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INSTITUTE ON RELIGION AND PUBLIC POLICY

Analysis of the
Draft Law of the Kingdom of Belgium
To Punish the Abuse of an Individual's Ignorance or Weakness
By the
Expert Committee on Legislation and Implementation
Of the
Institute on Religion and Public Policy
Expert Committee Opinion drafted by William Walsh

Introduction

On 21 March 2006, the Minister of Justice formalized a preliminary draft law punishing the "abuse of weakness or ignorance of persons". The Minister submitted this preliminary draft law to the Council of Ministers, which approved it on 31 March 2006 and transmitted the preliminary draft law to the Council of State for review to ensure its constitutional compatibility prior to being introduced in the Parliament.

The government bill adds a new Chapter lV entitled "abuse of an individual's ignorance or weakness" as part of Title Vlll of the penal code. The key provision of the preliminary draft law submitted to the Council of State read as follows:

> Anyone abusing the ignorance or weakness of a minor or a very vulnerable individual, either due to his/her age, sickness, disability, physical or mental deficiency, illegal resident status or precarious living condition or pregnancy, so as to get that person to do an act or refrain from doing an act that would seriously endanger his/her physical or mental integrity or assets, will be sentenced to a jail term going from 3 months to 3 years and a fine from 250 up to 20.000 euros.
>
> Should the act or refrained act lead to the person's death, the sentence will be 6 months to 5 years and a fine going from 500 to 40.000 euros.

Although the language of the draft law does not specifically refer to "sects", the government's summary and explanatory statement accompanying the draft law make it clear that its primary purpose is to implement a recommendation contained in the 1997 Report of the Belgian Parliamentary Inquiry Commission on "Sects" by inserting a new article into the criminal code targeting individuals associated with "sects" which punishes the abuse of a person's weakness due to "people's indoctrination by sects".

Moreover, although the explanatory statement claims that the draft law "aims at punishing reprehensible behaviour coming from anybody and not just those taking place

within sects," the Ministry of Justice Press Statement announcing the preliminary draft law is entitled "Sects" and government statements to the press note that the purpose of the draft law is to "increase the battles against sects".

Advice of the Council of State

The Legislative Section, Second Chamber, of the Council of State provided its advice regarding the draft law on 10 May 2006.[1]

Regarding the principle relating to the lawfulness of charges in criminal legislation, the Council stressed that Article 12, paragraph 2, of the Belgian Constitution and Article 7 of the European Convention on Human Rights mandate that any actions subject to criminal charges " must be defined in terms that are sufficiently clear, specific and foreseeable for the citizens to know beforehand what actions or omissions would involve their responsibility".

The Council stressed that this principle of legality is essential to the division of powers between the legislative and judicial branches, and that criminal laws must be written with precision and accuracy in order to prevent arbitrary judicial rulings. It noted that the legality principle "means that, in criminal matters, the legislature bears the constitutional responsibility, and not just a simple obligation of caution, to provide precise rules". The scope of this obligation " means that the law is to define in specific, clear and foreseeable terms the various behaviors likely to bring prosecution and the need for accuracy must be assessed according to a reasonable way" to prevent courts "from creating new charges or applying them using the principle of analogy. It mostly aims at ensuring that laws be written up in such a way that citizens may reasonably well predict the criminal consequences of their deeds or omissions." [2]

In addition to this requirement that any criminal charge must be precise and well defined, the Council also noted that any draft law must be compatible with the right to freedom of religion or belief and other rights and freedoms recognized by either the Belgian Constitution or the European Convention on Human Rights, as vague charges would result in giving the offense a broader scope which would inevitably interfere with fundamental rights protected by these instruments.

Applying these standards to the draft law, the Council raised certain relevant observations. First, it noted that there is a need to clarify the connections existing between a "state of ignorance" a "weakness condition", "vulnerability", and the eight conditions articulated in the draft law (age, illness, disability, physical or mental deficiency, illegal residency or precarious status, or pregnancy).

[1] This decision was not made public until July 2006 when the government introduced a revised draft law and preamble in the Chamber of Representatives reflecting certain issues of concern raised by the Council of State. The Council confined its review to the legal basis of the draft law, the competence of the author of the bill, and whether the draft law fulfilled preliminary procedural requirements.

[2] The Council quoted from its Advice Nr. 34.362/4 (27/01/2003) and other Advices emanating from Advice Nr. 23.811/2 (15/02/1995).

The Council emphasized that there should be no presumption of an existing weakness condition. An indictment must prove not only that the victim was in one of the eight conditions specified in the draft law, but also that these conditions caused the victim to become ignorant, weak or vulnerable. The Council emphasized that the words "weakness" and "vulnerable" cannot be seen to be tautological concepts. Otherwise, the government would have to do nothing more than prove that one of the eight conditions exists for charges to apply.

Based on these concepts, the Council noted that the "bill's author will have to define clearly in the Preamble" connections between these terms. It emphasized that the "bill must be amended to clearly translate the legislative body's intent".

Second, the Council observed that, for an offence to be committed, it is necessary for an individual to have "driven" the victim to some action or omission seriously damaging his or her physical or mental integrity or assets and to have done so in an abusive way. This requires that the Preamble of the bill clarify that an individual had the knowledge and intention to drive the victim to action and to seriously damage the victim. There must be an abuse, such as deception or manipulation, leading to the victim adopting a behaviour that he would have otherwise never chosen to adopt.

The explanatory statement in the Preamble of the draft law sent to the Council had attempted to fulfill this requirement by noting that the "abuse can be committed using various techniques, especially the *mental manipulation ones* used to unbalance the person," thus attempting to make "mental manipulation" a key basis for the crime. However, in its advice, the Council responded by observing that, during the Parliamentary procedures of the French About-Picard law, the concept of "mind manipulation" was criticized by numerous groups and removed from the law.

Based on these observations, the Council noted:

> So in order to abide by the author of the bill's intent, while complying to the above mentioned constitutional and international regulations covering the legality of charges, it is indispensable that the bill be complemented, specifying the abuse to mean that the perpetrator adopted a specific behaviour (*the bill will define it*), and that it be not enough for him to simply have been the cause of the damaging action or omission. (Emphasis added).

In conclusion, the Council emphasized the need for the draft law to not infringe on fundamental human rights regarding freedom of religion or belief:

> It is all the more necessary to better define the proposed offence as too broad a scope could lead to problems in regards case law coming from the European Court of Human Rights.

> Thus, according to a formula used by the European Court in matters of freedom of expression and association, basic protected rights and freedoms also apply to those whose ideas or religious practices or an expression of private life may "offend, shock or worry the State or some part of the population". Restricting these freedoms can only occur if provided by law (abiding by the principle of legality of charges), if they pursue a legitimate purpose and are necessary in a democratic society marked by pluralism, tolerance and a spirit of openness, i.e. if they conform to a pressing social requirement and are proportionate to a legitimate objective pursued. (Footnote omitted).

In support of this proposition, the Council referred to a number of cases regarding religious freedom from the European Human Rights Court, notably *Hoffmann v Austria*, in which the Court held that "notwithstanding any possible arguments to the contrary, a distinction based essentially on a difference in religion alone is not acceptable."[3]

Ministry of Justice Revisions to the Draft Law

Subsequent to the Council of State's Advice, the government submitted its revised draft law to the Belgian Chamber of Representatives on 13 July 2006. The only substantive change in the language of the draft law was to add the word "fraudulently" to specify that any abuse must be fraudulent in nature :

> Anyone having *fraudulently* abused a minor's or a very vulnerable person's condition of ignorance or weakness, either due to her age, sickness, disability, physical or mental deficiency, illegal resident status or precarious living condition or pregnancy, so as to get that person to do an act or refrain from doing an act that would seriously endanger her physical or mental integrity or assets, will be sentenced to a jail term going from 3 months to 3 years and a fine from 250 up to 20.000 euros. The sentenced person might also be deprived of her rights as defined in Article 31.
>
> Should the act or refrained act lead to the minor's or very vulnerable person's death, the sentence would be 6 months to 5 years and a fine going from 500 to 40.000 euros.

The government explained this revision in the new Preamble to the draft law, noting that this revision was made to comply with the observation of the Council of State. The government provided the intent behind this revision as follows :

The fraudulent abuse assumes that tricks are being used, leading the victim to adopt a behaviour that otherwise would not have been adopted. Thus, the fraud may occur

[3] *Hoffmann v Austria* (1994) 17 EHRR 293, para. 36.

through using various maneuvers, *especially mental manipulation ones to destabilize the person or bring her under some influence.* (Emphasis added). [4]

Thus, despite the observation in the Advice of the Council of State that the concept of "mental manipulation" was criticized by numerous groups and removed from the French law, the Belgian government has not only continued to rely upon this controversial and discredited concept, it has made it the linchpin in understanding the term "fraudulent abuse" in the current draft.

Moreover, although the Council of State stressed the need to ensure that the draft law complied with the principle of legality by defining, in specific, clear and foreseeable terms, the various behaviors likely to bring prosecution, that the need for accuracy in these terms must be assessed in an objective way, and that any vague charges in the draft law would result in giving the offense a broad scope which would interfere with the right to freedom of religion or belief and other fundamental rights protected by these instruments, the revised law was only superficially changed and these concerns raised by the Council were not adequately addressed.

Indeed, the phrase "anyone having fraudulently abused a minor's or a very vulnerable person's condition of ignorance or weakness" is neither clearly defined in the Preamble nor the subject of obective and precise guidleines. This defect is only exacerbated by the government's insistence on defining the term " fraudulent " as "using various maneuvers, especially mental manipulation ones" since there is no accepted definition of mental manipulation or brainwashing in this context and the scholarly consensus is that there is neither credible nor reliable scientific evidence to support the theory of mental menipulation without physical coercion.

Compatibility of the Draft Law with International Human Rights Standards

As currently framed, the proposed legislation appears to be inconsistent with Belgium's international human rights commitments articulated in United Nations, Organization for Security and Cooperation in Europe and European Convention on Human Rights documents and decisions in that it:

- Contains vague and excessively broad provisions which would impermissibly limit the religious freedom of individuals and groups seeking to practice their religion in legitimate ways;

- Provides virtually unfettered discretionary authority, which would allow abuse of official discretion and religious discrimination;

[4] The revised Preamble also noted and adopted Council of State observations that there must be no presumption of any condition of weakness; that the term "age" in the draft law referred solely to the elderly; that any damage had to be clearly delineated and clearly defined; and that heirs are not within the ambit of the draft law.

- Authorizes impermissible intrusion in religious affairs which would have the effect of imposing limitations and penal sanctions on beliefs and core religious rites that adherents sincerely believe in and sincerely practice; and

- Contains imprecise provisions regarding “fraudulently abusing a minor’s or a very vulnerable person’s condition of ignorance or weakness” which do not contain sufficient clarity to enable an individual, even with appropriate advice, to regulate his conduct or reasonably forsee the parameters or practical application of such a law in violation of the rule of law.

Although the Council of State directed the government to ensure that the law was revised to comply with international human rights standards as articulated in European Court of Human Rights cases upholding the right to freedom of religion or belief in order to further “a democratic society marked by pluralism, tolerance and a spirit of openness,” the draft law continues to fall short of these human rights standards.The revised draft law continues to employ vague terms that defy clear definition, are incapable of objective analysis, will result in arbitrary and discriminatory enforcement of the law, and will inevitably infringe on fundamental rights such as the right to freedom of religion or belief protected by international human rights instruments that Belgium has signed and ratified.

Compatibility of the Draft Law with the Rule of Law

By way of background, the mental manipulation draft law stems from a 1997 report of 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, Pentecostals, Amish, Quakers, five Catholic groups, the YWCA 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”. This recommendation was endorsed in March 2006 by a Parliamentary Working Group in a Parliamentary Report entitled *Follow-up of the Recommendations of the Parliamentary Board of Inquiry regarding "Sects".*

The draft law ignores fundamental freedoms guaranteed by international human rights treaties under the pretense of protecting them. The draft law presumes that religious beliefs are “dangerous” and require specific measures against them. It also presumes that proselytization and other manifestations of religion by individuals associated with targeted religious groups or the groups themselves constitute some form of “mental

manipulation" without referring to any reliable scholarly or scientific support for this novel theory of culpability.

Terms such as the "fraudulent abuse of the weak position or ignorance of a person" are extremely vague and open to excessively broad interpretation, allowing for arbitrary and discriminatory application. Such a vague provision places the fate of religious organizations and their adherents at the mercy of officials implementing the law. Laws which are excessively vague, which are discriminatory in intent and application, and which allow for the imposition of draconian measures on religious communities and their parishioners are incompatible with the rule of law in a democratic society and thus violate fundamental rights protected by all major international human rights treaties.

Thus, in *Hasan and Chaush v. Bulgaria*, the European Court of Human Rights held that the government's actions against a Muslim community were improper due to impremissibly vague laws. The Court found that the requirement that government actions must be "prescribed by law" in matters relating to freedom of religion or belief means that :

> The law should be both adequately accessible and foreseeable, that is formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct ....For domestic law to meet these requirements it must afford a measure of legal protection against arbitrary interference by public authorities with the rights safeguarded by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any discretion conferred on the competent authorities and the manner of its exercise.[5]

Hasan stands for the proposition that the rule of law principle requires precise legislation that does not allow for broad discretion and unforseeable application of the law in matters relating to religion or belief. Yet, the draft law suffers from the same defects that led the Human Rights Court to find that the Bulgarian law violated the right to freedom of religion or belief guaranteed by Article 9 of the Convention.

Likewise, the vague terms of the draft law contravene Article 7 of the Convention. As the Council of State stressed, Article 7 is not confined to prohibiting the retrospective application of the criminal law to an individual's disadvantage. It also embodies the principle that the criminal law must not be extensively interpreted to an individual's detriment. This principle stands for the proposition that an offence must be clearly defined in law. This condition is satisfied where the individual can know from the wording of the relevant provision what acts and omissions will make the person liable. Charges must be defined in terms that are sufficiently clear, specific and foreseeable for citizens to know beforehand what actions or omissions would involve their responsibility.

[5] *Hasan and Chaush v. Bulgaria*, App. No. 30985/96 (ECtHR, 26 October 2000).

The European Court has emphasized the need for foreseeable and accessible charges in a number of cases. [6] Yet, the draft law falls far short of these standards.

The draft law is strikingly similar to a "mental manipulation" penal offence, referred to as "plagio," enacted by Mussolini's government in the 1930s and struck down by the Italian Constitutional Court in 1981 for the same reasons that the Human Rights Court struck down the Bulgarian law in *Hasan*. [7] As the Constitutional Court emphasized in its decision, influence and even "psychological subjection" are a "normal" part of relationships between human beings and it would be virtually impossible to define and establish precise guidleines in this area:

> Typical situations of psychological dependency ... can reach degrees of intensity even for long periods, such as a love relationship, the relationship between priest and believer, teacher and pupil, physician and patient .... But practically speaking it is extremely difficult, if not impossible, to distinguish, in situations such as the instant cases, psychological persuasion from psychological suggestion and to differentiate between them for legal purposes. No firm criteria exist for separating and defining each activity, tracing a precise boundary between the two.

The Italian Constitutional Court went on to highlight the arbitrary and discriminatory nature of "psychological pressure" laws.

> A detailed review of the various and conflicting interpretations of Article 603 Penal Code, both in law studies and in precedent law, clearly shows the imprecision and vagueness of the law provision, an impossibility to assign to it an objective content, that is consistent and rational; it shows therefore an absolute arbitrariness of its practical application. It has been correctly compared to a drifting mine within our law system, since it could be applied to any fact that implies mental dependence of a human being from another human being, and since it lacks all certain parameters in order to establish its intensity.

The Constitutional Court struck the offence from the penal code because "*its specific traits could not be reliably and rationally specified"* and because it was "*clearly impossible to find in real life a situation of total subjection."*

It is important to note that, although the Constitutional Court struck the law based on the vague character of the statute, the Court found that *any mental manipulation law* must by its very nature be impermissibly vague and overbroad, since there is no accepted definition of brainwashing in general and the scholarly consensus is that there is neither credible nor reliable scientific evidence to support the theory of mental menipulation without physical coercion.

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[6] See, e.g., Judgement of 27 September 1995, *G v. France*, A-325-B,p.38 ; Judgment of 22 November 1995, *S.W. v. United Kingdom*, A.335-B, pp.41-42.

[7] Corte Costituzionale, *Grasso* judgement of June 8, 1981, No. 96 in *Giurisprudenza Costituzionale.*

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.[8]

Neither the Working Group Parliamentary Report recommending such legislation nor the Preamble accompanying the draft law acknowledge the existence of an overwhelming body of scholarly literature that challenges the validity of mental manipulation theories. Major studies by the leading authorities in the field and by organizations such as the American Sociological Association debunk the myth of brainwashing as it applies to new religious movements.[9] 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 report.[10]

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 be resorting to normal legal methods. Consequently, they did not recommend taking any political or legal measures that encroach upon international human rights norms.[11] 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".

The study recently commissioned by the Belgian government and conducted by the Catholic University of Louvain also concedes that the current conclusion coming both from foreign scholars dealing with minority 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*

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[8] Dick Anthony, "Religious Movements and Brainwashing Litigation", *In Gods We Trust: New Patterns of Religious Pluralism in America,* 2d. ed. (New Brunswick 1990); *Brainwashing and the Cults: The Rise and Fall of a Theory,* J. Gordon Melton (2005)

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[9] See, e.g., American Psychological Association Memorandum of July 11, 1989 filed in in the case *David Molko and Tracy Leal vs Holy Spirit Association for the Unification of World Christianity, et al.* (Supreme Court of the State of California, No. SF 25038).

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

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

for radically changing people's idea, will and concrete everyday life, especially against their own will". [12] (Emphasis added).

Yet, despite the finding in the government's own study that the concept of mental manipulation has received *no empirical confirmation*, the Preamble to the draft law attempts to make mental manipulation the lynchpin to define the term " fraudulent " in the draft law.

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. [13]

In order to separate science from pseudo-science, scientific analyses must produce trustworthy conclusions that may be applied in penal cases by the courts. Yet, the concept of "abuse of weakness or ignorance of persons" is so vague that it cannot be tested and proved or disproved in any given case, rendering it impossible to be used fairly and objectively as a standard to punish an individual in a criminal trial.

Legislation based on such extremely vague language allows for too broad of an interpretation that will inevitably result in arbitrary and discriminatory application of the law by permitting almost unfettered discretion by government officials to use the criminal laws as a weapon to repress minority faiths. Passage of such legislation – based on the widely discredited notion of "mental manipulation" – would represent a serious setback for religious freedom in Belgium. Under such circumstances, the Belgian draft legislation is not compatible with international human rights standards regarding the rule of law.

Compatibility of the Draft Law with the Right to Freedom of Religion or Belief

As the Council of State observed, it is especially important that the draft law be precise and clear so as to not infringe upon the fundamental right to freedom of religion or belief. Yet the vague and overbroad terms used in the draft law place the fate of all religions at the mercy of official interpretation of the law, which will inevitably lead to arbitrary and

[12] *Contested Religious Movements: Psychology, Law and the Policies of Precaution* (Catholic University of Louvain 2005*)*.

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

discriminatory enforcement while effectively chilling the rights of all members of the religious community in Belgium and directly infringing on the rights of those targeted.

The nature, aim and purpose of the draft law is to target religious communities. The draft law is so vague and extensive that its enactment could have a deleterious effect on even officially religious communities, notably Catholicism and Protestantism. Although the draft law represents a danger to all religions, its primary targets are religious communities derogatorily designated as "sects." These groups are being targeted on the basis of broad and vague standards which could just as easily be applied to all religions, but which are not so applied due to the discriminatory motives underlying the draft law. Such draft laws violate the prohibition against religious discrimination contained in Articles 2, 18 and 26 of the International Covenant on Civil and Political Rights, Articles 9 and 14 of European Convention on Human Rights, and the OSCE's general commitment to freedom of thought, conscience, religion or belief articulated in Principle VII of the Helsinki Final Act. This right to be free from religious discrimination is particularly important to members of targeted religious movements which are the subject of special laws against "sects" as they are denied the same guarantees of religious freedom provided to the historical religions.

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 targeting "sects", on the other hand, are discriminatory and endanger the religious liberty of every citizen.

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.[14] The European Convention on Human

[14] 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

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 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. [15]

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. Yet, these rights and these presumptions are completely ignored in the draft law.

In addition, the 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 manner," and "any distinction based on religion or belief should be supported by reasonable and objective criteria in pursuit of a legitimate aim under the ICCPR".[16]

Distinctions based on classification of religions into two groups, one considered acceptable by the State and classified as "religions" or "mainstream religions" and the other considered unacceptable by the State 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. There is no legal justification for such classification. Indeed, classifying religious groups into "religions" and "sects" is itself 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."

As the Human Rights Committee has noted:

> 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.

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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).

[15] *Kokkinakis v. Greece*, 17 EHRR 397 (1994).

[16] General Comment 22.

Likewise, the former UN Special Rapporteur for Religious Freedom rejected the type of classification that forms the methodology of the draft laws:

> 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. [17]

The UN 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.

European Human Rights Convention jurisprudence 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 in *Hoffman v. Austria*, a case referred to by the Council of State in its advisory opinion, that disparate treatment based upon differences in religion violates the right to be free from religious discrimination under Article 14 of the European Convention.[18]

International legal standards mandate that new religions or religious minorities which 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, the draft legislation adopts a distinctly unequal and intolerant approach toward religious minorities that leads Belgium down a path of intolerance.

This standard of non-discrimination toward minority religious groups is consistent with the European Court's policy, as noted in *Manoussakis and Others v. Greece*, (1996) 23 EHRR 387, to "secure true religious pluralism" and to "exclude any discretion on the part

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[17] 1996 Annual Report by the Special Rapporteur on Religious Freedom to the United Nations Human Rights Commission

[18] *Hoffmann v Austria* (1994) 17 EHRR 293, para. 36.

of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate."

As a matter of law, restrictions on religious freedom, including the right of an individual to manifest one's belief through adopting the religion of one's choice and the right of a religious organization to manifest belief through proselytism, are only justified if Belgium can demonstrate that such restrictions fall within the narrow limitation clauses of the relevant international instruments. Any attempt by the State to interfere with religion must be "strictly necessary" to fulfill a "pressing social need" that "is proportionate to the legitimate aim pursued". [19]

Yet, the draft laws provide no factual foundation to justify State intervention and no legal justification whatsoever to restrict fundamental religious freedoms. The explanatory statement and the legislation completely ignore unequivocal findings in the scientific and academic community that no serious issue of such mental manipulation exists.

Even though it provides neither a factual nor a legal basis for restrictions of religious freedom, the draft laws advocate an interventionist approach by the State to ensure that its citizens are "protected" through legislation and policy in Belgium towards proselytism by "sects". This attempts to make the Belgium government arbiter of the proper choice of religion for consumers in the religious marketplace. These laws in essence attempt to justify policies to dissuade people from making particular religious choices and to penalize religion organizations that manifest their religion through proselytism and religious practices based on the State's view on the propriety of those choices rather than neutral criteria applicable to all religious groups.

Such an approach is inherently biased and violates the strict requirement of neutrality mandated by international human rights law. The European Court has instructed governments "to remain neutral and impartial" and has been loathe to accept any restrictions on religion, viewing any contested measures with "strict scrutiny". [20] Likewise, the Court has found that "the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate."[21]

Moreover, the right to freedom of conscience 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 OSCE Advisory Panel of Experts on Freedom of Religion or Belief note in the OSCE publication *Guidelines for Review of Legislation Pertaining to Religion or Belief :*

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[19] *Metropolitan Church v. Moldova* (44701/99) (13 December 2001), paragraph 119.

[20] *Metropolitan Church*, paragraph 117*; Manoussakis*, paragraph 44.
[21] M*anoussakis*, paragraph 45*; Metropolitan Church*, paragraph 117.

> 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.[22]

Conclusion

Under such circumstances, the proposed legislation would violate the right to freedom of religion guaranteed by Article 9 of the European Convention, Article 18 of the ICCPR, and the OSCE Concluding Document of Vienna, paragraphs 11, 16.1-16.7 and 17. In addition, the vague and overbroad terms of the draft law regarding "fraudulently abusing a minor's or a very vulnerable person's condition of ignorance or weakness" do not contain sufficient clarity to enable an individual, even with appropriate advice, to regulate his conduct or reasonably forsee the parameters or practical application of such a law in violation of the rule of law and Article 7 of the European Convention.

The Institute accordingly urges the Belgium Parliament to not enact the draft legislation as currently drafted in order to ensure that Belgium complies with its United Nations, European Convention on Human Rights and Organization for Security and Cooperation in Europe Commitments.

[22] *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).