

REGISTRATION OF RELIGIOUS COMMUNITIES IN EUROPEAN COUNTRIES

Abstract

In the text regimes of religious community registration by statutory law in European countries is reviewed. Although freedom of religion is declared as a principle at the European level and individual constitutional provisions, varied obstacles to registering religious communities are set. They may reflect fear of abuse of religion or the intent to safeguard the hegemony of a traditionally entrenched religion. Some of these obstacles are historically entrenched, whereas in post-Communist countries they have been set during democratic reconstruction.

States differ in conditions for registration, in bodies competent to act upon such supplications, procedures in reviewing them and in practice. A trend toward reaching the standards set by the European Convention on Human Rights may be discerned.

The major policies of the Venice Commission regarding religious liberty and a number of standard setting judgments by the European Court of Human Rights, regarding religious liberty, particularly within the registration of religious groups are reviewed in continuation. These policies and judgments ensue from a strict vision of individual and collective religious rights and may collide with traditional religious cultures favouring an entrenched church, within various confessional traditions in Europe. These opinions and judgments present a limited but important instrument of affirmation of religious liberty and suppressing state arbitrariness in the treatment of religious freedom, particularly of minority groups and beliefs. Problems of Orthodox cultures are stressed.

Key words: registration of religious communities, religious liberty, church and state, separation of church and state, Council of Europe, European Court of Human Rights. Art. 9 of the European Convention of Human Rights, Venice Commission.

1. Introduction

The most general and point-of-departure normative rule of religious life in Europe, considered at least verably without contest, is the one enshrined in Art. 9 of the European Convention of Human Rights. It deals with the general freedom of religion, at the individual and the collective level, the right to testimony, to carrying out one's conviction.

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It does not pursue however, from this, that the right is so general and self-understanding that it would not be necessary to govern it and that a declaratory provision of 'religion being free' would suffice. The need to govern this issue pursues, on the one hand, from the very nature of religion, which manifests itself in various and the definition of which is contestful and even 'changable' (Introvigne, 1999), and on the other, from the history of Europe, which was rich in state and privileged religions, whereas freedom of religion was affirmed more recently and always in a struggle with a ruling religion. More precisely, even today, there are states with a state religion, or a position close to such a one, like Great Britain and Greece. However, a more precise inspection of the normative order of religion would need to speak of the manner of achieving freedom of religion in practice. The sole designation of a state holding a state religion does not yet necessarily mean that religious freedom is truly more limited in comparison other systems of governing religion, as today's arrangements are all complicated and serve their ends to different extents, being mixed with historical antecedents, sometimes burdening them, at other times proving flexible for the current situation.

Thus, it is difficult to imagine a European country, where religious freedom regulation would be limited to an extent found in the First Amendment to the US Constitution, which is supplemented primarily by judicial decisions and interpretations, whereas legislative regulations are mainly those pertaining to tax and health law. Nevertheless, the Venice Commission in its directions regarding legislation pertaining to religion and faith (71/2004), warns that with regard to legislation it is not necessary to rule in many instances states consider it so (point 1), pointing to it being possible to rule on such matters in administrative and criminal law, without creating a law on religion.

Formal establishment, i.e. registration of religious communities is a delicate issue because with such a status, entitlements and privileges are attained, along with a general esteem. Lack of registration, according to the intents of the Convention and of the European understanding of this right, should not be an impediment for religious activity per se, as religious activity should be free without registration as well (underscored in the Directions, particularly as some religious communities do not intend to register and do not intend to act publicly, which is to be observed as part of religious freedom (Point 8). Thus, special attention to this issue is understandable, and particularly to prevent the registration of communities, which by their nature are not religious. The best known such instance is the one pertaining to the Church of Scientology, which has been the motif of suits and judicial contests in many European countries. Furthermore, some states – from time to time – establish special state agencies to surveil 'dangerous' actions on the part of 'quasi-religious' institutions, particularly by the so called manner of 'brain washing' of the young. The best such known case is the one pertaining to France. Such attempts, in Europe and in the US, have not been confirmed by the existence of 'brain washing', nor of the justification of such campaigns and measures. Science designates such phenomena as 'moral panics', as unwarranted fear and its instigation (Richardson and Introvigne, 2001).

Thus, on the one side stands the Convention, whereas it is confronted, on the other, by the national transition and the relationship of powers within the states. This is the basic framework within which the conditions for the procedures to register religious communities are established. We are using the term religious community as a general

designation for all religious groups and institutions. From art. 9 of the Convention it would pursue that any classification of such communities is not permissible. Philosophically, differentiating between registered and unregistered communities can be contested, as religious freedom is boundless and supposes the equality of all groups in treatment by the state. Asking for registration on the part of the state might soon mean discrimination, which is strictly prohibited.

The consequences of introduction of registration for religious freedom can be somehow facilitated by introducing few and minute conditions for registration, but most particularly by allowing religious activity on the part of unregistered communities, which is, with regard to statutory law, not the case with Belarus and the Ukraine, meaning an infraction of the Convention.

Religion is a phenomenon having its parallel in the absence of religion as a world view and as a basis for association. Among the few states to envisage this explicitly is Belgium, in art.9 of the Constitution adopted in 1993, enabling state financial support for 'state recognized associations extending moral services' (Robbers /ed./, 2005 14) Venice Commission expressly underscores the need for an equal treatment of agnostics and atheists on the part of the state, along with the religious (Directions, Section A3).

2. National conditions and procedures for registration: basic data

- **Albania** has no particular statutory act on religious communities. Such communities may be registered in conformity with the Act on Non Profit Organization, in accordance with which they attain legal entity status. Durham et al. consider it a flexible system (2005, XXII), but it is difficult to imagine a parity of historically entrenched religious communities.
- In **Armenia**, to be registered organizations need to prove being »free of materialism and to be completely spiritual in nature«, they must number at least 200, must be founded on 'historically recognized spiritual writs'. Such demands are doubtlessly outside the Convention requirements. To ne važi za zajednice nacionalnih manjina. Registration is carried out by a registrar of religious communities. (<http://www.state.gov/g/drl/rls/irf/2008/108433.htm>)
- **Austria** has a complicated and fragmented system. Beside the Roman catholic Church, the position of which is defined by Concordats, there are other traditional religious communities, the position of which is determined by contracts, which are no longer possible to be entered into, because of rulings by the Constitutional Court. Now, there are two modes of establishing religious communities: (1) Pursuant to StGG from the XIX century religious communities are established as public law entities. Their membership must amount to at least 2% of inhabitants and the existence during 16 years is a condition. A decree on establishment is adopted. Such a solution is invoked in transition countries when wanting to make registration restricted. (2) According to the Law on religious communities from 1998, religious

communities are registered with an administrative agency, attaining only private legal person status. In the applications names and signatures of 300 persons, residing in the country must be contained, who do not belong to any other community. The administrative agency determines whether there is a contrariness with public order, public health and morality, as well as rights of others, in which case it rejects the application.

- **Belgium** recognizes only 6 confessions, as defined by statutory law, as well as secular associations. Other associations of a religious nature may also operate, but within the tax system to be considered religious, they need to contain a notion of a divinity, which is the result of judicial procedures. (ROBBERS (ed.) 2005, 16). For registration 10.000 members and a 'longer presence' are necessary. (Šturm 2004, 74).
- **Belarus** recognizes, according to the Act on Religious Freedom (2002), beside the Byelorussian Orthodox Church and traditional communities which are enumerated in the Act (not including Staroobrydci), a division into 3 groups: religious communities, religious associations and national religious associations. The first must number at least 20 persons of age living in the direct vicinity. The second need to number at least 10 associations, of which one needs to be 20 years of activity and must be constituted at the national level. The third category is established if it is active in at least 6 provinces. At registration, the religious community files data on itself, including data on doctrine, 'if it is not known to the authorities'. The submission must contain signatures of all members, whereas the registration being mandatory (art. 17). So far no such communities have been registered. (<http://www.state.gov/g/drl/rls/irf/2008/108436.htm>). Activity without prior state approval is prohibited. Durham et al. 2005 XIX).
- **Bulgaria**, according to the Act on Religious Communities (2002.) appoints registration authority to the judiciary for all communities, except for the Bulgarian Orthodox Church as 'traditional', the court being authorized to revoke the registration permanently or for a time period, if the entity were to act contrary to public order, health or morals (art. 8), extending wide authority. Cases of Islamic and Jehovahist entities having difficulty are noted, with regard to registration.
- In **Croatia**, substantial conditions for registration contain having 500 members and the presence of 5 years to be registered as a private legal entity before being registered as a religious organization. (Zakon o pravnom položaju verskih zajednica iz 2002., čl. 21).
- In **Cyprus**, religious communities are registered as private associations, not being entitled to any particular rights on the basis of their religious nature, except for the state Greek Orthodox Church which is not 'a state agency' (Robbers (ed.) 2005 241).
- Beside historical communities in **the Czech Republic**, the act of

1992 demanded, regarding registration, 10.000 members or 500 members, of the organization was associated with the World Council of Churches (Robbers (ed.)2005 46) The act of 2002 defines terms for registration in a more liberal manner, indicating 3 persons of age applicants (Title 3, Section 9), but groups 'conducting psychological pressure' or 'violating the psychological developments of minors' are disallowed (Title 2, Section 5 of the Act). The applications also needs to contain the usual data on the community, seat and organization. It requests indicating association with foreign organizations.

- **Estonia**, according to a law from 2002 requests 12 adult persons to file a request, which is to be filed with a court.
- **U Finland**, where a state church exists (Lutheran), religious communities may established by application to the patent office, in conformity with the Act on Religious Freedom of 2003, where 10 founders need to be noted (Robbers (ed.)2005 525). The same agency issues the registration decision.
- In **France** the conditions for the registration of a (statute from 1905) 'cult association' (always of a local nature, to prevent the influence of the Roman Catholic Church), a clear cult (religious) nature, carrying out the cult activity solely and conformity with public order are conditions apply to district administrative authorities, which grant registration permits. Numerous Protestant and Jewish communities have conformed to these requests, whereas the Catholic church did not. Courts have interpreted restrictively the conditions, including regarding New Age communities and other questionable communities. Some communities were stripped of their registration. Criminal prosecution of deceptive activity with respect to religion exists. (Robbers (ed.) 2005 167). An inter-ministerial council for monitoring 'dangerous' cults operates.
- In **Georgia**, a low number of members is required for registration as non-profit organization, which many communities refuse to do (Forum 18, 861). Although the state is not small the number of applicants is set at 5. (<http://www.state.gov/g/drl/rls/irf/2008/108447.htm>,
- In **Germany**, where registration is within jurisdiction of the lands, proven permanence is considered as a condition, whereas the constitutional Court added loyalty towards the country's legal order (Robbers (ed.) 2005 82) Postoji šarenilo rešenja. *Bavaria*, possibly the most conservative in this respect, requests, a registration of a community that at least 0,1% adherents in the population of the land (Šturm 2004, 74).
- In **Greece** the most difficult condition for registration is to attain the consent of the local Orthodox bishop, whose opinion is usually a negative one. This is now overcome by an appeal to the Council of State, which usually grants the appeal (Robbers (ed.) 2005 125). Be-

side this, the petition must contain explicit doctrine and ritual, which may not violate public order and moral principles (art. 13 of the Constitution, Robbers (ed.) 2005 124). There are specific limitations for Muslims, who are disallowed to established outside Thrace, where Muslims are under international legal protection. The Ministry of Education has rejected the registration of the Church of Scientology, explaining it 'not to be a religion'.

- From information at our disposal, it pursues that administrative practice in **Holland** is liberal. In recent judicial practice it was found that registration presupposes a 'structured organization' and that 'religion needs to be present' (Robbers (ed.) 2005 375-6).
- In **Hungary**, after the reregistration of communities registered before enforcement of that act of 1990, churches (this is used as a gender term) are registered with district courts, after submitting proof of 100 or more members as founders, along with the presentation of the organizational structure, which needs to be 'elective' (Robbers (ed.) 2005 331)².
- From the report by J. Casey, it pursues that in **Ireland** religious communities (beside the historic ones) are established as usual associations and share their legal position (Robbers (ed.) 2005 187-208).
- In **Italy**, after the Concordat system of arrangement was replaced by a contractual one (1984), the contractual manner of establishment and arrangement of the legal status was applied to other religious communities as well (with the difference that the contract was not an international one, as in the case of the Catholic Church, thus not having same effect. These contracts are confirmed by the parliament. In this way equality is not (art. 8 of the Constitution) fully achieved, but 'equal freedom' is. Beside this, a law from 1929 (no. 1159) is in force. It enables registration of religious communities without tax and education entitlements. These are attained only when legal entity status is attained. Ferrari considers that administrative agencies have too great discretionary latitude at accepting i.e. non-accepting applications of registration by the act of 1929 (Robbers (ed.) 2005 214).
- The Act on Religious Freedom of 2006 governs that in **Kosovo**, religious communities are registered as non-government organizations with the Ministry for Public Services. Such a solution was criticized by some religious prelates (<http://www.state.gov/g/drl/rls/irf/2008/109483.htm>)
- In **Latvia**, according to the Act on Religious Communities of 1995, congregations not belonging to known religions must register yearly in order to determine 'their loyalty to the state'. From the wording of art. 8., para. 3, it pursues that the director of the Council for religious Organizations has the discretionary right to register a community.
- In **Lithuania** registration is separated from the attainment of legal

² In 1993 a legislative draft was considered in Hungary, envisaging 10.000 members or a 100 year presence as condition for registration (Durham et al. XII).

entity status. To be registered 15 persons belonging in 2 communities are required. State recognition (a higher status) is attained by parliamentary decisions, after operation in the state for at least 25 years. Only at this stage is legal entity status attained. Religious communities need to conform to morality, even to tradition of Lithuania (Robbers (ed.) 2005 289). In this manner, the Baptist church attained status (Robbers (ed.) 2005 290). The procedure is complicated, supposing a favorable opinion by the Ministry of Culture. 'Other (non-traditional)' communities are also known, i.e. recognition is not a condition for operation.

- In **Luxembourg** there is no religious community registration, but they are established by contract between the state and the community (due to the Concordat with the RCC of 1801, which is technically still in force. Without the contract, communities have a civil status, not a religious one.
- In **Macedonia**, regarding registration special problems exist with the Ohrid Archbishopric of the SOC, which is not being treated here. The registration petition by the Reformed Christian Adventist Church was rejected in 2008. In 2008 a new act was adopted not containing details of procedure, enabling arbitrariness (Forum 18. (<http://www.worn.org/article.php?idd=28139&sec=59&con=46>).
- As pursued from the report by Misfud Bonnici (Robbers (ed.) 2005 331-365) in **Malta** there is no formal registration procedure.
- In **Moldavia** there is a single type of religious community. It is the community recognized by the state. In the application, the doctrine, organization, mode of operation are designated, whereas leadership must be of Moldavian citizenship. It is noted, although the wording is not clear, that the government has discretionary power at deciding on registration. moldavskog državljanstva. (Judgment by ECHR 45701/99 ESLP of 13. Dec. 2001.) Within administrative procedure there is no appeal. The Ministry of Justice does not implement a judgment on the Registration of the Pentecostal Christian Church, where it was initially alleged that the original application did not contain signatures by the petitioning members. Jurisdictional conflicts exist regarding various Orthodox churches (<http://www.state.gov/g/drl/rls/irf/2008/108460.htm>). It is alleged Moldavia did not respect advice from the Council of Europe on setting the number of petitioning members below 100.
- In **Montenegro**, an act adopted in 1977 is in force, making registration easy, although not being adequate in other respects.
- In **Poland** there are religious communities established in two manners. A significant number is established by a special law governing the particular community, including Jehovah's Witnesses. The act of 1989 envisages registration with an administrative agency (the Ministry of Internal Affairs). According to changes of this Act, a membership of 100 citizens is requested at registration, and the applications

should contain notes on goals, doctrine, ritual, seat and statutes. Informations on financing sources are also sought. (Durham et al. 2005 XIII), The application may be rejected from standard reasons set in the Convention, interesting being the case of the Raellian community which was rejected, as it was alleged the first human cloning was carried out within it, in contradiction with 'the right to life' (Robbers (ed.) 2005 427-8).

- In **Portugal** the Roman Catholic Church a position defined by a Concordat entered into in 2004, whereas other communities are registered. It pursues, from the report by Canas, conditions for registration are not demanding, but conditions for attaining the position of an 'entrenched' community are demanding: existence in Portugal within 30 years in an 'organized form', whereby a series of privileges is acquired, including the entitlement to celebrate marriage and tax privileges (Robbers (ed.) 2005 451). Thus, the state undertakes a task the reporter criticizes.
- **Rumania** had, until 2006. no particular statutory act on religious freedom and communities (except for an antiquated law from 1948. which does not govern registration). For a period communities could have been registered as non-profit organizations, whereas communities existing prior to World War II were recognized as entities. According to decree no. 63 from 1998 new communities could be registered with the state secretariat for religions. This body is 'authorized to review the applications, propose recognitions, monitor and decide on renewals of churches and other religious buildings'. A prior consent is received by a court. Such a solution is considered as one of the most arbitrary in Europe. (Durham et al. 2005 XIII). The Act on Religious Communities of 2006 is very restrictive regarding registration: for the attainment of a full position (within a tripartite classification) a membership of 0.1% of the population and presence of 12 years as of the enforcement of the act is requested (Institute for Democracy and Religion Report 24., Sept. 2008).
- In **Russia**, according to the Law of 1997, there are 3 categories of religious communities, with respect to registration. (1) A religious group carries out ritual and instruction. It is not registered and does not have legal entity status, cannot open a bank account, assets, cannot publish written materials, has no tax easements. It is obligated to report to local authorities on its activities. (2) A local religious organization is registered when numbering a minimum of 10 members citizens in one vicinity, provided it is part of a centralized organization or that it had existed factually for 15 years. It attains legal entity status. (3) Centralized religious organizations are composed of at least 3 local units, they are entitled to have further branches and after 50 years of existence they gain the right to use the term 'Russian' in their title (<http://www.state.gov/g/drl/rls/irf/2008/108468.htm>). In both cases of registration the state needs to be informed on the

doctrine regarding the family, marriage, upbringing, health and civil duties. On these issues no standards have been set as to acceptability opening a possibility of arbitrariness on the part of the state (Durham et al. 2005 XXIV).

- In **Slovakia**, according to a law adopted in 1992, membership of 20.000 permanent residents of age is required, whereas religious organizations operating at the time are registered ex lege. In this manner the Jehovah's Witnesses were registered. (Robbers (ed.) 2005 503).
- In **Slovenia**, registrations from the previous political system were upheld (as of 1976 on). According to legislation currently in force, religious communities are registered by an administrative agency (the Office for Religious Communities). The legislation adopted in 2006 defines that the Office determines whether the following conditions are met: 100 members of age and with permanent residence, description of doctrine, organizational information, securing publicity and other technical information (art. 13 and 14 of the Act on Religious Freedom of 2006.) the Church of Scientology has been registered. If unregistered, religious communities have no financial easements.
- In **Serbia**, according to the Act of 2006, registration supposes, among substantial conditions, a founding signature by 0,001% of the total population.
- In **Spain**, communities may be registered (beside those already established by Concordat or contract) permit issued by an administrative agency. Conditions to be met in the application are: religious goal, identity, rules, bodies (art. 5 of the Act on Religious Freedom 1980.). By judicial decisions, conditions have been set in detail regarding membership, truly religious nature of the teaching (Judgment by the Constitutional Court 46 of 2001 (Robbers (ed.) 2005 147). Recently, registration of the Church of Scientology was denied by the Ministry of Culture, corroborating 'it was not a religion'. Registration of the Islamic Community outside its traditional area of Arab inhabitation has also been denied. (<http://www.state.gov/g/drl/rls/irf/2008/108449.htm>).
- In **Sweden**, beside the once state Church of Sweden, other communities may be registered as of the act of 1996, attaining in principle the same status (Robbers (ed.) 2005 540). According to the Decree on Religious Communities of 1999, they register with an administrative agency (Agency for Legal, Financial and Administrative Services) by informing it on title, seat, responsible persons, statutes and other pertinent technical data. A substantial condition is that the community need to have as goal 'divine service' and that it has a significant membership in Sweden or in the world. Application is rather liberal. The Church of Scientology succeeded in registering by this condition. The Buddhist community is also registered, in spite of difficulties regarding this condition.

- In **Switzerland**, governing religion is part of canton jurisdiction and they register communities, maintaining mainly the privileged position of historical communities (<http://www.eurel.info/EN/index.php?RuBintialeSS=Legal%20status%20of%20religions&intrubrique=Main%20texts&pais=23&rubrique=153&no mpais=Switzerland>). The Church of Scientology is not registered, by judgment of the Supreme Court, which pointed to the substantial reason (after rejecting at the level of cantons, although it acts as 'mission').
- In the **Ukraine**, religious communities may be registered at the local or at the national level. In both cases 10 they must have a membership of 10 persons of age. Without registration, legal transactions may not be carried out, publications may not be issued. Applications are filed with the All-Ukrainian Council for Nationalities and Religious Organizations. Other religious entities may carry out religious activities only upon invitations of an already existing community, which is a limitation surpassing the European Convention. Numerous difficulties at the registration of the Islamic Community are reported, including those of a jurisdictional nature. (<http://www.state.gov/g/drl/rls/irf/2008/108477.htm>).
- In the **United Kingdom**, beside the technically state Anglican Church and Church of Scotland and other traditional churches, religious communities are established as private societies (associations). By special regulations, separate entitlements are achieved regarding buildings as religious facilities, as to celebrating marriage, as to tax deductions. A fragmented judicial practice exists as to this (Robbers (ed.) 2005 562). The system is completely different than others, status of the religious building may be central in nature, being in jurisdiction of local authorities, later reaching the judiciary. In spite of the existence of technically state churches, Britain guarantees a high level of religious freedom by this type of registration.

3. The Council of Europe: The Venice Commission and the European court of Human Rights in action

The Council of Europe has two active instruments in influencing the factual protection of human rights: (1) The European Court of Human Rights, which may be addressed by individuals and legal entities, upon exhausting legal redress in respective countries and which passes judgments, where states may be condemned and penalized for infracting human rights, as enshrined in the Convention, and (2) the Venice Commission, a body of experts giving advice on legislation being drawn in member countries, with regard to issues of human rights, religious right arising often on the agenda. The Council of Europe has other instruments as well, but these are the main ones.

The European Convention, with respect to religion, often collides with a mighty historical traditions of European countries, with respect to religion, where traditional

churches prevail (with exception of a few multiconfessional ones, e.g., Switzerland, Germany, United Kingdom, and the Netherlands³). It is evident that great variety exists regarding registration of religious communities among European countries, all signatories of the European Convention of Human Rights, adopted in 1950. In practice, there are restrictions and even discriminatory actions on the part of state agencies at the implementation of freedom of religion level implementation, reported by Forum 18, a non-governmental organization (<http://www.forum18.org>) in greater detail. Factual registration practice is such that it may be said in numerous cases religious liberty is not equal, this certainly goes for Belarus and the Ukraine, as well as Moldova, where religious activity is not allowed without prior registration. Slovakia with the census of 20.000 members is also certainly outside the limits of the Convention, regarding protection of religious liberty. The intention to abide by the Convention technically only is also visible in case of Malta where the Constitution states, regarding the privileged status of the Roman Catholic Church,

Another example of intent to bypass the objectives of the Convention pursues from the following provision of the Constitution of Malta: 'Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subarticle (providing for freedom of conscience), to the extent that the law in question makes provision that is reasonably required in the interests of public safety, public order, public morality or decency, public health, or the protection of the rights and freedoms of others, and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.' (Art. 40, para. 1) This is a veil to privilege the only church mentioned in the Constitution. A series of limitations of freedom of conscience are set as being admissible.

The Hungarian Constitutional Court found that 'the treatment of churches as equal does not exclude taking into consideration true social roles of individual churches'. (case 4/1993, quoted in Robbers (ed.), 2005, 331), indicating the same trend of circumventing true separation and equality of religious groups.

It could be assumed that systems with state churches are more restrictive as to registration than systems with separation. The former group is composed of the British, Danish, Greek, Maltese and the Finnish system. Express instances of early separation are to be found in the French and the Dutch political systems. However, detailed comparisons of the French and the British, particularly the English situations demonstrate that in England religious freedom is served more, as there is no state control, such as threatens in France particularly in issues as 'dangerous cults'. Religious liberty, of course, does exist for the minority protecting it from being persecuted. The notion of 'sects deserving reprehension' and struggle against them by an inter-ministerial body is a French invention, followed by some countries, among which Poland. This seriously limits religious freedom /Ministère de l'Intérieur: direction des libertés publiques et des affaires juridiques, circulaire du 20 décembre 1999 sur la « Lutte contre les agissements répréhensibles des mouvements sectaires », Int. 9900262C).

It is easy to conclude that the European Convention was not usually the point of

³ At closer inspection, many countries have historical and protected religious minorities of Jews or other groups, e.g. Austria, respecting the religions which had recognized and privileged position in Imperial Austria (does not hold identically for Hungary).

departure in drafting the legislation in European countries, regarding religious liberty in its collective form of protection. Beside transition countries (which also adjusted their systems under the impact of hegemonic churches or churches would-be hegemonic or having a similar position), other states also did not reject their previous systems and traditions and built new ones on the suppositions of the European Convention, as an administrative technical application. This brought about complicated legal situations regarding religion, including the registration issue. Recently the European Court of Human Rights frontally tackled such a situation in the case of Jehovah's Witnesses and others vs. Austria (no. 40825/98, regarding which a judgment was passed on 31. 10. 2008). Namely, Austria had a complicated system (which was again changed during the litigation at issue, further complicating the problem. This system included 2 main types of religious communities, i.e. religious societies according to the act 1874 (which are entitled to establish schools, allowing for waiving military duty on the basis of religious conviction, tax facilitations, membership in state bodies) and religious communities according to the act of 1998, demanding a lengthier presence in Austria of 20 years and a membership of 0.2 percents (16.000) citizens. During two decades of administrative, judicial, constitutional-judicial proceedings, which was later condemned by the European Court, (point 117 of the judgment), Austrian authorities consistently rejected to register Jehovah's witnesses as a religious society within the meaning of the 19th century law. Beside numerous legal acts where procedural drawbacks on the part of the supplicant (Jehovah's Witnesses) was stressed by the Austrian authorities, in the decision by the Ministry of Education of 1997 the substantial reason was explicated that 'there was an unclarity in organization' and particularly that there was 'a negative stance towards the state' on part of the Witnesses.

Pursuing from the notion of individual and collective religious liberty the European Court pronounced a fundamental position that the state 'may treat religious groups differently, but only to correct 'factual inequalities' among them...and that difference in treatment is discriminatory if it does not have such an objective, not having reasonable justification either' (point 96 of the judgment). The Court also found that allowing such a long time period of waiting to attain a privileged position on the part of the religious petitioner opens the delicate issue of the duty of the state to remain impartial and neutral at implementing regulatory power in the sphere of religious freedom...' (point 97 of the judgment). Thus it drew attention to the questionability of the 20 year long proceedings.

By condemning Austria for violating arts. 9, 14, 6 and 13 of the European Convention may serve as an example for the reform of legislation, as inequality in treatment has been questioned in general. In substance, all arrangements where privileging is done are condemned, allowing for what is called in education 'positive discrimination' of those who are weak and small, with a view to their achieving factually equal status. This position could mean a new European standard in the treatment of collective religious liberty protection.

Thus, the Court underscored the impartiality and neutrality of the state, which needs to be implemented at registration as well, but in general in religious matters. Such a condemnation of Austria has a more general impact, particularly for 'new democracies' whose legislation is often on the margin of discrimination.

Austria granted the position of religious society to Jehovah's Witnesses in 2009.

In another case, the Church of Scientology vs. Russia (case no. 18147/02), the European Court condemned Russia because of a marginal issues: the administrative agencies issued orders without instructions on how the petitioner (the Church of Scientology) is to complete his petition documentation regarding the petitioner's doctrine, in order for the supplication to be complete. Of course, here the substantial issues of doctrine of the Church of scientology is at issue, as it is questionable whether it sums up to a religion. The Salvation Army also was not able to renew registration in Russia in the 90s. The case with the ECHR indicated a very protracted procedure in russia, including various branches of the Salvation Army being delat with i different manner, including the Constitutional Court of Russia quashing certain decisions, but the Salvation Army's not being able to re-eregister as a religious community was found to be a violation of art. 9 (case no. 72881/01).

A more prominent example is the one of the Metropolitan Orthodox Church of Bessarabia vs. Moldova, where Moldovian authorities failed to register this group, invoking public security, which was to mean that the recognition would be a challenge to the national unity of Moldova, or at least bring about disputes within it. The stated Church is subjugated to the Romanian Orthodox Church in contrast to the Moldavian Orthodox Church recognizing the Russian Orthodox Church. The Moldavian authorities defended themselves with the Court by attempting to present the issue as an internal one within the Moldavian Orthodox community. The Court found that art. 9 was expressly breached, determining that the the state had illigitimately intervened in the sphere of religious freedom, particularly regarding public witness and association on religious grounds, repeating its position on 'the state having the duty to be neutral and impartial' in its relation towards religions, communities and faiths (judgment 45701/99, point 116). The Court further explains: 'What is at stake here is the preservation of pluralism and the proper functioning of democracy, one of the principle characteristics of which is the possibility it offers of resolving a country's problems through dialogue, without recourse to violence, even when they are irksome'. Allegations of moldavian authorities as of having allowed the activities of the Metropolitan Church the Court did not accept as substitution for recognition, particularly as the Moldavian legislation which allows activities for ecognized churches only (art. 14 of the Act on Religious Communities of 1994). In this judgment it is also stressed In this judgment it is also stressed 'that in principle the right to freedom of religion for the purposes of the Convention excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed' (point 117). The Court had also found the existence of inadmissible assessment of religion on the part of the state, inadmissible favoring of various 'sections', inadmissible permission that already communities intervene with regard to registration of another. All this of course, constitutes a formalist understanding of freedom of religion, which particularly affects established Orthodox ones, where parts can secede from existing ones and establish new entities. Another case involving Moldova was the True Moldovan Orthodox Church vs. Moldova, where rejection of registration was also at issue (case no. 952/03). The Court again ruled in favor of the petitioners, noting that failure of registration in the Moldovan context means an interference into the activity of the Church. (Some countries rule that similar names of already existing communities cannot be used, but Moldova did not have such a provision.)

The European Court underscores the absolute value of neutrality and impartiality of each state with respect to religion, but it defines neither. As to neutrality philosophers Monsma and Soper state that it means 'that the state does not influence the choice of citizens in favor or against a certain form of world view belief, imposing burden or extending favors'. This would amount to a liberal ideal. The authors further elaborate a variant of this principle bearing in mind liberalism's enlightenment, which, beside the already mentioned, underscores the limitation of religion to the private sphere and thus marginalizes religion, whereas public life is to be without any such elements. (1997, 113)

In fact, full neutrality on the part of the state regarding religion would mean also the absence of registration of such communities. In the Guidelines set by the Venice Commission (2004) – interpreting other international legal acts – it is stated.

If absence of registration is, however, impossible, due to records keeping reasons and rights on the basis of religious status, registration should not bring about any new rights or privileges for the religious communities. Since the state, by definition, cannot extend privileges to all, it pursues that from the liberal ideal it cannot extend them to any one, including the registered ones. However, as Madeley (2003) points out, this would be a chimera, not possible to achieve as full religious freedom is unachievable. If neutrality is affected by registration, which is imminent (if we take the British example to be unique and not possible to be replicated), then religious freedom becomes seriously threatened by every classification of religious groups, at registration or otherwise. Unnecessary, unreasonable limitations of freedom of religion appear in legislation in other forms. Durham et al. (2005), mention that it is unreasonable to demand more than 15-30 founding members, regardless of the size of population (in transition countries this number is much higher in many instances, XIII). They point out that religious freedom being a prominent value, it is unreasonable to demand more founding members for a religious group than for an ordinary association. Penalizing religious activity carried out without state approval, as is the case in Belarus, represents an express violation of religious freedom (Durham et al., 2005, XIX). Even more unreasonable is seeking proof of length of presence, as in the cases of Croatia, Russia, Austria, Bavaria, Belgium etc. Further, limitations of religious freedom are to be found in procedural issues, as in the Albanian Law on Non-profit Organizations, which does not set time limits to the administrative agencies as to adopting a decision on registration (Durham et al., 2005, XVIII). Finally, the mode of implementation of certain provisions is liable to differences in interpretation, particularly as what is contrary to public order, and even health, along with the provision that no two groups may be registered by a similar name.

As a consequence we are confronted by a situation which R. Stark points out: owing to lack of competition among religious offering enterprises, the offering entities become arrogant, slow and lazy (Stark and Iannaccone, 1994).

Along with the activities of the European Court, the Council of Europe acts by way of the European Commission for Democracy through Law (the Venice Commission). The opinions of the Court in individual issues and opinions by the Commission regarding legislation, complement each other and are generally harmonious.

The Venice Commission adopted in 2004 Guidelines for Legislative Reviews of Laws Affecting Religion or Belief (271/2004).

In the Guidelines, it is stressed:

- * that many issues appearing as practical ones should not be governed by legislation in this area, but within other legislations, e.g. criminal or administrative legislation, supposing that legislation on religion should not be too restrictive or unnecessarily detailed (point 1)

- * that a definition of religion, particularly one along with the notion of a God should not be entered into legislation. (point 2),

- * that states should be allowed a 'margin of appreciation', as here it is dealt with a sensitive issue of a cultural nature and only of literal and consistent pursuing of religious freedom. Again, this should not be interpreted to extensively,

- * that it is inadmissible to request public demonstration of religious conviction on the part of the state (section B1), which pertains also to signing requests for registration,

- * the importance of neutrality and impartiality of the state in its regulatory activity is stressed, pointing out that "[s]tate measures favouring a particular leader or specific organs of a divided religious community or seeking to compel the community or part of it to place itself, against its will, under a single leadership, . . . constitute an infringement of the freedom of religion." (section B4). One can imagine problems where there are entrenched, culturally and state favoured churches.

- * Legal entity status cannot be the foundation for religious organization and recognition, if communities do not wish such a subjectivity (section B8).

- * regulation of priests' position by the state is questionable, as some communities do not have special priests or all members are considered priests (section E1).

- * Registration may not be compulsory, registration should involve a minimum number of members, minimum periods of presence, minimum procedural conditions and minimum state discretion – all in the protection and promotion of religious liberty.

Other issues are also treated by way of recommendation in the Guidelines.

The Venice Commission has also reviewed numerous legislation drafts on religious issues, particularly on registration, of many European countries, particularly the 'new democracies.'

4. Let it be allowed to give a note with regard to countries with Eastern Orthodox tradition:

In the European states with other traditions beside the Eastern Orthodox ones (mainly the Roman Catholic instances) a restrictiveness and difficulties may be noted in the implementation of religious liberty and state neutrality, i.e. in the approachment to these ideals, enshrined in the European Convention. Such are the legislative arrangements of Slovakia, where registration is practically prohibited by the number of founding members required for registration. However, in countries with Eastern Orthodox traditions, a typical deviation comes about originating from the cultural matrix, regarding state neutrality in issues of religion (beside the technical difficulties of registration). This is the issue of state paternalism towards religious groups, an inclination to intervene in conflicts between religious groups.

Such instances are to be found in Bulgaria (two cases came to the attention of

the Court in strasbourg: one pertained to the leadership of the Bulgarian Orthodox Church, where within a single church two pretending leaderships were established – judgment no. 35677/04 (the Bulgarian state claimed at the Court in strasbourg that two leaderships were established within a single church, being an internal issue of the BOC), whereas the second pertained to the leadership of the Islamic Community in the same state – judgments no. 30985/96 and 39023/97 (again, the Bulgarian state claimed that it was an internal issue within the Islamic Community, this time). In both disputes (one came to the attention of the Court twice) Bulgaria was condemned by the Court for violating art. of the ECHR. Thus, the Bulgarian state intervened into organizational decision making of both disputes, where two traditional communities were on the way of dissolution, attempting to salvage unity, supporting one party in the dispute, which the European Court found inadmissible. The fact that the dispute of the sme content found itself before the judges of the Court twice for the same traditional confession, Bulgaria was condemned for violating art. 9 of the ECHR. A basic difference in the comprehension of religious liberty came about between the Bulgarian state and the ECHR. Whereas the European Court understood individual rights as fundamental, including right to establish and organize the religious community, albeit a new one ('According tot he position of judicial prattice of this Court, religious freedom is primarily a matter of individual consciousness...', judgment no. 39023/97, point 73), in Eastern Orthodox culture the idea of 'people at assembly' ('saborni narod') i.e. a collective understanding or religious subjectivity prevails and religious is a national matter. Thus the dispute within a confessional community may end by the establishment of a new one, or even more ones, by the European point of view, the Orthodox tradition would demand that the state takes care of such disputes renewing unity, which would presuppose taking sides in the dispute. State authority would give legitimacy to one side, having repercussions for economic possessions of the community.

Further, the Ukraine was condemned for not registering alterations in the statutes of a parish (Svyato-Mykhaylivska Parafiya vs. Ukraine, no. 77703/01).

The prevalence of such a position comes to the fore again in the case Kokkinakis vs. Greece, where the state persecuted the advancement of the doctrine and practice of Juhovah's Witnesses, invoking legislation protecting the Orthodox faith. The Court found a violation of art 9 (judgment no. 14307/88).

Romania also presents an interesting case. The Venice Commission in its Opinion (354/2005), based on the mentioned Guidelines, objected to the draft of the Romanian law for regulating a too large number of issues, immanently limiting freedom of religion. It also objected to the classification of religious communities proposed in the draft. This classification would bring about inadmissible differences in legal position, such as inviolability of estates of religious groups, when the first envisaged category of religious groups would be at issue. The Romanian draft also foresaw the recognition of canon law of communities of the first category, without guaranteeing that such canon law would contains European standards of procedural and other nature (section IV, 28).

Some other states with Eastern Orthodox tradition have not had cases before the Court, but the mentioned instances are typical of a cultural tradition. The failure to register the Montenegrin Orthodox Church is Serbia could be such a further case.

In comments regarding the last draft of the Serbian law on religious communities

(before adoption), the Commission – finding many of its previous comments had been taken into account - underscores that canon law is recognized regardless of whether it meets European standards, standards of human rights protection, which is not admissible. It is also opines that state discretionary powers at registration remain too large and not sufficiently defined (Opinion on the law on religious communities of Serbia, no. 379/2006, points 21-25).

We have noted only some instances within a paritcular pattern in Eastern Orthodox culture stemming from the classical notion of harmony of state and church and further stemmping from the notion of Caesaropapism known in Byzantium. Basically this meant that the state was superimposed upn the national church.

Thus, this is a cultural disagreement, which is not minor in extent, but one which may be overcome by further democratization, affirming the liberal democratic model and individually understood human rights. One cannot expect Euopean institutions to bend their positions.

European and other international norms have certainly contributed substantially against privileging and monopolization in religious life (as stressed by Durham et al., 2005, XIII). These norms have found substantial backing in the practice of the European court, although the Court is sensitive to cultural issues, not applying article 9 in a mechanical manner.

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Сергеј Флере

РЕГИСТРАЦИЈА ВЕРСКИХ ЗАЈЕДНИЦА У ЕВРОПСКИМ ДРЖАВАМА

Резиме

У раду се разматрају режими регистравања верских заједница, како је то регулисано у законодавним актима. Мада је слобода вере као принцип проглашена на европском нивоу и у појединим уставним уређењима, постављене су различите препреке код регистравања верских заједница. Такве ограничавајуће одредбе могу проићи од страха од злоупотребе религије или у настојању да се одржи хегемонија традиционално укоренење религије. Саме неке од тих препрека су историјски укоренење, а у пост-комунистичким земљама те препреке су успостављене током демократске обнове.

Државе се разликују у погледу услова за регистрацију, у погледу органа који је надлежан за израду поднеска за регистрацију, поступка разматрања и доношења одлуке, као и праћења извршења. Може се уочити тенденција ка достизању стандарда одређених у Европској конвенцији о људским правима.

У наставку се представљају деловање Венецијанске комисије, органа Савета Европе у погледу остваривања верске слободе законодавним путем, а посебно код питања регистрације верских заједница. Разматра се и рад Европског суда за људска права у погледу заштите верске слободе, посебно се истичу неке пресуде које постављају стандарде у погледу заштите верске слободе у колективном виду, а посебно код питања регистрације верских заједница. Циљеви Венецијанске комисије и пресуде Европског суда произилазе из строгог схватања индивидуалног и колективних верских права, што може бити у супротности са разним конфесионалним традицијама унутар Европе. Та мишљења Комисије и пресуде Суда представљају ограничен, али значајан инструмент унапређења верске слободе и ограничења арбитерности држава, а посебно заштите верских мањина. Наглашају се проблеми православних земаља у том контексту.

Кључне речи: регистрација верских заједница, верска слобода, црква и држава, растава цркве од државе, Савет Европе, Европски суд за људска права, члан 9. Европске конвенције о људским правима, Венецијанска комисија.

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