



**Coordination des Associations & Particuliers pour la
Liberté de Conscience**

CAP pour la Liberté de Conscience - Liberté de Religion - Liberté de
Conviction

12, rue Campagne Première - 75014 Paris.

<http://www.coordiap.com>

contact@coordiap

OSCE Human Dimension Implementation Meeting

Working session 12 and 13: Freedom of religion or belief

7 October 2008

Religious Discrimination in France

**CAP Submission Regarding the Appointment of
Mr. Georges Fenech as President of MIVILUDES**

Coordination des Associations et des Particuliers pour la Liberté de Conscience – Coordination of Associations and Individuals for Freedom of Conscience (CAP) is an interfaith association created in 2000 to unite minority religions in France. CAP's purpose is to oppose discrimination concerning the right to freedom of conscience and belief in France and to denounce actions which violate human rights and are a threat to fundamental liberties. Members of CAP include adherents to numerous minority faiths targeted for discriminatory measures as "sects" by the government.

On 19 September 2008, Prime Minister Fillon appointed Mr. Georges Fenech, former Magistrate and Member of Parliament, as Chairman of MIVILUDES (the Inter-Ministerial Mission of Vigilance to Fight against Sectarian Drifts). MIVILUDES was formed on 28 November 2002 by the Prime Minister. MIVILUDES is an inter-ministerial government entity tasked to collect data on religious movements and inform the public about the "risks of sectarian deviances". MIVILUDES is composed of a President, a Secretary General with a task force of twelve Officials assigned from government ministries, an Executive Committee composed of 18 government officials from nine ministries, and an Advisory Council composed of eight members of Parliament, eight associations, and 14 experts.

Mr. Fenech assumed his position as President of MIVILUDES on 1 October, 2008. This appointment is of great concern to CAP and many religious organizations in France. As detailed below, Mr. Fenech is unfit for such a high level government appointment due to his controversial background which includes Mr. Fenech currently facing criminal charges. In addition, Mr. Fenech has exhibited a complete lack of objectivity and neutrality on the issue of religious tolerance. His appointment represents a backward step for religious freedom and tolerance in France.

By way of background, Mr. Fenech was appointed as a Magistrate in 1984. He was President of the [Association Professionnelle des Magistrats](#) (APM) from 1996 to 1998, a union of judges. He was elected as a Member of Parliament in [2002](#) and took a leave of absence from his function as a Magistrate during his mandate as an MP.

Controversial Background

Mr. Fenech has a background that makes him an inappropriate official to assume the role of President of MIVILUDES.

- In July 2001, Mr. Fenech was indicted based on charges of “concealment of misuse of company assets” regarding 100,000 FF (15 000€) he received in the name of the Union of Magistrates (APM). The charges indicate that these funds stem directly from illegal sales of arms to Angola. The committal for trial involving nearly 40 accused and consisting of 468 pages was released in April 2007.¹ The criminal trial of this case is due to start on 6 October 2008.
- In 2008, Mr. Fenech was summoned to Court on 16 October 2008 by officials of the political party La France en Action for insults and defamation for stating that the party was linked to “sectarian” organizations and was covertly promoting and financing a number of “sects”.
- In March 2008, Mr. Fenech was sanctioned as a Member of Parliament by the Constitutional Court due to financial irregularities during his election campaign which constituted an “*offence*” to articles 52-8 et LO136-1 of the election Code. His mandate as an MP was cancelled and he was declared ineligible for one year.
- In December 1998, Mr. Fenech’s application to the position of First Judge of Instruction in Paris was rejected by the Ministry of Justice because of “words with anti-Semitic connotations” in the magazine managed by Mr. Fenech as President of APM and “questions generated, from the viewpoint of Magistrates, by his participation to an unofficial mission of observation of the presidential elections in Gabon”.

¹ See AFP wire of 6 April 2007.

A few days after his parliamentary mandate was cancelled, Mr. Fenech was appointed in April 2008 by the Prime Minister to conduct a study and evaluation of the Judiciary to ensure that it is set up to "fight more efficiently" against "sectarian abuses". On 27 August 2008, Mr. Fenech was appointed as First Substitute at the Central Administration of the Minister of Justice. Concerns were formulated by some magistrates following this appointment that Mr. Fenech could use his new position to put pressure on his criminal case before trial. The conflict of interest was pointed out in *Libération* on 23 July 2008 when it stated:

"Controversial come back of Fenech amongst the judges: the appointment of the indicted former Member of Parliament from UMP at the Ministry of Justice is of concern to some magistrates".

Lack of Objectivity in Contravention of the Principles of Non-Discrimination and Objectivity

In addition to his controversial background, Mr. Fenech also has taken positions against the rights of religious organizations derogatorily referred to as "sects" in France that contravene the principles of non-discrimination and equality regarding religious organizations.

The intolerant position of Mr. Fenech towards minority faiths is also evidenced by his statement that he does not believe in dialogue with groups labelled by him as "sectarian movements" in spite of the fact that there is no definition of this phrase. When interviewed on 8 June 2007 on Sud Radio he stated:

"I have never dialogued with whoever would have ties with a sectarian movement."

This extreme position contravenes Article 17 of the Treaty on the Functioning of the European Union² which France is bound by and which provides:

"1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.

2. The Union equally respects the status under national law of philosophical and non-confessional organisations.

*3. Recognising their identity and their specific contribution, **the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.***"

Mr. Fenech is obviously not the person who will ensure the fulfilment of these provisions; his appointment to head an inter-ministerial mission under the Prime Minister's responsibility is therefore inappropriate.

This intolerant position of Mr. Fenech regarding minority faiths in France is also evidenced in his actions chairing the Parliamentary Commission on Minors in Sects. In June 2006, with only 10 out of 577 members of Parliament present at the French National Assembly, eight of those present appointed themselves members of the third Parliamentary Inquiry Commission in eleven years regarding minority faiths in France, this one focusing on youth.

² Official Journal C 115 of 9 May 2008 (Consolidated Version).

This inquiry regarding youth and minority faiths is ironic as the United Nations Rapporteur on Freedom of Religion or Belief published a report in March 2006 regarding her visit to France in which she determined that the methods of the first two Parliamentary inquiries and divisive policies adopted by the government at that time has resulted in " *the public condemnation of some of these groups, as well as the stigmatization of their members, has led to certain forms of discrimination, in particular vis-à-vis their children*".

Rather than attempt to repair these human rights shortcomings identified by the UN Religious Freedom Rapporteur, as the foremost UN expert on international human rights law and religious freedom, the Parliamentary Commission under Mr. Fenech's leadership instead attempted to compound the problem of religious intolerance directed at children of minority faiths by holding biased hearings to attempt to justify draconian laws and "awareness campaigns" designed to:

- take custody away from a parent or parents of children of minority faiths;
- stigmatize and marginalize such children in public educational institutions;
- subject such children to discriminatory examinations and treatment;
- refuse to respect the fundamental human right of parents to raise their children in accordance with their own religious beliefs;
- bias court officials against members of minority faiths through "awareness sessions" on so-called sects;³ and
- expand the highly controversial and internationally criticized About-Picard law through further repressive legislation.

The tactics of Mr. Fenech and the Commission were criticized by the United States State Department in its 2007 Human Rights Report. The State Department noted that:

"Members of Jehovah's Witnesses also alleged that during the reporting period the rapporteur and the secretary of the newly convened commission openly attacked them, describing them as delinquents and criminals and labeling their activities as "mafia like." The Commission's report also elicited criticism from other minority religious and civil rights groups, which labeled the Commission's conclusions an affront to freedom of conscience and religious belief".

During a public hearing of the Commission presided by Mr Fenech, Jean-Pierre Brard, Secretary of the Commission, asked Jean-Yves Dupuis, representative of the Ministry of National Education, who had explained that the children of Jehovah Witnesses were actually considered as model students by the French National Education: *"Am I right that the [Ministry of] National Education has the objective of developing the sense of criticism? Can we consider that the Jehovah's Witnesses are making handicapped children, intellectually speaking?"*

3

Such "awareness" programs for court officials have been condemned by the United Nations Human Rights Committee. In its Concluding Observations of the Human Rights Committee: Germany. 18/11/96 (CCPR/C/79/Add.73), the Human Rights Committee recommended, in strikingly similar circumstances, that Germany discontinue the holding of "sensitizing sessions for judges against the practices of certain designated sects". Otherwise, the right to a fair trial is destroyed for religious minorities.

Mr. Fenech raised the *"problem of legitimacy of the intervention of a judge, a prosecutor, a social worker when nothing indicates a danger"*, when dealing with *"a family which looks normal, which needs no external intervention but the children are raised in a family which is caught in a sectarian grip"*. He made the following suggestion: *"Could we envision an ex officio intervention for example from the moment we find out that a child belongs to a family and to a certain group?"*

Mr. Fenech implies that even though a family "looks normal" and needs no "external intervention", the State can intervene because of the purported existence of a danger for the child by reason only of the beliefs of his parents, which are deemed to pertain to a "sectarian" movement.

The entire approach of this Commission headed by Mr. Fenech violated fundamental human rights principles. Article 18 (4) of the International Covenant on Civil and Political Rights requires States to "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". Likewise, Protocol 1, Article 2 of the European Convention on Human Rights requires States to "respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

Conclusion

In her report on her visit to France, the UN Special Rapporteur for Religious Freedom included the following recommendations to the UN General Assembly:

"111. The Special Rapporteur hopes that future actions of MIVILUDES will be in line with the right to freedom of religion or belief and avoid past mistakes. She will continue to closely monitor the various efforts that are carried out by MIVILUDES.

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".

The appointment of Mr. Fenech undermines the UN Religious Freedom Rapporteur's mandate that MIVILUDES operate "in line with the right to freedom of religion or belief and avoid past mistakes". This appointment represents a step backwards for religious freedom in France.

Under these circumstances :

CAP calls for the Prime Minister to cancel Mr. Fenech's appointment as President of MIVILUDES.

CAP also respectfully requests that the OSCE Chair-in-Office Personal Representative on Combating Racism, Xenophobia, and Discrimination against Christians and Members of Other Religions visit France and closely monitor the activities of MIVILUDES and its new President to ensure that their actions comply with religious freedom and tolerance in accordance with the Helsinki Accords.