



TO: The Organization for the Security and Co-operation in Europe Human
Dimensions Meeting of September 28 to October 9, 2009
FROM: Benjamin W. Bull, Alliance Defense Fund
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**THE FUNDAMENTAL RIGHTS OF FREEDOM OF THOUGHT,
CONSCIENCE AND RELIGION AND FREEDOM OF EXPRESSION
AS CORNERSTONES OF A DEMOCRATIC SOCIETY**

Threats to Rights of Conscience

Alliance Defense Fund (ADF) is an international legal organization that represents Christians and others in connection with threats to their religious liberties and rights of conscience. In the last several years, we have seen an alarming increase in violations of religious rights of expression, association, and free exercise of religion. Many of these violations have been initiated by governmental entities.

There are two categories of violations that are particularly problematic: (1) those arising from the abuse of “non-discrimination” laws; and (2) those arising from the abuse of “hate speech” laws. There has been an ever-increasing application of “hate speech” laws to religion-based expression and free exercise of religion. There has also been a similar substantial increase in the application of “anti-discrimination” regulations to Christian ministerial organizations and associations. Assuming for the sake of discussion that there are valid societal justifications for such laws, it is essential to craft reasonable religious exemptions to prevent their misapplication to protected religious expression and Christian ministerial organizations. Additionally, any interference with freedom of religion must be narrowly tailored and must be necessary in a democratic society. Otherwise, we are left with the unacceptable consequence that traditional orthodox Christian expression and teaching—including within the Church—are criminalized. Moreover, when “nondiscrimination” regulations are misapplied to Christian ministries and associations, they threaten the very existence of such

organizations. ADF has been involved in numerous such cases. The five cases below illustrate these problems.

Abuse of Non-Discrimination Laws

- In the state of Washington, USA, a public school board adopted a policy prohibiting student organizations from discriminating against persons on the basis of their religion. While this regulation on its face seems reasonable enough, over-zealous administrators have applied it to Christian student clubs formed for religious purposes. ADF currently represents a Christian student club named the Truth Club (established for Christian student prayer, ministry and fellowship) that was banned from its public school campus because it required that its officers and voting members be professing Christians. The case, named *Truth v. Kent*, has been in litigation for almost five years.

<http://www.christianpost.com/article/20090630/high-court-refuses-to-hear-bible-club-case/index.html>

- In the UK, the University of Exeter banned the Christian Student Union (established 50 years ago as a student Christian ministry for prayer, devotion, and fellowship) because the Christian Union limited voting rights and leadership positions to students who were professing Christians. After lengthy administrative and legal proceeding, the university finally relented and allowed the Christian Union to return to campus.

<http://www.christiantoday.com/article/exeter.christian.union.takes.legal.action/8962.htm>

The threat posed by “non-discrimination” requirements to religious associations cannot be overstated. Religious organizations exist for the very purpose of advancing and promoting their faith, prayer, evangelistic fellowship and similar activities. The right to promote these efforts and beliefs is guaranteed in international law as a fundamental right

and a cornerstone of democracy.¹ Requiring that non-adherents be permitted to lead or vote for leadership of such religious entities necessarily pre-stages their complete loss of identity and eventual ruin. Indeed, it seems absurd that ANY group could be coerced by government action to allow people to join their group when those people want to defeat that group's mission and/or destroy the group itself. Such interference is a breach of international law which governs that a State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs, and requires that conflicting groups tolerate each other.² Furthermore, there are numerous instances when such non-discrimination regulations have been applied to religious schools, hospitals, and charities.³ When government applies a religion non-discrimination law to a religious organization, it intrudes on the internal affairs of religious organizations. This governmental action violates the black letter of the law by taking away from the organization the ability to define itself as religious. And in the end, the result is the destruction of the religious group.

Recommendation: Laws that prohibit discrimination of persons on the basis of religion should specifically exempt all religion-based organizations, ministries, and activities. An example of a comprehensive exemption follows: “The prohibition of discrimination does not apply to: (1) the conduct of a religious organization, (2) the religiously motivated conduct of any organization, and (3) the religiously motivated conduct of an individual who is acting according to the dictates of his or her sincerely held religious beliefs.”

¹ See e.g. ECtHR, 25 May 1993, *Kokkinakis v. Greece*, Series A No. 260-A, § 31: AFDI, 1994, p. 658; ECtHR, *Hoffmann v. Austria*, Series A, No. 255-C: JDI, 1994, p. 788; ECtHR, 26 September 1996, *Manoussakis and Others v. Greece*, Reports 1996-IV: AFDI, 1996, p. 749.

² ECtHR, 13 December 2001, *Metropolitan Church of Bessarabia and Others v. Moldova*, Appl. no. 45701/99., § 123

³ See, e.g., *EEOC v. Catholic Univ.*, 83 F.3d 455 (D.C. Cir. 1996)(university); *Scharon v. St. Luke's Episcopal Presbyterian Hosp.*, 929 F.2d 360(8th Cir. 1991) (hospital); *Shaliehsabou v. Hebrew Home of Greater Wash.*, 363 F.3d 299 (4th Cir. 2004) (religious charity); *Feldstein v. Christian Sci. Monitor*, 555 F. Supp. 974 (D. Mass. 1983) (religious corporation). *Monitor*, 555 F. Supp. 974 (D. Mass. 1983) (religious corporation).

Abuse of Hate Speech Laws

- ADF was involved in the defense of Swedish Pastor Ake Green. Pastor Green was sentenced to 30 days in prison for engaging in “hate speech” when he preached a Sunday sermon in his church from the Bible on the biblical position on immoral sexual behavior. Pastor Green was prosecuted under Sweden’s “hate crimes” law for “causing offense” to the “homosexual community.” The prosecutor was quoted as stating: *“One may have whatever religion one wishes, but this is an attack on all fronts against homosexuals. Collecting Bible citations on this topic as he does makes this hate speech.”* (“Swedish Minister Jailed for ‘Anti-Gay’ Speech” *Catholic World News*, July 6, 2004. After three years in the courts, his conviction was finally overturned by the Supreme Court of Sweden.

<http://www.catholicculture.org/news/features/index.cfm?recnum=30655>)

- In Alberta, Canada, a human rights tribunal ordered a Christian pastor to renounce his Christian faith tenets and never again express moral and religious opposition to homosexual behavior, since such opposition was “hate speech.” The pastor, Stephen Boisson, was ordered to pay \$5,000 for “damages for pain and suffering” to an activist who claimed he was “hurt” by Boisson’s comments.

<http://www.worldnetdaily.com/index.php?fa=PAGE.view&pageId=66704>) The case is presently on appeal.

- Daniel Scot and Danny Nalliah are both Christian pastors in Melbourne, Australia. In March, 2002, they held a religious seminar that critiqued Islam from a Christian prospective. Three Muslims attended the seminar and reported what they heard to the local Islamic Council. Soon afterward, it brought suit against Scot and Nalliah under the state’s then-new “hate speech” law. The court ruled that the pastors, in criticizing

Islam, had engaged in a hate speech crime. The court ordered them to apologize publicly and banned them from making similar comments anywhere in Australia.

<http://www.becketfund.org/index.php/case/101.html>

With the adoption and application of “hate speech” laws we have re-created the notion of "heresy" and "orthodoxy"; some ideas are protected, others persecuted, and lives can be destroyed for holding the wrong ideas. Indeed rather than allowing thoughts and expression to compete evenly in the free marketplace of ideas, unpopular ideas are not debated, rather they are punished. As in the Green case, religious notions of sexual morality or open criticism of certain religious belief systems are banned.

As the European Court of Human Rights, for example, has repeatedly held, “Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for each individual’s self-fulfillment.”⁴ The Court has also held on numerous occasions that freedom of expression constitutes one of the essential foundations of a democratic society, the hallmarks of which are tolerance, broadmindedness and pluralism.⁵

It is paramount that OSCE Participating States not act to indoctrinate their citizens and cannot be allowed to operate distinctions between persons holding one opinion or another. Any such distinction would be contrary to the principles of democracy which have been so bravely defended throughout the recent century and throughout the history of the OSCE.⁶ This freedom of expression protects not only: “the information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but

⁴ ECHR, *Lingens v. Austria*, 1986; ECHR, *Sener v. Turkey*, 2000; ECHR, *Thoma v. Luxembourg*, 2001; ECHR, *Maronek v. Slovakia*, 2001; ECHR, *Dichand and Others v. Austria*, 2002, etc.

⁵ See e.g.: ECHR, *Handyside v. The United Kingdom*, 1976.

⁶ Cf., Report of the Committee of Ministers, in *Theory and Practice of the European Convention on Human Rights*, Van Dijk and Van Hoof, Kluwer, 1990, p. 413.

also those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broad-mindedness without which there is no democratic society.”⁷

Recommendation: “Hate speech” laws must exempt religion-based expression and ideas.

Status of Religious or Belief Communities

The issue of the status of religious or belief communities must gain greater recognition within the purview of the OSCE’s work on religious freedom. Equal treatment and the recognition of legal personality are fundamental components of freedom of thought, conscience and religion. In the OSCE region, particularly in Europe, there has been a sharp increase in State abuse of this aspect of religious and belief communities’ fundamental rights. The European Court of Human Rights in *Hasan and Chaush v. Bulgaria* held “that religious communities traditionally and universally exist in the form of organized structures. They abide by rules which are often seen by followers as being of divine origin. Religious ceremonies have their meaning and sacred value for the believers if they have been conducted by ministers empowered for that purpose in compliance with these rules. The personality of the religious ministers is undoubtedly of importance to every member of the community. Participation in the life of the community is thus a manifestation of one’s religion, protected by Article 9 of the Convention [freedom of thought, conscience and religion].”⁸ Despite this, insurmountable obstacles still exist for the registration of places of worship in Turkey. Greece, Russia and France also provide significant administrative hurdles for the registration of minority and so-called non-traditional religions. Many other nations have unfavorable taxation schemes or

⁷ ECHR, *Handyside v. the United Kingdom*, 1976; ECHR, *Sunday Times v. the United Kingdom*, 1979; ECHR, *Lingens v. Austria*, 1986; ECHR, *Oberschlick v. Austria*, 1991; ECHR, *Thorgeir Thorgeirson v. Iceland*, 1992; ECHR, *Jersild v. Denmark*, 1994; ECHR, *Goodwin v. the United Kingdom*, 1996; ECHR, *De Haes and Gijssels v. Belgium*, 1997; ECHR, *Dalban v. Romania*, 1999; ECHR, *Arslan v. Turkey*, 1999; ECHR, *Thoma v. Luxembourg*, 2001; ECHR, *Jerusalem v. Austria*, 2001; ECHR, *Maronek v. Slovakia*, 2001; ECHR, *Dichand and Others v. Austria*, 2002.

⁸ ECtHR, 26 October 2000, *Hasan & Chaush v. Bulgaria* (Appl. No. 30985/96), § 62.

potentially discriminatory policies of funding certain churches over others (see e.g. Austria and the proposed new registration law in the Slovak Republic).

Discrimination among religious denominations creates a *prima facie* case for State interference of the right to freedom of thought, conscience and religion.: "(F)acts demonstrating a failure by the authorities to remain neutral in the exercise of their powers in this domain must lead to the conclusion that the State interfered with the believers' freedom to manifest their religion."⁹ Further, "'the believer's right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully free from arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus at the very heart of the protection which [the right to freedom of thought, conscience and religion] affords."¹⁰

In addition, the refusal of legal personality for religious or belief communities, without grounding in a lawfully prescribed statute or without due process, is an impairment of the very substance of religious freedom and of the fundamental right of access to courts to safeguard the rights long-honored by the OSCE and set out in international law.

Recommendation: The OSCE must provide enhanced monitoring of laws which relate to taxation of religious or belief communities to ensure equal treatment of all religions. Statutes relating to the establishment of legal personality by religious communities must be available, accessible, foreseeable and cannot afford unfettered discretion to the bodies responsible for recognizing legal personality in determining eligibility. The OSCE must also adopt a position on "sect laws" providing guidance for Participating OSCE States whereby non-traditional or minority religions are not unduly prejudiced or even persecuted simply because they are non-traditional or minority religions. Criteria for sect-laws must be concrete, objective, proportionate to the aim sought and necessary in a democratic society with little to no discretion being afforded to sect-law administrators.

⁹ ECtHR, 26 October 2000, *Hasan & Chaush v. Bulgaria* (Appl. No. 30985/96), § 78.

¹⁰ *Id.*, § 62.