with the essence of the offense and could reasonably be foreseen*".

The Belgian draft law does not provide the necessity of foreseeability laid down by the European Court. If it were to pass, targeted religious movements would not be able to foresee when a person would be deemed to be in a "situation of weakness" and what proselytizing could be considered as "*pressures*" or when a person could be said to be under "*psychological subjection*" due to attempts of conversion. No minority faith could predict when a person would be considered to have been "weakened" in order to be abused.

Only one certainty exists in this regard: proselytizing by favored religions will not be considered to fall within the ambit of this law, raising a separate issue of discrimination in violation of Articles 9 and 14 of the European Convention on Human Rights.

Such a concept as "*techniques susceptible to alter one's capacity of discernment*" has no legal definition and could conceivably cover any discussion, argumentation or teaching resulting in religious conversions. In order to find an abuse of weakness through use of such "techniques", officials would have to engage in an evaluation of the religious teachings and practices of the targeted groups to assess if they "*alter one's capacity of discernment*". Such an evaluation has been expressly prohibited by the European Human Rights Court.

Conclusion

The provisions of the draft law intended to criminalize religious practice and inject the authorities into the manifestation of religion process regarding faiths which beliefs and practices are considered as "*psychological subjection*" contradict the rule of law, violate fundamental rights to freedom of religion and conscience, including the right to manifest religion, and contravene the doctrine of neutrality.

THE INSTITUTE on Religion and Public Policy accordingly urges Belgium to request the assistance of the OSCE Panel of Religious Experts to review the draft Religion Law so that the panel may advise the government of Belgium regarding the compatibility of the provisions of the proposed legislation with OSCE standards and international human rights law.