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## Upholding the Rule of Law and Due Process in Criminal Justice Systems:

## Violations of the Right to Equal Protection and Non-Discrimination in Matters Relating to Religion in France and Belgium

*"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".* Art. 14(1) International Covenant on Civil and Political Rights.

*"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground".* Para. 5.9, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, Copenhagen 29 June 1990.

### Introduction

The principles of equal protection and non-discrimination under the law are fundamental components of the rule of law. They ensure that all laws are applied uniformly and objectively, regardless of race, religion, gender, culture or minority status. These principles form a critical foundation to the right to a fair trial in criminal proceedings. OSCE participating States have committed themselves to adhering to the principles of equal protection and non-discrimination in the administration of criminal justice.

This submission concerns the contravention of the right to a fair trial and the impartiality of the judiciary in cases regarding minority religious associations and their adherents in France and Belgium. Repressive measures – in the form of Ministry of Justice and Ministry of Interior Circulars, "awareness" seminars for judges and prosecutors, and discriminatory laws allowing biased private groups subsidized by the state to intervene in criminal proceedings– have been initiated by the French government to target 173 religions derogatorily designated as "sects". These special measures have undermined the general institutional framework and guarantees securing a fair trial, judicial impartiality, and judicial independence in France.

Belgium is in the process of emulating these special measures. "Awareness" sessions for magistrates, judiciary trainees and prosecutors currently exist. In March 2006, a Belgian Parliamentary Working Group published a report entitled *Follow-up of the Recommendations of the Parliamentary Board of Inquiry regarding "Sects"* advocating

the passage of discriminatory and repressive criminal legislation and the adoption of the type of special measures implemented in France which contravene the principles of equal protection and non-discrimination in criminal proceedings concerning the 598 groups and communities currently derogatorily designated as “sects”.

These special measures in France and proposed measures in Belgium cannot be countenanced under OSCE standards concerning the rule of law articulated in the concluding documents to the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, which mandates *“justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression”*.[1] These measures also contravene UN Basic Principles on the Integrity of the Judiciary, *the Bangalore Draft Code of Judicial Conduct 2001, Guidelines on the Role of Prosecutors*, and the principles of equality and non-discrimination articulated in Article 14 of the International Covenant on Civil and Political Rights.

**1. Freedom of Religion Standards**

The United Nations, religious experts, and UN treaty-based bodies have consistently found that the expression "religion or belief," as well as the individual terms "religion" and "belief," must be construed broadly to include non-traditional religions and all forms of belief. This was the opinion articulated in two studies prepared by the first two Special Rapporteurs on freedom of religion of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, and expressly confirmed in the Working Paper, drafted by the third Special Rapporteur.

Likewise, the Human Rights Committee has found that freedom of religion is not limited in its application to traditional religions and that 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, contravenes Article 18 of the International Covenant on Civil and Political Rights.

> “Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. 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.”* General Comment No. 22 on Art. 18 (Para 2).

[1] Para. 2, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, Copenhagen 29 June 1990.

The right to be free from discrimination based on religion or belief is also anchored in the OSCE's general commitment to freedom of thought, conscience, religion or belief articulated in Principle VII of the Helsinki Final Act.

Nevertheless, the French and Belgium governments have determined to create a suspect category of religious groups under the pejorative term "sects while initiating criminal investigations and prosecutions based on repressive measures that deprive targeted groups of a fair trial.

## 2. France

In May, 2005, the Prime Minister issued a Circular Letter withdrawing government reliance on the "sect list," consisting of 173 targeted minority faiths, conceding that the list was misused to "blacklist some groups". This new policy cannot be successful, however, unless the machinery of discrimination constructed over the last several years – including Circulars and Manuals that relied on the "sect list" to create discriminatory policies in criminal proceedings– is dismantled and unless constructive dialogue occurs on an inter-ministerial basis at the highest levels of government.

### a. 29 February 1996 Ministry of Justice Circular

The first repressive measure adopted in the aftermath of a Parliamentary Report stigmatizing 173 groups as "sects" consisted of a 29 February 1996 Ministry of Justice Circular to public prosecutors around the country urging them to *"fight*" sects.[2] Through "faultless vigilance" and using "*particular severity*", the Minister of Justice invited prosecutors to "*apply the existing law more strictly*" and to "*fully use the existing legal arsenal.*" The Circular also stated that "every complaint or declaration relating to sectarian phenomena be carefully studied and be the subject of a systematic investigation... *the possible requisites for dismissing the case will have to be especially detailed."*

In the introduction of the Circular, the Minister of Justice unequivocally asserted that new religious movements were the main target of this repression. The annex to the Circular officially lists the 173 movements in the Parliamentary Report, thereby further stigmatizing these groups and targeting them for discriminatory and repressive legal actions.

The arbitrary and discriminatory nature of the Circular is further illustrated by the admission that no threat to public order actually exists, as the Minister notes that "*the denunciations or complaints from victims remain too few in number*". Despite years of uniformly derogatory public pronouncements to "*fight sects*", false and derogatory information disseminated by the anti-sect groups, and the repressive measures detailed in this submission, the government concedes in a 2005 publication that public order is still not threatened by these groups. This publication notes that criminal cases "remain limited

[2] *Journal Officiel*, 5 March 1996; Alain Garay, "Le circulaire du 29 fevrier 1996" JCP, no. 15 (10 April 1996).

in number" due, in particular, "to a scarcity of complaints and an absence of reports".[3]

This Circular remains in force to this very day and forms the policy impetus to place pressure on prosecutors and judges to file cases – no matter how weak – and to refuse to dismiss such cases – even when an investigation evidences that no justifiable legal or factual basis to continue exists – against targeted religious movements and their parishioners.

**b**. **The "Sect Mission" and the 1 December 1998 Ministry of Justice Circular**

On the basis of the 1996 Circular, a task force, known as a "Sect Mission" was established within the Department of Criminal Affairs and Pardon (DACG) of the Ministry of Justice headed by a magistrate, Marie-Jose Aube Lotte, who is under the Director of Criminal Affairs and Pardons and who oversees the prosecution of cases concerning minority religions in liaison with the prosecutor's office, putting pressure on prosecutors to bring cases against minority faiths.

Ms. Lotte does not observe the strict neutrality in matters of religion required under international human rights law. To the contrary, she has attended conferences and lectures organized by so called "anti-sect" groups with a vested monetary interest in "fighting" groups it labels as "sects"; published articles that repeat the biased misinformation and inaccurate stereotypes put forward by these anti-religious groups that reliable and objective experts have rejected as unscientific; and organized a one-week seminar on "sects" for prosecutors, judges, police officers, and government officials on an annual basis that focuses on the biased misinformation and inaccurate stereotypes put forward by these anti-religious groups.

These anti-religious associations, UNADFI and CCMM, routinely publish biased and inaccurate propaganda regarding minority religions in France, and have been convicted for libel several times. The Swedish government rejected France's policies towards religious movements in 1998 because of its alliance with these groups, fueling its biased approach: "In France, the state has on the whole made common cause with the anti-cult movement" in order to "declare a war on new religious movements".[4] Moreover, the UN Rapporteur for Religious Freedom noted, in her report on her visit to France in September 2005, that the "campaigns and other actions that have been initiated by associations" have "often been emotional".

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[3] Guide for Public Agents on Sectarian Deviations, published by the French government's mission interministerielle de vigilance et de lutte contre les derives sectaires (MIVILUDES) in 2005 (Documentation Française, January 2005) Part 1, Chapter 4. Throughout the Guide, continuous reference is also made to the purported danger to minors. Yet the Guide concedes that, "at the national level, the number of cases of minors at risk is relatively low (a study showed that out of the 54,000 cases on educative assistance in 2003, only 192 had some connection to a cult-related issue)." The government's own figures demonstrate that no "sect problem" exists. Part 2, Chapter 1.

[4] Report of the Swedish Government's Commission on New Religious Movements, *In Good Faith: Society and the new religious movements* (1998).

The 1998 Circular also appoints a magistrate from the general prosecutor's office within each appeal court as "sect correspondents" for their jurisdiction, in charge of pushing anti-sect cases on the public prosecutors below them, and under the direct supervision of the anti-sect magistrate at the DACG. Each "sect correspondent" is required to coordinate actions of the judicial authorities with the actions of other government departments involved in "sect" matters. The criminal cases which receive these special instructions are cases against targeted religious minorities, since the 1998 Circular makes express reference to the 1996 Circular and the list of 173 targeted groups.

Significantly, the 1998 Circular is addressed not only to public prosecutors like the 1996 Circular, but *also to the judges of instruction and the sitting judges*, who preside over cases concerning the targeted groups. The Circular instructed *prosecutors and judges* to maintain institutional contacts with:

> *"Associations that can be taken seriously, such as UNADFI and CCMM that combat sects. Only good can result from state prosecutors' establishment of ties with these associations, in order to discuss the schemes of sect-like movements that fall within their competence"*.

The purpose of the Circular was to increase the number of complaints filed against targeted religions by relying on information and initiatives taken by these private groups – further entangling the government with biased sources and destroying the concept of neutrality and fairness in the administration of justice.

The 2005 *Guide for Public Agents on Sectarian Deviations* contains a whole chapter on *"the machinery to fight against sects"* set up within the Ministry of Justice. This publication supports the initiatives articulated in the Circulars and further illustrates that the discriminatory and repressive measures put in place by the French government in 1996 to improperly influence and pressure judges and magistrates against entire religions and their adherents *continues to this very day.*

These provisions are an exception to Article 40 of the French Code of penal procedure and to the principle that public prosecutors have discretion in initiating prosecutions. They establish a regime derogatory to the principles of equality and non-discrimination at the heart of the rule of law.

**c. "Awareness" Sessions for Judges and Prosecutors against the Practices of Targeted Religions**

Starting in 1996, training and "awareness" programs for the police, state prosecutors, judges of instruction and sitting judges were initiated. The 2005 *Guide for Public Agents on Sectarian Deviations* notes that each year the National School for Magistrates (Ecole Nationale de la Magistrature) organizes a one-week seminar on sects for prosecutors, judges, police officers, and government officials from the youth and sports ministry,

national education, judicial protection of youth, general direction of competition and consumer offices. Up to 140 trainees take part in this course.

The anti-sect magistrate at DACG runs these seminars together with an official at the Labor Ministry. In addition, the anti-sect magistrate also gives these seminars on sects to prosecutors and judges within the appeal courts.

Along with the Circulars, these seminars and awareness programs improperly prejudice attendees against targeted faiths by providing biased stereotypes and unscientific information, and thus clearly violate human rights standards. Belgian officials have also lectured and participated in these seminars on “sects.”

Based on documents released under the Freedom of Information law, the presentations on the targeted religions have been biased. The seminars delivered to the judges have included specific briefings on Scientology, Jehovah's Witnesses and other targeted groups, with information provided by UNADFI and CCMM, and without any possibility of contradiction, debate or rebuttal by the concerned groups.

Such “awareness” programs for court officials have been condemned by the United Nations Human Rights Committee. In its *Concluding Observations of the Human Rights Committee: Germany. 18/11/96 (*CCPR/C/79/Add.73), the Human Rights Committee recommended, in strikingly similar circumstances, that Germany discontinue the holding of "sensitizing sessions for judges against the practices of certain designated sects”. Otherwise, the right to a fair trial is denied for religious minorities.

These programs operate to prejudge entire groups, thereby infringing the right of the minorities to be presumed innocent, and contravene the principle of equality of arms since these minorities are not in a position where they can contradict the biased information given to the judges.

**d. Penal Amendments and Public Subsidies for CCMM and ADFI**

The Ministry of Justice introduced a penal reform bill that passed on 15 June 2000, enabling “associations that fight against sects” to intervene in proceedings against targeted religions. This provision was amended by the law of 12 June 2001, known as the About-Picard law, which allows private vested interest groups – such as ADFI and CCMM – to become civil parties in litigation in cases involving targeted minority faiths.

Overall, the About-Picard law allows for the imposition of restrictions on religious groups in France which are unprecedented in Europe and which include: 1) specifically drafting the law in order to be applied to minority religions only; 2) the creation of a new offence of fraudulent "abuse of [a person's] ignorance or vulnerability" designed to apply only to disaffected members of targeted religious groups; allowing groups which make it their very business to "fight" minority religions a formal role in the proceedings in which these measures can be imposed; and 3) a provision providing for the dissolution of

associations of targeted religious groups when they or one of their leaders have been convicted of certain crimes.

Taken together, these matters make the law incompatible with basic principles of the rule of law. Indeed, on 18 November 2002, the Parliamentary Assembly of the Council of Europe adopted Resolution 1309 (2002) on the About-Picard law, calling on the French government to "reconsider the law".

Under the law, these associations are empowered to incite criminal complaints against religious groups, to represent the complainants using their own attorneys, to appear as private civil parties and thus to control the legal system as government proxies to attack religious minorities. The right to a fair trial is clearly violated in connection with the granting of the status of "civil party" to anti-"sect" organizations in criminal proceedings against minority religious groups or leaders or members of such groups for two reasons.

First, in certain proceedings in which the question of whether the incriminated activities related to a targeted organization designated as a "sect" is likely to be the main question, the very granting of partie civile status pre-judges this issue.

Article 2-17 of the French penal code provides that any association recognized as being of public utility and existing for at least 5 years can be a civil party in cases in which offences have been committed by or within a group or organization "*which purpose or effect is to create, maintain or exploit a psychological or physical subjection*". Since the status can only be granted in proceedings concerning acts committed in the context of the activities of an organization designated as a "sect", the granting of this status implies a pre-determination that the group in question constitutes such an organization, rendering the right to be treated as innocent until proven guilty and the right to a fair trial nugatory.

Second, the involvement of such blatantly biased groups in the substance of the determination of a criminal case undermines the right to a fair trial and violates the impartiality of the tribunal - in particular in cases relating to freedom of religion. The European Court of Human Rights has found the involvement of the Greek Orthodox Church in cases regarding house of worship permits for the use of premises by Jehovah's Witnesses to be completely inappropriate as that Church would have interests inimical to the objectivity and neutrality demanded in state interactions with minority faiths.[5]

This offends UN standards as well. The United Nations Special Rapporteur for Religious Freedom has also expressed concern about the inclusion of ecclesiastical authorities in the decision making process in Greece and has recommended that such laws be amended to exclude them from the process due to concerns regarding the need for impartiality and freedom from religious discrimination. [6]

Surely, allowing blatantly biased anti-religious groups to interject themselves into criminal proceedings against religious minorities is *far worse* than allowing a state

[5] *Manoussakis and Others v. Greece*, (59/1995/565/651) (26 September 1996), para. 43.
[6] Greece Report, A/51/542/Add.1 (7 November 1996).

religion to be part of the administrative process. The inclusion of these groups in criminal proceedings violates the right to religious freedom, contravenes the requirement of strict neutrality in religious matters by the State, and renders the right to a fair trial and judicial impartiality nugatory, transforming the cases into full blown "heresy trials".

The government continues to designate UNADFI as an association of public utility (*Association d'Utilité Publique*) to publicly subsidize ADFI's campaign of religious intolerance. In 2000, according to UNADFI documents, the Prime Minister's Office invested 5 million francs (762,000 euros) in UNADFI to allow them to buy new premises. In 2004, the French government granted 110,000 Euros to ADFI in a letter signed by the Prime Minister.

Yet, the very concept of fighting "destructive sects", which constitutes ADFI's mandate, is anathema to international human rights standards as it attempts to make an arbitrary distinction between religions described as "good" and religions described as "bad". Based on the public subsidies and laws allowing it to intervene in trials, ADFI has a vested monetary interest in "fighting" religious groups designated as "sects". Such discrimination is incompatible with the duty of the state to remain neutral and impartial with respect to religions and with the policy of true religious pluralism.

What France may not do directly under international human rights law it may not do indirectly through a private group. ADFI is nothing more and nothing less than the government's agent in the "fight against sects", and therefore any acts taken by ADFI must be attributable to the government and fall under the jurisdiction of the International Covenant on Civil and Political Rights and other relevant UN instruments.[7]

### 3. Belgium

#### a. Draft Laws on Mental Manipulation

On 21 March 2006, the Minister of Justice formalized a preliminary draft penal 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 Conseil D'Etat for review to ensure its constitutional compatibility prior to being introduced in the Parliament.

The key provision of the draft law reads 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".

[7] It should also be noted that the President of UNADFI, Catherine Picard, is employed at the Ministry of Sports and is thus a state agent.

Although the language of the preliminary draft law does not specifically refer to “sects”, the government’s summary and explanatory statement accompanying the draft law, make it clear that the primary purpose of the draft law is to implement the recommendation of the 1997 Report of the Belgian Parliamentary Commission by inserting a new article into the criminal code punishing the abuse of a person’s weakness due to “people’s indoctrination by sects”.

In addition to the draft law put forward by the Minister of Justice, there are currently five similar draft laws before either the Belgium Senate or the Chamber of Representatives proposing various forms of legislation concerning so-called “sects” that would establish criminal offences based on the “mental manipulation” and “abuse of weakness” theories. The laws presume that minority religious beliefs are “dangerous” and require specific measures against them. They also presume that proselytization and other manifestations of religion by individuals associated with targeted religious groups or the groups themselves constitute some form of “mental manipulation.”

The terms in the draft laws, such as the “abuse of the weak position or ignorance of a person”, “mental pressure”, “psychological pressure”, and “abusing gullibility” are extremely vague, open to discretionary application and excessively broad interpretation, allowing for arbitrary and discriminatory application. Indeed, reading the preambles and explanatory statements in the six draft laws, it is clear that the laws have been specifically drafted in order to be applied to minority religions in a discriminatory manner.

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.

The very nature, aim and purpose of the draft laws are to target 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 these draft laws. Such draft laws also violate the prohibition against religious discrimination contained in Articles 2 and 26 of the International Covenant on Civil and Political Rights. 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 against “sects”, on the other hand, are discriminatory and endanger the religious liberty of every citizen

Moreover, these attempts to define and punish “mental pressure,” “psychological pressure” or “abuse of weakness” are truly remarkable in light of a host of scientific and academic studies unanimously finding that the theory of “mental manipulation” or

"religious brainwashing" have no merit. 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]

Major studies by the leading authorities in the field and by organizations such as the American Psychological Association and 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 vague and broad wording of these laws will inevitably lead to the use of these laws into tools of persecution by those opposed to religious tolerance while further polarizing religious minorities and creating an atmosphere of discrimination in contravention of the rule of law.

**b. Emulation of Repressive French Measures**

On 30 March 2006, the Belgium Parliament adopted a Working Group Report entitled *Follow-up of the Recommendations of the Parliamentary Board of Inquiry regarding "Sects" (*Working Group Report). The Working Group Report endorses the draft legislation on mental manipulation. It also contains other recommendations emulating the repressive French measures which, if implemented, would contravene the rule of law by undermining the right to non-discrimination and equality through one-sided "awareness"

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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).
[9] APA Memorandum of July 11, 1989

[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.

initiatives to instill prejudice and other special measures to encourage the initiation of criminal proceedings against targeted faiths and their members.

The Report contains a number of recommendations that contravene the rule of law, including:

- An "action plan for *the fight against sectarian practices*" for the judiciary, the prosecution, the police and State Security.

- Written policy *"to clearly define missions to be assigned to the Judiciary authorities and police, both in regards to investigations and proceedings*", to strengthen their means of action.

- A *"performance indicator listing the possible actions to be undertaken against"* targeted groups.

- Written policy containing "*specific instructions to the parquets and labour courts"* regarding targeted faiths.

- The application of " articles 7bis and 35 of the penal code, *which makes it possible to dissolve corporate bodies in case of condemnation in the event of illegal sectarian practices*".

Likewise, the Working Group Report calls for more "vigilance" by Judges in Family Courts in rendering decisions regarding child custody and visitation rights, including consultation with the Observatory, "when one of the parents is a follower" of a targeted organization.

Yet, the European Court of Human Rights, in a custody case involving a mother who was a Jehovah's Witness, reversed an Austrian Constitutional Court decision taking the child away from the mother based upon her religious association and beliefs. The Court found that a decision, which in essence is only based on a different religious affiliation as such, is "unacceptable" because it is contrary to the European Convention on Human Rights and is therefore in violation of the law.[12] Any attempt to deny custody or visitation rights based upon religious affiliation is blatantly discriminatory, violates fundamental human rights law and has no place in a government report.

Ironically, the Report concedes that "sects are less visible," that "complaints are indeed hard to verify," that "former followers are rarely ready to testify after their going out of the movement," that "the federal prosecutor's office has yet to initiate a criminal procedure in a sectarian case" and that "the number of case dismissals remains high, because the 'sect cases' are often opened based on hard to verify accusations or because the facts complained about are not very serious." These concessions that no serious

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

problem necessitating special measures exists are significant. They expose the fact that the call for such measures represents nothing but political maneuvers that will result in further intolerance and discrimination.

These recommendations, which emulate the French model, would seriously undermine the rule of law in Belgium if they are adopted. Special measures in the form of Ministry of Justice circulars or directives to pressure prosecutors and judges to initiate cases and investigations against the 598 targeted groups would undermine the general institutional framework and guarantees securing a fair trial, judicial impartiality, and judicial independence in Belgium for religious minorities. These proposed actions, legislation and repressive measures cannot be countenanced under Paragraph 5.9 of the Copenhagen Document, UN Basic Principles on the Integrity of the Judiciary, *the Bangalore Draft Code of Judicial Conduct 2001*, *Guidelines on the Role of Prosecutors*, and Article 14 of the International Covenant on Civil and Political Rights.

**c. Awareness" Sessions for Magistrates and Prosecutors against the Practices of Targeted Religions**

Starting in 1997, training and "awareness" programs on the "sect phenomena" for prosecutors and judges of instruction were initiated in Belgium. As recently as 2005, "training sessions" for magistrates and judiciary trainees on the "sect issue" were held under the auspices of the Higher Justice Council of Belgium.

Like France, these "awareness" programs have been one-sided and present the beliefs and activities of targeted faiths in a uniformly derogatory light. These programs contravene principles regarding the rule of law articulated by the UN Human Rights Committee.[13] They directly undermine the rule of law by infringing on the right of members of religious minorities to be presumed innocent and by contravening the principle of equality of arms since these minorities are not in a position where they can contradict the biased information given to magistrates.

**Conclusion**

Since 1990, the OSCE has enhanced its commitments to combat racism, xenophobia, anti-Semitism and related intolerance, including against minority religions. For example, OSCE Permanent Council Decision No. 621, *Tolerance and the Fight Against Racism, Xenophobia and Discrimination* (July 1994), commits OSCE States to promoting religious freedom and tolerance through "*transparent and non-discriminatory laws, regulations, practices and policies"*. Both France and Belgium have also committed themselves to adhering to the principles of equal protection and non-discrimination in the administration of criminal justice as articulated in the 1990 Copenhagen Conference on the Human Dimension.

Yet, the repressive measures implemented in France and proposed in Belgium contravene these commitments and the principles of non-discrimination and equal protection of the

[13] *Concluding Observations of the Human Rights Committee: Germany. 18/11/96 (*CCPR/C/79/Add.73).

law which are at the heart of the rule of law. The time has come for France and Belgium agree to full compliance with OSCE principles and commitments regarding freedom of religion, non-discrimination and the rule of law.

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