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Status of Religious or Belief Communities

Introduction

Is the issue of the status of religious or belief communities truly relevant? International human rights instruments binding for all countries of the OSCE provide for the freedom of religion or belief. This freedom, however, does not require a specific system of relations between the State and Religious or Belief Communities. In fact, religious freedom can be guaranteed in countries where very different legal systems apply to religious or belief communities. Freedom shall be universal, solutions may vary.

In this short introduction, I will focus on systems, models of legislation, and challenges, with a view to provoking thoughts on this issue, and hopefully, an interesting debate.

I. Legal personality and systems of recognition

Legal personality for religious groups is necessary for various practical reasons, which include very concrete needs such as acquiring property and opening a bank account. However, beyond practical aspects, I believe that the status bears a message in many different ways. Emerging religious communities in some countries are often basically satisfied with the legal conditions of their operation, they are free to worship and their mission is not hindered, but they still want to get “in the club”. Having a special legal status may mean to be included, may carry the message of being mainstream, not a second class reality. It is a valid question how this desire should be treated. In the OSCE area we find at least four different approaches to the issue of the status of religious communities.

1. Countries not providing a special status for religious communities

In this framework, religious communities may fit in the social and legal context of the country in many ways. For example, a religious community can be categorized as a (special) association, a foundation or a trust. Specific activities, policies and decisions can be taken depending on the nature of the issue at stake, for example property issues or tax deductions.

2. Very open systems

In some countries instead of recognition we can speak about registration: a formal procedure without any internal scrutiny of doctrines and structure. Registration is formal, the procedure rapid. This model may be very appealing but it also may become problematic for various reasons. When all communities are equal and this status is easily accessible, being a religious community has no dignity in itself any more in other words the status may not reflect the specificity of religious communities. Consequently a tacit two-tier system may emerge: all are equal, but some become even more so. Very open

legislations may not correspond with the historical and social setting of a country. A framework for all may still leave space for further legislation on the details.

3. Two-tier systems

This system is present in a number of countries, including where recent legislation on freedom of religion or belief has been introduced. A two-tier system is not a swearword. It may be a system that fits in social reality of a country. In this case, however, base level entity status should be easily available and equal freedom should be guaranteed for both base-level communities and “mainstream” communities. Distinctions between the two leagues have to be based on factual and relevant differences, criteria of different levels of recognition have to be clearly set. If the “professional league” in a two-tier system is a privilege of few, and criteria are arbitrary or realistically they are there to block the system, transparency is jeopardized. A two-tier system needs to be administered: not all religious communities are keen to be administered and not all countries are ready to run an agency that is truly able to administer the system in a transparent way. Certainly differences between those, not meeting the criteria can be wider than between those just being under and above the threshold.

4. Recognition of religious communities

This system is traditionally pursued in many countries, usually by a governmental agency, usually with the possibility of judicial review for the case of the rejection of the request for recognition. When a legal system provides for the recognition of religious communities a key requirement is that recognition should not be a condition for manifesting freedom of religion or belief, for exercising religion in community with others and carrying out all the activities linked to religious freedom such as having places of worship, receive voluntary funds, organize religious education etc. When registration is not automatic an easily available alternative legal form (eventually based on the freedom of association) has to be provided to make a base level entity status accessible for all. Institutions mandated to provide this status to religious communities should strictly work under non-discrimination policies. Moreover, criteria for granting recognition should be clearly defined.

II. Autonomy

As pointed out at the beginning of this presentation, the status of religious communities is not a prerequisite for the right to exercise freedom of religion or belief. Models differ from country to country and we should not aim at a uniform system so that all participating States have the same. What has to be uniform – more precisely universal – is the freedom of religion, in its individual and collective aspects.

The central issue is whether the status available to religious communities ensures autonomy. Autonomy can be at stake in many different ways and even new challenges may come up.

- **Internal organization/international character** of religious communities may not be respected: recent case law of the European Court of Human Rights shows some examples, but the actual list may be much longer. Countries usually have their traditional notion on religious communities, and often unconsciously shape the legal structure offered to religious communities on one or few, traditional communities. Others may have difficulties in fitting to the structure.

- **Doctrines/actions** of religious communities have to be controlled in freedom loving democracies: there has to be a clear borderline between freedom and abuses. A religious group advocating criminal acts (to give an extreme example: ritual murder) should not enjoy freedom. The borderline, however, seems to change. Nevertheless, moral and religious convictions have to be respected: preaching against divorce or homosexual acts has to be free, even if these actions became permissible or decriminalized by state legislation, but advocating for suicide shall not be tolerated.
- **Equal treatment** is gaining more and more attention, especially with regard to employment. In a number of countries the implementation of the principle of equal treatment in the field of employment constitutes a challenge to religious autonomy. Genuine religious offices (that of ministers and of teachers of religion etc) are generally not at stake. However, institutions run by churches (schools, hospitals etc.) become questionable: is a church run institution free to select its personal taking religious affiliation into consideration or are they bound by the principle of non-discrimination?
- **Religious education:** speaking/teaching about religious facts, providing information on religion is gaining space in public education and the space it is gaining used to belong to religious instruction, to education provided by or in accordance with religious communities. When religion loses/does not gain the chance to introduce itself, but instead of commitment information is offered, the autonomy of religious communities becomes at stake. Neutral and factual information has to be available, but not instead of but alongside the right of parents and belief communities to provide education in accordance with their conviction.

No country can guarantee, no religious community can ensure religious freedom for good and all. No democracy, no country applying the highest standards of the rule of law can feel really comfortable when human rights are at stake. Besides traditional difficulties we all inevitably confront new challenges also with regard to religious freedom and religious autonomy. So we have good reason to exchange thoughts and experiences and to learn from each other.