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NON-DISCRIMINATION LEGISLATION & RELIGIOUS FREEDOMS THE NEED FOR FAIR DEALING AS BETWEEN 'MINORITIES'

My name is **David FIELDSEND**, and I represent **CARE for Europe**. We have become increasingly concerned in recent years at the negative effect on religious freedoms that is starting to come through in case law as non-discrimination laws, particularly harassment and hate speech provisions, are enacted in western European countries – the United Kingdom and the Nordic countries having taken the lead in implementing such measures are now exhibiting the clearest signs. There are also examples coming through from English-speaking countries on other continents like Canada and Australia.

Depending on which metaphor you wish to use these unintended negative consequences of well-meaning legislation can be likened to collateral damage in warfare, or the side effects of medications that can end up being just as serious as the problems they were initially designed to solve. Entirely subjective tests of harassment (ie. if offence is taken regardless of whether there was any intention to cause offence or whether a 'reasonable person' could realistically have been expected to take offence); interpretations of tolerance which effectively require agreement with the point of view of the one to be tolerated, rather than simply accepting their right to express their opinion; and the insistence that both public and private providers of goods and services be willing to promote activities their religion teaches to be immoral are examples of this.

The requirement to conform to a certain secular morality contained in these new laws is now demonstrably having a negative effect on **freedom of expression, freedom of association** and **freedom of conscience** of both religious institutions and individual believers.

Freedom of expression

Following the Danish cartoons incident a couple of years ago there is a strong case for arguing that there can be no true freedom of speech without the freedom to offend. Yet in the UK at the moment the law is being interpreted such that the right of followers of religion A not to be offended means that followers of religion B must be prevented from expressing tenets of their religion which differ from those of religion A. eg. A Christian couple from the north of England who are hotel proprietors are being prosecuted because when a Muslim guest at their hotel forcefully expressed to them the view that Jesus could not be the Son of God but was only a prophet, they responded by explaining their Christian religious views and the reasons for them. The adverse publicity surrounding the

case has led to a catastrophic drop in bookings and threatens the survival of their business regardless of the outcome of their eventual trial. In Australia two Christian pastors who were converts from Islam and had come to Australia as refugees from persecution in a Muslim country were convicted of a hate crime for stating in a church meeting that Islam could sometimes have an aggressive face. The moral convictions of religious people can also be affected. In Sweden a pastor who referred in a sermon in church to the biblical teaching about the sinfulness of homosexual activity was prosecuted and convicted of a hate crime, although this was subsequently overturned on appeal. In Scotland the Muslim chair of a body responsible for representing the voluntary sector was forced to resign when he would not deny that he subscribed to the orthodox teaching of his faith that homosexual practices were sinful.

Freedom of Association

Although the relevant European Directive on non-discrimination in employment allows for organisations 'of a religious ethos' to expect those working for them to respect that ethos in teaching and conduct, national legislation is becoming more restrictive. In particular courts in England are now refusing to distinguish between 'orientation' and 'practice' in discrimination cases. This means that religious organisations who have tried to play fair by accepting those of a homosexual orientation who practice a celibate lifestyle (as is expected for all unmarried employees) are now being told they can only distinguish on the grounds of intellectual belief and a life lived in adherence to the moral teachings that are part of the religious ethos can no longer be required. A recent ruling along these lines affected a Church of England Bishop.

Freedom of Conscience

The recent legalisation of civil partnership ceremonies and the adoption of children by same sex couples in the UK has not only led to the closure of the main catholic adoption agency but also led to a number of Christian professionals of long standing losing their jobs. A registrar of civil marriages in London who asked to be excused from undertaking ceremonies for same sex couples (there being plenty of other registrars in the team who were willing to do this) because of her religion was not only told she had to do all ceremonies or none at all but had action taken against her for harassment. Likewise a Christian magistrate responsible for family law cases who asked to be excused from making rulings on the very small number of applications from same sex couples for adoption was dismissed and a Christian paediatrician with long service on an adoption panel who merely asked to be allowed to abstain from voting in such cases lost her position. But it is not only those who could be considered to be in public office who are affected, in Canada a Christian printer was prosecuted for refusing to print material for a gay rights advocacy organisation and in a US state a photographer who declined to cover a same sex ceremony (even though it was not legally recognised) was taken to court.

We would therefore like to call upon the OSCE/ODIHR and OSCE Missions to scrutinize “tolerance and non-discrimination” laws and measures to ensure that there are adequate safeguards in them to protect these crucial religious freedoms.

(intervention for OSCE session, Sofitel, Warsaw on Monday 5th October 2009)