



Austria

Proposed Changes to the Religion Law Represent a Major Step Backwards In Defiance of Court Mandates

Introduction

The 1998 Austrian Law on the Status of Religious Confessional Communities (1998 Law) treated minority faiths and their parishioners as second class citizens not entitled to the rights, privileges and protections afforded favored faiths. These glaring defects in the law continue to be strongly criticized by human rights groups and religious communities because they establish impermissible, tiered religious recognition status and impose onerous criteria to achieve that status. In addition, the European Human Rights Court and the Constitutional Court of Austria have rendered considered opinions that key provisions of the law fail to meet fundamental human rights standards, necessitating amendments that conform to internationally accepted principles of religious freedom and non-discrimination.

Rather than remedy the defects in the law as mandated by the Human Rights Court and the Constitutional Court, new legislation has been proposed that will perpetuate the inherent human rights inequities in the law and, for some religions, make it worse. This regressive, rather than progressive, nature of the new law is extremely disappointing.

Instead of facilitating equal treatment of all religions, no matter their size or whether they are newly established in Austria, the proposed changes to the 1998 Law act to cut off recognition for some recognized religions and continue the moratorium for other religions not currently recognized as "religious societies" by maintaining onerous duration and population criteria in defiance of judicial decisions by the Human Rights Court regarding these provisions as well as OSCE and UN standards.

The proposed law is scheduled to be taken up in Parliament on 6 July, 2011. Currently, there are 14 recognized religious communities in Austria. According to reports published this week by FOREF, five religions currently recognized under the 1998 Law -- Old Catholics, Methodists, Buddhists, Mormons, and the Apostolic Church --will lose that status if the proposed law is enacted.

In the opinion of THE INSTITUTE, this represents a major step backwards for religious freedom and pluralism in Austria. It is surprising and distressing that a country that is the

seat of major human rights institutions and the Organization for Security and Cooperation in Europe (OSCE) is choosing to turn its back on human rights commitments it is obliged to follow.

Proposed Amendments

By way of background, the status of religious organizations in Austria is governed by the 1874 Law on Recognition of Churches and the 1998 Law. Religious organizations are divided into three legal categories or tiers: officially recognized religious societies, religious confessional communities, and associations. Only religious societies are officially recognized, and they receive substantial and distinct rights, freedoms and advantages denied to confessional communities and associations.

The 1998 Law imposes harsh new criteria on groups to achieve religious society status, including a 20-year period of existence (at least 10 of which must be as a group organized as a confessional community under the 1998 law) and membership equaling at least 0.2 percent of the country's population (approximately 16,500 persons). According to the State Department 2010 International Religious Freedom Report, only five of the 14 recognized religious societies meet this membership requirement.

The 1998 Law also provides that religious groups not recognized may seek official status as "confessional communities" without the fiscal and educational privileges available to recognized religious groups. To qualify as "confessional communities" groups: 1) must have at least 300 members; 2) submit written statutes describing the goals, rights, and obligations of members, as well as membership regulations, officials, and financing; and 3) submit a written version of their religious doctrine. The Ministry of Education is empowered to examine the doctrine to determine whether the group's basic beliefs violate public security, public order, health and morals, or the rights and freedoms of others.

Rather than remedy the defects in the 1998 Law, the proposed legislative provisions amending the law make it worse. The inequitable three-tiered status of religions remains unchanged. The 1998 Law allowed previously recognized societies to retain their status regardless of their size and the length of their existence in Austria. However, the proposed provisions would require these religious organizations to meet the population and duration criteria in the amended law. As previously noted, FOREF has reported that Old Catholics, Methodists, Buddhists, Mormons, and Apostolic Church will lose that status as recognized religions if the proposed law is enacted.

The proposed law will continue to require religions to meet the harsh 16,500 person population requirement that has been found to violate the principles of non-discrimination and equality.

Although the duration requirements have been diminished in some respects under the proposed provisions, they remain unacceptable under standards established by the OSCE, European Human Rights Court and United Nations. The amendments provide that a religious organization in existence for a minimum of 20 years, with at least 10 years in an

organized form and at least 5 years as a confessional community with legal entity status may apply for religious recognition (currently an organization must be a confessional community for 10 years and be in existence at least 20 years).

Alternatively, an organization may apply directly for religious recognition without the moratorium of first going through a 5 year confessional community “observation” period if:

- 1) The applicant’s “organization and doctrine are integrated in an internationally active religious community that has existed for at least 100 years and has been active in Austria in organized form for at least 10 years;” or
- 2) The applicant’s “organization and doctrine are integrated in an internationally active religious community that has existed for at least 200 years.”

The Proposed Provisions Perpetuate a System That Violates Fundamental Human Rights

A. Three-Tiered System Found Discriminatory By Human Rights Court

The amendments to the currently law are distressing because they perpetuate serious human rights defects in the law Austria has been advised to remedy. These provisions do not pass human rights scrutiny and ignore direct and controlling precedent from the European Human Rights Court that Austria’s tiered system under the 1998 Law offering an inferior religious status to minority faiths violates the right to religious freedom and the right to be free from religious discrimination. See, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (July 2008, Application no. 40825/98).

In the *Jehovah’s Witnesses v. Austria* case, Austria argued that the second tier status offered minority faiths under the 1998 Law did not offend religious freedom and anti-discrimination status as religious organizations could operate as “confessional communities” or “associations” with legal entity status. This argument was emphatically rejected by the Human Rights Court on the grounds that such a status was inferior to that of a “religious society”, as “confessional communities” were subject to more severe State control in respect of their religious doctrine, their rules on membership and the administration of their assets pursuant to the 1998 Religious Communities Act.

The Human Rights Court held that, under Austrian law, “religious societies” enjoyed privileged treatment in many areas, including facilitation of the founding of schools, tax and military exemption, religious charitable activities and membership of various boards. Given the number of these privileges and their nature, the Court found that the advantage obtained by “religious societies” is substantial and this special treatment undoubtedly facilitates a “religious society’s” pursuance of its religious aims. Therefore, the obligation under the freedom of religion clause of the Convention incumbent on the State’s authorities to remain neutral in the exercise of their powers in this domain requires that “all religious groups must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner.”

Accordingly, the Human Rights Court concluded that that difference in treatment violated the right to be free from religious discrimination protected by the anti-discrimination clause of the European Human Rights Convention, Article 14, taken in conjunction with the right to religious freedom protected by Article 9.

Austria is defying its obligation to adhere to the human rights standards in the Human Rights Convention by ignoring this judgment by the Court and perpetuating this three-tiered system. This represents a transparent attempt to suppress minority religious freedom in complete contravention of European Human Rights Court decisions and UN and OSCE standards. This exclusionary approach is inconsistent with the Human Rights Court's application of a fundamental human rights policy of the European Community to religious freedom issues – "the need to secure true religious pluralism, an inherent feature of the notion of a democratic society". It would frustrate this policy of "true religious pluralism" and result in arbitrariness and unfair discrimination to exclude new and minority faiths from registration as religious organizations.

B. Retroactive "De-Registration" Violates the Rule of Law

Five recognized religious organizations, Old Catholics, Methodists, Buddhists, Mormons, and Apostolic Church will lose that status as recognized religions if the proposed law is enacted.

This type of retroactive legislation contravenes the Rule of Law and fundamental human rights. This type of provision was a feature of Russia's 1997 Religion Law, which was struck down by the Russian Constitutional Court on the grounds that an existing religious organization cannot be denied its rights through "re-registration" without violating the right to freedom of religion and association and the legal equality principle.

C. Repressive Membership and Duration Requirements

The prerequisite that a religious organization provide evidence that it has at least 16,500 members and that it satisfies the proposed duration requirements violates accepted human rights norms.

The joint publication by the Venice Commission and the OSCE Panel of Religious experts entitled *Guidelines for Review of Legislation Pertaining to Religion or Belief* finds that the types of onerous requirements contained in the current provision contravene human rights standards, noting that:

High minimum membership requirements should not be allowed with respect to obtaining legal personality.

Not only is the 16,500 membership requirement outrageous, the OSCE stated in the report, *Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities* (OSCE

Report) that it was concerned that the 300 member requirement for “confessional community” status violates OSCE Guidelines:

Turning to statutory schemes that govern formal grant of entity status, the first issue is the number of individuals required to create a legal entity. In most countries, the number is very small. In a typical American state, no more than three founders would be necessary. European countries often require a somewhat larger number of founders for religious associations than for other non-profit organizations. Whereas two to five founders is often sufficient for secular NGOs, religious associations usually require ten or more. (...)

More troublesome are countries that require substantially larger numbers. The Czech Republic requires 300 members, as does the 1997 Austrian law. For smaller religious organizations, this is a very substantial number, particularly since it is presumably only adult members who can be counted. It is particularly problematic for religious traditions that take a congregational approach to church polity, and prefer to maintain smaller and more intimate congregations. In such a tradition, it may be impossible as a matter of religious practice to have a religious association that crosses the 300-member threshold.

The OSCE Report also found the 1998 Law’s minimum membership requirements “particularly troublesome”.

Particularly troublesome are proposals such as one advanced in Hungary in 1993 and being reconsidered currently that would make a minimum membership of 10,000 necessary for registration. Such a requirement would result in de-registration of approximately two-thirds of the currently registered religious associations in Hungary. Similarly, Austrian law now requires that in order to qualify as a recognized Church, a religious denominational community must have followers that number at least two per cent of the population of Austria according to the most recent census. Although these requirements may apply only to “upper tier” entities, they are sufficiently problematic to warrant special mention, as they can result in permanent discrimination against smaller groups.¹

The 16,500 population requirement represents a transparent effort to repress minority religious communities in Austria. This represents an excessive minimum membership requirement that violates both freedom of religion and association. Such a minimum membership requirement imposes unauthorized limitations on manifestation of freedom of religion.

Likewise, lengthy duration requirements offend human rights. The OSCE and Venice Commission Guidelines note that:

¹ The reference in the report to exceptions for “upper tier entities” was made prior to the ECHR decision against Austria on this very point.

It is not appropriate to require lengthy existence in the State before registration is permitted.

In addition, the OSCE report notes that:

Duration requirements of this type are clearly inconsistent with the OSCE commitment to grant religious groups at least base-level entity status. The wording of this commitment in Principle 16.3 of the Vienna Concluding Document recognizes that the precise form of legal personality varies from legal system to legal system, but access to some form of legal entity is vital to OSCE compliance. This is clearly violated by the refusal to register religious groups that do not satisfy the 15-year rule.

The European Human Rights Court has also rejected these types of duration provisions in legislation. In October 2009, the European Court of Human Rights found that the refusal to register Churches in Surgut and Nizhnekamsk as religious organizations because they had not existed for 15 years as required by the 1997 Religion Law violated the rights of the applicants, in particular, violation of the provisions of Article 9 of the Convention (freedom of religion) in the light of Article 11 (freedom of association). The Court found that "the restricted status afforded to religious groups under the Religion Act did not allow members of such a group to enjoy effectively their right to freedom of religion, rendering such a right illusory and theoretical rather than practical and effective, as required by the Convention".

The draft law's approach also contravenes the European Court of Human Rights' application of a fundamental human rights policy of the European Community to religious freedom issues – "the need to secure true religious pluralism, an inherent feature of the notion of a democratic society".² Similarly, the Court has emphasized the importance of "pluralism, tolerance and broadmindedness, without which there is no democratic society".

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As the Court has stressed, since religious entities exist in the form of organized structures, "the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords".⁴ It would frustrate this policy of "true religious pluralism" and result in arbitrariness and unfair discrimination to exclude minority faiths from attaining the same rights and benefits of other religions simply because they are smaller or new to Austria.

The right to non-discrimination is a basic and pervasive feature of international human rights law. All the major human rights instruments guarantee that everyone is entitled to freedoms "without distinction of any kind such as...religion." These standards are emphasized in UN human rights instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

² *Manoussakis Others v. Greece*, (59/1995/565/651) (26 September 1996), paragraph 44.

³ *Manoussakis*, paragraph 41.

⁴ *Metropolitan Church v. Moldova* (44701/99) (13 December 2001), paragraph 118.

The most important finding by the United Nations on religion is Human Rights Committee General Comment No. 22 on Article 18 of the Covenant, which guarantees freedom of thought, conscience and religion. This General Comment provides the Human Rights Committee's definitive interpretation of the right to freedom of religion. The Human Rights Committee finds that:

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 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.* (Para. 2) (Emphasis supplied).

The Covenant thus clearly prohibits any attempt to discriminate against religions because they are small or are newly established in a State.

The General Comment also emphasizes the narrow permissible restrictions government may impose on religions, and the need to ensure equality and non-discrimination among religions.

In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination ... Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in Article 18... (Para 3).

Conclusion

Austria's 1998 Law and the proposed provisions to the law create a second class of religions and continue to codify Austria's ability to deny religious protections from religions that it targets. The three-tiered system and the population and duration numerical requirements contravene European Convention, OSCE and UN standards. Rather than remedying the serious deficiencies that have been universally condemned by human rights bodies in the 1998 Law, the proposed legislation perpetuates these deficiencies and then proceeds to make it worse by retroactively revoking recognition from 5 religious communities. Passage of this legislation will represent a major step backward for Austria in defiance of Human Rights Court decisions and OSCE and UN guidelines.