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The protection of the rights of parents and children belonging to religious minorities

Revised report¹

Committee on Equality and Non-Discrimination

Rapporteur: Mr Valeriu Ghiletschi, Republic of Moldova, Group of the European People's Party

Summary

¹ Reference to committee : Doc. 13333, Reference 4057 of 27 June 2014.

A. Draft resolution²

1. The Parliamentary Assembly notes that the population of the member States of the Council of Europe is more ethnically, culturally and religiously diverse than ever before. The landscape of religious communities in Europe is complex and evolving, with traditional beliefs spreading beyond their historical territory and new denominations emerging. Such an environment has the potential to render families belonging to religious minorities ostracised for their views and values in contexts where there is a dominant majority that holds conflicting views.

2. In this context, the Assembly recalls its staunch commitment to supporting peaceful coexistence between people of different religious and ethnic affiliations, and striving for a tolerant, respectful and democratic community for all, as outlined in the adoption of several Assembly texts including: Resolution 1904 (2012) on “The right to freedom of choice in education in Europe”; Resolution 1928 (2013) on “Safeguarding human rights in relation to religion and belief and protecting religious communities from violence”; Resolution 2036 (2015) on “Tackling intolerance and discrimination in Europe with a special focus on Christians” and Resolution 2076 (2015) on “Freedom of religion and living together in a democratic society”.

3. The Parliamentary Assembly underlines its commitment to protecting the fundamental rights enshrined in the European Convention on Human Rights, in particular the right to freedom of thought, conscience and religion under Article 9, and the right of parents to provide their children with an education in conformity with their own religious and philosophical convictions under Article 2 of Protocol No.1. The Assembly reiterates the fundamental right of children to education in a critical and pluralistic manner in accordance with the European Convention on Human Rights, its protocols and the case law of the European Court of Human Rights.

4. The Assembly considers that particular difficulties can arise with regard to respecting the beliefs and convictions of minority religious communities in the context of the registration of religious organisations, state-provided education and social services. The Assembly considers that it is not member States’ role to regulate or validate the beliefs and worldviews of its population, but to accommodate different perspectives and convictions, and allow individuals to thrive together within the boundaries of public order, health and morals. It considers that the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions and identities and religious convictions are essential in order to achieve social cohesion.

5. The Assembly therefore calls on all member States of the Council of Europe to protect the rights of parents and children belonging to religious minorities by taking practical steps, legislative or otherwise, to:

5.1 affirm the right to freedom of thought, conscience and religion for all individuals, including the right not to adhere to any religion, and protect the rights of all against being compelled to perform actions that go against their deeply held moral or religious beliefs, while ensuring that access to services lawfully provided is maintained and the right of others to be free from discrimination is protected;

5.2. promote reasonable accommodation of the deeply held moral or religious beliefs of all individuals in cases of serious conflict to enable citizens to freely manifest their religion or belief in private or in public, within the limits defined by legislation and provided that this is not detrimental to the rights of others;

5.3 repeal any law or rule which establishes a discriminatory distinction between religious minorities and majority beliefs;

5.4. ensure easy-to-implement options for children or parents to obtain exemptions from compulsory State religious education programmes that are in conflict with their deeply held moral or religious beliefs; such options may include non-confessional teaching of religion, providing information on a plurality of religions, and ethics programmes.

² Draft resolution adopted by the Committee on 6 December 2016 in Paris.

B. Draft recommendation³

1. The Parliamentary Assembly, referring to its Resolution ... (2016) on the protection of the rights of parents and children belonging to religious minorities, recommends that the Committee of Ministers:

1.1. transmits the said Resolution to the governments of member States;

1.2. draws up guidelines on how member States should make effective reasonable accommodation of deeply held moral or religious beliefs of individuals, while ensuring respect for the rights of others.

³ Draft Recommendation adopted by the Committee on 6 December 2016 in Paris.

C. Explanatory memorandum by Mr Valeriu Ghiletschi, rapporteur

1. Introduction

1. The Committee on Equality and Non-Discrimination appointed me as rapporteur on “The protection of the rights of parents and children belonging to religious minorities” on 3 December 2014. I presented a preliminary draft report in April 2016 and a draft report in June 2016.

2. During the June part-session of 2016, the Committee on Equality and Non-Discrimination rejected the first drafts of the resolution and the recommendation I had proposed on the basis of my initial report. This was, of course, a great disappointment to me personally as the efforts I had put into writing the report were all in the interests of securing the rights of parents and children of religious minorities, but I respect the decision of the Committee in rejecting my proposals.

3. I have taken time to consider the criticisms that were raised by the Committee, and have now decided to focus my report on subject matter that we are all in agreement with when it comes to ensuring equality and non-discrimination for all citizens across the member States of the Council of Europe.

4. The area of concern that I had originally highlighted in the motion for the resolution⁴ was the restrictions of the rights of parents to raise their children in conformity with their own religious and philosophical convictions. This right is explicitly secured under Article 2 of Protocol 1 to the European Convention on Human Rights, as well as being supplemented by Article 9 of this Convention on Freedom of thought, conscience and religion.

5. This same right is also enshrined in Article 18 of the UN International Covenant on Civil and Political Rights, which states: “4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*”

6. Instances where parents experience the denial of this right are indicative of an environment where there is a lack of tolerance, respect and plurality. We must take steps to address this root concern if we are genuinely seeking to champion equality and non-discrimination for all of our citizens, and especially those belonging to minority groups across the member States.

7. Therefore, the remainder of this report is based on the previous texts adopted by the Parliamentary Assembly that have established the Assembly’s *acquis* on this topic and laid the groundwork for this report. It will also highlight specific situations (including cases from the European Court of Human Rights) that have come to my attention, which provide insight on where the rights of parents and children belonging to religious minorities are at the most risk of being violated. It will conclude by proposing action to be taken by the Parliamentary Assembly and the Committee of Ministers of the Council of Europe to address these concerns which builds on the firm consensus that already exists within this Assembly.

2. Previous consideration of religious minorities by the Parliamentary Assembly

8. The issue of the rights of religious minorities has been addressed by the Parliamentary Assembly on a number of occasions, and a number of adopted texts tackle discrimination against religious minorities from various angles. One of the prevailing themes that emerge from these documents is that member States should seek to provide “reasonable accommodation” to parents of religious minorities in order to provide them the freedom to raise their children in conformity with their own religious and philosophical convictions. This concept is important because it is a practical and effective means of protecting the rights of citizens from being compelled to perform actions that go against their deeply held moral or religious beliefs.⁵

9. In Resolution 2076 (2015) on Freedom of religion and living together in a democratic society, the Assembly stated: “Legislatures and governments must take account of the fact that political decisions taken in the name of the “neutrality of the State” may, in practice, give rise to disguised discrimination against minority religions, which is incompatible with the right to freedom of religion and the principle of secularity.” The Assembly added: “while it is aware that States Parties to the European Convention on Human Rights have a wide margin of discretion in this field, the Assembly invites States to seek “reasonable

⁴ Doc. 13333 of 10 October 2013.

⁵ See also, ‘*Reasonable Accommodation Beyond Disability in Europe*’, Thematic Report prepared by European Commission, Directorate-General for Justice, September 2013.

accommodations” with a view to guaranteeing equality that is effective, and not merely formal, in the right to freedom of religion”, and recommended that member States: “promote the social integration of religious minorities and act at an early stage against those social, economic and political inequalities which affect those minorities, and resist their marginalisation and the instigation of hatred against them.”

10. In Resolution 2036 (2015) on Tackling intolerance and discrimination in Europe with a special focus on Christians, the Assembly noted that: “The reasonable accommodation of religious beliefs and practices constitutes a pragmatic means of ensuring the effective and full enjoyment of freedom of religion. When it is applied in a spirit of tolerance, this concept allows all religious groups to live in harmony in the respect and acceptance of their diversity.” The Assembly went on to call on member States to “promote reasonable accommodation so as to [...] respect the right of parents to provide their children with an education in conformity with their religious or philosophical convictions, while guaranteeing the fundamental right of children to education in a critical and pluralistic manner in accordance with the European Convention on Human Rights, its protocols and the case law of the European Court of Human Rights.”

11. In Resolution 1928 (2013), on Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence, the Assembly again called on member States “while guaranteeing the fundamental right of children to education in an objective, critical and pluralistic manner, respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions” (paragraph 9.11).

12. In Resolution 1992 (2014) on The protection of minors against excesses of sects the Assembly noted that: “in conformity with Resolution 1530 (2007), the protection of minors, parental rights and freedom of religion or belief are to be promoted in any context, whether public (including public schools, hospitals, etc.) or private (including private education systems, the family, sport and other recreational activities, religious activities, etc.)”. The Assembly added that it did not “believe that there are any grounds for discriminating between established and other religions, including minority religions and faiths.”

13. It is therefore abundantly clear that, over the years, this Assembly has been a vocal advocate for the rights of parents and children of religious minorities to live freely in conformity with their religious convictions, and has called on member States to ensure that these communities are treated with the greatest respect and tolerance. This is entirely consistent with this Committee’s aim of promoting equality and non-discrimination of the minorities in society.

3. Evidence of parents and children of religious minorities facing discrimination

14. Despite the consistent sentiment from this Assembly that is unquestionably supportive of the rights of religious minorities in society, today’s Europe is not immune from the risk of violations or unjustified limitations on freedom of thought, conscience and religion. Unfortunately, discrimination on grounds of religion is increasing. Europeans are aware of this trend: according to a Eurobarometer survey published in September 2015, “Social acceptance and discrimination on the grounds of religion and ethnicity”,⁶ 50% of respondents believe that discrimination based on religion or belief is widespread, up from 39% in 2012. This applies to various degrees of discrimination in the workplace (33% believe that expression of religious belief is a disadvantage in a recruitment procedure, up from 23% in 2012), acceptance in political positions, and acceptance in social circles (an alarming 30% of respondents state that they would feel uncomfortable if their adult child was in a relationship with a Muslim.)

15. This survey also shows that the European public strongly supports measures to combat ethnic and religious discrimination, such as training on diversity in the workplace and monitoring of recruitment procedure (respectively 80% and 77% of respondents are in favour).⁷ The survey was conducted among citizens of the 28 European Union member States. Needless to say, extending the research to the other Council of Europe member States would be relevant and useful.

16. Further evidence of the trend towards unjustified discrimination on grounds of religious belief is evidenced by recent decisions of the European Court of Human Rights. For example, in the decision of 10 February 2015, *Dimitrova v. Bulgaria* (15452/07), the Court found that Bulgaria had violated Article 9 on freedom of thought, conscience and religion of the Convention. The case concerned measures taken by the police against Ms Dimitrova on account of her activities in a religious organisation, and the civil proceedings for damages she had brought as a consequence. Ms Dimitrova was a member of an international religious

⁶ European Commission, Eurobarometer on discrimination 2015.

⁷ *Ibid.*

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organisation called Word of Life, a Christian bible based association, whose previous status as a non-profit organisation in Bulgaria was revoked in 1994. Following a complaint that the organisation had a 'negative psychological influence' on its followers, the prosecuting authorities of Bulgaria ordered restrictions on the rights of its members to assemble and promote their beliefs. The Court determined that the facts of the case disclosed an interference with the applicant's rights under Article 9, since the police action was taken in direct response to the applicant's manifestation of her religious belief and was intended to discourage her from worshipping and observing her religion in community with other adherents.

17. Focusing directly on the parents' ability to raise their children in accordance with their beliefs, in the judgment *Mansur Yalçın and others v. Turkey* of 16 September 2014 (21163/11), the European Court of Human Rights held, unanimously, that there had been a violation of Article 2 of Protocol No. 1 (right to education) to the European Convention on Human Rights. In this case, the applicants, who were adherents of the Alevi faith, an unorthodox minority branch of Islam, complained that the content of the compulsory classes in religion and ethics in schools was based on the Sunni understanding of Islam. The court observed in particular that in the field of religious instruction, the Turkish education system was still inadequately equipped to ensure respect for parents' convictions.

18. Despite the judgment in *Mansur Yalçın*, the European Court of Human Rights recently found that Turkey had violated Article 14 (prohibition of discrimination) in conjunction with Article 9 of the European Convention on Human Rights in respect of the Alevi community in the decision of 26 April 2016 on *İzzettin Doğan and Others v. Turkey* (application no. 62649/10). At paragraph 178, the Court stated: "by failing to take any account of the specific needs of the Alevi community, the respondent State has considerably restricted the reach of pluralism, in so far as its attitude is irreconcilable with its duty to maintain the true religious pluralism that characterises a democratic society, while remaining neutral and impartial on the basis of objective criteria. In that connection the Court observes that pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions and identities and religious convictions. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion."

19. In *Vojnity v Hungary* of 12 February 2013 (29617/07) the Court concluded that there was no reasonable proportionality between the total denial of the applicant's right to have access to his child and the aim pursued: the protection of the best interest of the child. The Court found that the applicant's religious convictions had had a direct bearing on the outcome of the matter at issue. Consequently, there had been a difference of treatment between the applicant and other parents in an analogous situation, which consisted of reproaching the applicant for his strong religious convictions. At paragraph 37, the Court also recalled that: "the rights to respect for family life and religious freedom as enshrined in Articles 8 and 9 of the Convention, together with the right to respect for parents' philosophical and religious convictions in education, as provided in Article 2 of Protocol No. 1 to the Convention, convey on parents the right to communicate and promote their religious convictions in the bringing up of their children."

20. Turning attention to the education of children in public schools, this is the area where the rights of parents under Article 2 of Protocol No. 1 are most at risk of being violated. The UN Special Rapporteur on freedom of religion and belief, Mr Heiner Bielefeldt, specifically noted that the environment in schools may present particular challenges for families from religious minorities. In his Interim report of 2015, Mr Bielefeldt stated: "Another field requiring attention in that regard is education in school. Pressure exercised on children in schools, for instance with the purpose of alienating them from their religion or beliefs, may again simultaneously violate the rights of the child and the rights of his or her parents. In many such cases, the rights of persons belonging to religious minorities may additionally be at stake."⁸

21. Finally, I have become aware of a number of cases across Europe where children from minority religious communities have been taken into the custody of the State in the context of child protection proceedings. While I do not propose to discuss the particular circumstances of these cases, as many are still the subject of judicial proceedings, it is important to scrutinise the possibility of religious discrimination as a motivating factor in any child protection proceedings against minority religious communities.

22. The jurisprudence of the European Court of Human Rights under Article 8 (respect for private and family life) in the area of parental rights rests on the clear assumption, grounded in the Convention and in international law, that a child should grow up in an environment in which his or her family ties are maintained. The European Court of Human Rights has placed a clear burden on the State to rebut the powerful presumption that a child should be either in the custody of his parents or, having demonstrated the necessity

⁸ United Nations Special rapporteur on freedom of religion and belief, Interim report, August 2015.

of doing otherwise, at least permitted to maintain contact with them. In *Olsson v. Sweden* (No. 1) of 24 March 1988 (10465/83) the Court held (paragraph 72) that: "It is an interference of a very serious order to split up a family. Such a step must be supported by sufficiently sound and weighty considerations in the interests of the child ... it is not enough that the child would be better off if placed in care."

23. On the 19th of April 2016, Nils Muižnieks, the Council of Europe's Commissioner for Human Rights, told the Parliamentary Assembly, in response to my question regarding a particular child custody case in Norway, that the best interest of the child is almost always to be with the parents and: "only in extreme and exceptional cases, where the child can come to serious harm because of the parents' behaviour, should a child be taken away temporarily from the parents."

24. As previously quoted, the European Court of Human Rights recognised in the decision of 26 April 2016 on *İzzettin Doğan and others Vs Turkey* (62649/10), that pluralism is also built on genuine recognition of, and respect for, diversity and the dynamics of cultural traditions and identities and religious beliefs. The Court then noted that the harmonious interaction of persons and groups with varied identities was essential for achieving social cohesion. I believe that systems that impose a singular 'correct' viewpoint on sensitive and controversial issues are totalitarian in nature and have no place in a modern democracy. Therefore, this Assembly must affirm the rights of parents and children of religious minorities to live in social environments that respect and support their way of life as far as possible.

4. Conclusions and recommendations

25. The European public is more ethnically, culturally and religiously diverse than ever before. This also means that the possibility of discrimination against minority communities is more likely than ever.

26. In this report, I have highlighted only some of the evidence that exists to show that there are increasing restrictions on the rights of parents to raise their children in conformity with their own religious and philosophical convictions. There is no doubt that there are many more instances that have not come to light due to the fact that minority communities are usually the least represented and have the smallest voice in society. It is therefore all the more important to address this issue in light of the evidence that is currently available.

27. As the Parliamentary Assembly, it is our duty to give these under-represented families a voice that demands their rights are respected, and to call on member States to afford parents the respect, tolerance and dignity they are due in the weighty task of raising of their children. I believe that the members of this Committee are all in agreement when it comes to this very important principle.

28. In conclusion, I propose that the Assembly takes note of the consensus that has been established in the passing of numerous Assembly texts highlighted in this report, and proceeds to take further constructive steps to address the outstanding concerns that I have raised; recommending that:

- a. member States ensure that they do not violate the rights of parents to raise their children in conformity with their own religious and philosophical convictions;
- b. member States look to introduce the concept of 'reasonable accommodation' to ensure a fair balancing process when dealing with the requests of minority parents;
- c. the Committee of Ministers investigate how, and to what extent, parents of religious minority communities experience barriers to raising their children in conformity with their own religious and philosophical convictions; and
- d. the Committee of Ministers draw up guidelines on how to make reasonable accommodations for parents and children belonging to religious minorities.