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*Sfera Politicii este prima revistă de știință și teorie politică apărută în România, după căderea comunismului. Revista apare fără întreruperi din 1992.*

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# The Threat to Religious Liberties and the European Institutions

■ ROGER KISKA

[Alliance Defense Fund]

## Abstract

*The following article analyzes the 3 chief threats facing religious liberty today in Europe, namely: (1) hate speech legislation; (2) anti-discrimination laws; (3) attacks on parental rights. Concrete examples are given of offenses to religious freedom. Additionally, the black letter law is set out in each section with suggested action points for national governments. The Article also discusses the **Lautsi v. Italy** judgment of the European Court of Human Rights, explaining its importance and using it as evidence to establish the political nature of the Strasbourg based court.*

## Keywords

hate speech legislation, anti-discrimination laws, attacks on parental rights

## (a) Introduction

It was an opportunity to address the importance of religious freedom and the emerging threats facing religious liberties in Europe during the ECPM congress held in the Romanian Parliament 23-25 June 2011. Romania, I believe, is an important and symbolic location to discuss about this theme because of a number of reasons. Romania is indeed a battleground country in international circles by both opponents and proponents of religious liberties. It is also a country which in 1989 showed the world what freedom means by ushering in democracy and rule of law. Those same freedoms are today at stake. Not at the hands of communism or dictatorship; but from a threat coming from a much more cunning and friendly figure with the European Institutions. These institutions believe that they can use Romania as a new member state still unsure of its place in Europe as a means of quickly implementing radical legislation that they would like to in the future set up in the west. In a way, it has become a cold war of social policy.

While Romania has by and large been spared this fate, other countries like Serbia and Croatia have been pressured by empty promises of easier access to European Union candidacy by radically changing their non-discrimination laws to protect „sexual orientation“ at the grave risk of injuring religious liber-

ties. Moldova is at this very moment under this same pressure. No doubt you will learn a lot about this push by the European Union against susceptible states in essence making empty threats and even emptier promises to get what they want.

So instead, I would rather discuss about the chief threats I see as facing religious liberty in Europe today. Those threats are three-fold: (1) hate-speech laws; (2) non-discrimination laws and (3) attacks on parental rights. I would also like in my time to address the ruling in *Lautsi v. Italy* as a key to understanding exactly where we are on the religious liberties road map at this time.

Before it is important to know what religious freedoms means to the average European. Freedom of thought, conscience and religion is guaranteed by the European Convention of Human Rights under Article 9 of the Convention.

The European Court of Human Rights has held that the right to freedom of thought, conscience and religion is one of the cornerstones of a democratic society. The Court has held that religious freedom is one of the vital elements that go to make up the identity of believers and their conception of life. Article 9 has taken the position of a substantive right under the European Convention of Human Rights.

The freedom to choose one's faith and live it out is a protected and universal freedom under the European Convention. Discriminatory treatment of a religion for historic, ethnic or content based reasons, which has the effect of diminishing this freedom of choice, is illegal. State interference with the practice of those religious and philosophical convictions where necessity is lacking, violates Article 9 of the Convention.

What does religious freedom mean for you? Among other things, it means the right to pray **anytime and anywhere**. It also means that you can **share** your opinion and your faith freely, including references to the Bible or God. It means that **no one** can tell you what to believe. It means freedom to follow your own Christian conscience, even in your professional life, without fear of being persecuted or fired from your position. It means speaking openly about Christ in whatever stage of life you are...for example in your office or on university campuses. Freedom of religion includes the right to **live** your faith whether you are at work, in the store, in a church or in the classroom.

While this is what the black letter law says, the actual interpretation of Article 9 is in the process of entering some monumental struggles with very serious threats to our religious freedom. Let us start this discourse by talking about our right to speak and hear the truth.

## **(b) Freedom of Expression: „Hate Speech Laws“**

The European Court of Human Rights has interpreted freedom of expression to protect not only the information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb; such are the demands of pluralism, tolerance and broad-mindedness without which there is no democratic society. A freedom which protects only ideas that are accepted by all is not a freedom. International law does not guarantee nor has it promulgated a right „not to be offended“. To this extent, intergovernmental bodies like the European Union of Council of Europe cannot seek to create new law. Instead they must shape their policy to conform to and to inform existing black letter law. And the black letter law dictates that the recent proliferation of „hate speech“ laws where incitement and imminence of an objective threat are not prerequisite elements are in direct contradiction to the protection of freedom of speech.

Furthermore, freedom of religion is emptied of its value without freedom of expression. Freedom of religion is characterized by the fact that it is the only fun-

damental right which recognizes the transcendent. It is a freedom which deals with ultimate concern; the intimate and personal relationship of man with His God. At its heart, freedom of religion requires, and the law protects, the right to express one's faith and in principle, the right to try to convince one's neighbor of its truth.

„Hate speech“ laws have a chilling effect on religious freedom when they are defined to mean that any appeal to truth, whether it be moral or spiritual, is punishable by law. European nations have a duty to remain neutral with regard to value judgments about the content of religious speech. Whereas a nation may legislate to promote conditions where competing worldviews live peaceably together; they may not legislate to guarantee that these same worldviews cannot have voices in the public square if they differ in content. Nor can governments dictate that people of faith may not publically speak what they deem to be moral truths.

The end product of this promotion of radical relativism is the incubation of an environment ripe for fundamentalism. For on the fringe of relativism lies a very attractive fringe of fundamentalism where people will go to extremes to find what they deem to be Truth with a capital „T“.

The principle of tolerance and non-discrimination was developed as a shield but is now all too often being used as a sword to defeat the fundamental freedoms of religion and expression. Tolerance is slowly becoming totalitarianism. The freedom to express moral ideas based in sacred texts, as Ake Green did in his Biblically based sermon on homosexual behavior, is being met with prison sentences. The belief in moral truths based in religious teaching, as was exposted by Rocco Buttiglione during his European Commission confirmation hearings, is being met by governments with professional ostracism.

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 aforementioned Green and Buttiglione cases, 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.“ We must never forget, for example, the lessons of 1989. It was the marriage of the fundamental freedoms of religion, expression and assembly in Poland which led to the creation of Solidarnosc. Without the legal preconditions to allow for open expression of moral and religious belief, Solidarnosc would have failed. These same lessons were most certainly learned here in Romanian in that same year. And so we must, as our host country has taught us, embrace these freedoms rather than stifle them.

Freedom of expression can be offensive. Publically, Sir Elton John recently called Christians *en masse* hateful lemmings because of the morality Christianity teaches. This was said, and rightfully so, without punishment. Reciprocity demands that people of faith be allowed equal opportunity to express their viewpoints. Human rights after all, are for the majority as much as they are for the minority.

We must never forget that freedom of expression makes up one of the vital elements of democracy. The pluralism is dissociable from a democratic society, which has been dearly won over the centuries, depends on it. „Hate speech“ laws must therefore exempt religion-based expression and ideas.

Let us now move on onto non-discrimination laws.

### **(c) Non-Discrimination Requirements**

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. 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. Furthermore, there are numerous instances when such non-discrimination regulations have been applied to religious schools, hospitals, and charities. 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.

*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.“ Furthermore, laws that prohibit discrimination of persons on the basis of religion should specifically exempt all religion-based organizations, ministries, and activities.*

We must also be very weary of non-discrimination laws in the scope of employment and provision of goods and services. The United Kingdom has proven that the implementation of such laws is a recipe for oppression of the Christian worldview. Recently in the United Kingdom, bed and breakfast owners have been successfully sued for refusing to rent one of the rooms in their home to a same-sex couple because of their religious convictions. In another instance, a foster family was denied the right to take in a foster child because they opposed homosexual behavior. Most Catholic adoption agencies which have sincerely held onto their Christian ethos have also shut down to business because of their refusal to have to place infants with same-sex couples.

And just in May, the European Court of Human Rights took up the companion cases of Liliane Ladele, a Christian registrar fired for asking to be excused from performing same-sex partnership ceremonies because of her faith, and Gary McFarlane, a Christian counselor terminated for gross misconduct for refusing to counsel same-sex couples regarding sexual relations problems. The outcomes of these companion cases will have a radical effect on the legal landscape regarding the interpretation of non-discrimination laws and conscientious objection for Christians in Europe.

Speaking of landmark cases, let us turn to *Lautsi v. Italy*, perhaps the most controversial religious freedoms cases in recent memory.

#### (d) *Lautsi v. Italy*

From a practitioners' perspective, I cannot think of a case more divisive than *Lautsi v. Italy*. Let me start with a procedural overview for those not familiar with the history of the case.

The case was brought by Soile Lautsi, a Finish-born Italian, who brought the case within Italy to have crosses removed from the public school where her two children attended. The Constitutional Court of Italy determined that it did not have jurisdiction over the case, stating that the subject matter of the case was administrative rather than constitutional. An Italian administrative court thereafter upheld Italy's policy concerning the placement of crosses in public schools. Unsatisfied, Mrs. Lautsi took her case to the Second Chamber of the European Court of Human Rights.

It should also be noted that the first attempt to have the crosses removed was in a meeting of Mrs. Lautsi's school board where a democratic vote was held and the idea overwhelmingly voted down. It should also be noted that her husband brought this motion. I note this only to emphasize how political this case really was as the choice of Mrs. Lautsi instead of her husband as the applicant before the European Court was not an accident. Mrs. Lautsi being foreign born and the mother made a far more sympathetic plaintiff than did her husband.

The European court held unanimously on November 3, 2009 that Italy breached Protocol 1, Article 2 of the European Convention of Human Rights because, the court claimed, the presence of the crosses acted to indoctrinate children into the Catholic faith. The judgment also held that Mrs. Lautsi's religious freedom under Article 9 was violated as she had a right to raise her children absent of any religious faith. As a result of the ruling, Italy filed and was granted an appeal before the Grand Chamber of the European Court.

The Grand Chamber is basically a super Supreme Court and answers appeals of the highest importance and sets the law for Europe on how to interpret the European Convention. ADF acted as a third party on behalf of 33 Members of European Parliament from 11 EU Member States.

On March 18, 2011 the judgment of the Grand Chamber came down. To give you an idea of the scope of the shift in the Court's thinking it is best to provide the numbers in how the judges voted. In the 2009 judgment by the Second Section of the Court, with 7 sitting judges, it voted 7 to 0 that there were violations of Protocol 1, Article 2 on Education and 7-0 that Article 9 on freedom of thought, conscience and religion was violated. On March 18, the Grand Chamber on the same facts and same law, sitting as 17 judges, ruled 15 judges to 2 that no violation of the education protocol occurred and 17 judges to 0 that Article 9 need not even be examined. The end result is that Italy would continue to be allowed to have crosses displayed in public schools.

Several points about the judgment and how it reflects current trends in European jurisprudence. First, I think that no one can argue that this case was not purely politicized from day one. Nor can anyone say that the Court is not susceptible to public and political pressure. With such a powerful backlash against the decision it was not surprising that the original judgment was overruled. What was shocking for me was how overwhelmingly the court changed its opinion going from finding a unanimous violation to then almost unanimously finding no violation. Again, this was on the same facts and the same law. So basically, such a shift means one of two things: (a) that the judges of the second section were completely incompetent and completely misunderstood the law or (b) that both judgments were political in nature.

Second, to refute the calls from the secular left at the European level, the Lautsi judgment does **not** reflect the rise of the Christian right in Europe. This is obvious from the fact that probably even those of us in this room cannot agree as to whether the court was right or wrong in its judgment. The fact is the European

Court has been pushing very strongly towards freedom from religion as opposed to freedom of religion for many years now. Examples abound such as the *Folgero and Others v. Norway* case involving opt-outs of religious education; the *Valsamis* case involving a Jehovah's Witness child suspended from school for not attending a military parade against his religious conscience; and the *Konrad* case which held that Christian parents could not home educate because it could set up parallel societies of what the court implied to be „normal“ people and „fundamentalists“. If anything, *Lautsi* represents a backlash to these types of decisions where religious freedom has been taken as a second class right. *Lautsi* is a recalibration of the religious freedoms meter towards the status quo.

Third, despite the divergent beliefs among Christian over the decision, one thing is important to recall. That a judgment against Italy at the Grand Chamber would have been a „grand“ disaster. A look at the American model is a great example where the removal of school prayer and religious symbols from schools quickly led to even children not being allowed to have Bibles in some public schools and children being refused to have their own school prayer at recess time. It is a slippery slope and the judgment would have had far reaching consequences of removing Christianity from the public square.

Number four, while I do not believe *Lautsi* stands for the uprising of a religious right, I think it **does** show how a collaborative effort among Christians appealing to the loss of our religious liberties exemplifies that united together we can push the ball forward for religious freedom. This has also been very true on the issue of persecution of Christians and discrimination against Christians which are matters that have risen to prominence in the last year.

Finally, with regard to emerging religious freedoms threats, let us turn to Europe's attack on parental rights.

### **(e) Parental Rights**

One facet of religious freedoms people do not often see so readily because it is categorized more frequently with family rights, is the attack on parental rights. However, when analyzed closely, this attack is amongst the most dangerous because it strikes at parents rights to raise their own children according to their own religious and moral convictions. What is really at stake in this fight, are the hearts and minds of our youngest and most vulnerable. Ideologies from the left who wage this war see that if they can convert the next generation without interference from parents, then they will have won the battle over social policy. Several countries stand out to this extent.

First I would like to talk about Germany which has had major problems over recent years with parental rights issues. Germany is an interesting case study because the country as a whole is held up by many for its rule of law and good reputation. However, many parents have experienced the dark side of German politics. In Germany, state education is mandatory for all children under the age of 16. This means that these children must attend either private or public schools with no exceptions. The German government also made mandatory „sexual education“ classes. The content of these classes differs in each of the different provinces of Germany.

In Salzkotten, the education board has chosen a particularly radical „sexual education“ programme which is mandatory for all children between the ages of 9 and 10. This means that there are no exceptions to attending and the content is the same whether the child attends a private Christian school or a state public school. The classes are three days long and they surround an interactive sexual education play which basically teaches children that if something feels good then you should try it.

I represent 10 Christian parents from Salzkotten who told the state that they would not allow their 9 and 10 year old children to be so sexualized at such a young age. They said that such teaching compromised their ability as Christian parents to teach their children proper Christian morals and that they wanted to teach their own children their own Christian sexual morals. As a result of the parents refusal to have their children attend the radical sexual education play, the German government fined the 10 parents more than 1000 Euro each (that is more than 2000 euro per family). The parents refused to pay the fines saying that to fine them for exercising their most basic parental rights and right to religious freedom was a clear violation of the European Convention of Human Rights. As a result of their refusal to pay, all 10 parents were sentenced to spend more than 40 days in jail. When they were released the government **again** tried to make them have their children attend the classes and again fined them. At this time, most of the 10 parents are either serving or have served their second jail sentences for standing up for their children's well-being.

The cases are currently before the European Court of Human Rights in Strasbourg. I have recently filed several briefs for the families to classify the cases as an emergency because of the German government's insistence in jailing these courageous parents.

In Nuremberg, Germany I have had another shocking case involving a young girl named Melissa Busekross. Melissa was 15 years old at the time and had been attending state schools her entire life. She was a good student in all of her classes except with one teacher. With that teacher she failed two classes. The school asked that she be held back an entire year and her parents thought this was not fair as she should not suffer because of one bad teacher. So the parents decided that they would educate her at home because she would progress and learn much faster if they focused on her individual needs. They also did not like the disruptive and unchristian environment in her school. The school board's reaction to this decision was swift and ugly. The school took the matter to court and the court ordered that 15 year old Melissa be taken by police force to the Nuremberg mental hospital and kept there for several months. At 7:00 in the morning with no warning police surrounded Melissa's house and took her into custody like a common criminal as her parents watched helplessly. Melissa made several failed attempts to escape but to no use. They had diagnosed her with what they called „school-phobia,, or the fear of going to school.

The story does not end in Germany. I have a similar case in Sweden involving a loving family who also wanted to home educate their six year old son Domenic. The difference between this case and the Melissa Busekros case is that at this time home education was legal in Sweden and young Domenic met all the criteria to be allowed to home school.

Domenic's father is a micro-engineer and Swedish. His mother is from India. The family had a life long dream of moving to India for them to do missionary work with Indian orphanages where Domenic's father Christer would teach them about economics and help them to live more efficiently. This would also have been a huge benefit for Domenic because he would be close to his mother's family and get to see an entirely different side of the world than most any other child his age would.

Domenic's parents thus went to the local principal and explained their plans to leave to India. They asked if the school could provide textbooks for Domenic because it was important that their son learn both a Swedish **and** an Indian education in case they ever moved back to Sweden. The principal not only refused this very reasonable request he called the local school authority and reported that the parents' refused to have their son learning any education whatsoever. When the parents were already on the airplane in Stockholm ready to fly to India the police came on board the plane with a child welfare officer and took Domenic from his

parents. In essence the state kidnapped Domenic who was also a lawful citizen of India and gave him to a foster family. It has been more than a year and a half that his parents have tried everything in their power to get back custody of their son. The response of Sweden has been to give them even less time with their son and to try and terminate their parental rights all together. And even worse, the more media attention the case gets and the more embarrassed the Swedish child services get the more problems they cause for this poor family.

There are many, many more examples but just to give you an idea of how Western Europe has been poisoned by this mentality I will give you just one more example from Spain. The Zapatero led government in Spain initiated a new controversial curriculum for all students known as „Education for Citizenship“. There is almost no quality control over the subject which is implemented differently in the different regions of Spain. In some regions the textbooks for the classes promote homosexual behaviour and other forms of deviant sexual behaviour with graphic cartoons. In other regions, the textbooks promote communism. And yet in other regions, the textbooks use cartoons which make fun of Jesus Christ or of the Roman Catholic church in the most inappropriate ways.

50000 parents in Spain filed formal complaints with the government saying that they wanted to at least have the option to have their children removed from this offensive class. The Spanish government said no. Two thousand parents brought lawsuits against the Spanish government in order for them to be allowed to remove their children from the classes. The Spanish government still said no. We now co-counsel a case with Spanish allies with 305 parents at the European Court of Human Rights demanding that Strasbourg intervene and allow these parents to be allowed to exercise their natural parental rights and protect their children from these offensive classes.

The law is very clear on the issue of what rights parents have in raising their children. The United Nations Convention on the Rights of the Child clearly states that among the most important rights of the child, besides the right to life, are precisely the right to parental love and the right to education. The Convention also explicitly states that parents, being the ones who love their children most, are those most called upon to decide on the education of their children. This guarantee requires that the State respect the right of parents to educate their children according to their own religious or philosophical beliefs (beliefs which would include pedagogical beliefs). This right has also been codified by Article 18(4) of the International Covenant on Civil and Political Rights, Article 5(1)(b) of the Convention Against Discrimination in Education, Protocol 1, Article 2 of the European Convention of Human Rights, Article 26(3) of the Universal Declaration of Human Rights, and Article 13 of the International Covenant on Economic, Social and Cultural Rights.

Article 2 of the First Protocol of the European Convention of Human Rights explicitly specifies that the state shall respect the right of parents to ensure education and teaching in conformity with their own religious convictions. The scope of this clause is broad and encompasses all methods of knowledge transmission and every type of educational structure including, moreover, those outside the school system. The rights of parents to educate their children according to their own religious beliefs and desires as to what may be in their child's best interest must be safeguarded in order to provide the possibility of pluralism in education, this being essential for the preservation of a democratic society.

Again, I reiterate, governments cannot discriminate against people, including parents, simply because of their Christian convictions. A decision in a home education case several years ago named *Konrad v. Germany*, really captured just how institutionalized this prejudice against Christian belief is. The Court, ruling the case inadmissible, deemed that home education for Christians had the potential effect

of setting up „parallel societies“. If we really unpack what the court meant by parallel societies, it is clear that they meant that home education among Christians in Germany would set up conflicting elements of society: one „normal“ and the other „fundamentalist“ and therefore abnormal. When looking at language like this, the fact that good Christian parents are being put in jail to protect their children and that governments like that of Zapatero are working so hard to deny opt-outs from classes aimed at social engineering, it cannot be denied that this threat to religious liberty is at its zenith.

## **(f) Conclusion**

In conclusion, I have given you a lot of information to think about here regarding the current threats against Christians and about our options for victory and need to organize.

Undoubtedly, our opponents are organized and fierce. As such, we must be even more organized and fiercer. As participants in this conference we have a golden opportunity to develop a cohesive and cooperative strategy for religious freedom in Europe and internationally.

No single individual or organization can win this battle alone just like our opponents did not conquer all of the ground they did individually. This is a battle that cannot be lost and this is a battle that will undoubtedly define our generation. As we all well know, in order to win these battles, we will require a team effort. And so I urge all of us here to use this time effectively, both inside of these meetings and out, to set a cohesive strategy for victory.

We must strive to see laws that affirm religious liberty; protect life from conception to natural death; defend the family; and preserve marriage as being between one woman and one man. We must reclaim what we have lost; protect what we have; and shape a future where Christian religious freedom will be protected and affirmed! So my closing question to you is: you now have the challenge before you... How will you respond?

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# The myth of secular tolerance<sup>1</sup>

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*Religion is the tragedy of mankind. It appeals to all that is noblest, purest, loftiest in the human spirit, and yet there scarcely exists a religion which has not been responsible for wars, tyrannies and the suppression of the truth. Religion is not kind, it is cruel.* (A. N. Wilson)<sup>2</sup>

*Love your enemies, bless those who curse you, do good to those who hate you and pray for those who persecute you, that you may be sons of your Father in heaven.* (Jesus of Nazareth)<sup>3</sup>

## Abstract

*The resurgence of religious violence at the start of the twenty-first century has reinforced the myth of secular tolerance – the notion that whereas religious believers are instinctively intolerant, tolerance comes naturally to the secular mind. This article challenges the myth. It suggests that secular people are not immune from the temptation to persecute and vilify others, and argues that the Christian Gospel fostered the rise of religious toleration. Facing the rise ‘new secularism’ since 2008 it is important to go to the roots of the myth of secular tolerance.*

## Keywords

religious toleration, new secularism, secular tolerance

## Introduction

On 15 September 2001, four days after the destruction of the World Trade Centre in New York, Professor Richard Dawkins blamed the tragedy on something he called ‘religion’. Religion, he suggested, is ‘a ready-made system of mind control which has been honed over centuries’, and ‘teaches the dangerous nonsense that death is not the end’. It is thus ideally suited to brainwashing ‘testosterone-sodden young men too unattractive to get a woman in this world [who] might be desperate enough to go for 72 private virgins in the next’. By holding out the promise of an afterlife, religion devalues this life, and makes the world ‘a very dangerous place’. Dawkins issued a stark warning: ‘To fill a world with religion, or religions of the Abrahamic kind, is like littering the streets with loaded guns. Do not be surprised if they are used.’<sup>4</sup>

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1 Acknowledgements: This article is based on an article in September 2003 been published as a ‘Cambridge Paper’ (Vol 12, No 3) by the UK-based Jubilee Centre ([www.jubilee-centre.org](http://www.jubilee-centre.org)).

2 A. N. Wilson, *Against Religion: Why we should live without it*, (Chatto & Windus, 1991).

3 Matt. 5:44-45.

4 R. Dawkins, ‘Religion’s misguided mis-

In the wake of 9/11 Dawkins was widely praised for his 'courageous' statement, and other well-known commentators joined his private crusade/jihad against religion. The *Guardian* columnist Polly Toynbee was just as stentorian: 'The only good religion is a moribund religion: only when the faithful are weak are they tolerant and peaceful. The horrible history of Christianity shows that whenever religion grabs temporal power it turns lethal. Those who believe theirs is the only way, truth and light will kill to create their heavens on earth if they get the chance.'<sup>1</sup> The chorus was swelled by Matthew Parris in the *Spectator*, who theorised that Christianity and Islam were potentially violent because of two common features: a claim to universality and a belief in the afterlife, which puts 'another world' before this one. By contrast, secular people who placed all their hopes in humanity and in the 'here and now' would not sacrifice temporary peace and prosperity for eternal glory. 'Godlessness', concluded Parris, 'is a humanising force'.<sup>2</sup>

It is easy to understand why these vigorous polemics against religion were published after the attack on the Twin Towers. Secular commentators felt the need to vent their frustration at the religious zeal which had apparently motivated the suicide bombers. They were, however, anxious to avoid charges of Islamophobia. Attacking Islam was taboo, but attacking religion *per se* was acceptable. Condemning one-sixth of the world's population was irresponsible; incriminating three-quarters of it was 'courageous'.

Underlying the polemics of Dawkins, Toynbee and Parris was what we might call 'the myth of secular tolerance'. The myth is not that secular people can be tolerant, for often they are. Rather, the myth of secular tolerance is that *tolerance comes naturally to the secular person, whilst intolerance comes naturally to the religious believer*. The myth suggests that simply by virtue of being secular, one is somehow immune from the temptation to vilify and persecute 'the other'. This is a myth in the vulgar sense that it is a commonly held belief without solid foundation, a figment; but it is also a myth in the technical sense – a moral tale that sustains and nourishes the culture and beliefs of those who hold it.

Before assessing the myth, we should begin with a definition. Tolerance has been traditionally defined as 'the policy of patient forbearance towards that which is not approved'.<sup>3</sup> Tolerance is not the same as approval or indifference, for the tolerant person exercises *restraint* towards something that they dislike. A father may be said to tolerate his son's heavy metal music, for example, precisely because he dislikes it but refrains from banning it in the home. By contrast, intolerance involves the active attempt to suppress or silence the disapproved practice or belief. Of course, the means of suppression will vary greatly from context to context: a state may criminalise an activity and imprison or even execute those who practise it; a voluntary organisation may expel an offender from membership; and polemicists may attempt to discredit or destroy an opposing viewpoint by subjecting it to vilification and abuse. In this paper, we will concentrate on political intolerance (the use of state coercion), and polemical intolerance (the use of vitriol and stereotyping).

In the first part of the paper, I will question the myth of secular tolerance by arguing that secularists have often resorted to political and polemical intolerance. In the second half, I will suggest that the modern commitment to religious tolerance first emerged from within the Christian tradition.

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siles', *The Guardian*, 15 September (2001):20.

1 P. Toynbee, 'Last chance to speak out', *The Guardian*, 5 October (2001):21.

2 M. Parris, 'Belief in paradise is a recipe for hell on earth', *The Spectator*, 22 September (2001).

3 R. Scruton, 'Toleration', in *A Dictionary of Political Thought*, (Macmillan, 1982). J Horton, 'Toleration', in E.Craig, ed., *The Routledge Encyclopedia of Philosophy*, 10 vols, (Routledge, 1998).

## The reality of secular intolerance

The roots of modern secularism are complex, but it is possible to identify a continuous tradition of secular rationalist thought stemming from the radical Enlightenment of the eighteenth century. The Enlightenment was a complex phenomenon, and in many places it had a distinctly Christian complexion. But radical Enlightenment thinkers were fiercely anti-clerical and antagonistic to the claims of revealed religion. Among the key figures in this movement were the Dutch Jew, Spinoza, the English radical, John Toland, the French *philosophes*, Voltaire, Diderot, and Rousseau, and the Scottish philosopher David Hume. Some of these men were deists, whilst others were atheists. But all emphatically rejected Christian claims to special divine revelation, and championed a sceptical and anti-supernaturalist worldview.

The founding fathers of this radical Enlightenment believed that their movement would form a steadily expanding oasis of secular tolerance in a desert of religious bigotry. Voltaire was convinced that rationalism would rescue Europe from the violence of the Christian past and propel it towards a tolerant future. He himself campaigned against the persecution of French Huguenots, and other deists like Thomas Jefferson and Frederick the Great of Prussia made major contributions to religious toleration.

However, it would be a mistake to think that deists, atheists and freethinkers have always been on the side of the angels (not that they believed in angels). The tendency to stereotype and stigmatise 'the other' goes back to the very roots of modern rationalism. Despite his impassioned pleas for toleration, Voltaire demonstrated little sympathy for traditional religions. A brilliant satirist, he was scathing in his attacks on Jews, Catholics and Calvinists, whose cherished beliefs he scornfully dismissed as absurdities. In this respect, Voltaire established a model for discourse in modern societies, for he combined a commitment to tolerance with an equally strong commitment to free (and aggressive) speech. As he famously said, 'I disagree with what you say, but I will defend to the death your right to say it.' In many ways, this has been a positive legacy, for it is surely a mistake to think that when we sign up for toleration we forfeit the right to engage in robust intellectual critique or even satire.

But Voltaire's disdain for traditional religion had its dangers. He was surprisingly mealy-mouthed about the Roman persecution of the early Christians and the Japanese persecution of sixteenth-century Catholics – he seemed to favour worldly pagan persecutors over devout Christian martyrs. Moreover, Voltaire's disdain for the Hebrew Scriptures and for Judaism helped to foster a new kind of anti-semitism.<sup>1</sup> In Voltaire himself, these strains of intolerance were kept in check, but in some later rationalists they ran riot. As the historian Richard Popkin has pointed out, the basically tolerant deism of the American Revolution stood in sharp contrast to the intolerant deism of the French Revolution.<sup>2</sup> In France, the deist revolutionaries launched a fierce campaign of de-Christianisation during the Reign of Terror. Several thousand clergy were executed, and many more were imprisoned. Even nuns were sent to the guillotine.<sup>3</sup> Given the right circumstances, deists could quickly forget Voltaire's commitment to tolerate those with whom one disagreed.

In this respect, the French Revolution established an ominous precedent. For among the greatest figures in the secular rationalist tradition was Karl Marx. The

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1 On the ambiguity of Enlightenment attitudes see A. Sutcliffe, *Judaism and Enlightenment*, (Cambridge University Press, 2003).

2 R. Popkin, 'An aspect of the problem of religious freedom in the French and American Revolutions', *Proceedings of the American Catholic Philosophical Association*, 50, (1976):146-61.

3 J. McManners, *The French Revolution and the Church*, (SPCK, 1969).

movement that Marx founded drew deeply from the well of radical Enlightenment contempt for traditional religion, and Marx was convinced that human emancipation would require 'the abolition of religion'.<sup>1</sup> The militant atheism of Marx's followers was to be the major source of religious persecution in the world between 1917 and 1979. The Russian Revolution ushered in a period of repression and martyrdom almost unprecedented in its scale. By 1939, not a single monastery or convent remained open out of a thousand or more with which the Soviet period began. The number of churches was reduced to barely a hundred, and thousands of clergy were arrested and liquidated.<sup>2</sup> In Communist China, things were just as bad. According to one authority on religious persecution, the decade of the Cultural Revolution in China (1966 to 1976) 'was perhaps the largest intense persecution of Christians in history'.<sup>3</sup> Even in contemporary China, Catholic priests and Protestant pastors often live in fear of arrest.

The philosopher John Gray (himself a non-believer) has recently highlighted the history of secular intolerance:

The role of humanist thought in shaping the past century's worst regimes is easily demonstrable, but it is passed over, or denied, by those who harp on about the crimes of religion. Yet the mass murders of the 20th century were not perpetrated by some latter-day version of the Spanish Inquisition. They were done by atheist regimes in the service of Enlightenment ideas of progress. Stalin and Mao were not believers in original sin. Even Hitler, who despised Enlightenment values of equality and freedom, shared the Enlightenment faith that a new world could be created by human will. Each of these tyrants imagined that the human condition could be transformed through the use of science.<sup>4</sup>

Here then is a serious problem for those who subscribe to the myth of secular tolerance. Contrary to what Matthew Parris suggests, Godlessness is not always 'a humanising force'. One could justifiably amend the dictum of Polly Toynbee: 'The horrible history of atheism shows that whenever secularism grabs temporal power it turns lethal.'

Of course, some would argue that the blame for this 'horrible history' should not be laid at the door of secularism but of Marxist-Leninism or Maoism. There is merit to this argument, as there is to the parallel claim that the Crusades and Inquisitions involved an ideological distortion of authentic Christianity. But there may also be distinctive features of the secularist worldview which foster intolerance. The secular myth of progress tends to create a triumphalist and intolerant eschatology. People who believe that the future is secular, and that only backward religions stand in the way of progress, face a strong temptation to give history a helping hand by aggressively clearing these roadblocks from the highway to human emancipation. 'I'm the future, you're the past' is a slogan that breeds intolerance, particularly when the future must be realised in the here and now. In the radical Enlightenment tradition, contempt for religion has frequently been translated into policies of suppression.

Dawkins and Toynbee, of course, clearly stand in the line of Voltaire rather than of Lenin and Mao. Although they disagree with what believers say, they would (one hopes) be willing to defend to the death their right to say it. Yet there is something a little chilling about Toynbee's statement that 'The only good religion is a moribund religion'. For his part, Dawkins seems determined to match the radical feminist claim that all men are potential rapists, for he clearly implies that all believers are potential terrorists. On one level, such fighting talk is harmless. Sticks and stones may break

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1 Karl Marx, *Selected Writings*, ed. D. McLellan, (Oxford University Press, 1990), 43-44, 51, 62, 64.

2 See S. Hackel, 'The Orthodox Churches of Eastern Europe', in J. McManners, ed., *The Oxford History of Christianity*, (Oxford University Press, 1990), 558-9.

3 P. Marshall, *Their Blood Cries Out*, (Dallas: Word, 1997), 78.

4 J. Gray, 'The myth of secularism', *New Statesman*, 16-30 December (2002), 70.

bones, but words do not. Yet one wonders whether modern commentators have not crossed the boundary-line between legitimate vigorous critique and the crude stereotyping which is the hallmark of polemical intolerance. By traducing the faithful as potential terrorists or atavistic bigots, secularists obviate the need for reasoned argument and sensitive engagement with 'the other'. Casting off polemical restraint, they foster prejudice and undermine the possibility of genuine conversation.<sup>1</sup>

Anti-religious polemics are particularly significant when they fuel an active campaign for state-sponsored secularisation. Polly Toynbee has written that 'religion should be kept at home, in the private sphere'. The worlds of education and politics should be religion-free zones.<sup>2</sup> The secularisation of British society by the state is also advocated by the philosopher A. C. Grayling, who explains that this 'would mean that government funding for church schools and "faith-based" organisations and activities would cease, as would religious programming in public broadcasting'.<sup>3</sup> Other commentators suggest that the state should stop treating religious communities with kid gloves, and should start imposing liberal or secular values.<sup>4</sup> This echoes the argument of some political theorists, who maintain that the state should actively promote individual 'autonomy' at the expense of traditional communities. But as the philosopher William Galston warns, this autonomy-based liberalism 'exerts a kind of homogenising pressure on ways of life that do not embrace autonomy'. Rather than protecting legitimate diversity, it undermines it.<sup>5</sup> All of this begs the question: how much pluralism can secular liberalism tolerate?<sup>6</sup> If secular intolerance is relatively mild at present, it should not be underestimated.

### **Christianity and the rise of toleration**

What then of the second component of the myth, the claim that intolerance comes naturally to the religious believer? This is clearly a central conviction of Dawkins, Toynbee and Parris, and many secular people are convinced that the very idea of tolerance is a product of Enlightenment rationalism. During the Salman Rushdie controversy, the former Labour party leader, Michael Foot, put it this way:

How the world in general, and Western Europe in particular, escaped from this predicament, this seemingly endless confrontation [between religions], is one of the real miracles of western civilisation, and it was certainly not the work of the fundamentalists on either side. It was done by those who dared to deny the absolute authority of their respective gods; the sceptics, the doubters, the mockers.<sup>7</sup>

Foot's essential point – that religious dogmatism kills while religious scepticism heals – can seem persuasive. It is certainly true that in medieval and early modern Europe, devout Christians – like Thomas More and John Calvin – often supported policies of persecution. In the sixteenth century, several thousand 'heretics' were executed because the Catholic and (to a lesser extent) Protestant churches believed that this would save souls by halting the spread of the gangrene of heresy.<sup>8</sup>

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1 For a revealing analysis of secular intolerance see P. Jenkins, *The New Anti-Catholicism: The Last Acceptable Prejudice*, (New York : OUP, 2003).

2 P. Toynbee, 'Religion must be removed from all functions of state', *The Guardian*, 12 December (2001):18.

3 A. C. Grayling, 'Keep God out of public affairs', *The Observer*, 12 August (2001):26.

4 See Roy Hattersley, 'Religion can't be used as an alibi', *The Guardian*, 19 May 2003.

5 W. Galston, *Liberal Pluralism*, Cambridge University Press, (2002), 23.

6 See J. Chaplin, 'How much cultural and religious pluralism can liberalism tolerate?', in J. Horton, ed., *Liberalism, Multiculturalism and Toleration*, (Macmillan, 1993).

7 L. Appignanesi and S. Maitland, eds., *The Rushdie File*, (Fourth Estate, 1991),244.

8 See B. Gregory, *Salvation at Stake: Christian Martyrdom in Early Modern Europe*, (Cambridge,

But Foot was wrong to suggest that the reaction against this kind of persecution was initiated by secular rationalists or unbelievers. In reality, the early advocates of religious toleration in sixteenth- and seventeenth-century Europe were devout Christians, and their case against persecution was fundamentally theological.<sup>1</sup> They had become convinced that the use of coercion in religion constituted a betrayal of the Gospel. The Gospel, they argued, reveals that we are all recipients of divine tolerance.<sup>2</sup> Despite our rebellion against him, God the Father displays an almost incredible clemency and longsuffering towards us. Instead of treating us as our sins deserve, he endures our hostility and offers us forgiveness. Like the Father of the Prodigal, he longs for the day when we will return to his embrace.<sup>3</sup> Tolerationists argued that Christians, who are so indebted to God for his tolerance towards them, ought to display mercy and patience towards others.<sup>4</sup> They underlined the words of Jesus: 'Be merciful therefore, as your heavenly Father is merciful.'<sup>5</sup>

Tolerationists pointed out that the mercy of the Father is embodied in his Son. Christ comes to inaugurate a new kind of kingdom, one not characterised by domineering rule or violence.<sup>6</sup> He is meek and lowly, persecuted but never persecuting. In his declaration of his kingdom's principles, he commands his followers to love their enemies, turn the other cheek, and do unto others as they would have done to themselves.<sup>7</sup> When his disciples try to call down fire on an unbelieving Samaritan village, he rebukes them.<sup>8</sup> He rides into Jerusalem on a donkey, not a charger.<sup>9</sup> He is led like a lamb to the slaughter.<sup>10</sup> At his trial he declares, 'My kingdom is not of this world.'<sup>11</sup> And in his Great Commission to his disciples, he teaches that his kingdom was to be extended by teaching, not by compulsion.<sup>12</sup>

For tolerationists, the New Testament church offered a startling rebuke to contemporary Christendom. The primitive church relied on the Spirit and the word, not on worldly force. The Apostle Paul teaches that the weapons of the Christian's warfare are not worldly but spiritual.<sup>13</sup> 'Paul did war', wrote the tolerationist Henry Robinson, 'but not according to the flesh; he did not imprison, fine, nor cut off ears, his weapons were only spiritual, the power and might of Jesus Christ.'<sup>14</sup> The primitive church had taken the way of the cross; it had eschewed violence and suffered persecution. As John Locke put it, 'the Gospel frequently declares that the true Disciples of Christ must suffer Persecution; but that the Church of Christ should persecute others, and force others by Fire and Sword, to embrace her Faith and Doctrine, I could never yet find in any of the Books of the New Testament.'<sup>15</sup>

Tolerationists highlighted the New Testament contrast between the sword and the word, force and argument, coercion and persuasion. Christ's Gospel is not

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MA : Harvard University Press, 1999).

1 See P. Zagorin, *How the Idea of Religious Toleration Came to the West*, (New Jersey : Princeton University Press, 2003); J. Coffey, *Persecution and Toleration in Protestant England*, (Longman, 2000), ch. 3.

2 Rom. 2:4.

3 Luke 15:11-32.

4 Matt. 18:21-35.

5 Luke 6:36.

6 Matt. 20:25-6.

7 Matt. 5-7.

8 Luke 9:51-56.

9 Matt. 21:1-5.

10 Isa. 53:7.

11 John 18:36.

12 Matt. 28:19-20.

13 2 Cor. 10:3-5. See also Eph. 6:10-18.

14 Henry Robinson, *Liberty of Conscience*, London, 1644, pp.16-17.

15 John Locke, *A Letter Concerning Toleration*, London, 1689, p.12.

spread through physical violence or abusive speech, but through the preaching of the word, persuasive argument, and holy living. As Paul teaches, 'the Lord's servant must not quarrel; instead he must be kind to everyone...Those who oppose him he must gently instruct.'<sup>1</sup> If the Gospel undercuts religious coercion, it also fosters gracious speech. The Anglican Jeremy Taylor remarked that it was 'one of the glories of the Christian religion, that it came in upon its own piety and wisdom; with no other force, but a torrent of arguments and a demonstration of the Spirit...Towards the persons of men it was always full of meekness and charity, compliance and toleration.'<sup>2</sup>

The determination to reform Christianity by returning to New Testament principles produced some remarkable results. In North America, three English tolerationists set out to create colonies that would guarantee freedom of religion. The radical Puritan Roger Williams founded Rhode Island, the Anglican John Locke helped to draft the constitution of the Carolinas, and the Quaker William Penn founded Pennsylvania, with its capital Philadelphia (the city of brotherly love). Through their writings and example, these men and others like them helped to transform Christian attitudes. By 1700, support for the enforcement of religious uniformity was breaking down in the face of new ideas of toleration and religious freedom.

Paradoxically, this modern commitment to toleration had arisen out of an attempt to go back in time to restore the simplicity and peaceableness of the primitive Christianity. As the French philosopher, Jacques Derrida, has suggested:

the concept of tolerance, *stricto sensu*, belongs first of all to a sort of Christian domesticity. It is *literally*, I mean behind this name, a secret of the Christian community. It was printed, emitted, transmitted and circulated in the name of the Christian faith.<sup>3</sup>

Derrida points out that even Voltaire supported his calls for toleration by appealing to the non-coercive character of the apostolic church. The Enlightenment critique of Christendom's religious violence remained profoundly indebted to the example of Christ and the early Christians. As Oliver O'Donovan explains, Christendom was 'the womb in which our late-modernity came to birth. Even our refusal of Christendom has been learned from Christendom.'<sup>4</sup> When critics of Christianity reprimand the church for its history of persecution, they echo the statements of Christian reformers.

## Conclusion

The myth of secular tolerance is seriously flawed. There is no good reason to suppose that secular people are immune from the temptation to suppress or silence 'the other'. Indeed, in practice secularists have often been highly intolerant. Moreover, although the church has sometimes turned aside from the way of Christ by resorting to persecution, the Christian Gospel was one of the principal sources of the rise of religious toleration. The myth of secular tolerance offers a convenient excuse for ignoring the truth claims of Jesus, and it provides a useful propaganda tool for those who wish to discredit the church and marginalise the Christian voice in contemporary debate. So Christians need to question this reigning myth of secular society, and challenge the tendency of some commentators to stereotype and

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<sup>1</sup> 2 Tim. 2:24-25.

<sup>2</sup> Jeremy Taylor, *Liberty of Prophecy*, London, 1647.

<sup>3</sup> J. Derrida and G. Vattimo, eds., *Religion*, Cambridge : Polity Press, 1998, p.22.

<sup>4</sup> O. O'Donovan, *The Desire of the Nations*, Cambridge University Press, 1996, p.194.

stigmatise believers. Yet we should resist the urge to retaliate in kind. We are called to love our enemies and do good to those who hate us.<sup>1</sup> Our speech should be 'full of grace'.<sup>2</sup> In a pluralistic society, where moral disagreement can be bitter and profound, we should display civility and defend open and reasoned debate.<sup>3</sup> The New Testament warns us that we will face hostility and persecution.<sup>4</sup> It also gives advice that could serve as a motto for Western Christians in the twentyfirst century: 'Live such good lives among the pagans that, though they accuse you of doing wrong, they may see your good deeds and glorify God on the day he visits us.'<sup>5</sup>

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1 Matt. 5:38-45.

2 Col. 4:6.

3 See R. Mouw, *Uncommon Decency: Christian Civility in an Uncivil World*, Downers Grove: Intervarsity Press, 1992.

4 Matt. 5:10-12; John 15:20; 2 Tim. 3:12.

5 1 Pet. 2:12 .

# Religious Freedom Ethic's Dimensions: Individual *vs.* Communitarian

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## Abstract

*Vivid debates were encountered in recent years on the subject of religious freedom ethics. The politic correctness attitude became many times a coercion instrument for suppressing the communitarian interests by promoting individual interests, instituting the minority tyranny that reduced to silence the communitarian interests. This might also create a disproportional representation in society for communitarian religious interests. The question is: whose religious interests should prevail? Should there be more guarantees given by the governments for the long existing, larger, and traditional religious groups, compare with the guarantees provided for the newer and smaller religious groups? Those questions provide a glimpse of the existing tension in the society on the subject of religious freedom. The present paper should answer these types of questions, explaining the tension and giving possible answers from a religious freedom normative approach.*

## Keywords

ethics, religious freedom, communitarian, individual, morality

The tension in the epistemology determining the individual and communitarian way of constructing the society extends much beyond the metaphysic and theological debate.<sup>1</sup> Phillip E. Johnson considers that the proclaiming of the individual religious freedom is not part of the modernist deadlock, but it is more about creating obligations for the others.<sup>2</sup> There is a desire for the individual autonomy, but also a desire for the group solidarity<sup>3</sup>, desires that are

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1 Cornel Boingeanu considers that for the theological debate the differentiation comes from the diverse traditions of interpretation for the Trinitarian doctrine. On one hand were the Cappadocian fathers that understood the Trinitarian tradition as being ontological, and on the other hand was the Augustine tradition that seen the relationship as a logical concept, the divine identity of the Trinity being dissolved into the divine nature's Unity. (Cornel Boingeanu, „Dimensiunea escatologică a ființei umane” (En. *Eschatological Dimension of Human Being*), in Ioan Bunaciu, Bunaciu Otniel, Radu Gheorghită & Emil Bartoș, ed., Editura Reformatio, Oradea 2005, 266).

2 Phillip E. Johnson, „Impasul modernist în drept” (En. *The Modernist Impas in the Righs*), în *Dumnezeu și Cultura* (En. *God and Culture*), D.A. Carson & John D. Woodbridge, ed., Cartea Creștină Press, Oradea 2006, 210.

3 Peter Ludwig Berger, *Facing up to Modernity: Excursion in Society, Politics and Religion*, Penguin, London, 1977, 107.

most of the times in conflict in the ethic debates. Robert Nisbet, talking about America in the years 1950's, affirms:

On one hand we praise the equalitarian democracy, moral neutrality, intellectual freedom, social progress, rationalism and all impersonal liberties of modern industrialization and political society. On the other hand, we continue to venerate traditions, securing the social status, corporatist hierarchies, religions and communities, having all in the context all moral implications.<sup>1</sup>

When you refer to religion it implies in most of the cases the idea of a group or community, someone's believe being practiced in a group. Very rarely you met people that on individual base they have their own and singular religious perspectives. Thus is necessary to have an ethical debate over the communitarian vs. individual dimension of religion. The first ethic-philosophical references the community was found in the Greek philosophers, in the writing of Aristotle, Cicero, St. Augustine, Tomas Aquinas, or in the roman laws. Rousseau in France or Hegel in Germany wrote about it much latter. First, community was an abstract and a universal concept, only than being understood as a group that includes moral rules and ethic principles.<sup>2</sup> G. Van der Leeuw, in *Religion in Essence and Manifestation*<sup>3</sup>, talking about humanity, says that this in itself forms a community to which „we all belong and have no other options“.<sup>4</sup> The communitarians considers that an isolated individual being evaluated as such is incomplete due to the fact that the social, cultural, religious, historic etc., contexts should be considered for the evaluation. By the Rawls's ignorance veil concept, the participants of the original position meant to be ignorant for any kind of information, including those referring to believes.

MacIntyre considers that someone's life could be known only by knowing the story behind it. But someone's story is related to the other's stories, which create a complex narrative that reveals the individual's story only in the context. MacIntyre sees this context that shaped and formed the individual being more related to family, tribe or neighborhood, than to state, nation or social class. Too often the modern states present such a confused content of values for the society, without giving a minimal understanding over the values that unite the society. Out of those, there are for sure most of the times not included religious beliefs, mainly due to the plurireligious modern states. Religious believes used to create the sense of unity in the Pre-Modern societies. More than that, the belonging to a community is not given by artificial membership, nominal or instrumental, but have inner own values. Therefore Alasdair MacIntyre considers also that the justice and morality concepts are very confuse in our contemporary society, that do not agree on hierarchy or the content of those values, thus a „seriously disorder“<sup>5</sup> had been produced in our society, and a disorientation in the individual's life.<sup>6</sup> The murder, that seem to be a complete moral concept, the act being seen as blamable, could not be equally treated as the lie, that gets underway from the society's moral judgment. W. Connelly

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1 Robert A. Nisbet, *The Quest for Community: A Study in the Ethics of Order and Freedom*, Oxford University Press, New York 1953, 212, 213.

2 Shalomo Avineri & Avner DeShalit, *Comunitarism and Individualism*, Oxford Univeristy Press, 1992, 1, 2.

3 Published originally in German at Tübingen in 1933 with the title: *Phanomenologie der Religion*.

4 Gerardus Van der Leeuw, *Religion in Essence and Manifestation*, George Allen & Unwin, London 1938, 272.

5 Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, University of Notre Dame Press, 1984, 2<sup>nd</sup> Ed., 5,6.

6 Mihaela Miroiu, *Convenio. Despre natură femei și morală* (En. *Convenio. About Woman Nature and Morality*), Polirom, București 2002, 176.

considers that concepts as democracy or freedom are included in normative considerations, in spite of their multiple interpretations, and the use of them in society is understood as normative.<sup>1</sup>

Thus the freedom in within, or for a religious group, could be effective when the state gets involved in order to create the environment for the individual to benefit of the different options, and to chose which one corresponds to its interests. More than that, the state should inform de individual over the options available. The pressure of the community to impose the individual the choices he has to make, limits his choices at the general interests of the particular community, usually defined as the community moral. The individual freedom is being limited to this environment, which makes the positive freedom to be in fact a repression in the name of freedom. Not only the religious group could be restrictive regarding the individual freedom, the individual being such victimized, but also the individual may fall into what Mihaela Miroiu calls the two excesses: assimilation and victimization.

The lack of courage to assume your differences implicitly attracts the identification with the group considered as norm, in other words: the sin of assimilation. Being conscience of differentiations, but accepting a victim statute, being disarmed by the dominant group, attracts another sin: the sin of victimization.<sup>2</sup>

Eileen Barker in the article „New lines in the supra-market: How much can we buy?“ describes the continuous tension in the attempt of making compatible the values and models promoted by society. The values that are fundamental in society for the individualism or communitarianism, freedom or security etc., could bring enormous tensions and contradictions. Those contradictions could be left in their own mood to develop together in society, or could be eliminated by adhering to a standard which exclude confrontation. Eileen Barker concludes the article by saying: „the pluralism price is eternal vigilance“.<sup>3</sup>

The individual interest interacts permanently with the moral principles of the society. The individual could place judgments on the communitarian ethics, embrace or reject their values. His or her decisions could affect the community if these are in contradiction with the ethic principles of the community. Carl F. H. Henry insists on the need of individual morals for personal equilibrium affirming that: „fundamental, in the chaos of the social ethic, is the personal moral decline and the usefulness feeling that comes along with this decline“.<sup>4</sup>

Looking at this interaction that is a lot of times very tensioned, between two bearings of morality, the individual and communitarian, being submissive to the state laws, raises moral dilemmas. The dilemma is dealing with the clarification of whether or not to be submissive to state's laws. The debate is first of all linked to the morality of decision, and not to the legality of it. The moral conflict is linked to the submission before laws that conflicts the religious beliefs, being inconsistent with the religious requirements. Transferring it to the religious entity, the moral conflict is linked to the submission of a given religious group to the requirements of the law, when is known that those laws are in contradictions with the principles of the group's religious beliefs.<sup>5</sup>

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1 William E. Connolly, *The Terms of Political Discourse*, 2<sup>nd</sup> ed., Martin Robertson, Oxford 1983, 29.

2 Mihaela Miroiu, *Convenio. Despre natură femei și morală* (En. *Convenio. About Woman Nature and Moral*), 177.

3 Ian Hamnet, *Religious Pluralism & Unbelief*, Routledge Press, London 1990, 40.

4 Carl F.H. Henry, *Etica Creștină Personală* (En. *Personal Christian Ethics*), Cartea Creștină Press, Oradea 2004, 12.

5 Ellis M. West & Roger William, „On the Limits of Religious Liberty“, in *The Annual Society of Christian Ethics*, Knoxville, TN, USA 1988, 133.

The answers of various legislative forums are very different. The understanding of the concept of freedom, of what is: *freedom for* or *freedom from*, or both, is instrumental for this approach. Isaiah Berlin approach for the positive and negative aspects of freedom are very important in the debate.<sup>1</sup> If there is a legal coercion it should first have a moral foundation before establishing cohabitation norms where the individual morality fails in promoting social peaceful and understanding relationships between the members of a certain society.<sup>2</sup> The organized or positive freedom, in Berlin's terms, applied to religious groups „means conformity of desires, willingness and behavior, directed by the conscience, being in accord to the corporative leadership. This is due to the fact that involves the acceptance of the communitarian responsibility of being loyal to a moral exterior authority, which transcends desires, institutional leadership and the temporary caprices of majority”.<sup>3</sup> The autonomist concept applied to religious groups reveals most of the time only the group leader's desires and wills, serving mainly their personal interests.

Because of that, you can't talk in a legitimist way about conscience, much less about the religious „rights” of conscience. This is due to the fact that the standard of the institutions that adopts this conception don't attract automatically the obligation of a moral authority beyond them. Their convictions could not be appreciated as being right or wrong, as long as those institutions are not under any objective source of authority. Their actions could be evaluated as useful, profitable or malevolent. In other words, even that their convictions are totally relative, their actions could be thus evaluated as harmful, irrelevant, or probably, welcome in relationship with the effect on the other people in regard with the civil order [...] Brought to extreme, such institutions activity could undermine the social cohesion, causing an oppression of those that are weak and powerless.<sup>4</sup>

Applying the organized freedom perspective on the individual will highlight a submission of the individual to the communitarian goal. The goal is the religious freedom of all members of community. The manifestations of religious freedom from this perspective consolidate the social order and higher-up the stability of a responsible governing. An atomist freedom applied to the individual, being a freedom without obligations, could lead to anarchy because the lack of acceptance of social conventions.<sup>5</sup>

### **The individual will in the context of communitarian morality**

The challenge to decide over what freewill means caused vivid debates. Theologians were due to explain determinism in order to define the freewill. Extensive definitions for the freewill were advanced. Therefore, Jonathan Edwards (1703-1758) wrote a simple and popular definition: „the two words together means in daily speaking that man has the power, privilege and opportunity to do exactly what he wants and only what he wants”.<sup>6</sup> Samuel Wakefield (1799-1895) said: „a

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<sup>1</sup> Isaiah Berlin, *Patru eseuri despre libertate*, Humanitas, București, 1996, 200-257; *Four Essays of Liberty*, Oxford University Press, Oxford 1969.

<sup>2</sup> Ellis M. West & Roger William, „On the Limits of Religious Liberty”, in *The Annual Society of Christian Ethics*, 133.

<sup>3</sup> Daniel R. Heimbach, „Patru perspective asupra libertății religioase” (En. *Four Perspectives on Religious Freedom*), in *Libertatea Religioasă* (En. *Religious Freedom*), no editor, Cartea Creștină Press, Oradea 1995, 22.

<sup>4</sup> Heimbach, *Patru perspective*, 22,23.

<sup>5</sup> Heimbach, *Patru perspective*, 23,24.

<sup>6</sup> Samuel Wakefield, *A Complete System of Christian Theology*, Cranston and Stowe, Cincinnati, 1869, 313.

free moral agent is the one that is the initiator of all his deeds, without any external influence or coercion".<sup>1</sup> J.C. Wenger includes in his definition more elements, affirming that freewill is:

Man's capacity to choose between different alternatives, without being influenced by anything or anybody. Freewill means the option to think different alternatives and be able to evaluate the difference between more possible results. It also means the option of choosing between good and bad. Freewill is capable of thinking for itself and plan for its life. It is based at least partially on intelligence, but is also inspired by feelings and body desires. Freewill doesn't reject a withdrawal in itself, because man can sacrifice some immediate advantages in favor of a higher, long term goal.<sup>2</sup>

John J. Coughlin considers that freewill complete the intellectual capacity of man in order to create his concept of good. It determines someone to act, and the actions are evaluated by the standard of the good that every individual has. The absence of coercion could let the individual to freely act based on his freewill. This type of freedom is understood not only as negative freedom, but positive freedom, because it transform the will into act in conformity with the individual own preferences. Philosophical theories and legal norms are products of human inventions, but the standard of good and bad is set by the individual's freewill determined under different circumstances. The establishment for the law is not therefore determined by the moral order imposed or self constituted, but by the power of the individual to impose his will over the others in the normative process.<sup>3</sup>

John J. Coughlin affirms that through the freewill, the individual accepts some values, becoming thus the creator of his own value's set, which further determines his existence. The existentialism reveals in fact the compatibility between the fix nature and the concept of auto-determination. Therefore there is no metaphysical creation in itself, but under the life circumstances the individual create himself through his freewill in a personal and distinctive way. The individual became in such a way the owner of himself or herself, being able to develop its ability for self perfection.<sup>4</sup>

The concept of individual's determinism placed on irreconcilable positions the theoreticians. Those adapting the Judeo-Christian perspective support the idea that the individual has the freewill that depends on his or her judgment, being intimate and interior, and based on the transcendent principles. The primate of the conscience requires that the individual should be allowed to act on the dictate of his conscience. The anthropological capacities of rationality, intentionality and conscience are seen as being good, but disordered, leading thus to a conflict in judgment. Therefore the formation of the conscience became a continuous project that allows the individual to assume responsibility for past deeds, but it also accepts that conscience could be incomplete or in error. Because of that, the primacy of individual conscience, if able to neglect egoism, selfishness or other human weaknesses, could benefit from the supernatural source of knowledge.<sup>5</sup> Constantine Galeriu considers that „the area of freedom is so large, existing in within the option, and risk, to say 'no' even to the good”.<sup>6</sup> Paul Evdokimov says that is that type of freedom that

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<sup>1</sup> *Ibidem*, 314.

<sup>2</sup> John C.Wenger, *Introducere în Teologie* (En. *Introduction in Theology*), trans. Petru Popovici, Mennonite Publishing House, Scottdale, PA 1954, 118.

<sup>3</sup> John J. Coughlin, „Canon Law and The Human Person”, in *Journal of Law and Religion*, St. Paul, MN, USA, Vol. XIX, No.1, 2003-2004, 30, 31.

<sup>4</sup> Coughlin, *Canon Law*, 33.

<sup>5</sup> Coughlin, *Canon Law*, 33, 34.

<sup>6</sup> Constantin Galeriu, *Jertfă și răscumpărare* (En. *Sacrifice and Redeem*), Harisma Press, Bucharest 1991, 86.

the Christian have in order to say to God: „your will be *not* done“.<sup>1</sup> From Christian perspective, God has the only absolute freedom, and the man’s freedom is limited to the capacities he has been created with. Stăniloae says that the individual „wants to be for himself his own supreme for [...] but even under this circumstance, God allows the human being in his freedom“.<sup>2</sup>

### **Moral values of the community in relationship with religious freedom**

Antonio Rosmini in „Society and its Purpose“<sup>3</sup> is referring to the Christian’s principle of giving a special importance to the direct relationship with God. Christianity considers this virtue and intimate union with God as a mean in itself for the human being. This gives the individual an essential role in his diligent lifetime fight for a cause. The direct result of it is the respect all should have for the personal human goals in life, implicitly for the human dignity. The Gospel reveal only one truth that could be equally achieved by all individuals, which means that equalitarian principle is part of the Christian attitude, or core values, as long as a final goal could be established for every single individual. This goal could be achieved in independence one of another, without using someone to achieve the goal and without violating or obstruction anyone’s freedom.

The attachment of the idea of morality or natural rights to the concept of individual person, matured only in the XVII century when the Protestants supported the individual conscience authority in religion and morality matters, and in consequence the individualism spread in the political and social thinking.<sup>4</sup>

Therefore the Christian contribution was major to highlight and implement the equality concept. Equality is being also a collateral concept with concepts as justice and equity. The Latin *aequitas* is a noun corresponding to the adjective *aequus* which means equality, even thou the equality and equity are different concepts. Aristotle and Plato distinguish between the two concepts by the arithmetic and geometric equality. Arithmetic equality gives everyone equal portions, regardless of importance, but the geometric or proportional one, gives equal portions to equal individuals (based on the merits or ability). Therefore the beneficiaries should be of the same importance or same category. The arithmetic equality, Aristotelian one, is the democratic concept of justice distribution. Plato and Aristotle name it as a „form of equality“ because equalized the value of beneficiaries with their responsibilities.

The equity allows or even requires discrimination when relating to relevant differences for morality and forbidden discrimination in the absence of those differences. It is fair to discriminate when favoring the needy or meritorious, or those with abilities, and is not fair to discriminate between people that are in equal need, equally meritorious or ability. The rule is to treat similar cases the same and different cases in a different manner.<sup>5</sup>

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1 Paul Evdokimov, *Iubire nebună a lui Dumnezeu* (En. *Crazy love of God*), trans. Teodor Baconscky, Anastasia Press, Bucharest 1994, 36.

2 Dumitru Stăniloae, *Chipul nemuritor al lui Dumnezeu* (En. *Everlasting Image of God*), Oltenia Metropolitan Press, Craiova 1987, 78.

3 Antonio Rosmini, „Society and its Purpose“, *Philosophy of Politics*, Vol.2, Rosmini House, 1994; trans from *La Società ed il suo fine*, Milano, 1837, 229-233.

4 David Daiches Raphael, *Problems of Political Philosophy*, Macmillian Press, London 1985, 170.

5 *Ibidem*, 173.

Equity is in direct relationship with the concept of justice. But there is a major distinction that needs to be mentioned between the conservative and reformed traditions. The conservative conception on justice means the distribution of justice in society, maintaining the social norms, restituting the *status quo* where possible and a protection of a certain order in society. The reformed conception of justice requires the revision of social order, redistribution of justice in such a way that is set by the new context of justice and in order to produce a more equitable society. The second type of conception is mainly in people's thinking when they talk about justice, mainly when this is linked to the religious freedom. The individuals want that justice that is moral, transcend the laws or preset social norms. The law protects the rights and enforces the responsibilities that correspond to the rights. The justice concept is frequently used to support the individual rights even against the social order. The distinction between the legal justice and the moral one should be effectuated here. Both are preoccupied for an equity order or society, in order to protect the individual right before the society or other individual requirements, but both have a conservative and reformative aspect.

The judge should be impartial, but also equitable when he establishes the sentence. The procedure is given by the fact that the judge treats everyone equally, without taking care of differentiations, as the only thing that matters is the one of guilt and responsibility in the civic cases. When this is being established the judge can pronounce an equitable sentence. Impartiality is when you administrate the same treatment for all people alike, giving them the same benefits and responsibilities. The justice and injustice, bias and impartiality are terms exclusively used to designate the treatment for the human being. The social dimension of justice is a way to protect norms that are accepted by the majority of a society because these are in their advantage. But where there is no uniformity mainly because of profitable social arrangements for some social categories, it doesn't mean that justice is missing. Affirmations as: „all people are equal“, are not affirmations that recognize deeds, but they refer to rights. When these are included into the laws, the individual has the right to require an equal treatment. The right to religious freedom included in the international norms, requires this equal treatment on the base of intrinsic human dignity of every single human being.

Ideological perspectives on the equality concept determine the place and role of the equality in the society. Andrew Heywood in *Political Ideologies* makes an incursion throughout different political perspectives. The liberals believe in a universal moral norm given by our belonging to humanity. This implies a formal equality, considered also political or opportunity equality. But the social equality could be obtained with the price of suppressing the ability. The conservatives embrace the legal and moral equality, considering that the society has a natural hierarchy, and the material inequality could produce economical benefits. For the socialists is essential to establish the justice and equity, the social cohesion and fraternity, such making room for the positive freedoms. The anarchists insist on the political equality understood as an equal right necessary for the personal autonomy. They consider that political inequality will make room for oppression. The anarchic-Communists believe in the absolute social equality set by the collective ownership over the production. The Fascists reject equality considering that humanity is made of radical inequalities, both between their leaders and their followers, but also between different nations and races of the world.<sup>1</sup> All those perspectives on equality concept are valuable as they all could provide a projection on the type of societies that could exist under particular governments.

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<sup>1</sup> Andrew Heywood, *Political Ideologies*, Macmillian Press, London 1992, 111.

The right to equality could suggest few things: equality treatment, equality chances or equality in meeting the basic needs. The treatment equality means a huge time consume in order to appreciate all the individuals, making sure that no individual is being ignored, setting apart for each individual an equal time and energy in evaluation as you give everyone else. Impartiality is when those conditions are not met. Equality chances means that all have the right to equal opportunities for personal development. Those having special abilities will magnify the opportunities; therefore the resulting benefits will be unequal because of abilities or the consumed effort. For this to happen be necessary to eliminate all the restrictions that could get on the way in achieving the personal interests. The equality in meeting the basic needs is covered in the liberal democracies by the concept of welfare and implies the right of everyone to have the minimum subsistence necessary for life, without caring for the level of the personal contribution to get it.<sup>1</sup> The right of equality is imperative to be respected in the society in order to ensure a favorable climate for religious freedom. All individuals should be equally treated by the state, giving them equal opportunities, regardless of their faith or religion they profess or practice. Only by doing so, the state is adopting a correct ethical attitude toward the individuals. There is no need of extra evaluation's criteria, but the humanity of every single individual has to be sufficient for the state to apply an equal treatment for all members of the society.

## Conclusions

The liberal democratic states should be neutral in the treatment toward different religious groups. In connection with the liberal democrat states support for individual, based on the human dignity ethic principle, makes it imperative for the states to be neutral toward any individual's believes. The individual's believe should be than respected and guaranteed by the state. The tension arises when communitarian interests, such as promoting traditional values, are being challenged. Well known minority tyranny is being a lot of times imposed over the communitarian interests on the bases of no discrimination principle. This could discriminate large religious groups favoring minor religious groups, or individual's believes. It also could atomize society's values, as almost no standard could be imposed. On the other hand, if the governments favor the large religious group's interests, individual believes are being implicitly discriminated. The acceptance of the human rights standard in liberal democratic states is not avoiding the ethical debate over whose interests should prevail. The secularist's solution of excluding religiosity from the public square, isolating it in the private realm, proved in recent history to be a disastrous strategy. Therefore the only solution possible is to build a network of moral principles on which to construct the religious freedom state. It shouldn't be religious state or irreligious state, but it should provide freedom for all religions, thus accommodating individual with the communitarian interests in religious matters. This paper included some of the ethical debates linked to this, projecting possible implications and options available, showing in fact that there are a lot of moral principles to consider for guaranteeing religious freedom.

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<sup>1</sup> The Communists conception over the distribution of justice in the society is that the distribution of responsibility is in accordance with abilities. The distribution of the benefits is in accordance with the needs. I have to mention here that the merits were mainly linked to the party representatives. Such a distribution model is being practiced in monasteries or *kibbutz*, but the functionality of it is possible only if selfishness is completely missing.

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**SYMPOSIUM**  
**LIBERTY OF FAITH AND CONSCIENCE**  
**Bucharest, Parliament, 23<sup>rd</sup> June 2011**

ADDRESS OF The Apostolic Nuncio  
Archbishop FRANCISCO-JAVIER LOZANO  
Dean of the Diplomatic Corps in Romania

I received with great pleasure the invitation to participate in this Symposium which takes place at the Parliament of Romania and is organized by the Ecumenical Prayer Group friends, whom I thank from my heart for the invitation and send them best wishes for a fruitful activity.

I cordially greet all the participants in this symposium, which has a theme so important in the world today, in Europe and even in this noble and dear country, Romania.

As Representative of the Holy See in Romania and the Republic of Moldova, I am grateful to be invited to contribute to an issue of great relevance in the present work of the Holy See and the Catholic Church – such as the right to freedom of religion and conscience.

Pope Benedict XVI recalled some time ago that *religious freedom, inalienable exigency of the dignity of every human and the cornerstone of the human rights edifice, is often compromised. Actually, there are many places where it can not be fully exercised. The Holy See defends religious freedom and demands it to be respected for all. He is concerned because of discrimination against Christians and against the followers of other religions.*<sup>1</sup>

The topic of religious freedom is therefore very timely and we are all witnesses of serious episodes in the world that threaten the existence of Christian communities and other religious communities. It is sufficient to think of what happens in some countries in Asia, the Middle East and the Islamic world in general. We often read in newspapers about serious infringements and violence against Christians and members of other religions.

Certainly, we all know that the challenges to religious freedom are not only in distant countries in the Far or Middle East, but also within the European Union. Today's Western culture is likely to contrast the liberty of truth and justice. Instead, freedom needs a foundation to enable it to develop without endangering human dignity and social cohesion. This foundation can only be transcendental, because it alone is so „high“ as to allow freedom to expand to a maximum and, at the same

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<sup>1</sup> Benedict XVI, *Speech* addressed to the accredited Diplomatic Corps at the Holy See, 7 January 2008, no. 11.

time so „lasting“ as to guide and qualify in all circumstances. Only faith in the transcendental Absolute is a guarantee against false earthly absolutes. Where God is considered a secondary greatness that can be put aside temporarily or permanently, on behalf of more important things, it is precisely these supposedly more important things that fail. This is demonstrated by the tragic result of all political ideologies, even of opposite side. The religious nature of the Holy See and its Universal vocation create a situation in which diplomacy does not determine its own priorities based on economic or political interests and cause it not to have geopolitical ambitions. The 'strategic' priorities of pontifical diplomacy are, above all, providing favorable conditions for the exercise of the mission of the Catholic Church as such, but also for the life of faith of its members and therefore for the right to freely exercise their human rights and fundamental freedoms.

In reflection of the Church – and here I think, first of all, of the most recent and authoritative documents, such as the *Dignitatis Humanae* Declaration of the II Vatican Council – religious freedom is a subjective and insuppressible right, inalienable and inviolable, with a private dimension and a public one; an individual, a collective and an institutional one<sup>1</sup>. The respect for religious freedom, as the guardianship of the transcendent dimension of the human person, allows the balanced development of all other freedoms and rights. Therefore, it is not only *one* of the fundamental human rights, but much more, it is *superior* among those rights. It is superior because, as Pope John Paul II recalled when receiving the members of the OSCE Parliamentary Assembly, its defense is *the litmus paper in order to check the compliance with all other rights*<sup>2</sup>; superior because historically it was among the first human rights that has been claimed; at last, superior because other fundamental rights are uniquely related to it. Where religious freedom thrives, all other rights flourish and grow; when religious freedom is in danger, they all shake. Freedom of religion and conscience is, in fact, also the freedom to freely express one's faith, one's own religious thinking and to convert, to gather for religious reasons, to enter into marriage in accordance with one's faith, to give children religious education, to exercise works of religion and thus, health care and social development.

John Paul II wrote in encyclical *Centesimus annus: The source and synthesis of the right to life, family and children's education, of work is, in a sense, religious freedom, understood as the right to live in the truth of one's own faith and in accordance with the transcendent dignity of the human person*<sup>3</sup>. In this perspective, I feel obliged to point out the mistake people make when they interpret *religious freedom as freedom of religion*. In fact, they assume that religion is more of a danger or an enemy, rather than an insuppressible exigency of any person in any place and at any time; even more, they deny the transcendent dimension of the person. Without saying that to defend freedom expresses in reality a reductive conception of it, because they understand it only as a relief from external constraints, real or alleged, but not as a possibility to adhere to truth and good and act accordingly.

After having clarified the nature of pontifical diplomacy and its conception of religious freedom, I go now to broadly describe how this liberty is promoted by the bilateral diplomatic activity of the Holy See. This basically refers to the relationships of the Apostolic See with each of the 179 countries with which it now maintains diplomatic relations.

Within bilateral diplomacy, the main purpose of agreement action – namely of arrangements and agreements between Church and State – is precisely to ensure

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1 Cf. Second Vatican Council, *Dignitatis humanae Declaration*, no. 3 and 4.

2 John Paul II, *Speech* addressed to participants in the OSCE Parliamentary Assembly, 10 October 2003, no. 1.

3 John Paul II, Encyclical *Centesimus annus*, no. 47.

stability and certainty to the activities of the Church and provide guardianship over the religious freedom of Catholics.

Although all bilateral relation corresponds to precise historical and social requirements and therefore has a specific feature, it is united with all others by several fundamental objectives: ensuring freedom of worship, jurisdiction and association of the Catholic Church; the stabilization of areas of cooperation between the Church and civil authorities, especially in the area of education and charity. In fact, these areas, referring to the two fundamental pillars of human action and the activity of the Church – truth and love – in a way define the identity of the Catholic Church, by outlining the religious and social involvement of its institutions and members.

In fact, if education is considered as the capacity to place the person in a conscious relationship with reality, ie as a challenge between freedom and truth, then it is clear that freedom of education is one that can not be waived, either for a truly free society or for the Church, which, par excellence, manifests a transcendent and overview vision of reality. As for the size of the charitable dimension of ecclesial action and the insuppressible requirement to express the truth of one's own faith in this field, St. James is very eloquent: *What good, my brethren, if someone says he has faith but has no deeds?* And further adds that faith without works is dead.<sup>2</sup>

Finally, it is important to note that bilateral agreements manifest the recognition of the public dimension of religion by state authorities and also work for the advantage of other religious denominations. Of course, the bilateral activity of the Holy See is not limited to agreements. When it appears necessary, the Holy See intervenes to defend the religious freedom of communities and individuals, through Apostolic Nuncios and/ or directly, through the contacts of the State Secretariat with accredited ambassadors.

Within the United Nations, the topic of religious freedom is tackled each year, specifically in New York and Geneva. In New York, in the Third Committee of the General Assembly: The Holy See participates in negotiations related to resolutions regarding this issue and always delivers an intervention. Talks about religious freedom are also common in Geneva during the sessions of the Human Rights Council. Under these circumstances, the Holy See frequently speaks on issues related to freedom, religious intolerance and the defamation of religions. Additionally, he pursues the subject within the informal negotiations for the Resolutions to be adopted by the Council. With regard to the UN system, particular attention should be given to the annual report regarding religious freedom in the world.

Both within the United Nations and the OSCE, as it will be emphasized further, the Holy See does not cease to point out that the foundation of the right to religious freedom is within the equal dignity of all human persons. Therefore, in order to promote this dignity in an integral manner, we must effectively combat both the so-called „christianophobia“ as well as „Islamophobia“ and antisemitism. The term „christianophobia“ was first introduced in 2003, in a resolution of the Third Committee of the 58th UN General Assembly. Under these circumstances, the term was associated with „Islamophobia“ and antisemitism, and since then appeared in various documents of the UN and other international bodies, yet without ever being defined, but which has to do with the misinformation with regard to Christians and their religion, the intolerance and discrimination endured by Christian citizens, the violence and the persecution.

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<sup>1</sup> James 2,14.

<sup>2</sup> Cf. James 2,17.

As shown, discrimination and intolerance against Christians are issues of special significance, to the human, political and social level, in addition to the religious one. They need to be treated with the same determination with which one fights antisemitism and „Islamofobia“, if one wants to find a solution for each of these problems, which are, unfortunately, most present.

In regard to the Catholic Church, it is enough to remember the missionaries that re murdered each year around the world. Just as the Holy Father reminded us, *it is quite often that we hear about missionaries, priests, archbishops, monks, nuns and dedicated people that are persecuted, locked away, tortured, deprived from liberty just because they are Christ's disciples and Bible's apostles. Sometimes there is suffering and death even for the communion with the universal Church and for the loyalty shown to the Pope.*<sup>1</sup>

In numerous countries Christians are victims of prejudice, stereotypes and intolerance, even with from a cultural perspective. The Holy See doesn't stop close following of the UN initiatives, but also other International Organizations, that help start intercultural and inter-religious dialogue. Just as Pope Benedict the XVI<sup>th</sup> mentioned in a speech addressed to the Diplomatic Corps, *in order to be true, this dialogue needs to be clear, avoiding relativism and syncretism, it needs to be supported by an honest respect toward others and by a spirit of reconciliation and fraternity.*<sup>2</sup>. That is the reason why inter-religious dialogue isn't used to „level“ religions, or even to „vary“ the differences and therefore, to end their incompatibility or their pretend for truth. It does not even *stand in the mutual help, for example, for becoming better Christians, Jews, Muslims, Hindu or Buddhists. This would be the most complete list of faiths in which – with the pretext to validate what each has best – we would not even take serious ourselves or others and we would give up faith definitely.*<sup>3</sup>. This dialogue can rather favor the collaboration between religions on common ground themes, such as one's person determination and peace building; it encourages profound respect towards other people's faith and eagerness to look in what is encountered as foreign, the truth that can help any person move forward. However, not even in this case, there cannot be a complete relinquishment of truth, moreover it is possible only through getting to know it better. Actually, relativism doesn't bound together. And neither does pure pragmatism. Giving up the truth and convictions doesn't give man superiority or brings him closer to others. Besides, these international initiatives must be aware that religion has special characteristics, that need to be respected.

Regarding the international organizations with regional character, one must be reminded that the Holy See is a full member of the Organization for Security and Co-operation in Europe (OSCE). In fact, thanks to the Holy See's, the Final Act at Helsinki contains religious freedom among the human rights that the state members have engaged to respect in order to insure peace and safety to their own citizens. The Holy See has always been a reference point regarding this theme, mostly because it has presented itself as a carrier of general religious beliefs and not only of catholic confession ones. In developing the trial at Helsinki, regarding religious freedom, they were guided by a double line. In the first years there was the effort to obtain acknowledgment of the content of this right and this was obtained with the final document of the Vienna region in 1989. One's human dignity is built upon the ability for truth. In exchange, generalizing tolerance means giving up this dignity.

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1 Benedict XVI, *Angelus*, 26 december 2007.

2 Benedict XVI, *Speech* addressed to the Diplomatic Corps near the Holy See, 7 January 2008, nr. 9.

3 J. Ratzinger, *La Chiesa, Israele e le religioni del mondo*, Cinisello Balsamo 2000, page. 73.

In fact, generalizing tolerance means transforming itself in a supreme value, but this inevitably puts the truth on second place and trivializes it. In turn, relinquishing truth offers the man to the greatest calculation, to usefulness and to the moment, giving up the person's greatness.

In order to remain in the regional international area, it is known the help that the Holy See gave at the „Treaty of Lisbon“. This Treaty affirms that the Union respects and doesn't harms the statute of Churches and religious communities in the national legislation of member states. This warranty is based upon the subsidiarity principle, supported by the social doctrine of the Church and reminds the fact that in Europe, the configuration between State and Church and religious communities is varied : it suffices to think of the diversity in Greece, Spain, England of Romania. Besides this, the article engages the EU to maintain an open dialogue, transparent and used to religious confessions, based upon recognizing their identity and their specific contribution. This is a necessary dialogue, among others, in order to respect the principles of an authentic pluralism and to build a true democracy. Wasn't it Alexis de Tocqueville that underlines the fact that despotism doesn't need religion, but freedom and democracy.1?

Then, as far as the Holy See's action in Europe, I believe it is favorable to mention, in a constructive spirit, that it stops two serious attacks for religious freedom: unbinding religion from a nation, that firstly isolates, in the world of feelings, and the separation of religion from public life. In regard to the first profile, there must be a powerful confirmation that there is not such a possibility like extracting the problem of truth in religion: this is just because of the need to protect human dignity that religious freedom is based upon. Such as any liberty, it isn't a purpose in itself, but it is oriented towards truth and man cannot resign to remain what is essential, a „blind man since he was born“. The intrinsic way of freedom to truth and the truth of freedom are today a decisive checking advantage in the conversion of freedom, understood as an aspect of religious freedom. In fact, if man wants to live in a respectable way, he cannot abandon the obligation to look for truth about God, as a last goal of man kind. That is why the right to religious freedom requires the obligation of searching for the truth about God, with a compelling free will, with a ration immune to prejudice.

Religious freedom asks for judgment: either in the form of religion, in order to identify those that correspond to each person's thirst for truth, even within religion, so that one can find identity and authentic accomplishment. For each believer and for the religion itself, this represents a challenge. Mostly, this requires that it doesn't reduce religion to simple social solidarity agencies. Solov'ëv assigns the AntiChrist a book, *Open book towards peave and world well being*, that has as a main point the adoration of well being and rational planning. Religion couldn't not display a social function. Still, this takes place, before all, keeping alive the sense of God and the transcendent. Meaning that solidarity, receiving and civic values are essential factors, that religion always promoted, just because it survives through the sense of God. Referring to the Catholic Church, Pope Benedict the XVI-th wrote down: *The church cannot and must not take into its hands the political battle needed to build a society that is as just as possible. (...) But it also cannot and must not stand aside in the fight for justice. The church must enter this battle taking the way of rational arguing and must awaken those spiritual forces, without whom justice, which involves abandonment, cannot be affirmed nor can it be developed.*<sup>2</sup>

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1 Cf. Alexis de Tocqueville, *La democrazia in America*, Milano 2004, I, 9.

2 Benedict XVI, Enc. *Deus caritas est*, nr. 28.

At the same time, a healthy laic character bears a distinction between religion and politics, between Church and State, without making God look like a private hypothesis, or without excluding religion and the ecclesiastic community from public life, because of the social dimension of faith. However, the civil equality criteria is not respected there where those who believe are forced with the obligation to argue *etsi Deus non daretur*: while theistic reasons could not be publicly invoked, arguments of secular and rational nature could be so. We don't need to hide the fact that in our today's global society, contact with „differences“ may create a miscommunication of content and the temptation to impose the public space as „neutral“. Still, if one wishes to extend to a maximum level the liberty of all, without interrupting the connections that allow us not only to be closer, but also more united, we need to publicly recognize a common ethical code. But in order for this to fully take place, it is necessary to admit the public dimension of religious freedom. In fact, this freedom carries ethical values that are capable to enrich democracy and to build culture. Religious freedom possesses a public dimension because what beliefs must not be hidden, but on the contrary, they must be shared.

Concluding our reflections regarding the Symposium about religious freedom, faith and conscience, held here, in the Parliament of Romania, we must mention that the result of political and diplomatic engagement in favour of religious freedom is mostly connected to a culture that promotes true liberty and truth. The power of these values depends on individual and social passion towards them. Religious freedom helps exert anyone's religious creed. Still, christian faith offers a more profound liberty than one that is simply religious. Saint Ambrose used to say *Ubi fides, ibi libertas*,<sup>1</sup>. Actually, Christ reveals Himself as a fulfillment of our liberties. However, He doesn't reveal Himself before we freely decide for Him. Meaning, Christ takes away from us the burden of liberty. As Charles Peguy wrote: *What would redemption be if it isn't done out of freewill??*. If we want religious freedom for all, we must personally accept the risk of freedom and witness the truth.

Thank you very much!

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<sup>1</sup> Saint Ambrose, *Epistola* 65,5.

<sup>2</sup> Charles Peguy, *Il Mistero dei santi innocenti*, in: *I Misteri*, Milano 1997, page 321.

# Interview with Andrea Williams



Changing Society to put the  
Hope of Christ at its Centre

*Andrea Minichiello Williams is CEO of Christian Concern and the Christian Legal Centre. Christian Concern seeks to put the hope of Christ at the centre of the nation by campaigning on issues of national importance such as life and family issues and freedom of belief for Christians. Christian Concern lobbies for changes in the law through the Parliamentary process. The Christian Legal Centre defends Christian freedoms through the justice system and in the media.*

*Can you tell more about yourself and the organizations you represent?*

My name is Andrea Williams, I am married and the mother of four children. Apart from spending time with my family I am mainly occupied with two organizations: the Christian Legal Centre and Christian Concern.

The Christian Legal Centre takes up cases affecting Christian freedoms. I am a barrister and the director of the Centre. As a barrister I am responsible for cases where Christians are defending their right to speak biblical truth in the public sphere. For more information please visit our website: <http://www.christianlegalcentre.com>.

Besides this I am also the chief executive and co-founder of Christian Concern, which has over 34,000 supporters. Christian Concern is a policy and legal resource centre that identifies changes in policy and law that may affect the Christian heritage of the UK. The team of lawyers and advisers at Christian Concern conduct research into, and campaign on, legislation and policy changes that may affect Christian freedoms or the moral values of the UK. Christian Concern is committed to enabling Christians to stand for biblical truth in the public arena. For information please visit: <http://www.christianconcern.com>.

*Can you tell me more about the way freedom of faith and conscience are protected throughout the history in the UK and what are the main challenges in the UK that are threatening the freedom of faith and conscience?*

For centuries the Bible has been the bedrock of English law. The English legal system was originally based on Christian principles of justice derived from the Magna Carta. A yearbook of King Henry VII's reign, declared, „A basic principle of the Common Law is that any law is, or of right ought to be, according to the Law of God“.

The flawed philosophy afflicting our legal system currently is one that results from focusing on our so called legal Human Rights. The philosophy behind Human Rights Law is founded on humanist principles – the idea that human conduct should be based on natural knowledge, and not upon supernatural knowledge.

*So what is the problem of this philosophy?*

The most important thing is that this philosophy puts man at the centre of society and ignores God. As a direct result of this, the UK is experiencing various negative trends which have become more visible and more problematic in the last ten years. What we currently see in the United Kingdom is the systematic and accelerating divergence of our laws from Biblical truth and a culture that proclaims „my tolerance of the liberal views of others is all that matters“; and that „there is no truth except the truth that there is no truth“

The English society is a society that is moving away from Christian principles of morality, and which, in some areas, has abandoned them altogether. As a result we have the situation that laws are created to permit behaviour, as opposed to restrain behaviour

When we abandon God's laws we end up in the social, legal and moral chaos that the UK has currently found itself in.

*What are the most important challenges concerning the protection of freedom of faith and conscience in the current UK Legislation? How is the current relation between the freedom of faith and conscience and the laws on anti-discrimination?*

The Government has introduced a whole raft of equality and diversity legislation with the goal to promote an aggressive secularism that wants to cut Christianity out of public life. The laws also promote a new state-enforced morality, particularly regarding sexual ethics, that many Christians cannot condone.

The Equality Act 2010 and its predecessors have meant that Christians in the UK are unable to discriminate in the provision of goods, facilities and services on the grounds of a person's sexual orientation or religious belief. This is a clash of freedoms. The Labour government's view was quite clear – homosexual demands trump religious rights, even where the effect will be to force Christians to act contrary to their deeply-held convictions. If you provide a service, you mustn't discriminate. UK legislation makes no difference between sexual orientation and the manifestation or practice of a certain sexual lifestyle.

*Can you give concrete examples/case studies from your work where these freedoms are challenged? With other words: did the changes in the UK legislation really had such a negative effect on the freedom of faith and conscience?*

As a result of equalities legislation Christians are being oppressed instead of having the freedom to exercise their beliefs freely. At the Christian Legal Centre we have 50 cases where Christians have been persecuted for practicing their beliefs. I will quickly inform you about a few of those cases:

Gary McFarlane, a relationships counsellor, was dismissed after refusing to counsel homosexual couples on their sex lives. Mr McFarlane was refused the opportunity to have his case heard at the Court of Appeal. Incredible and alarming statements about religious beliefs were made by Lord Justice Laws in his judgment given on 29 April of this year:

„The promulgation of law for the protection of a position held purely on religious grounds cannot therefore be justified. It is irrational, as preferring the subjective over the objective. But it is also divisive, capricious and arbitrary. We do not live in a society where all the people share uniform religious beliefs. The precepts of any one religion – any belief system – cannot, by force of their religious origins, sound any louder in the general law than the precepts of any other. If they did, those out

in the cold would be less than citizens; and our constitution would be on the way to a theocracy, which is of necessity autocratic”.

Then there is the case of Owen and Eunice Johns. Many prospective foster parents have been stopped from fostering children, including Eunice and Owen Johns, because of their Christian views on sexual ethics. The Johns were deprived of an opportunity to foster after they conceded that they would not promote homosexuality to a child in their care. The High Court upheld the right of Derby Council to stop the Johns from fostering children as their beliefs contravened the Council's 'equality and diversity' policy. The Equalities and Human Rights Commission intervened in that particular case and said that children were at risk of being „infected” by Christian moral teachings.

Theresa Davies, a civil registrar was forced to resign from her job after refusing to register homosexual unions in the form of civil partnerships. Andrew McClintock was forced to resign as a magistrate after he challenged whether placing children with homosexual couples was in the best interests of the child. Sheila Matthews, a paediatrician, was dropped from the adoption panel because she believed that children up for adoption should not be placed with homosexual couples and do better with a mother and father. I could go on and on about many other cases as well, but I think you get the picture...

*I do, although it sounds almost too bizarre to be true... Are there any other ways in which Christian values are challenged in UK legislation?*

Yes. The starting point for answering this question is the **Abortion Act of 1967**. This Abortion Act was revolutionary when passed. Despite strong opposition, it legalised abortion within certain boundaries. Abortion was now legal when the mother's life is at risk or the risk of physical or mental problems to the mother or the child was greater than if the pregnancy were terminated. Finally, it is legal if there exists a substantial chance that the child will suffer from severe physical and/or mental abnormalities.

Those who passed the Abortion Act thought its safeguards were adequate. However, it was permissive legislation. It crossed a clear moral boundary. It denied the principle that human life is sacred and created a bypass.

What happened when this law was passed? In 1966, the best estimate by the Royal College of Obstetricians and Gynaecologists is that there were 14,600 abortions. By 1968, the number had increased to 23,641 in 8 months. By the Year 2000, 6 million abortions had been performed in the England and Wales since the Act was passed. Today, about 196,000 babies aborted every year in the UK. 1 every 2.68 minutes...

From 42½ years since that Act was passed, the abortion figure is now over 7 million. Abortion has been sanctioned under the guise of „serious physical abnormality” for nothing more than a cleft palate. The bypass, became and A road, the A road became a Dual carriageway and Dual carriageway became a Motorway. Today no-one describes abortion as anything other than a „legitimate choice”, the idea of the need to justify it – an anachronism of a bygone morality.

*What about bioethics?*

We have seen some major changes in that area as well, negative changes unfortunately...

In 1990, Parliament passed the Human Fertilisation and Embryology Act (subsequently amended in 2001), which for the first time allowed the creation of embryos for scientific research for up to 14 days. This was a natural progression, because

the 1967 Act had allowed the destruction of the embryo, the law would now permit the creation of an embryo with the intention of using it and then destroying it.

On 11th August 2004, the Human Fertilisation and Embryology Authority (created by the 1990 Act) granted Professor Alison Murdoch of the Newcastle Fertility Centre of Life a licence to create cloned human embryos. The law never stands still and once heading in a direction, it can just keep going. Ideas have unforeseen consequences.

But worse was yet to come with the passing of the Human Fertilisation and Embryology Act 2008. The Act allows: The creation of animal-human hybrids by mixing animal egg and human sperm, the selection of an embryo that will match a sick elder sibling's DNA and create so-called „saviour siblings“. A child is therefore created with the function of providing „spare parts“ for their sibling. Of course any embryo that does not match is destroyed. This new law always opens the door for genetic screening. For example, if they find a breast cancer gene, the embryo that contains it will be destroyed.

And the list goes on, the law allows the creation of fatherless children, when using IVF to create children, there no longer needs to be consideration of the child's need for a father, we have seen the first lesbian couple sign a birth certificate as „parent“ and „second female parent“. Actually, the laws are now relaxed enough to allow an embryo to be created that has genes from three parents!

As you can see, the human embryo has become nothing more than a product that can be made, copied, destroyed, harvested and sold – as people see fit. There is no respect for Human Dignity anymore, currently euthanasia is not allowed in the UK but I am afraid that this will change soon as well.

*I am afraid that the situation concerning traditional marriage in the UK is not much better, am I right?*

Unfortunately I have to say yes... again. In the name of equality, UK law has changed in recent years and is giving increasing recognition to family relationships that do not involve marriage, in particular co-habitation and homosexuality. Heterosexual cohabitation rights became equivalent to heterosexual marriage rights. After this, homosexual couples said that their love is equivalent and should be protected in law. I will give you a few examples of what kind of laws have been implemented in the UK in the 21<sup>st</sup> century:

The Gender Recognition Act of 2004 gives legal recognition to a transsexual's „acquired gender“, effectively allowing two people of the same actual gender to get married. And a man can get a birth certificate saying he was born a woman and vice versa- suppression of the truth.

The Civil Partnerships Act of 2004: allows same-sex couples to register their relationships as civil partnerships and to enjoy all the legal rights and benefits enjoyed by heterosexual married couples. This is same-sex marriage in all but name.

The Adoption Act 2004: allowed homosexual and lesbian couples to adopt children.

This trend culminated in the passage of the Human Fertilisation and Embryology Act 2008, which redefined the terms „parent“, „mother“ and „father“. Birth certificates can now say „parent“ and „second female parent“. And organisations are encouraged to use the gender neutral term „partners“ instead of „husband and wife“.

Unfortunately this is not only in the law but also been taught at schools. British schoolchildren learn that all types of sexual relationships are equally and morally valid and that there are no moral limits to sex. A leaflet published for children by the National Health Service Sheffield stated that „An orgasm a day is good for you as is eating 5 fruit and vegetables“.

What is very frightening however is that these ideas become protected ideas and the way in which the State can enforce such protection is by saying that if you speak out against such ideas you discriminate or are using „hate speech“. If you speak on behalf of life you are against women’s rights. That leads to a loss of freedom of speech and conscience in the public sphere.

In order to protect and promote these various ideas (ideas have consequences), the Government has introduced a whole raft of equality and diversity legislation, which has now been consolidated into one Act: The Equality Act 2010.

*The situation concerning freedom of faith and conscience in the United Kingdom is obviously far from ideal. What kinds of actions do you want to undertake to protect these rights in the UK and how we can help you?*

Well, first of all, we want the church in the UK to be faithful to Jesus Christ, and to wake up and speak against the marginalisation of Christians in the public sphere. I believe that if Europe as a whole remains faithful and stands up for the truth when Christian freedoms are challenged, we could win the continent back to Christ. The crisis is not in the coherence of Christianity, but in its perceived legitimacy to command national respect in the public arena, and we want to change this.

As part of our ongoing commitment to put the hope of Christ at the centre of the UK, Christian Concern is running several major campaigns on which I will elaborate a bit:

### **Equalities and Conscience Petition**

Following the ruling on Christian foster parents Owen and Eunice Johns, Christian Concern has launched a major new petition, the Equalities and Conscience petition, calling on the Prime Minister to respect Christian conscience and take urgent action to address the problems created by equalities legislation. 100,000 signatures will get us a parliamentary debate, and 1 million signatures, a new Bill. The following cases are more examples of intolerance towards Christian beliefs.

### **Equal and Free**

Sharia courts are currently in operation in the UK and are inherently discriminatory against women. We are supporting the Equal and Free campaign, being run to back Baroness Cox’s Bill to stop sharia law being used unjustly in the UK. We have rolled-out a programme of travelling road shows called ‘Awake Arise O Church’.

*Christian Concern* has developed an ‘Awake Arise’ day conference package that can be rolled out across the country during 2011 for groups of local churches in individual towns or cities.

Certain core sessions or modules will be the same for every programme, such as informing and empowering Christians to influence their local MP, to stand for election to the local council, to volunteer as governors of local schools or to become appointed as magistrates at the local courts.

### **Not ashamed**

The Not Ashamed campaign provides an opportunity for Christians across the UK to stand together and speak up for the Christian foundation of our nation, motivated by the conviction that Jesus Christ is good news not just for individuals or for the church but for society as a whole. Indeed, He is the only true hope for our nation. Christians will be encouraged to wear wristbands and t-shirts in public stating they are Not Ashamed to be a Christian.

## **Wilberforce**

The 'Wilberforce' programme will focus on raising up a new generation of Christians that is equipped and enthused for engagement in public life. Building on this year's inaugural and very popular Wilberforce Academy, we are using the latest technology to develop a virtual community that will provide a strong relational network and robust resources to enable thousands to work together in the LORD's strength to see society transformed. As the Wilberforce Academy continues we plan to develop a fully fledged internship and long-term mentoring programme to help develop the next generation of Christian pioneers and leaders across the spectrum of public life, including the media, politics, law and education.

*What lessons other countries from Europe can learn from the situation in the UK in their battle to protect the freedom of faith and conscience and what steps should be done on international (European) level in order to protect these basic freedoms? Do you have a message to our readers concerning the freedom of faith and conscience?*

The European Union seems to be trying to foist equalities legislation and a homosexual rights agenda onto many European Countries, especially Eastern European countries. However, such legislation in the UK has led to the suppression of speech and ideas, the coercion of behaviour and sanctions for those who disagree. We urge you to learn from the mistakes we have made. Do not let your nation slip into the situation we are in.

Truth has gradually been eroded from the public sphere over the last fifty years. The discrete alterations are subtle and almost imperceptible, but over time the transformation can be dramatic – even deadly. In the face of a subtle but kind sounding and constant change to a social and legal framework, it's easy to 'turn a blind eye'. The feeling of inevitability and impotence can quickly overwhelm us. Yet the temptation to think that way must be resisted by Christians. We know that the living God is righteous and cares deeply about the state of any society. We know too that He is both generous and powerful. He is able to bring hope.

In a new political era, we must keep on speaking of The Lord Jesus Christ to the nations to ensure that they do not turn away from Him. We need to be alert. The church throughout Europe needs to speak and resist when Christian freedoms are challenged. By remaining faithful and proclaiming the truth, we need to win the continent of Europe to Jesus Christ together. As Christians we know that only Jesus Christ can bring lasting peace and fullness of life to our continent and its communities.

I hope that the Christian concern and the Legal Centre can play a role in this, but certainly the work of a European organization as ECPM is also crucial in this. Yet, in the end it is up to all Christians in our societies to stand up for their beliefs and their rights!

# Attaining Human Dignity by the Conscientious Use of Freedom

■ JONATHAN VAN TONGEREN

[European Christian Political Youth Network]

## Abstract

*Christianity understands freedom not as the freedom to do whatever one chooses, but rather as the freedom to do what is morally right. Freedom is to take responsibility for ones actions, hence the goal of human freedom is to live righteously and thus attain the fullness of his dignity.*

## Keywords

politeia, human dignity, conscience, freedom, objective morality, natural law

• A recovery of the concept of regime or *politeia* as elaborated in the political philosophy of Plato and Aristotle<sup>1</sup> would help clarify the deep impact that the culture can have on the minds and hearts of all citizens, including Christians. The regime is the whole political and social order. It refers to the moral tastes, style of life, form of government and the spirit of the laws. So understood the regime is a crucial influence in the lives of most individuals. Only few could escape these influences, such as informed, committed Christians. With the emergence of Christianity, the regime is no longer necessarily as decisive in the lives of individuals. God's Word and grace mediated through the Church can be wholeheartedly embraced even in the midst of bad regimes. Yet experience shows that many Christians are unduly influenced by the regime, what we usually call the culture or the social conditions.

## The impact of the liberal regime

• Liberalism and liberal democracy inclined citizens to think about morality to a great degree in terms of rights or subjective values. This in turn leads to a fixation on choice and autonomy as ends in themselves and about the goods

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1 Cfr. Sir Ernest Barker, *The Political Thought of Plato and Aristotle*, Methuen, (London, 1906).

of the body, safety, health, pleasure and prosperity. The liberal temper is anything but neutral in the moral tone it sets for its citizens. It supposedly encourages openness to all human possibilities, but today's version of openness encourages not the pursuit of truth, but rather subservience to public opinion, a preoccupation with having things and a reshaping of religion to suit the temper of the times. Liberal regimes dispose citizens to have an incomplete understanding of human dignity. Persons are said to have dignity because they are autonomous and are capable of making choices. According to the most common opinion in contemporary society, the dignity of the human person is especially secured by ensuring the protection of rights. The initial and primary emphasis on rights is of course a logical step, since the autonomous exercise of choice requires the possession of rights. Another consequence of understanding dignity as constituted by human autonomy is linking the assessment of human dignity to a persons quality of life, especially the capacity to make autonomous choices. It is now commonly thought that a persons dignity diminishes with his or her declining quality of life. Physical and mental deterioration as well as suffering supposedly diminish human dignity. In *Quill v. Vacco* (1997), the second circuit court of appeal even went so far as to make an ominous statement about legal obligations toward the terminally ill. Quote: „The state's interest lessens as the potential for life diminishes.”<sup>1</sup> The presence of this statement in a decision of an American appeals court, surely indicates a trend toward regarding those persons with diminished physical capacity as less than fully human.

### **Liberal and Christian understandings of human dignity**

Now the liberal understanding of dignity is a challenge to the Church, both in the areas of ordinary Christian teaching and in Christian social thought. Careful education is necessary for Christians to understand that the dignity of the human person is not essentially constituted by the ability to make choices. According to Christian teaching, people have dignity because they are created in the image and likeness of God, redeemed by Jesus Christ and destined for eternal life in communion with God. As Vatican Council II put it: „The principal cause of human dignity lies in the call of human beings to communion with God.” Being created in the image of God and redeemed by Jesus Christ makes it possible for everyone to respond to God's invitation to communion with Him. This threefold foundation for human dignity is both unshakable and instructive. No act of the human person can remove this foundation. Even when people commit the worst sins and crimes or suffer diminished physical and spiritual capacities, they retain human dignity.

While this Christian teaching about the permanent character of human dignity is often mentioned and acknowledged by informed Christians, rarely do Christians hear that human dignity is also a goal or an achievement. Given the foundation of human dignity and the reality of sin, it logically follows that all will have to strive and strain to reach their ultimate goal, communion with God. Christians continuously achieve their dignity by seeking the truth, resisting sin, practising virtue and repenting when they succumb to temptation. In other words, dignity is not only a permanent possession. There is a sense in which dignity is appropriated over a lifetime of living according to the fullness of truth. Saint Leo the Great's famous Christmas sermon states this point in a memorable way. Quote: „Christian, recognize your dignity and now that you share in God's own nature do not return by sin

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<sup>1</sup> *Vacco v. Quill*, 521 U.S. 793 (1997) as retrieved from <http://supreme.justia.com/us/521/793/case.html> July 6, 2011.

to your former base condition.”<sup>1</sup> It is significant that this quotation stands as the first sentence in the section on morality in the Catechism of the Catholic Church. It immediately directs attention to the necessity of achieving human dignity by living without sin. Vatican II’s pastoral constitution on the Church in the modern world says that: „...man achieves [the dignity to which he is called] when emancipating himself from all captivity to passion, he pursues his goal in a spontaneous choice of what is good, and procures for himself through effective and skilful action, apt means to that end. Since man’s freedom has been damaged by sin, only by the help of God’s grace can he bring such a relationship with God to full flower.”<sup>2</sup>

### **Human dignity as the goal of freedom**

Now we have come to understand that human dignity is not only a permanent asset, but also a goal or an achievement, we also understand that dignity is related to morality. Only in making moral choices and acting accordingly can man achieve his full dignity. Freedom of conscience is required for every individual to achieve his dignity. But it does not follow that conscience is something individually subjective, this would be a reversion of the order of things. Objective morality cannot be subject to individual conscience, but individual conscience rather is subject to objective morality. If morality is subjectified, freedom of conscience becomes problematic, since someone may well deem something right according to subjective individual moral standards, that is objectively a moral wrong. The only way to prevent this problem is to define individual conscience in relation to objective morality or natural law, and the Church has traditionally done exactly that. This is echoed in *Gaudium et Spes*: „In the depths of his conscience, man detects a law which he does not impose upon himself, but which holds him to obedience. Always summoning him to love good and avoid evil, the voice of conscience when necessary speaks to his heart: do this, shun that. For man has in his heart a law written by God; to obey it is the very dignity of man; according to it he will be judged. [Cf. Rom. 2:15-16.] Conscience is the most secret core and sanctuary of a man. There he is alone with God, Whose voice echoes in his depths. [Cf. Pius XII, March 23, 1952: AAS (1952), p. 271] In a wonderful manner conscience reveals that law which is fulfilled by love of God and neighbor.”<sup>3</sup> The Church thus identifies the contents or rather the substance of conscience as natural law, and the dignity of man as living in accordance to this law. The Christian definition of freedom per se is also closely related to conscience, as opposed to the liberal, humanist understanding of freedom. Liberalism holds that the freedom of one ends where the freedom of the other begins. This is a negative definition of freedom, which limits its moral aspect to the principle of not harming the other’s freedom, whereas Christianity holds to a positive definition of freedom. The Christian concept of freedom can be very concisely defined, in the words of the philosopher prof. em. Robert Spaemann: „What we call freedom is the ability to take responsibility.”<sup>4</sup> In the liberal definition freedom is the freedom to do whatever one chooses, in the Christian definition freedom is the freedom to do good, to do what is right from a moral point of view. thus understands the freedom of man as the freedom to work conscientiously to attain the fullness of his dignity, a dignity that lies in living in accordance with objective morality or natural law.

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1 Pope Leo I, „Sermo 1,,, *Nativitate Domini*, (Holy See, 2010) 1-3; PL 54, 190-193.

2 Pope Paul VI, *Gaudium et Spes*, (Holy See, 1965).

3 Pope Paul VI, *Gaudium*

4 Robert Spaemann, ‘Menschenwürde und menschliche Natur’, *Internationale Katholische Zeitschrift Communio*, 39 (2010), 134-139.

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# Human Dignity – Constitutional Principle of Fundamental Human Rights

■ LUCIAN POP

[Timis Bar]

## Abstract

*As a constitutional principle of the human rights, the human dignity is a supreme value, a norm and a right, thus that the reconfiguration of protection standards of fundamental human rights is made by cohesion of the legal, social and moral dimensions of human dignity.*

*With this article, the author argues that legal meaning, social meaning and moral meaning of human dignity, are centerpiece of protection of freedom under law.*

## Keywords

human dignity, legal meaning, social meaning, moral meaning, human rights, political correctness

## Introduction

„Whereas recognition of the *inherent dignity* and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”, as it is stated *ad litteram* in the Preamble of the Universal Declaration of Human Rights, one must find, under the auspices of the Constitution of Romania the fact that, irrecusably, the human rights and human dignity are inseparable concepts and realities in a state subject to the rule of law.

As a constitutional principle of the human rights, the human dignity is a supreme value, a norm and a right, thus that the reconfiguration of protection standards of fundamental human rights is made by cohesion of the legal, social and moral dimensions of human dignity.

## Legal meaning: human dignity – the right to have rights:

If one acknowledges the authority of „human dignity” concept from the perspective of the constitutional principle of fundamental rights, one accepts the irrecusable legal force of the principle to order *a priori* on guaranteeing and protecting a fundamental right, and the rigors of right acknowledgement are subordinated to the „human dignity” concept.

As against the role of general principles that precede all constitutional regulations, I declare the legitimacy and defining importance of paragraph (3) in article 1 of the revised Constitution of Romania that proclaims *expressis verbis* the supreme values that determine directly the content and purposes of state functions. Fully complying with the provisions in the Constitution of Romania, these supreme values are the following: human dignity, rights and freedoms of citizens, free development of human personality, justice and political plurality. These principle provisions create a reference system for the regulations that concern the fundamental rights and freedoms, as well as for those concerning the public authorities. Given the obligation to revise the constitutional text in year 2003, a revalorization and guaranteeing criterion of these supreme values was introduced, according to the democratic traditions of the Romanian people and the ideals of the 1989 Revolution.

This revalorization of human dignity and of the supreme values proclaimed by the Fundamental Law of Romania is meant to reconfigure the protection standards of the fundamental human rights, from the perspective of understanding the fact that the law world is basically a world of *significations - values* embedded in legal norms, in legal relations and facts.<sup>1</sup> It must be emphasized the fact that the legal area must not be mistaken for the right; it is the limited value that prescribes the behavior and limits its manifestations, while the right is the wrap of this value, customized differently diachronically and synchronically. The law as manner to crystallize the value regulates the types of behaviors and ensures their observances by the addressees. It has an imperative form included in the power of a regulating authority that one finds constantly in all cultures and all communities.<sup>2</sup> Thus, given the ideas of J. Rawls, the arguments that the *right* term is not only a category, but also a *value* – precisely the contrary of what Kelsian legal advisors supported are vaster; *pas le droit sans valeurs*. To move further, I must remind the fact that Ihering said on the Latin word *jus* that it comes from the Sanskrit word *jaus* – connection between people having a three-fold significance: moral, legal and religious. The connection was part of the social reality. *The right is an element of legal reality*, thus that the social reality comprises the legal reality, and the right, its defining element, makes and structures it. It must be emphasized, in this context, that the right is configured and evolves in the legal reality environment, by which it refers to the other social reality forms. Any legal conscience continues to amplify even after the crystallization of its ideas into adequate norms, evolving either based on or against the law, which implies the rights – legal conscience relation. Without a doubt, the legal norms are not drafted, empirically or statistically, before being filtered in the legal conscience of those that crystallize them.

If one speaks of a legal civilization, implicitly the *legal culture* concept is brought to discussion – the manner in which an identified society / community, by intersubjective communication, understands / interprets the law according to the same stimuli, as well as the manner used by a society / community for speaking / writing on the law based on the same language. These societies can be marked as *interpretative communities* or *epistemic communities*. There are societies that manifest naturally collective assumptions, attitudes, aspirations and antipathies to the right, expressing reflexively – at the level of some inconscient cultural manifestations – *the legal mentalities* that characterize them. Given these conditions, the legal culture grants a certain *legal identity* to a society. Part of the legal identity of a society, the legal norms and institutions are embedded in a specific weaving that cannot be ignored.<sup>3</sup>

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1 Gheorge Mihai, „Fundamentele dreptului (Fundaments of law)”, volume I-II, *Publishing House All Beck*, Bucharest, (2003): 14.

2 Mihai, *Fundamentele*, 5.

3 Manuel Guțan, „Forme pe un alt fond: transplantul juridic comunitar și cultura juridică românească” (Forms on another fund: EU legal transplant and Romanian legal culture), in *Pandectele Române Magazine* no. 5 (2008): 21.

Given this perspective, the idea according to which the constitutional principle of human dignity is integrated *ab initio* in the public order claims its full legitimacy.<sup>1</sup> The human dignity is not only an exclusive attribute of the person, but it becomes the dignity of everybody, and the person must be protected against its free choice.

Integrating the human dignity principle in the public order implies not only the unconditional obligation of the state to protect the human dignity *erga omnes*, but also the existence of a constitutional standard of „public dignity“, by protecting and guaranteeing the freedom of belief and thought that determines the dignity of individual beings.

It must be emphasized, in a reveling manner, the fact that in Germany the human dignity principle is enlisted in the beginning of the Fundamental Law: „the human dignity is sacred. All public powers are held to respect and protect it (article 1 paragraph 1).“ In the German law, the human dignity acquired a constitutional value *expressis verbis*, by the formulation of the Constitutional Court of Law: „supreme value of fundamental law“, „fundamental element of the constitutional values system“<sup>2</sup>, and „constitutional principle that dominates all parts of the Constitution“. In the case law of German constitutional court, the human dignity principle was called upon in decisions concerning extremely sensible matters that result in controversies: right to life, imprisonment conditions, and protecting the physical integrity of the person.

In the Belgian law system, one can witness a limited confirmation of the human dignity principle, unlike the absolute formulation manner of the German formula. Article 23 paragraph 1 of the Belgian Constitution provisions „anyone is entitled to lead a life in conditions complying with the human dignity“.

Thus, the right to dignity arises as a „relational right“ designated to determine the existence and extent of some rights, confirming in the case law area the conceptual autonomy of human dignity: „intangibility of human dignity can occur as inspiring the right to have private life respected, as well as economic and social rights.“ Beyond the case law variations, the legal doctrine acknowledges the legal authority and ontology of human dignity. It is „the alpha and omega of constitutional system for protecting rights and freedoms“ (F. Delperee). This opinion is influenced fully by the position granted to human dignity by the system of European Convention on Human Rights.<sup>3</sup>

Although it has a variable making up, the *human dignity* concept is believed as a true pedestal of fundamental rights<sup>4</sup> or a *matrix principle* of these ones. It must be underlined the fact that acknowledging and guaranteeing the freedom of thought, conscience and religion involves a neutral state from this point of view. Observing different convictions and religious beliefs is an extremely important obligation of the state. It must accept the fact that individuals can adopt convictions freely and can change their minds, excluding any intervention while exercising the right guaranteed by article 9. The right to freedom of religion excludes any appreciation from the state in connection to the legitimacy of religious beliefs or the manner for expressing them. Also like this, the state cannot intrude in the leading of religious

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1 Opinion confirmed by the French Council of State in a case quoted by Valentin Constantin in „Valori fundamentale vs. drepturi fundamentale“ (Fundamental values v. fundamental rights) in *Noua Revistă a Drepturilor Omului (New Magazine of Human Rights)*, 4 (2006):25.

2 Christoph Enders, „A right to have rights – the German constitutional concept of human dignity“, in *NUJS LAW REVIEW*, July-September, (2010), 255.

3 Bianca Selejan Guțan, *Spațiul european al drepturilor omului (European space of human rights)*, (C.H.Beck Publishing House: Bucharest), 2008, 133.

4 B. Mathieu, „La dignité de la personne humaine; quel droit? Quel titulaire?“ in *Recueil Dalloz*, (1996), 282.

communities. The principle of state neutrality is not yet absolute. Thus, it is not possible to avoid certain obligations connected to the life in society in the name of convictions and beliefs.

However, a question arises and the response of the Court is a consequence of political correctness's seduction. Can a state impose certain practice connected to a religion? This question arose in a member state where the deputies had to give their oath while putting their hand on the Gospels. The Court concluded that article 9 was violated, the fact of imposing this oath being equal to the obligation, for the individuals elected by the people, to swear allegiance to a certain belief (ECHR, February 18, 1999, *Buscarini and others v. San Marino*).

A revealing cause considering the public-private relation, in the context of article 9 in the Convention, is the *Pichon and Sajous v. Franța* Case of October 2, 2001, OCHR, on the inadmissibility of the pharmacists's request that refused selling birth control pills given their religious beliefs. The European judges showed that article 9 protects, before all, the area of personal convictions and religious beliefs, this being of inner conscience, as one calls it sometimes. As well, it protects the acts connected tightly to these components, such as the religious or devotion deeds, which are aspects of practicing a religion or a conviction under a generally acknowledged form. More, article 9 enumerates different forms that manifesting a religion or a conviction can take, this being the cult, teachings and rites. Still, in order to protect the personal realm, article 9 in the Convention does not guarantee always the right to behave in public according to the manner dictated by a conviction. The term „practice” in the meaning of this article does not designate any type of public deed or behavior motivated or inspired by a religion or a conviction, even if they are well-crystallized convictions.<sup>1</sup>

### **Social meaning: human dignity v. political correctness: Kant chases shadows away!**

Beyond the celebration of diversity and over appraising the human rights in the European space, one must admit that the freedom of thought, conscience and religion must not be subordinated invariable and irrevocable to the *political correctness*. If the religious freedom is protected and guaranteed genuinely in the New Europe, it must be underlined the fact that one cannot ask everything in the name of *human rights* and one cannot *accept* everything in the name of *political correctness*. That is why, certain dilemmas and contradictions in the European space must be reconsidered in order to emphasize the negative influence of political correctness of the freedom of thought.

At the upper levels of European power, political correctness is an authentic sword of Damocles as regards the freedom of thought: the Rocco Buttiglione case is the most preeminent, but not the only one. The Buttiglione case, says Rémi Brague, „shows strongly a capital fact: Christians cannot claim to be citizens of the European Union, entitled to candidate to leading positions. They can be loyal subjects, according to the duty to submit to the political regime that leads them, but not citizens *stricto sensu*.<sup>2</sup> The paradox we are facing is the demand of political correctness that it comes from inside the human rights, which is totally false because then its action would not rely on discriminating some in favor of other.

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<sup>1</sup> Jean François Renucci, *Tratat de drept european al drepturilor omului (European law treaty concerning human rights)*, 219.

<sup>2</sup> Horia Roman Patapievic, „Noua Europă și vocea care lipsește: creștinismul” (New Europe and the voice missing: Christianity) in *Idei în Dialog (Dialoguing Ideas) Magazine*, 1 (52) January, (2009):30.

From this perspective, the political correctness creates in the society an opinion current according to which the discussing of correct political statements must be dealt with the same severity and indignation as a penal felony.<sup>1</sup> Political correctness is a genuine thinking police and does not comply directly with the human rights doctrine, as the progressists claim, the same as its true opponent is not the reactionary spirit as its advocates claim but the critical spirit and the freedom of speech.

Even if in the explanation attached in article 1 of the European Chart of Fundamental Human Rights it is stated „The human being's dignity is not only a fundamental right in itself, but it is the basis of fundamental rights“, the human dignity principle cannot be over appraised politically and depreciated implicitly by excessive politicization. Au contraire, the human dignity must be acknowledged as the only absolute value in a world of relative values.<sup>2</sup>

Political correctness is rendered relative before the conceptions of German philosopher Immanuel Kant that deepens the idea of dignity, showing that its substance is connected to spirit: nobody must be *treated as means, but only as end*. The right to dignity is each person's right to be treated as end, never as tool for meeting some one else's interests. It is a positive human right; but such a right that claims to be democratic must comprise laws by which each law subject finds itself as end, and not as tool or means.<sup>3</sup>

By far the most influential definition of dignity has been the so-called „object formula“. This definition, which found its first systematic elaboration in the work of Günter Dürig, rests on Kant's categorical imperative in terms of which a human being is an end in itself and not simply a means to an end. According to Dürig, the dignity guarantee is rooted in the idea that man is distinct from impersonal nature by virtue of his mind, which enables him to become conscious of himself, to determine himself and to shape his own environment.<sup>62</sup> To treat human beings as objects is to deny their capacity to shape themselves and their environment. In Dürig's formulation: „Human dignity as such is affected when a concrete human being is reduced to an object, to a mere means, to a dispensable quantity. [Violations of dignity involve] the degradation of the person to a thing, which can, in its entirety, be grasped, disposed of, registered, brainwashed, replaced, used and expelled“.<sup>4</sup>

Thus, the human dignity must not be privatized exclusively, but mainly integrated in the public order for annihilating the troubling effects of political correctness on the freedom of belief and conscience.

### **Moral meaning: human dignity – reconfiguration of relation between morality and law**

In what way can the human rights understood correctly be legitimate? Can the fundamental rights be observed fully in a society with relative values? Considering the *presence and auspices of the Supreme Being*, called upon in the Declaration of the Rights of Man of 1789, connected closely to the origin of man, the response to these legitimate questions makes one accept that the single complete expression of human rights and human dignity can be found only by acknowledging the true existential and anthropologic nature of Man, *IMAGO DEI*. This acknowledgement is the basis of what one calls *civilization*.

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1 Horia Roman Patapievici, *Omni recent (Recent man)*, (Humanitas Publishing House: Bucharest, 2008), 317.

2 Henk Botha, „Human Dignity in comparative perspective“, in *STEEL LAW REVIEW* (2009): 174.

3 Gheorghe Mihai, *Fundamentele*, 121-122.

4 Henk Botha, „Human“, 183.

The human dignity states the preeminence of natural right and acknowledging the man as being bearer of the divine face in the history of Universe creation. As political solution to the freedom matter, the democracy is incomplete, thus that one has to admit that the equal inalienable rights are included in the human nature, this meaning they are not due to any political regime, by modern law creation excess. To believe in the human rights means implicitly to state their universality, but especially the fact that the human dignity principle contains all arguments for proving the protection of human rights in Romania.<sup>1</sup>

The legal force of the human dignity constitutional principle as supreme value claims the relevance of moral norms as against the legal norms, accentuating by legislative initiatives the inherent cohesion of moral with the law during the law creation process.<sup>2</sup>

Professor H.L.A. Hart emphasizes, in his grand book *The Concept of Law* the fact that „the legal norms and the moral ones are created as being mandatory and independent of the consent of those they bind; both of them are supported by a social pressure; the conformation to the legal norms and to the moral one is not a merit, but it is a minimum natural contribution to the social life.” Thus, to accentuate always what separates the moral values of the legal ones does not serve anybody in theory or in practice.

## Conclusions

The right to dignity, by over appraising the character of supreme constitutional value, is presented as a „relational right” designated to determine the existence and length of other rights, confirming in the case law area the conceptual autonomy of human dignity: „the human dignity’s untouchable character can appear to inspire the respect of private life, as well as the economic and social rights.” Beyond the case law variations, the legal doctrine acknowledges the legal authority and oncology of human dignity. It is „the alpha and omega of constitutional system for protecting rights and freedoms” (F. Delperee). This opinion is influenced fully by the position granted to human dignity by the system of European Convention of Human Rights.<sup>3</sup>

Although it has a variable making up, the *human dignity* concept is believed as a true pedestal of fundamental rights<sup>4</sup> or a *matrix principle* of these ones, and that is why integrating this principle of guaranteeing the protection of fundamental rights in the public order claims completely its legitimacy.

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4 B. Mathieu, *La dignité*, 282.

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# Church Affairs in Hungarian Legislation, Policy Study

■ ISTVÁN PÉTER DANKU

[Government of Hungary]

## Abstract

*'To mention Europe's Christian roots implies indicating as well the residual sources of moral orientation, which is a factor of Europe's identity.'* [Joseph Ratzinger, Europe's Crisis of Culture] This study will attempt to present the principles of the relationship between the State, religion and churches in the context of the secularised state of Hungary, which nevertheless has Christian traditions going back one thousand years. It will outline the background to the process of legislation and the specific measures of the Hungarian government. All of this is especially topical in Hungary, as the recently adopted Fundamental Law has made it necessary for the adoption of a new cardinal Act on the fundamental constitutional right of freedom of conscience and religion, and in connection with this the question of the status of churches

## Keywords

State, church, religious freedom, Christianity, constitution, legislation

## 1. Freedom of religion and conscience in Hungary

Among specialists in constitutional law there is a widespread opinion that freedom of conscience and of religion is the original source of all rights to freedom.<sup>1</sup> In Hungary laws safeguarding religious freedom go back to the 16<sup>th</sup> century, and the *Tordai Edictum* of 1568 can be seen as the first guarantee of religious freedom in the Europe of that time. In the bourgeois Hungary that was conceived in the 1848 Revolution there was also legislation covering religious freedom under the category of so-called 'recognised religious denominations'. After the Compromise of 1867 this category continued to be used.

In the laws on church policy of 1895, the exercise of citizens' and political rights were made completely independent of membership of a religious denomination. The equality of recognised churches and denominations was strengthened, and Judaism became a recognised religion. In addition to this, the opportunity was created for the operation of recognised churches. These laws did not completely separate the

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1 Gábor Galambos, „Vallásszabadság az emberi jogok európai bíróságának joggyakorlatában,” ELTE-ÁJK kiadvány,[http://www.ajk.elte.hu/TudomanyosProfil/kiadvanyok/elektronikus/seminarium/inter\\_cuncta/GalambosGabor-Vallasszabadsag.pdf](http://www.ajk.elte.hu/TudomanyosProfil/kiadvanyok/elektronikus/seminarium/inter_cuncta/GalambosGabor-Vallasszabadsag.pdf), 2005.

Church and the State, however. Act IV of 1990 provided wide-ranging guarantees for freedom of conscience and religion, and for the creation of churches. Later, however, it became clear that the extremely open conditions concerning the foundation of churches also created opportunities for abuse of this fundamental right. Thus there has been illegitimate utilisation of state support intended for churches, and the registration of organisations as churches which in reality do not engage in faith-based activities. This has led to there being several hundred registered 'churches' in Hungary, the exact number of which it is not possible to know. These pseudo-churches cost the country several HUF billion every year in budget expenditure.<sup>1</sup>

## 2. The principles set out in the new Fundamental Law

The National Avowal in the new Fundamental Law states that our king Saint Stephen made Hungary part of Christian Europe one thousand years ago. Our Fundamental Law recognises the role of Christianity in preserving nationhood, and values the various religious traditions of our country. Article VII in the 'Freedom and Responsibility' Chapter states that every person shall have the right to freedom of thought, conscience and religion. Hungary's Fundamental Law guarantees the separation of Church and State, and in this connection autonomy of churches while at the same time acknowledging their cooperation in the achievement of community goals.<sup>2</sup> Recently the plan for the new Fundamental Law was made public, and so we can briefly quote verbatim from passages which touch on the theme of this study:

The preamble contains the following:

*'We acknowledge the role of Christianity in preserving nationhood. We value the various religious traditions of our country'<sup>3</sup>*

There is great significance in the fact that these concepts appear in the Fundamental Law. Similarly to several other European constitutions, the role of Christianity has an appropriate place, but the country's other religious traditions also receive the recognition due to them.

Article VII of the Fundamental Law deals with the right to freedom of conscience and religion in detail, and with churches, as follows:

*'(1) Every person shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change religion or any other persuasion, and the freedom for every person to proclaim, refrain from proclaiming, profess or teach his or her religion or any other persuasion by performing religious acts, ceremonies or in any other way, whether individually or jointly with others, in the public domain or in his or her private life.*

*(2) The State and Churches shall be separate. Churches shall be autonomous. The State shall cooperate with the Churches for community goals.*

*(3) The detailed rules for Churches shall be regulated by a cardinal Act.'<sup>4</sup>*

By international standards, the Fundamental Law seeks to provide extremely wide-ranging safeguards for the above constitutional rights. The new Fundamental Law also resolutely upholds the constitutional separation of Church and State. The State does not seek to isolate or marginalise the churches, and neither does it seek

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1 <http://www.kormany.hu/hu/kozigazgatasi-es-igazsagugyi-miniszterium/egyhazi-nemzetisegi-es-civil-ugyekert-felelos-allamtitkarsag/hirek/a-keresztény-europa-reszekent>.

2 'A keresztény Európa részeként.' *Kormányportál*, <http://www.kormany.hu/hu/kozigazgatasi-es-igazsagugyi-miniszterium/egyhazi-nemzetisegi-es-civil-ugyekert-felelos-allamtitkarsag/hirek/a-keresztény-europa-reszekent>. 23 June 2011

3 <http://www.alkotmany.hu/>.

4 <http://www.alkotmany.hu/>.

to distance itself from the churches. On the contrary, it clearly declares the need for cooperation in the achievement of community goals in the interest of the public good. The constitutional separation of State and Church therefore protects both the autonomy of the churches and the autonomy of the State.<sup>1</sup>

The preamble of the Fundamental Law sees churches as being bearers of values and creators of communities with outstanding importance for society. In addition to their faith-based activities, it regards their community activities and their promotion of national consciousness as playing a significant role in the life of the country, society and the nation. It separately recognises the continuously defining significance and outstanding role of the churches in the history and culture of Hungary.

### 3. Regulation of religious status in the new cardinal Act

#### 3.1. General rules

'All religions determine their dogmas themselves for their adherents, they should believe according to their persuasion, the State can have a say only in the political sphere.' *Ferenc Deák, 'the Sage of the Nation'*<sup>2</sup>

The Act widely ensures – both at individual and community levels – the right to freedom of conscience and religion. Society regards churches as outstandingly important creators of values and community. The new Fundamental Law continues to ensure the separation of State and Church, and therefore it ensures the autonomy of churches in this context, and it prescribes cooperation in the interest of community objectives.

The articles of the Fundamental Law also specify what the State – from a legislative viewpoint – means by the terms 'church' or 'religious activity'.

*(Religious activity:* an activity related to a worldview which is directed toward the transcendental, relates to a system of faith-based principles, its doctrines are directed toward existence as a whole, and its beliefs embrace humanity as a whole with specific codes of behaviour which do not violate morality and human dignity.

The establishment of these principles, and the definition of minimum conditions which are important to protect the credibility of true churches, has been justified by the experience of the past twenty years, and awareness of the anomalous activities of pseudo-churches and 'business' churches.

*Church:* an autonomous organisation consisting of capable natural persons professing the same set of beliefs, resident in Hungary, possessing autonomous self-government, that operates primarily for the purpose of practising religious activities. In the application of this Act, religious systems of thought and religious communities will also be considered churches.)

The proposed Act specifies that it does not regard an activity in itself to be a religious activity if it is primarily based on one or more of the following: politics and advocacy; psychology or parapsychology; medicine; economics and business; education or higher education; healthcare; the provision of charity; family, child and youth welfare; culture; sport; animal welfare, natural or environmental protection; and data management activities which go beyond the core needs of a faith.<sup>3</sup> In connection

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<sup>1</sup> 'Újkorszak az egyházpolitikában' *Kormányportál*, <http://www.kormany.hu/hu/kozigazgatasi-es-igazsagugyi-miniszterium/egyhazi-nemzetisegi-es-civil-ugyekert-felelos-allamtitkarsag/az-allamtitkarz/beszedekek-publikaciok-interjuk/uj-korszak-az-egyhazi-politikaban>, 24 March 2011.

<sup>2</sup> 'Új korszak az egyházpolitikában' *Official government website*, <http://www.kormany.hu/hu/kozigazgatasi-es-igazsagugyi-miniszterium/egyhazi-nemzetisegi-es-civil-ugyekert-felelos-allamtitkarsag/az-allamtitkarz/beszedekek-publikaciok-interjuk/uj-korszak-az-egyhazi-politikaban>, 24 March 2011.

<sup>3</sup> <http://www.kormany.hu/hu/kozigazgatasi-es-igazsagugyi-miniszterium/egyhazi-nemzetisegi-es-civil-ugyekert-felelos-allamtitkarsag/az-allamtitkarz/beszedekek-publikaciok-interjuk/uj-korszak-az-egyhazi-politikaban>

with this, it should be emphasised that this legislation does not go beyond its own remit, and does not seek to interfere in questions of theology. However, given that in Hungary the designation of 'church' confers special legal status (*sui generis legal status*), which is associated with broad privileges and significant support from public finances, these issues need to be determined in relation to churches and the State. In addition, in other Member States of the European Union, both in Western and Central Europe, there are numerous examples of similar issues being regulated, so the need to clarify the situation is not contrary to European practice.

The proposed Act still considers churches to be of equal legal status (having the same rights and obligations); however – in accordance with Constitutional Court practice currently in force – it declares that it can take into account churches' actual social role and their public activities when creating further church legislation and when in contact with them. (For example, the public funding of church institutions providing public services is valid only in the case of those churches that have such institutions, or ecclesiastical estate planning law applies only to churches which had their properties seized by the State in the communist era. The enactment of this principle was also appropriate as a justification for further contacts only with those churches that are affected by the subject under discussion.)<sup>1</sup>

### 3.2 Registration of churches Court proceedings

On the basis of the conditions in the new legislation, there will be new court registration of churches. Registration will be centralised, and the Central Budapest Court will have exclusive jurisdiction, so only there can the process be initiated. This will provide unified direction of registration, which can be easily surveyed on an up-to-date basis. Until then they may fall into the category of organisations carrying out religious activities with the current legal status of churches. (This also guarantees to the maximum the community conditions of the practice of religion.) On this basis only the following are entitled to the acquisition of church status:

- a) those primarily carrying out religious activities;
- b) those with teachings centred on faith and associated rites;
- c) those which have operated in Hungary in the form of an organisation as an association for at least twenty years, and have at least one thousand members who are natural persons resident in Hungary. The operation of a church before the enactment of this law will also count towards the time limits given;
- d) basic regulations, deed of foundation, internal rules, organisational and operational rules or other appropriate rules have been accepted;
- e) the organisation has chosen its administrative and representative bodies;
- f) its members declare that the activity of the organisation created by them is not in conflict with the Fundamental Law or other legislation, and does not violate the rights or freedoms of others.

In addition to this, the proposed legislation defines in detail what documentation is needed for registration on the basis of the above conditions. For judgment of the registration application, or for judgment of the nature of the church requesting registration, the court shall seek the assistance of experts (e.g. theologians, church lawyers and church historians). (This is necessary, as a judge will not necessarily possess all the background information which will make clear the law's implementation of the criteria on religious activities and churches. In the course of various contentious proceedings courts may avail themselves of the services of judicial experts for the determination of specialist questions. In this regard it should

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<sup>1</sup> <http://www.kormany.hu/hu/kozizagzatasi-es-igazsagugyi-miniszterium/egyhazi-nemzetisegi-es-civil-ugyekert-felelos-allamtitkarsag/hirek/a-kereszteny-europa-reszekent>.

be emphasised that an expert only gives an opinion, and the decision is made by the court, which has independent powers, on the basis of the law and providing the right of legal redress. In the course of the procedure for registration of churches, the detailed rules for the summoning of experts – on the basis of the proposed legislation’s authorising stipulations – will be stated in a separate decree.)

The conditions for judgment on church status also make clear that the court proceedings are restricted to examination of only those objective criteria which prove that a given group is primarily carrying out religious activities, and has sufficient members with Hungarian citizenship. This will naturally not extend to examination of internal theological aspects of religious activity, and will not impair the internal autonomy of a church.

#### *Registration via an official authority*

Over the past twenty years it has become clear that the extremely open conditions concerning the foundation of churches also created opportunities for abuse of this fundamental right. Thus there has been illegitimate utilisation of state support intended for churches, and the registration of organisations as churches which in reality do not engage in faith-based activities. (At present several HUF billion in illegitimate public budget expenditure is diverted to a large number of pseudo-church bodies – organisations for the public good, foundations, and in certain cases organisations created by local governments and registered as churches; these institutions providing public services, mainly for social provision, have been set up as churches solely to gain the extra funds due to churches.) For this reason one of the most important aims of the proposed legislation is the filtering out of such organisations from the registration process for churches. This will not, however, adversely affect either those churches which have had a continuous and defining significance in Hungarian history and culture, or those smaller churches which perform public service activity in addition to religious activities, have signed agreements with the government and have either nationwide coverage or are part of world religions. For this reason these churches will be listed as having received court registration, initiated by the minister for church affairs. These churches will naturally operate on the basis of equal rights and legal continuity.

The churches in the appendix – at the request of the minister – will be registered by the court, and will not be subject to examination on the basis of the conditions in the legislation. (In several European states there are examples of the listing of churches with legal recognition, e.g. Romanian and Slovakian church legislation, or Austria, which defines the state administrative procedure for church recognition and registration.)

#### *3. 3. Other measures*

- The proposed legislation guarantees the possibility for churches to provide public services, and churches and their institutions carrying out similar activities to state and local government institutions will receive the same level of financing.
- The proposed legislation seeks to guarantee that churches can provide religious education in state-maintained educational institutions, and may carry out faith-based activities in higher education institutions, and shall benefit from state support. The conditions for military, prison and hospital pastoral services are similarly defined.
- The proposed legislation regulates church economic management, determining the conditions for oversight of state support, paying respect to church autonomy. Churches, especially church ceremonies and the undisturbed operation of church governance, religious buildings, cemeteries and other sacred places, and the naming of churches, their iconography, their order of ceremonies and their publicly

recognised names will receive heightened legal protection. Church officials will receive increased legal protection.

- The proposed legislation contains transitional measures on the solution to problems relating to social and child protection institutions arising from the amendment in force from 1 July 2011. On the basis of this, the twelve churches listed in Appendix 2 – which also feature in the notes forming part of Appendix 1 – will continue to receive supplementary funding. From 1 January 2012 the condition on church maintenance in the area of the system of social provision is in compliance with the new church legislation.

The fundamental rules of the new law will come into force on 1 January 2012 – together with the Fundamental Law.

### *3.4. International connections*

The Treaty on the European Union and the preamble of the Lisbon Treaty, which is about the amendment of the treaty on the creation of the European Community, draws inspiration from the cultural, religious and humanist legacy of Europe, which expounds the inviolable and inalienable rights of mankind. Article 17 of the Treaty on the operation of the European Union leaves religious regulation under national jurisdiction, but at the same time calls for an open, transparent and regular dialogue between the European Union and religious communities. The proposed Act takes into account the European Convention on Human Rights adopted by the Council of Europe, the Charter of Fundamental Rights and OSCE recommendations.

These recommendations were taken into account by the legislature during both the development of the legal environment of religious status and the creation of schedules. Following the creation of new legal relations, the open, transparent and regular dialogue with churches encouraged by the European Union may continue following the adoption of the new Act. In accordance with this, new possibilities for state-church cooperation will open up, in line with the new social challenges of the 21<sup>st</sup> century. Also a part of the dialogue is that the law provides special opportunities for churches in the field of their community tasks, respecting the principle of equal funding.<sup>1</sup>

## **Conclusion**

Commitment to the secular state, the most important principle of the Christian tradition and the Enlightenment, is reflected in the Fundamental law – which lists the interests and goals related to the functioning of society and the principles and rules concerning the internal regulation of the State, and which ranks highest among the sources of law – and the so-called cardinal Acts. The latter widely – both at individual and community levels – ensure the right to freedom of conscience and religion and regard churches as value and community creating aspects of outstanding importance. Ultimately, it can be stated that Hungarian legislation continues to ensure the separation of State and Church – therefore it ensures the autonomy of the Church in this context – and it ordains cooperation in the interest of community objectives. All in all, it includes Christian traditions dating back to Saint Stephen into the fundamental ideological framework of legislation determining social behaviour.

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<sup>1</sup> <http://www.kormany.hu/hu/kozisagzatasi-es-igazsagugyi-miniszterium/egyhazi-nemzetisegi-es-civil-ugyekert-felelos-allamtitkarsag/az-allamtitkarz/beszedekek-publikaciok-interjuk/uj-korszak-az-egyhazi-politikaban>.

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# Freedom of Faith in Russia

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### Abstract

*Church and State relations in Russia are in the stage of development for the last 20 years. Since election of President Dmitry Medvedev in 2008 Russia has chosen new model for Church and State relations and it is close cooperation. The leaders of the traditional religions of Russia have got a lot of privileges and even enjoy direct financial support by the government. Freedom of faith is granted to the followers of all of the religions but only Russian Orthodox believers can enjoy it up to maximum.*

### Keywords

Freedom of Faith, Church and State, Religious Minorities, Russian Orthodox Church

Freedom of faith is one of the realities of the contemporary Russia. The country is free from Christianophobia, widely spread in EU countries, and seems even interested in the deeper impact of religions historically practiced by its population on the life Russians and the society. Seeking for the best model of State and Church relations Post-Communist Russia tried various patterns and has come to the decision to leave individual religious practices without governmental control but to look after activities of the religious organization very carefully.

Russia has declared its independency from other republics within Soviet Union 12<sup>th</sup> of June 1990. One of the first laws adopted by the Post-Communist government has become the Law „On Freedom of Faith”.

The law gave the right to all of the people on the territory of the country to adopt any religion, to have and change religious views, practice this religion and disseminate religious views. Religious practices have been allowed to people without registration at any state body although when forming religious organizations with rights of legal entity, believers had to apply for the state registration. The procedure of the registration was very simple, quick and free of charge. Actually it was a kind of notification of the authorities on the fact that the religious organization has

been created. All that believers needed for it was just a Constitution of the religious association and 10 individuals as founders. The founders could be citizens of any country or people without any nationality. The law has declared complete equality of all of the religions and religious organizations before state laws, not one religion could enjoy any privileges or face limitations in comparison to others.<sup>1</sup>

After the collapse of Communist ideology Russian people were seeking for the way to get a new base for a system of moral values, the reason to live and therefore were looking at religions as the source of values with great hope. Unfortunately, intense atheistic propaganda of the Communist times had targeted the Orthodox Church for years and the image of God was corrupted in the conscience of the majority of Russian people which made them more open for the messages presented by new religious movements than to the Russian Orthodox Church. It is necessary to add that the Orthodox church had no right to perform any missionary activity in Russia in Communist times, even preaching, not only Catechism, was forbidden for the church and financially the church was extremely poor. Naturally, the Russian Orthodox church was unable to compete with well equipped and experienced foreign missionaries on the field of mission.

The Soviet Union collapsed in 1993 and Russia adopted a new Constitution. This Constitution proclaimed that „the Russian Federation is a secular state. No religion may be established as a state or obligatory one. Religious associations shall be separated from the State and shall be equal before the law”<sup>2</sup>. In the same time, according to the Constitution, the State is not directly limited in its right to give preferences to a certain religion or in the development of cooperation with religious organizations on social, cultural or any other field.

The freedom of conscience has been granted to everyone in Russia but somehow the right to change religion has not been mentioned there and it has motivated Russian Orthodox Church to raise the issue of proselytizing of other religious groups on their cannon territory. However, Muslims started to protest against missionary activities of other religions on the territory with a Muslim majority. In both cases, local authorities were taking the demands of the main religions leaders seriously and it has become a problem for religious minorities to find a place for worship other than private houses. There was a very small number of buildings suitable for big gatherings of people in Russia in the 1990-s. Mainly there were „houses of Culture”, cinema centers and theaters belonging to the state. After 1993 more and more regional authorities denied the right of religious organizations to rent state buildings designed for cultural programs, sport or educational purposes. To get permission from the authorities to use city or town land for construction of new facilities has been extremely difficult for religious minorities and it took years to get all of the necessary permissions for it.

Why did religious minorities lose the trust of the authorities in Russia? The reason is that the new religious movements are found locally or coming to Russia from abroad. The White Brotherhood led by Yuri Krivonogov with his wife proclaiming herself an Incarnation of St.Mary and Jesus in the same time was encouraging its followers to commit joint suicide in Kiev on the day of the „End of the Earth” 14<sup>th</sup> of November 1993. The action was stopped by the police who arrested over 600 followers of the organization that day.

The leader of another new religious movement, known as Aum Shinrikyo, was working intensively on getting access to public schools and military units and equipment in Russia in the early 90s. The leader of the movement Shoko Asahara

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1 Art.10 of the Law of the Russian Socialist Federal Republic „On Freedom of Faith” dated 25 October 1990.

2 Art. 14, Constitution of the Russian Federation, 1993.

found information about the deadly nerve gas Sarin in the Russian Army and obtained access to resulting in Tokyo subway poisoning in March 1995. Over 5,000 people were poisoned and 12 people died.

All of that information raised awareness at the Russian government about activities of the religious organizations historically new for Russia and the decision was made to limit their rights by legal means. Therefore the government adopted a new law „On Freedom of Conscience and on Religious Association“ in 1997.

The Preamble of the law was declaring the following:

*The Federal Assembly of the Russian Federation,  
reaffirming the right of every person to the freedom of conscience and faith  
as well as the equality before the law regardless of the attitude towards  
religion and convictions,  
proceeding from the fact that the Russian Federation is a secular state,  
recognizing a special role of the Orthodox Church in the history of Russia,  
the formation and development of its spirituality and culture,  
having respect for the Christianity, Islam, Buddhism, Judaism and other  
religions constituting an integral part of the historical heritage of the  
peoples of Russia,  
believing it important to promote mutual understanding, tolerance and  
respect in matters of the freedom of conscience and faith, therefore, adopts  
this Federal Law.<sup>1</sup>*

The law has divided all religious associations in three groups: the recognized one: Russian Orthodoxy, respected ones: Christianity, Islam, Buddhism and Judaism and others. Naturally only „respected“ religions enjoyed various privileges up to the direct support from the country budget and access to the hospitals, orphanages, educational institutions, prisons and Armed Forces.

The law has created an extremely complicated system for the registration of religious organizations although it still was (and is) permitted for religious associations to act without registration. Non registered religious associations can have religious gatherings in private homes and practice their religion on individual level but they have no right to publish and/or disseminate their literature and get access to any hospitals, orphanages, prisons, educational institution and Armed Forces at all.

By being registered religious organizations become accountable to the governmental structures such as Ministry of Justice, Tax authorities, Statistic Committee and have to present them reports about their activities on a regular base being subject of the audit.

Only registered religious organizations have the right to invite foreign religious workers to Russia but such people can stay in Russia no longer than 90 days of every 180 days. Religious workers have no right to get work permits. It makes it impossible for foreign missionaries to work in Russia.

In order to be register, a religious association has to prove that it has been practicing their religion in a certain area for 15 years and did not have any conflict with the law. Another option for the registration is to prove that the religious association is affiliated to the union of religious organizations already registered.

According to the new law, all religious organizations can be register by meeting one of the following three standards: a local religious organization is founded by 10 Russian citizens, a centralized religious organization formed by at least by three local religious organizations of the same faith or a religious institution formed by centralized religious organization for internal needs (for example, theological seminary).

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<sup>1</sup> Federal Law # 125-FZ of September 26, 1997 „On the Freedom of Conscience and on Religious Associations“.

When the law came into legal effect the government forced all of the existing religious organizations with valid registration to re-register. Some of them have found that it will be impossible. For example, many religious organization were unable to present solid evidence that they were operating in Russia for 15 years already (since the Communist time), some organizations could not find 10 brave people ready to submit all of their passport details, addresses and contact phone numbers as it has been required by the government. Many believers were remembering persecutions of the Communist times and were afraid that they could be easily arrested or face other negative consequences if the complete information about them as the founders of religious organization will be saved somewhere in the files of the authorities.

The religious organizations planted in Russia by foreign groups have lost their right to legally exist. One of these religious organizations, namely the Jesuit Order were one of the victims of this new law. Jesuits had a lot of property in Russia at that time and could lose it all if they would lose their registration as a legal entity. So, they had to appeal to the Constitutional court to seek for justice.

The Constitutional court, on its session 13<sup>th</sup> of April 2000, decided in their favor. The Court has motivated its decision by one of the basic principles of Russian laws namely that no new law can have a retrospective effect and if a religious organization has the right of legal entity already it cannot be closed down just on the base that it doesn't fit the pattern of a religious organization under new law.

As result of the decision of the Constitutional court and the following Comments to the law issued by the Ministry of Justice; many religious organizations registered before the new law came into legal effect (up to 75% of them) and many were able to pass the re-registration procedure successfully.

The Law „On the Freedom of Conscience and on Religious Associations“ has opened a new chapter in State and Church relations in Russia.

The Orthodox Church obtained preferences and has realized its responsibility for the social, cultural and spiritual welfare of the Russian people. The church issued the Basic of the Social Concept of the Russian Orthodox Church in 2000. The document is promoting active involvement of Orthodox laypeople into social, economic, cultural and political life. Later in 2008 The Russian Orthodox Church's Basic Teaching on Human Dignity, Freedom and Rights has been adopted. Since that moment the government of Russia has started to look at Russian Orthodox Church as the real partner in the fields of moral education and softening of social conflicts.

Practically all of the „respected“ religions of Russia are welcomed to enter in relations of social partnership with the state and can get even support for it. Government sponsors building of new churches and mosques. Such subjects as „Basic of Russian Orthodox Culture“ or „Basics of Muslim Culture“ in the areas where majority of Muslims lives will become obligatory for the all public schools in Russia starting from 2012 but non-religious parents can choose the subject „Basics of Secular Ethics“ for their children as the substitute. There are also courses on Basics of Buddhist Culture, Basics of Jewish culture, a course on World Religions and the text books on that subject are available in every school library.

Starting from February 2010, the Russian Army has got military priests who have taken position known in Communist times as deputy-commander on political matters. The duty of the political officers in Soviet Army was to lift up the spirit of soldiers, help them to fight stress and to teach them Communist doctrines. Military priests are providing spiritual help and catechism to the soldiers helping them to develop a healthy Christian system of values. In case when more then 10% of the soldiers in the squad are Muslims they can get a Mullah on the position of the military priest. Military priests receive their salary from the governmental budget.

Religious organizations in Russia receive donations tax free. More than this, Russian taxpayers receive tax deduction on the amount of money donated to any religious organization registered legally including religious minorities.

All of the registered religious organizations have the right to start new media and to use TV channels. Practically only major religions can afford it and run cable channels accessible to all Russian people.

New Patriarch of Moscow Patriarchate of Russian Orthodox Church Kirill enthroned in February 2009 has encouraged all of the laypeople to become missionary to the people around, he has prescribed to every parish to become a center for social work and welcomed new forms of missionary work with the younger generations. It has brought immediate results.

According to the Russian Public Opinion Research Center (VCIOM) the number of Orthodox Christians has grown from 72% to 75% of the population since 2009. 16% of Russian population was consisting of atheists and agnostics in year 2006 but in 2010 there were only 8% of non-believers in Russia.<sup>1</sup>

Freedom of faith in Russia is bringing its fruits.

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<sup>1</sup> „Do we believe in God?”, VCIOM, Press release # 1461, 30 March 2010, <http://wciom.ru/index.php?id=459&uid=13365>.

# Media, Religious Minorities and Freedom of Religion

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## Abstract

*The goal of this article is to have a look at the media agenda and the frames used to talk about religion in general but specially to report on minority communities and their right to religious freedom.*

## Keywords

Religious freedom, media, minorities, Spain

## 1. Introduction: Setting the scene

Talking about religious freedom implies thinking about the role of freedom of expression, as both are fundamental rights that are very close and the first one needs the backing of the second. Therefore it is important to highlight the role of the media in order to defend the right of religious freedom. The media play a central role in providing symbolic resources and give meaning to our society and world-views. For centuries religion has held this role and currently the media has since taken over as a social authority. So nowadays the media treatment of religion is an indicator of the status of religion in contemporary society. It is important to highlight the lack of information about religious topics in the mainstream media. When we look at the lack of media coverage of religion issues and the frequent use of the negative frame used to talk about it, we realize that there is a real need for reflecting what is the role of the media in addressing the right to religious freedom. In particular, there are very few studies that address the role of the media to guarantee the practice not only of religion freedom but also freedom of conscience.

In academic circles, in terms of political communication and journalism theory, there are deep questions that are asked every day about the re-

relationship between the media and society and the media impact on public opinion. However the issue how to cover religion in the media and its influence in society is rarely on the research agenda. Nowadays, the media and its globalized information culture become the main bodyguards of the moral and value system in the world. They play a key role in protecting and defend the values and rights that they consider vital and ignore the ones that are out of the mainstream agenda. Therefore, here we will reflect about the role of the media to create public knowledge about religion and to be a platform for religious communities to have a public voice in society. Using Spain as a case study, we argue that in general the media gatekeepers put religion out of the agenda or use a negative tone and act as the spokesmen of the dark side of religion. We will also consider if there are some reasons inherent in to the religious discourse that make it more difficult for journalists to report objectively.

Within western societies, there are differences in terms of media and religious freedom however this article we will mainly focus on the general framework and analytical outline of European countries and, in some cases, we will specifically refer to the Spanish case.

## 2. Theoretical-methodological Framework

The goal of this project is to identify the main media discourse framework: how often and how they talk about religion and religious minorities. The data will help to evaluate in which terms the media is shaping the collective imagination about religion and contributes to generate perceptions and attitudes.

In this section in order to research in depth how the issue of religious and religious minorities are presented in the media, the concepts and methodology of Agenda Setting Theory and Framing are used. The Agenda Setting Theory<sup>1</sup> has become one of the paradigms of greatest relevance in Communication. The central notion of the agenda suggests that the media influences the issues people think about and consider to be important<sup>2</sup>. The main hypothesis centers around the notion that the transference of visibility (saliency) which suggests that issues which bear more weight regarding media coverage end up becoming the most accessible to receivers<sup>3</sup>. In this study, the hypothesis is that media coverage of religion and religious minorities is not significant so the issue is not very accessible to receivers and it is not open to give religious minorities the chance to exercise their right to religious freedom.

Agenda studies agree in pointing out that the media agenda has a certain degree of influence over the public opinion agenda. Therefore the lack of visibility of religious minorities could contribute to their lack of integration in the public sphere were they are not encouraged to exercise their right to religious freedom.

The observation that religion seems not to be relevant in the media agenda is only one part of the picture, as it is also essential to analyze the media frames. A frame is the way information is organized<sup>4</sup>; it is the perspective of the facts based on the selection and emphasis of some elements. In sum, the first hypothesis is that Religion is very rarely on the media agenda. The second, it is that religion is often

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1 Maxwell McCombs, M. & Donald Shaw, D. The agenda-setting function of mass media, (*Public Opinion Quarterly*, Vol. 36, n. 2, 1972), 176-187.

2 Bernard Cohen, *The Press and Foreign Policy* (Princeton, NJ: Princeton University Press, 1963).

3 Dearing, J. & Rogers, E. *Communication Concepts 6: Agenda Setting*, (CA, Thousand Oaks: Sage, 1996).

4 Robert Entman, Framing: toward clarification of a fractured paradigm, (*Journal of Communication*, Vol. 43, n. 4, 1993), 51-58.

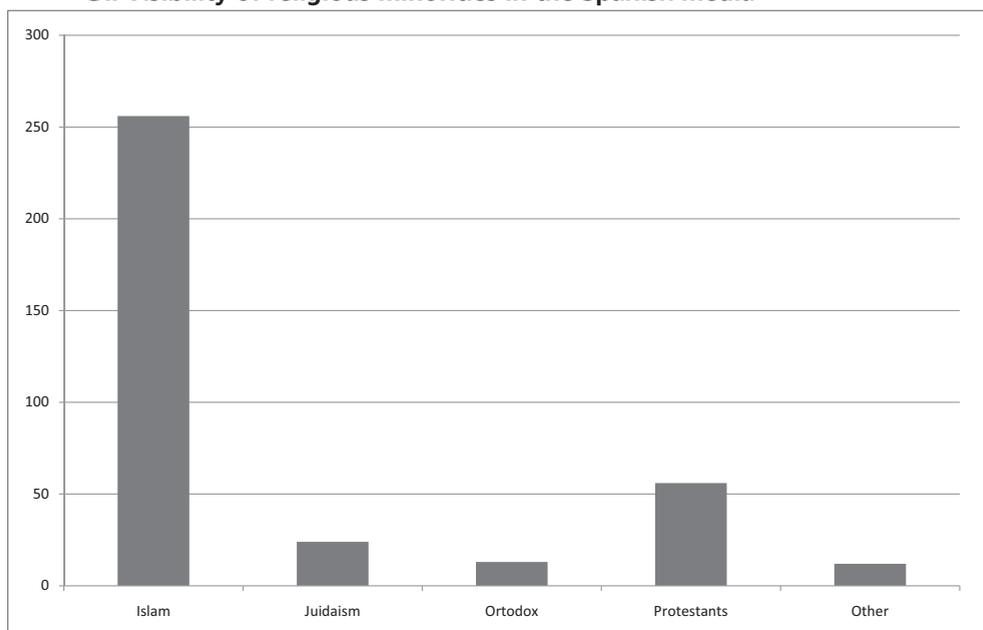
portrayed in a negative way, with a risky frame or human drama frame, by the media (regardless which religion).

In general news about religion are reported with a risky frame and hardly ever with a positive frame. Therefore, the media hype about religion are directly linked with negative news-worthy events or situations of crisis. The third hypothesis is that minority religious groups are hardly ever represented in the media. By having a look at the way religious minorities are framed in fictional television series it is possible to find out what the stereotypes are that are often used to talk about minorities and how visible they are. In order to test these hypotheses, in this article we will explore the media coverage of religion in the quality press and the television series in Spain.

### 3. Case Study: Visibility and Frames of Religious Minorities in the Spanish Media

If we look at all the news published in the quality press and look at the visibility of different issues, it is very likely to find that religion is present in less than 1% of the total number of news items in the main newspapers<sup>1</sup>. When having a look at the visibility of religious communities, the result is very similar; religion is more present in the news items as a feature to describe people or groups, however, very rarely is incorporated into the headline or as the lead in a news item (G1).

**G1. Visibility of religious minorities in the Spanish media\***



Note: N=374 news in 2010 (Newspapers: El País & El Mundo) / 65% Islam / 19% Protestants-evangelicals / Jews (8%) / Orthodox (5%) / Other (3%)

<sup>1</sup> 0.3% of the total number of news in the Spanish quality press ( Newspapers: El País & El Mundo). The keywords used for the automatic analysis had been: religion\*, islam\*, protestante\*,evangelic\*, orthodox\*, judio\*; judaismo\*. The visibility is measure in the headline and lead of the news item.

It is very clear that the Islamic community receives more media coverage than other religious groups. It is important to highlight that most of the news items about the Islamic community are international news items. It is also within the framework of international coverage of religious issues linked with Islam and the Islamic community. From all the news related to Islam, most of them are focused on terrorism (45 %) and other issues such as the burke and veil (22%). In these cases, the members of the community are not present with an active voice. Most of this news is reported in an indirect way without giving a voice to the actors and members of Islam. Another rhetorical feature is the negative associations, especially with issues connected to the Islamic community. The more sensational and dramatic the issues, the greater the chance to be included in the media agenda. The mass media is especially interested in this kind of approach because it is easier to talk about them and they attract more of the audience's attention. This is one of the reasons that Islam very often catches the media attention but not from a religious point of view, because it is more often related to politics.

In a secular society, it is considered that religion only sells when reporting a negative story with a certain degree of sensationalism as well as when religion is being devalued. Negative frames with a risk factor within the media could increase the fears that citizens have towards religion. Moreover, these kind media coverage could contribute to the misguided view of the reality of religion and its different communities.

When having a look at the occasions that religious groups appear or are mentioned in television series, we discover that the percentage of episodes that include a religious theme is also very low. Out of the 74 episodes analyzed<sup>1</sup>, only 16 mention or include religious groups. It is also very significant that 70% of these times, the person who belongs to a religious group is an immigrant. This confirms the findings of another study<sup>2</sup> who researches the representation of immigrants in Spanish fictional television programmes<sup>3</sup>. In the same way in the press, there is a tendency to emphasize that believers that are not catholic are from other countries. This is the case, but it is overemphasized by the media. In fact, it is possible to say that the arrival of immigrants and the growth of diversity have contributed to the visibility of religious minority group even though they are still it is reported as minorities.

Taking this into consideration, it is important to remember that the minorities differ from majority groups not only because of their number. The majority is also the model that is socially accepted as the one to follow. However, it could be true that a minority could be even more numerous than a majority (Deleuze, 1999). This author states that all of us could be at some point a minority. Social trends have the power to reinforce the visibility or invisibility of different groups and in this way, make them more or less noticeable. If believers represented in the media are members of a different religious group as well as members of an ethnic minority, it further reinforces their identity as a minority. This dynamic could crystallize the stereotype that it is only foreigners that practice their faith, at least this is what we see in the Spanish television fictional series. In such series, the Catholics are pretty much left out of the discourse, even more than religious minorities.

Television series, at least in the case of Spain in the last two decades, have been playing a model role in the representation of society and its values. They have tried to accompany the evolution of society and the changes of mentality and moral

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1 N=74 ( Television series: Aida, Física o Química, Hospital Central, Los Hombres de Paco).

2 Fajardo Galan, „La representación de los inmigrantes en la ficción televisiva en España“, ( La Laguna, Tenerife: Revista Latina de Comunicación social, 61,2006), 64.

3 Television series: Hospital Central and Comisario.

values. For example, they have incorporated issues such as the woman in the working world, divorce, evolution in sexual behavior, etc. In this process, secular values have been reinforced, including the Catholic Church being criticized<sup>1</sup>. But in general, television series have excluded religion and traditional values from social debates. The silence towards religion has been a way to criticize it and push it outside of normal and daily life issues.

In general, these television series do not address religious pluralism or substantial issues related to religion, and when they do, it is with a more folkloric approach. In general, there is a lack of visibility of religious minorities in the news and in fictional television series. This conclusion reinforces the results of other studies, such as Garcia & Gonzalez that conclude that the media hardly ever report minorities giving them their own voice. The spiral of silence in the media is taking place by not giving them their own voice or the chance to explain situations when there is a crisis, reinforcing their invisibility. For historical reasons, the Catholic Church and the Catholic community still receive more media coverage than other religious groups. However it is important to highlight that until Democracy came to Spain, the Catholic Church had been losing media coverage. During the last 25 years, religious freedom become a reality from legal and political terms however religious minorities sometimes have to remind the public institutions their right for example to build a place of worship.

On the other hand, the right to practice religion is permitted however the right to have a public voice is not considered relevant. So it becomes really hard for religious group to be present in the media with their own voice. Most of the time religious issues are mentioned is through the voice of an expert, journalist or somebody outside the religious community. The media didn't want to be the spokesmen for any religion anymore, but, at the same time, way they implicitly ignore religious minorities and their right to be visible in the public debate.

#### **4. Looking for some explanations: the limits of the journalistic discourse to approach religion**

The observations and results of this pilot study about representation of religion and religious minorities lead us to analyze the media operative dynamic and the causes leading to this cycle of silence and negative representation. The fact that the media chose to include some topics on the agenda over others and cover the opinion on certain issues has an important impact over what the audience reads and watches and therefore, believes. Religion is a complex issue that is related to personal experience and has a component of abstract thinking, beliefs and interpretation that make it difficult to express in a news item. The most mediatic religious events are the rituals and big ceremonies that have visual value and are easy to be presented in the audiovisual media. In the cases where the news talk about the personal spiritual life or experience, it is usually from extreme case of a very peculiar person that has an interesting or crazy story. For all these reasons, the religious events that are in the media are usually linked with the news values such as deviation, negativity, spectacle or scentric stories. On the other hand, there are the news connected with the dialectic conflict between different groups or the church and

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<sup>1</sup> Diego Garcia & Lucio Gonzalez, „Las minorías religiosas y los medios de comunicación en la CAPV”, RUIZ Eduardo (dir.) (2010). *La diversidad religiosa en el País Vasco. Nuevos retos sociales y culturales para las políticas públicas*. Publicaciones en la Universidad de Deusto, Bilbao (2010).

the government. So the human frame and the conflict frame are the ones that are more likely to make into the media agenda.

The other approach of religion is using the journalist opinion formats such as opinion columns and editorials. Some authors have pointed out that in the media, the spokesmen of media issues are writers, philosophers and journalist coming from an agnostic and atheistic background who make remarks about religion. Moreover in countries like Spain, the history of the close relationships between the Church and the State, the freedom of speech have been also interpreted from the approach of secular media that exclude religion from the agenda as a way to express the independence from institutions like the church. Some researchers have pointed out that the negative view on religion is stronger in Spanish newspapers than in the quality press of other European countries<sup>1</sup>.

## 5. Conclusions

The media play a role in establishing the public agenda and determining the hierarchy of the importance of the issues and it also plays a role in the structure and organization of our society. For this reason, it is possible to say that the media build a partial understanding of social issues because some of relevant aspects of reality are left out of the agenda, which leads to the disinformation of the audience regardless some issues or approaches.

The lack of visibility of religion and religious groups in the media is only one part of the picture, as it is also very relevant to analyze the media frames. A frame is the way information is organized; it is the perspective of the facts based on the selection and emphasis of some elements. In general, the media frame religion with a negative-risky frame and focus.

The predominance of negative frames is not a phenomenon exclusive to the news about religion, but rather is a trend in the media. However this trend becomes more evident when it is linked with a minority group that is only in the public sphere when there is a negative event. It is possible to say that by failing to cover religion seriously, the media have contributed to dim the religious issues into the invisibility and the salience only of the dramatic events, crisis or stories with a negative side. What becomes very clear is that the media do not encourage minorities to be present in the discourse or to exercise their right to express their religious beliefs in the public sphere. On the other hand, in general, it is possible to say that journalists are not really concerned with the importance of religious freedom worldwide. In the best case, when the media pick religious issues and talk about it, they usually focus on the individual story and the religious person's rights. There is a tendency in Western media to not report properly on cases where there is government repression and violations of religious freedom. Journalists have to remember their role to defend religious freedom as it has a vital role in the growth of democracy and human rights.

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<sup>1</sup> José María Contreras, La protección de las minorías religiosas: algunas consideraciones en torno a la declaración de los derechos de las minorías religiosa: algunas consideraciones en torno a la declaración de los derechos de las personas pertenecientes a minorías, (Madrid, *Anuario de Derecho Internacional*, N° 15, 1999), 159-204.

## 6. Recommendations

As we had been pointed out, the religious reality is a sensitive issue. The right to believe and to express what one believe should be guarantee by the media and not only by the legal or political institutions. Therefore, here we propose some recommendations that may help to better media coverage of religious minorities that may contribute to a better understanding and exercise of religious freedom in the public arena.

- The journalist approach of the religious issue implies the application of the same professional criteria that to other topics. For example, it should be reported taking in consideration the opinions of the different sides of the debate. It is necessary to have a better contextualization of the events and to the include voices of the people who belong to that group.
- The notion of journalistic and newsworthy event is not the best approach for religious issues because then there is a tendency to focus only on the conflict or the human frame. Due to the complexity of the religious issue, it should be more often reported from journalist genre such as deep interviews, documentaries, reports...that help to have a deep view and a better understanding of religion and spiritual experiences.
- The analysis of religion and the media as a platform for citizens to express their religion views and values demands that jornalist have a better knowledge of the religious issues in other to guarantee a balance view of the issues.
- In order to guarantee the freedom of religion and expresion of religious believes the media should have a deontologic code to have some guidelines to follow. In the same way that this kind of media watchers and moral-deontological approach have been used to report on issues such as immigration and the rights of ethnic minorities.

Regardless the rights of religious minorities, there are some general recommendations to be made:

- The different religious minorities should be part of the news coverage specially when that events concern to them , they should have the chance to practice their right to express their opinion about what happen.
- The mass media should be a platform for religious groups to present their possitive contributions to society, such a solidarity events, rehabititions centers, social centers, contributions to culture and education....
- It should be avoid generalizations of negative behaviour from a single person and event to the general.
- Most of the representations of religious issues in media do not come from the institutionalized religions or groups but are produced and edited by the media. It seems that the freedom of press and religion is somehow guaranteed only to those who own one. At least that is a fact for small religions that now they had found on the internet a loudspeaker to broadcast their own articles, programmes... However it is also important the religion is addressed also in mainstream media.
- Television Fictional Series should include religious minorities without stereotypical roles that could help to the normalization of religious pluralism.

Finally, it is important to point out the possibilities open up by this kind of research. This should serve as springbroad for future studies about this field of media representation of religion, religious freedom and minorities. First of all, it would be very relevant to compare the results achieve in different countries, and try to find out if there are important differences or similiarities. In this way we could conclude what are the main trends of media protaits of religion and religious minorities and in this way it is possible to draw some recommendations that could contribute to the duty of media into the guarantee of religious freedom and expression of religious diversity.

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# Communication – From Censorship to Crisis

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## Abstract

*The paper describes the evolution and the role of communication in human society, examining forms of censorship applied over time, and the types of crises that affect communication in modern society. In particular, this paper describes cases of censorship by the exercise of political power, especially in totalitarian regimes. Victims of censorship are people, books, other publications, media etc. Conclusion of the paper is that censorship of communication is one of the main obstacles in development of the human society.*

## Keywords

Communication, news, pattern, censorship, totalitarianism, religious and secular institutions, freedom

## 1. Introduction

Human society could not be conceived in the absence of communication, in today's society communication acquired a central role, both by theoretical concerns that directly refer to communication, as well as the object of research and by overcoming the role played until recently by communication sciences, that of annex in the context of human sciences<sup>1</sup>.

The progress of human society was determined and it also imposed a growing information capacity which, combined with community work, raised to ever higher rates of the communication need. Are assumption is correct when we say that human evolution is primarily communication.

Freedom is an essential element in deriving other rights and freedoms, and also the logical consequence of freedom of thought, conscience and religion, subject of the European Convention on Human Rights.

## 2. History of communication<sup>2</sup>

The primitive elementary form of human communication was a public indication of a fact: a notch on a tree trunk, a colored stone on a path etc. In

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<sup>1</sup> JJ van Cuilenburg, Scholten & GW A Noomen, *Știința comunicării* (Editura Humanitas, București, 2004), 5.

<sup>2</sup> Lîgia Bârzu, *Preistorie generală* (București, 2001), 49.

the same way it is a public indication of optical signals: smoke during the day, fire at night, coupled with the signals made by the monasteries and churches bells.

Communication is part of our lives, it is essential for our life and work. Derived from the Latin „comunis” – common – means „to agree with”, „to be in contact,” although the term in ancient vocabulary mean „to transmit to others”. Communication means a simple fact: practicing it, a man tries to establish communication with other people, by disseminating information, ideas and attitudes.

In practices related to communication, the appearance of writing was truly an essential moment for human evolution, making the invention of graphic signs, storing and transmitting information possible, not only in time scale but also horizontally within the community and especially between communities. In ancient Egypt, for example, there were chronics which by their content, resemble to newsletters of today, and in China, in the second century BC, in the Han Dynasty period, there was a regular newsletter „Ti Bap”, for officials’ information.<sup>1,2</sup>

News was gathered and began to be recorded in books or journals. The next step was the appearance of gazette-manuscript. Italy was the first country that had a newspaper, determined by needs felt first of all by the merchants. Initially, manuscripts were intended mainly for kings and princes, later for politicians or business, and finally for the bourgeoisie. The Golden age of the newspaper-manuscript was the sixteenth century, in Rome and Venice.<sup>3</sup>

A pattern with movable letters marked another fundamental step in disseminating information, books and papers reproduced by printing became very cheap and more easily to spread. The pattern with movable letters was invented in China, the first mobile hieroglyphs being made in the eleventh century. Innovation was exceptional and revealed later by a Chinese chronicler who wrote in 1422: „Each text should be printed and no man should remain ignorant.”<sup>4</sup>

For Europe, the time reference in the evolution of printing technology is placed between the years 1438-1450, when Johann Genfleisch, known as Gutenberg (1394 or 1399-1468), gave rise to the pattern based on isolated metal letters, movable, cast in molds. Art of printing, in conjunction with the invention of ink and develop of paper industry and of postal institution, determined the birth of the printed press. As an inexhaustible source of news from different fields, the press has intensified communication and public opinion was guided into one way or another. The press has become, gradually, in the modern world, „the fourth power in the state.”

In Romanian culture, the pattern was assimilated just 60 years after its appearance in Europe and 17 years after the printing of the first Cyrillic books.

The introduction of printing in Romanian culture is related to the name of Macarie, and of Radu cel Mare, Romanian prince (1496-1508). Early 16<sup>th</sup> century, three books with religious themes were published: Liturghierul (1508), Octoiul (1510) and Evangheliarul (1512), all in slavonic.<sup>5</sup>

The first document written in Romanian was registered in 1521 – the famous letter of Neaçu from Campulung. Only a few decades later in Romania, there was an intense publishing activity, held between 1559 and 1583, in a printing shop owned by deacon Coresi. Other printers worked in Cluj (1550), Alba Iulia (1561), Bucharest (1573, 1675), Iet (1640), Snagov (1690), Buzau (1694).<sup>6</sup>

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1 Constantine Antipas, *Istoria presei române* (Acad. Stefan Gheorghiu , București, 1979), 10.

2 Victor Visinescu, *O istorie a presei românești* (Ed Victor, București, 2000), 16.

3 Emanoil Cretzulescu, *Originea presei. Presa în străinătate și în România* (București, 1887), 5-6.

4 Albert Flacon, *Universul cărților* (Editura Științifică și Enciclopedică, București, 1975), 56.

5 George Ionescu, *Spicuri din trecutul tipografiei românești* (București, 1909), 39-40.

6 Radu Albala, *Antim Ivireanul și vremea lui* (Editura Tineretului, București, 1962), p. 83.

### 3. History of censorship

Censorship is the „act of any political, religious, military or administrative entity to condition the expression/distribution of information, opinions, ideas, intellectual creations, which the public has a right to know.”<sup>1</sup> Attribute of a religious, political or military power, censorship seems to have occurred even before it got a name, together with the first forms of written expression, as attested in biblical texts – the first record regarding this is brought by the New Testament.

As the crystallization of the first forms of state, censorship has become as much an attribute of the church and of secular institutions. For example, all actions against different forms of expression that put in doubt dogmas and, later on, political or military decisions of State Power.<sup>2</sup>

The first representative of ecclesiastical authority that has developed an effective system of censorship was Rodrigo Borgia, the future Pope Alexander VI (1492-1503). In 1501, he imposed the obligation not to print any book without prior approval of a senior prelate.<sup>3</sup>

The first forms of censorship have been by religious inspiration and until the appearance of secular censorship, the control of writing and teaching was the privilege of theologians.<sup>4</sup> Restrictions on religious institutions were transferred in different forms in secular institutions, primarily in universities, by imposing a point of view to ensure the purity of faith was an obsession for which they made the most severe punishment.<sup>5</sup>

In the Slavic area, the first forms of censorship arose due to interventions of religious authorities, especially after the Grand Duke Vladimir strengthened central state authority and introduced Christianity as official religion (982).<sup>6</sup>

The territories inhabited by Romanians, as in all European space, the censorship was created by church. In the Romanian provinces, even the circulation of foreign newspapers was often stopped because of censorship, despite the fact that customers were important landowners.

By the measures mentioned, Walachia and Moldavia came among countries where free speech depends exclusively by the political power.

### 4. Censorship of communication

Modern forms of censorship keep in different proportions, specific mechanisms of old forms, but are usually more discrete. Restricting access to information is a common practice and occurs through excessive classification of information as secret, through their inequitable dissemination or by preventing access to them.

Hitler and Lenin saw media as a powerful means of control. They limited exchange of information and violently repressed any form of resistance.<sup>7</sup>

In totalitarian societies, all forms of public expression are marked by official ideology, by the restrictions and by fear of repression. Through censorship, the

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1 JJ van Cuilenburg , Scholten & GW A Noomen, *Știința comunicării*.

2 Ovidiu Drâmba, *Istoria culturii și civilizației* (Editura Științifică, București, 1995).

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6 *Balșoia Sovietscaia Enciclopedia* (vol 46, Moscow, 1957).

7 V.I. Lenin, *Despre presă* (Editura Politică, București, 1960).

unique value of news is given on whether it serves the single party or not.<sup>1</sup> Hiding the events, the dependence on a single news agency (which is under the control of the single party) and deprivation of alternative sources of information are some of the communist models of communication components.<sup>2</sup>

Representative in this media system in Romania were the last years of Communism, in which communication had acquired a ritual character, somehow religious. Throughout history, censorship has made communication a real victim, both among books, publications and the people. „The danger to kill a good book is as great as that of killing a man,” said John Milton.<sup>3</sup>

## 5. Conclusions

Freedom of communication is a fundamental feature of the definition of man.

Freedom of communication applies not only to „information” or „ideas” that are favorably received, but also those that offend, shock or disturb the State or any other segment of the population.

Experts who have analyzed the phenomenon of communication admit that it seeks some specific features: communication has the role to put people in touch with each other, the message content pursues certain goals and the transmission of certain meanings, the communication has a dynamic character, because any communication, once started, has a evolution, it change and changes the people involved in the process etc.<sup>4</sup>

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Pastor Daniel Scot had to flee Pakistan because he was accused of blaspheming Islam, but ended up being charged with offending Muslims and Islam in democratic „Christian“ Australia. There he made a comparative analysis of Islam and Christianity in a seminar in a church. For this Pastor Scot faced fines and jail time for refusing to publicly recant his religious stance. His case was processed in the Australian court systems for over five years. Eventually, in late June 2007, the Muslim Council in Victoria, Australia agreed to drop the charges against Pastor Scot. Three Australian states have laws which, in the name of tolerance, do not tolerate criticism – even perceived criticism – of Islam.

There are an increasing number of cases related to freedom of speech, cases which are being discussed in media and / or tried in courts of law. There are also legislative changes with more countries introducing or changing so called hate speech laws – further restricting the right to free speech.

In a globalised world, where laws are increasingly internationalized, we need to better understand various trends and pitfalls which may impact us all.

## **The Importance of Freedom of Speech**

Freedom of speech is foundational and essential for other freedoms and rights. Without it we have neither freedom of the press, nor any rights to open political debate, nor freedom to manifest religious beliefs, nor freedom of expression in art and music, et cetera.

While advocating freedom of speech, one must recognize the need for limitations. Absolute general freedom is anarchy; absolute freedom of speech can have undesirable consequences. Freedoms and rights need to be defined and operate within a particular framework, which is related to both ethical and legal systems.

There are some common legal limitations to freedom of speech. You cannot instigate imminent violence nor convey state or military secrets and plead that you are exercising freedom of speech. There are also some limitations related to libel and slander against individuals.

The right and freedom to express one's views and opinions in writing, speech, and art inevitably means that others may differ or even take offense. But that is the nature of freedom of speech. One cannot guarantee that no-one will ever be offended by a message, political, religious, or otherwise. One may say that Mohammed is the last prophet, another may disagree. Some will assert that Jesus is God and others may find that stupid or even offensive. Some may argue for homosexual marriages and others for limited abortion rights. But all these things are foundational for a functional democracy, which is based on individuals' right to express and convey various and differing opinions.

Freedom of speech puts the emphasis on the speaker and what is said; the right to say basically anything, even things that are not true (for instance, that the earth is flat).

**A worrying trend is the shift toward the *hearer* and to *what is being heard* or how things are perceived, including the possibility that an individual or group may feel hurt or offended by what has been expressed. This is a move from the objective (what was expressed) to the subjective (how was it received, perceived). This is contrary to fundamental Rule of Law principles.**

One can see this tendency in both media and in legislation in many parts of the world, often relating to Muslims and those engaging in homosexual conduct.

## Cases of Concern

Glasgow, 2006: A Member of the Scottish Parliament asked Strathclyde Police to investigate remarks made by the Roman Catholic Archbishop of Glasgow. The Archbishop had defended the institution of marriage and criticized civil partnerships in a church service.

In November 2003 the Bishop of Chester, the Rt. Rev. Dr. Peter Forster, was investigated by Cheshire Constabulary after he told his local newspaper that some homosexuals re-orientated to heterosexuality with the help of therapy.

- In 2002, Dutch politician Pim Fortuyn was assassinated for his views on Islam and Muslim immigration.
- In 2004, Dutch film maker Theo van Gogh was stabbed to death for producing a movie that criticized Islam.
- In 2006, former Dutch lawmaker AyaanHirsi Ali was forced to flee the country after criticizing the mistreatment of women in Islamic societies.
- In Italy, the journalist and author OrianaFallaci was taken to court for writing that Islam „brings hate instead of love and slavery instead of freedom.”
- In France, novelist Michel Houellebecq was taken to court for calling Islam „the stupidest religion.” He was acquitted in October 2002.
- In Nottingham (Britain), the Greenwood Primary School cancelled a Christmas nativity play because it interfered with the Muslim festival of Eid al-Adha.
- In Scarborough, the Yorkshire Coast College removed the words Christmas and Easter from their calendar so as not to offend Muslims.
- In Glasgow, a Christian radio show host was fired after a debate between a Muslim and a Christian on whether Jesus is „the way, the truth and the life.”
- In East London, the Tower Hamlets town council renamed a staff Christmas party a „festive meal” so as not to offend Muslims.
- In the spring of 2010 a middle-aged preacher in Wokington, Cumbria in England was recently arrested for having „caused distress” among listeners. He had stated that according to the Bible drunkenness and homosexuality are wrong.
- In 2010 both Swedish and American television did not dare to broadcast an episode of South Park where there are references to Islam, arguing that it was dangerous - one might be threatened or killed.
- Also in 2010 a group in Miami, Florida had ads on buses promoting religious freedom and offering to help those who wish to leave Islam. The bus company quickly took them down because they did not want to „violate Islam”.
- Christian hotel owners in Liverpool were arrested and prosecuted for expressing an opinion about Islam in a conversation about religion. Although they eventually were acquitted, the case was an economic disaster for the couple who were forced to sell the hotel.
- 55% of the Muslims in Denmark think criticizing religion should be forbidden and 64% support curtailing freedom of speech.

## Dangerous Shifts

The above examples indicate dangerous shifts when it comes to freedom of speech. Put briefly:

from **freedom of speech** to **freedom from hearing**  
from **speaker** to **hearer**  
from „**instigating violence**” to „**I was offended or hurt**”  
from **objective** to **subjective** criterias / laws

The emphasis is now on the *hearer*, not the *speaker*. It is a move from the *objective* (what was expressed) to the *subjective* (how was it received, perceived). A

common limitation of freedom of speech used to be *instigating violence and threats*, now certain groups mustn't feel *hurt or offended*.

It needs to be stated again: Free speech is absolutely essential since other democratic freedoms hinge upon free speech (such as religious freedom, freedom of press, free political debate). Restrictions on free speech are attacks on the very foundation of democracy.

The losers will in the end be everyone, including Muslims and people engaging in homosexual practice. It is of no virtue to intentionally offend others, but we must distinguish between etiquette and law, what are good manners and what is accommodated by free speech.

Another example of a worrying and dangerous shift: The Islamic Conference, consisting of 57 Muslim countries, proposed a resolution that was passed by the UN Human Rights Council in March 2007 in Geneva relating to the Mohammed cartoons.

The resolution talks about vilification and defamation, but is quite different from libel and slander legislation in Rule of Law societies. There are several major flaws in the resolution. **Firstly**, it refers primarily to Islam and Muslims. **Secondly**, it makes freedom of speech content based. **Thirdly**, it is a major paradigm shift **from** individual freedoms and rights **to** protection of a group and their supposed „right“ to not be offended. **Fourthly**, it presupposes that truth about religious issues can and should be established in courts of law. (cf. Inquisition)

*„This resolution poses a dire threat to the rights of individuals – both Muslims and non-Muslims alike - to discover and live out their religious beliefs without fear of prosecution. It is imperative that the international community rise up to oppose the UN's endorsement of anti-blasphemy laws, and expose these resolutions for what they really are: legal justifications for undermining the freedoms of religion and expression, and institutionalized intolerance against religious minorities.“* (Tina Ramirez, Congressional Fellow for Rep. Trent Franks, USA)

#### **Four Trends**

The above examples and shifts point towards four trends. They are all very serious threats to freedom of expression – a cornerstone of democracy and human rights.

**First**, the so-called hate speech laws. They violate a fundamental rule of law: laws must be objective and predictable. Freedom of speech laws should be about what is said, not how it is perceived. These laws go from the objective to the subjective, from the predictable to the unpredictable.

**Secondly**, we see increasing harassment by police, employers and surrounding communities. In October 2009 a grandmother in the UK, Pauline Howe, was investigated by police for 'homophobic hatred' after objecting to a 'gay pride' parade in her home town of Norwich.

In 2005 pensioners Joe and Helen Roberts, also in the UK, were interrogated by police because they had expressed opposition to their local council spending public money on 'gay rights' projects.

The Church has for 2000 years taught that sex outside the marriage of one man and one woman is a sin. But in the summer of 2010 Intereconomia, a media group in Spain, was targeted with a fine of 100 000 Euros for its broadcast of television ads that promote the traditional family. It was deemed as hateful against homosexuals.

**Thirdly**, the increasing number of threats. We have already mentioned threats against Ayaan Hirsi and the death threats and assassination attempts of the Danish cartoonists.

In May 2010 the Swedish artist Lars Vilks was attacked at the University of Uppsala in Sweden when he gave a lecture on freedom of expression, which includ-

ed showing some pictures of Mohammed. He was physically attacked by Muslims chanting „Allahuakbar“.

Freedom of expression is designed to protect views and expressions that can provoke and shock. Freedom of speech also includes the right to question Lars Vilks and what he does. He has the legal right to do what he does and the state must uphold his right to freedom of expression. But in a civilized society and daily human interactions we would strive for good manners and to avoid intentionally causing anger. It feels a bit childish and immature to have as a primary goal to provoke and offend. But it is the smaller problem.

The attack on and threats against Vilks is just one of a growing number of examples of similar incidents which are threatening and harming democracy. That is the major problem.

**Fourth**, increasing self-censorship. Freedom of speech must be used – otherwise it dies. But more and more news desks, politicians and ordinary citizens are censoring themselves. This has reduced freedom of speech even though no laws may have been changed. The Swedish and American television networks that censored themselves regarding South Park and Islam are case in point.

### Three Necessities

For freedom of religion, freedom of assembly and freedom of expression to work there must be at least three things in place. **First** there must just laws and good law enforcement. **Secondly**, the State and authorities must have the intention and the power to ensure that these rights and freedoms can be exercised. But **thirdly**, it also requires that there is an acceptance of these freedoms and rights among ordinary people, by different groups in society, otherwise these rights and freedoms may be undermined.

This includes allowing people to believe and express things you don't like as well as accepting their right to assemble.

Alberth Mohler writes about the „hate speech“ concept in the article *The Culture of Offendedness?*. He rightly points out that you cannot have a free and democratic society and at the same time have guarantees that no-one should ever be offended by other people's expressed opinions.

*„The very idea of civil society assumes the very real possibility that individuals may at any time be offended by another member of the community. Civilization thrives when individuals and groups seek to minimize unnecessary offendedness, while recognizing that some degree of real or perceived offendedness is the cost the society must pay for the right to enjoy the free exchange of ideas and the freedom to speak one's mind.“*

On Valentine's Day in 1989, the Iranian Ayatollah Khomeini issued a death sentence against Salman Rushdie, accusing him of blasphemy against Islam in his book *„The Satanic Verses“*. Khomeini called on Muslims worldwide to execute the death sentence. Rushdie had to go underground. Thus he knows better than most the importance of freedom of speech and the threats against it. Mr. Rushdie's observations are critical:

*„The idea that any kind of free society can be constructed in which people will never be offended or insulted is absurd. So too is the notion that people should have the right to call on the law to defend them against being offended or insulted. A fundamental decision needs to be made: do we want to live in a free society or not?*

*Democracy is not a tea party where people sit around making polite conversation. In democracies people get extremely upset with each other. They argue vehe-*

*mently against each other's positions. People have the fundamental right to take an argument to the point where somebody is offended by what they say. It is no trick to support the free speech of somebody you agree with or to whose opinion you are indifferent. The defense of free speech begins at the point where people say something you can't stand. If you can't defend their right to say it, then you don't believe in free speech."*

A state needs good laws protecting freedom of speech. Media and law enforcement must not harass those who express unpopular views. But it is equally important that each and every one of us, as individual and in groups, learn to accept others' rights to express views we don't like. We need to create a society where even detested opinions can be heard. A democratic society must not accept any demands of freedom from hearing.

### **Concluding Remarks**

Freedom of speech is about making room for opinions which may make us uncomfortable. It is for the politically incorrect, for minority views, for the odd, and also for the ordinary. This is the basis for political debate and activity.

You cannot have freedom and still have guarantees that no one should feel offended or hurt. However, it is guaranteed that if freedom of expression is curtailed then democracy is endangered.

Freedom of Speech is also important as we fight against dictatorships. As Mr. Sam Ericson, president and founder of Advocates International, notes: *"There is no greater threat to any dictator – political, social, or theocratic – than the freedom of expression. Speaking truth to power is always a threat to those who want a monopoly in the marketplace of ideas. Access to truth has brought down dictators throughout history."*

Democracy, human rights and freedom are not destinations you arrive at. We mustn't take freedom of speech for granted – it can be lost.

*"Freedom is never more than one generation away from extinction. We didn't pass it to our children in the bloodstream. It must be fought for, protected, and handed on for them to do the same, or one day we will spend our sunset years telling our children and our children's children what it was once like in the United States where men were free."* (President Ronald Reagan)

The attacks on freedom of speech in Europe and beyond are worrying. We need to fight against hate speech laws, harassments, threats and self censorship. We need to stand up for everyone's right to express opinions in print, words and images.

There are no winners – only losers – if our societies continue down the road of „freedom from hearing“.

Freedom of speech is the very hub of the wheel of democracy and human rights. Don't tamper with it.

# Freedoms of Religion and Conscience under serious attack in the Republic of Moldova

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## Abstract

*The Moldovan Ministry of Justice proposed a new law to prevent and to fight against discrimination. The purpose of the proposed law was to create an instrument that allows the prevention of any kind of discrimination on Moldovan territory and to bring all the provisions together under one piece of legislation. However, because of the confusion at the Ministry of Justice about the goal of the new legislation, the proposed law became very controversial and it raised serious concerns about the freedom of faith and conscience. Nevertheless, active neo-liberal EU lobbyists and diplomats stated that this was the only way for the lifting of the visa barriers. Unjustified pressure from some official EU diplomats combined with a confused Ministry of Justice seemed to form the basis for a controversial law that brings fundamental freedoms in Moldova in serious danger.*

## Keywords

Moldova, Action Plan on Visa Liberalization, anti-discrimination, exemptions, religious ethos, European Directives, EU Charter of Fundamental Rights, Ministry of Justice, Confusion

## Introduction: the Moldovan political context

On the political level, Moldova has always been a country that has found itself at the crossroads between Russia and the European Union. Throughout the last decade, their politics have been mainly determined by the Communist Party which had a large enough majority to determine the main political direction of the country, which has been mainly focused on priorities dictated by Russia. However, beginning with 2009 the situation seemed to be changing. The elections of April 2009 brought the Communist party a little less than 50% of the votes. Consequently, they lost the absolute majority of seats they had had until then, which were necessary for choosing the president. These elections were followed by riots and political unrest on the streets of Chisinau. Although the opposition united, it was not possible to choose a new president with their small majority. New elections were organized in July 2009 where the communists lost again and the opposition parties (the Liberal Democratic Party, the Liberal Party, the Democratic Party and the „Our Moldova“ Alliance) together got a slight majority of 51.3%, enough to form a new government, but still not enough seats to choose a new president. New elections were therefore held in November 2010. The

opposition united in the „Alliance for European Integration (AEI)“ and the parties of this coalition (Liberal Democrats, Democrats and the Liberals) gained 7 more seats and therefore had a total of 59 seats (out of 101). Although this was a majority, it remained a fragile one and still not enough to elect a president. The communists remained with their 42 seats the single biggest party and a strong opposition. The majority formed through all the parties within the Alliance was only bound together by anti-communistic feelings and the urge to enter the European Union as soon as possible (as the name of the Alliance, in fact, suggests). The ongoing possibility of new elections, a weak coalition based on one big issue (European integration) and a strong opposition (the Communist Party) has created a very fragile political situation. Consequently, every issue concerning European Integration easily becomes a political issue and every remark or observation of EU representatives or diplomats can have an enormous impact and significant consequences on the Moldovan society and politics.

### **Action Plan on Visa Liberalization**

The European Union did not turn a blind eye to developments in Moldova and promptly reacted to these by taking negotiations with Moldova for an even closer relationship with the EU a step further. Therefore, on 16 December 2010, the Council of the European Union (also called the Council of Ministers) endorsed the European Commission's proposal for a visa liberalization action plan for Moldova with the purpose of creating visa-free travel between the EU and Moldova. The European Commission presented this Action Plan to Moldova in January 2011. A similar visa-liberalization plan was presented to Ukraine. It is interesting to note that there seems to have been no room for negotiations about the conditions that Moldova has to accomplish, as the Action Plan presented to them was a unilateral document. This aspect is clearly illustrated by the choice of words used in a letter from the Moldovan Ministry of External Affairs and European Integration to the Alliance to Save the Families in Moldova on 12 May 2011. This letter explains that the European Union simply „handed over“ (in Romanian: 'a inmanat') to Moldova this action plan. The letter states that „*through this Action Plan, the European Union imposes on the Republic of Moldova a set of compulsory requirements that need to be fulfilled in order to make visa-free travel within the Schengen space possible for Moldovan citizens. The Action Plan is part of a series of unilateral documents from the European Union concerning the liberalization of visas for third countries*“<sup>1</sup>. It is mentioned that the same thing applies for documents that have to do with visa liberalization for other EU Neighbourhood countries, namely Albania, Bosnia Herzegovina, Macedonia, Montenegro, Serbia and for the Action Plan issued to Ukraine. The letter makes it very clear that, „*The contents are not subject to negotiations but represent an offer of the European Union addressed to a certain number of countries, in this case the Republic of Moldova*“.<sup>2</sup> This statement underlines that no negotiation had taken place but this Action Plan was an EU product, drafted by the European Commission and approved by the Council of the European Union (also called the Council of Ministers).

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<sup>1</sup> Unauthorised translation of extract from letter Nr. IE 20-1-1/7128 „12“ 05 2011, received from the Ministry of Foreign Affairs and European Integration of the Republic of Moldova, the European Integration Department.

<sup>2</sup> *ibidem*

## Reviewing the Action Plan on Visa Liberalization

A closer look at the contents of this Action Plan for visa liberalization reveals the inclusion of some surprising requirements. Point 2.4 of the „EU’s Visa Liberalization Action Plan for Moldova” calls on Moldova to ensure that unjust restrictions and discriminatory measures based on „any ground such as sex, race, color ethnic or social origin, genetic features, health status (including HIV/AIDS), language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation” do not infringe upon freedom of movement within its territory.<sup>1</sup> Article 2.4.3. makes it compulsory to adopt „comprehensive anti-discrimination legislation as recommended by UN and Council of Europe monitoring bodies to ensure effective protection against discrimination” and ratify „relevant UN and Council of Europe instruments”.<sup>2</sup> It is interesting that these particular requirements be part of an EU Action Plan on Visa Liberalization at all as they refer to non-EU institutions and the adoption of unspecified Council of Europe and UN human rights instruments.<sup>3</sup> Furthermore, there is no mention within the requirements on anti-discrimination of the necessity to comply with existing EU law in this area. There are EU directives that deal with the topic of anti-discrimination and equal treatment: *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin* and *Council Directive No. 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*. Instead of a reference to these pieces of EU legislation, there is mention of recommendations from UN and the Council of Europe. Consequently, the impression given is that Moldova is expected to do more than what is required of EU member states. This choice of formulation of the mentioned requirements on anti-discrimination in the visa liberalization plan may have also given the impression to Moldova that a new law on anti-discrimination needs to be drafted and that it would not be sufficient to adapt the current legislation in order to be in line with the EU directives.

### **Confusion within the Ministry of Justice concerning the precise purpose of the anti-discrimination law results in controversial wording of the proposed law**

Shortly after Moldova was handed the Visa Liberalization Plan, the Moldovan Ministry of Justice drafted a proposal for a new law on preventing and combating discrimination. However, there seems to have been some confusion within the Ministry of Justice about the exact purpose of the proposed law. It appears that multiple objectives were being pursued through the elaboration of the anti-discrimination law, such as the adoption of EU acquits, satisfying the requirements of the visa liberalization plan and bringing together already existing provisions for anti-discrimination in the national legislation into a single piece of legislation<sup>4</sup>. The

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<sup>1</sup> See „EU – Republic of Moldova Visa Dialogue. Action Plan on visa liberalization”, 16 December 2010, point 2.4, pg. 10 on <http://www.gov.md/doc.php?l=en&idc=447&id=3397>.

<sup>2</sup> *Ibidem*, point 2.4.3

<sup>3</sup> It should be noted that the adoption of the various Council of Europe instruments (with the exception of the founding Convention) is at the discretion of the Member States and action to implement them only becomes mandatory for any European nation once it has ratified a particular instrument.

<sup>4</sup> The pursuit of multiple objectives through the drafting of the anti-discrimination law is clearly illustrated by statements and documents concerning the proposed law.

Mr. Alexandru Tanase explained in different television interviews (amongst others the Publika Report show on 7 March) that *the proposed law is an instrument that allows for the prevention of*

rather broad and vague declared purpose of the law reveals some confusion within the Ministry of Justice itself as to what the precise intention of this legislative proposal was. Was it the implementation of the 2000 EU directives? Consolidating the existing national anti-discrimination legislation? Implementing measures in order to meet the requirements in the Visa Liberalization Action plan?

The fact that the exact purpose and objective of the legislation have not been clearly expressed has created a lot of confusion. The result is a controversial law proposal on preventing and combating discrimination that one can argue goes much further than provisions within existing EU legislation and, most importantly, does not offer sufficient protection for the right of freedom of expression, freedom of conscience and freedom of religion. Therefore, the proposed law, in some ways, goes both too far and not far enough.

### **Why is the proposed law on preventing and combating discrimination problematic?**

The proposed law is problematic because some of the provisions within the text of the proposed legislation are worded in a way that provides opportunities for infringement upon freedom of conscience, freedom of expression, in particular that of religious institutions and organizations.

**Article 1** of the proposed legislation lists a number of grounds of discrimination without offering any reasonable exemptions for particular cases anywhere in the remainder of the legislative text for any of the listed grounds of discrimination. This could easily lead to a clash of rights in a number of situations and is also inconsistent with the texts of the EU directives. As mentioned earlier in the article, the only adopted EU directives on equal treatment are Council Directive 2000/43/EC of 29 June 2000<sup>1</sup>, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC of 27 November 2000,<sup>2</sup> establishing a general framework for equal treatment in employment and occupation that aims to combat discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation. In order to ensure that churches and religious organizations retain the right to employ people who are well suited for working in religious institutions, this directive contains a **religious ethos exemption**, which is missing from the Moldovan law.

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*any kind of discrimination on Moldovan territory, in particular in the field of employment” Further he stated that „although there are other laws in Moldova that contain anti-discrimination provisions, the proposed law is necessary because it brings these provisions together under one piece of legislation. The law then should „serve to adapt the Moldovan legislation to existing international norms on anti-discrimination, in particular EU legislation”. At the round table discussions that the ECPM organized 26 May 2011 in Chisinau on the Anti-discrimination law: problems and solutions with experts of „Care for Europe” and „the Alliance Defense Fund”, the representatives of the Moldovan Ministry of Justice explained that the purpose of the new legislation was to bring together aspects of non-discrimination already existing in different pieces of Moldovan legislation under one law; to introduce the concept of a body that oversees implementation of anti-discrimination measures into the Moldovan legislation and to adopt EU aquis into Moldovan legislation. The informative note that accompanied the legislative proposal (which can be downloaded from the following site: <http://nediscriminare.md/index.php?module=docs&type=nat>) also gave several reasons for the proposal of the anti-discrimination law. Among these, the strengthening and consolidating the existing legal norms on anti-discrimination in Moldova’s law and adjusting Moldovan legislation to international norms such as EU legislation, ECHR, the Universal Declaration of Human Rights etc. In the preamble of the proposed law the declared purpose is enabling the implementation of the 2000/43 and 2000/78 EU directives.*

1 See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>

2 See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>

**Article 2:** the definitions of the terms concerning discrimination are vaguely worded and leave a lot of room for subjective interpretation, in particular the definition of harassment, indirect discrimination, instigation/instruction to discriminate, victimization and positive action. The definition of instigation to discrimination could be interpreted in a way that undermines freedom of conscience and expression and is unnecessary within the law as it is not included in any of the adopted EU equal treatment directives. The definition of indirect discrimination is also problematic and incomplete. In the two mentioned EU directives, there is an exception to the application of indirect discrimination for cases when the practices can be objectively justified; the proposed Moldovan bill contains no such exception. The definition of positive action can also be potentially problematic because it goes far beyond the provisions of the two directives and it has an unclear meaning which may lead to actions that encroach upon freedom of conscience.

**Article 4,** in particular 4.b and 4.c can potentially lead to actions undermining freedom of expression because it tries to define serious forms of discrimination with amongst others: promoting/supporting discrimination through mass media (4b) and placing discriminatory messages and symbols in public spaces (4c).

**Article 8** covers anti-discrimination measures in the area of employment. Although it is taken almost word for word from the 2000/78 directive it does not include the special religious ethos exemption from the directive, only a general, vaguely worded exemption. Therefore it is an incomplete implementation of the provisions in the 2000/78 directive. It is easy to imagine what the consequences of this can be.

**Article 10** on non-discrimination in the provision of public goods and services lists a number of so-called „public goods“ that makes it unclear what ‘public goods and services’ actually refers to. Moreover it has no exact correspondence in the two directives which in fact do not cover provision of goods and services. Article 10 seems to be based on a not-adopted general equal treatment directive that focuses on provision of goods and services. This general directive never has been accepted by the EU because it is controversial and a similar legislative attempt recently failed in Austria.

**Article 11** on prohibition of discrimination in the sphere of education is not based on any of the provisions in the EU directives and therefore its presence is not necessary within a piece of legislation aiming to implement EU directives. Article 11.f on cooperation with NGOs in formulating non-discrimination educational programs in school is alarming. Article 11.2 is also particularly worrying because this provision would prevent educational institutions from imposing restrictions in admission criteria in all situations, without the safeguard of exceptions for specific cases or situations. In the informative Note from the Moldovan Ministry of Justice, the presence of this article is explained as being an implementation of the provisions of the UNESCO non-discrimination in education Convention. However, this article goes further than the provisions in the Convention which actually ensure exemptions for religious schools.

**Article 13** concerning the special Council for preventing and combating discrimination is of concern. The EU directives provide for such a body only for discrimination on the grounds of race and ethnic origin. It may prove problematic for the activity of this council to be extended to other areas as well and it is not necessary under the current EU directives. Moreover, this Council receives a lot of power under the provisions of Article 14 or the proposed law, including that of applying sanctions (Art. 14k) which does not exist as a provision either in Moldovan or EU legislation. It is unclear what the purpose of such a Council would be and whether its power and attributes are consistent with democratic processes.

**Article 23** provides guidelines for the application of the burden of proof. This article places the burden of proof on the accused rather than the plaintiff. Although this seems unfair, this article is present in the EU directives and therefore is difficult to argue against. However it is worth mentioning that in 2006 Romania amended its anti-discrimination legislation to introduce the concept of 'sharing the burden of proof' thus making it a little more fair.<sup>1</sup>

### **Reactions and debates**

There are a number of aspects concerning the wording of the proposed law, therefore, that have created strong reactions and that are quite controversial due to the fact that they may have serious consequences for the protection of the fundamental rights of the freedom of expression, conscience and religion.. Consequently, the proposal caused a lot of negative reactions in Moldovan society. However, strong criticisms towards the law were also fueled by a lack of knowledge and understanding about the content of the law and its purpose. This was due to a series of miscommunications and the excessively broad purpose of the law which created confusion and suspicion.

On the one hand, a large part of the debate over the proposed piece of legislation focused on attacking the law because it was considered a means of promoting gay rights. As a result, an attack against the proposed law began to be seen by some as a battle against homosexuals, which further complicated things by creating a situation in which all who were against this law were seen as homophobic. This, however, has distracted attention from the real problem of the legislation which is that it does not offer adequate protection to freedom of thought, conscience and religion! The project was sent back by the Parliamentarians to the Government who are reviewing it at the moment.

On the other hand we see that a great deal of the debate over this law has been focused on the idea that the law is necessary in order to implement the EU's requirements for visa liberalization. However, the Ministry of Justice has not stated this in any official document. Such a statement could be confronted with the reality of the fact that it would be unreasonable for the EU to expect Moldova to adopt measures within its legislation that are not part of EU aquis. The impression that the proposed law is necessary in order to implement the EU's requirement for visa liberalization has unfortunately been strengthened by the declarations of Monica Macovei, Romanian Member of Parliament and Chair of the European Parliamentarian Delegation for Moldova and the EU Representative Dirk Schuebel.

### **International reactions interfering in the democratic debate and discussions about this law**

It is perhaps not surprising that representatives of the European Union became involved in influencing the debate concerning the proposed law and thus intentionally or not interfered in the legislating process. **Monica Macovei**, Romanian Member of the European Parliament and Chair of the Parliamentarian Delegation for Moldova wrote an open letter to the Members of the Moldovan Parliament on 22 March 2011. She begins by congratulating the Moldovan government for this legislative proposal on preventing and combating discrimination and then swiftly moves

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<sup>1</sup> See pg 8: [http://www.non-discrimination.net/content/media/2009-RO-Country%20Report%20LN\\_final.pdf](http://www.non-discrimination.net/content/media/2009-RO-Country%20Report%20LN_final.pdf).

onto elaborating on why including sexual orientation amongst the anti-discrimination criteria is not negotiable from the EU's point of view. She bases her arguments on the requirements of article 21 from the EU Charter of Fundamental Rights and the 2000/78/EC Directive. After mentioning a number of conventions that Moldova needs to consider, without much explanation of what this involves, she concludes her letter with: „*Equality and combating discrimination are fundamental values of the European Union. I salute the efforts of the Republic of Moldova to combat discrimination and to integrate the laws and values of the European Union.*”<sup>1</sup>

It is interesting to note that Monica Macovei gave incomplete information regarding what adhering to EU principles means. The focus of her letter was on arguing only for the legitimacy of including one of the several criteria of non-discrimination contained in EU aquis, namely *sexual* orientation. She mentions that sexual orientation is a protected ground in the European Directive 2000/78/EC but fails to point out that this directive includes a very important exemption for religious ethos in employment,<sup>2</sup> specifically included in the directive to protect freedom of conscience and religion and completely missing from the proposed Moldovan law. Furthermore, on top of the intentional or unintentional omission of mention of the article on religious ethos exemption, she criticizes the one significant exemption that does exist in the text of the Moldovan law, namely that in article 7(3). According to this article, „*It shall not be considered discrimination when constraining a right is justified by objective reasons and is for a legitimate purpose and the means of achieving this purpose are proportionate, adequate and necessary in a democratic process*”.<sup>3</sup> Moreover, Mrs Macovei's argument on the EU Charter of Fundamental Rights (ECFR) being at the basis of offering protection from discrimination on grounds of sexual orientation is incomplete. Firstly, the Charter of Fundamental rights has not been adhered to by all member states. Poland and the UK, for example, have negotiated an opt out from the Charter. In its negotiations with the EU, Macedonia has also protested against having to accept the ECFR as part of the Lisbon Treaty<sup>4</sup> because they are afraid this would affect their family policy. It is also interesting to note that the visa obligation for Macedonia was lifted without such a liberal law as that proposed in Moldova . Furthermore, Monica Macovei seems to be very selective in picking which rights from the ECFR she refers to. She used only Article 21 (where „Sexual orientation” is protected) without mentioning other rights in the same charter like „the freedom of thought, conscience and religion” (Art. 10 of the Charter) or for the „Freedom of Expression and information” (Art. 11 of the Charter).

Another EU official who has been involved in the debate over the proposed anti-discrimination law is **EU Representative<sup>5</sup> Dirk Schuebel**. In a press conference on 26 May 2011, according to the Moldovan press, he stated the following: „In 2011 the honeymoon is over. Now we have become a couple and we must work together to achieve results”, thus emphasizing that it is time for Moldova to get to work on fulfilling EU requirements. He concluded his statements by referring specifically to the proposed law on preventing and combating discrimination: „*The adoption of*

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1 Unauthorised English translation of letter in Romanian written 22 March, 2011, Brussels by Monica Luisa Macovei, MEP to the members of the Moldovan Parliament.

2 See article 4.2 of the Council Directive 2000/78/EC (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>).

3 The text of the law can be found on [www.justice.gov.md](http://www.justice.gov.md) or [http://nediscriminare.md/index.php?module=news&item\\_id=166](http://nediscriminare.md/index.php?module=news&item_id=166).

4 See also Leo van Doesburg's article on Macedonia and the European Union: Between identity and integration <http://www.christianpoliticsportal.org/k/n22654/news/view/434398/383320/Macedonia-and-the-European-Union-Between-Integration-and-Identity.html>.

5 Which is also seen as an Ambassador for the European Union.

*the anti-discrimination law is a precondition for liberalizing the visa regime. This is a point in the Moldova – EU Action plan. If the proposed anti-discrimination law is not be passed, the requirements of the action plan will not be met”.*<sup>1</sup>

This statement has been understood and transmitted by Moldovan press as a clear statement that Moldova has no option but to adopt the law under its initial, controversial form. This is, therefore, clearly a statement made in ignorance of the shortcomings of the legislative proposal. Moreover, one can argue that Mr. Schuebel misuses his authority and that of the European Union.

As we saw, according to the Moldovan Ministry of External Affairs and Integration, the Action Plan was not negotiated, but unilateral handed over to Moldova as a set of criteria. Moreover, the Action Plan did not specifically dictate the form under which anti-discrimination provisions needed to be adopted within Moldova’s law but merely dictated that the principle of anti-discrimination on any grounds needs to be upheld by law. Therefore, should it not be enough if the parliament decides to adapt the law by just following the EU Directives (2000/43) and (2000/78) with the provisions and exemptions that are valid for each member state? Can the EU ask more from a one of its Neighbourhood Policy countries than it does from their own member states as conditions for visa liberalization?

Some international reactions to the legislative proposal in Moldova have been ones of concern on other grounds than those expressed by Monica Macovei and Dirk Schuebel. Concerned about the situation in Moldova, Bas Belder MEP<sup>2</sup> together with Peter van Dalen MEP<sup>3</sup> tabled the following question to the European Commission on 12 July:

*„On 16 December 2010, the Council endorsed the Commission’s Action Plan on visa liberalization for the Republic of Moldova, which was presented by the Commission to Moldova in January 2011. The Visa liberalization plan was drafted following an assessment of the possible obstacles to visa-free travel. One of the obstacles identified was ‘external relations issues (including human rights and fundamental freedoms) linked to the movement of persons’. As a result, paragraph 2.4.1 of the Visa liberalization Action Plan addresses this issue and calls for legislation to be reviewed in order to avoid restriction of freedom of movement on a great number of possible grounds of discrimination. Paragraph 2.4.3 of the Visa liberalization Action Plan calls for Moldova to adopt ‘comprehensive anti-discrimination legislation’ in order to ensure citizens rights and protection of minorities. Following this recommendation of the Action Plan, Moldova drafted an anti-discrimination law based on the 2000/78 Equal treatment in employment Council Directive and the 2000/43 Directive on equal treatment irrespective of racial or ethnic origin. However, the proposed law goes far beyond these two directives, for example by including a greater number of grounds of discrimination but without offering any specific provisions for exemptions designed to protect freedom of conscience or religious ethos, as those included in the 2000/78 Directive. National NGOs in Moldova expressed their concern that the proposed law does not offer sufficient safeguards for the protection of freedom of conscience and expression due to the*

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1 See Jurnal TV recording of the 26 May 2011 press conference with Mr. Schuebel on <http://www.jurnaltv.md/ro/news/luna-de-miere-s-a-incheiat-260440/#>.

2 as Member of the European Parliament he is member of the Commission of External Affairs and part of the EFD European Parliamentarian Group.

3 as Member of European Parliament, he is member of the ECR European Parliamentarian Group.

*lack of adequate safeguards and exemptions within the text of the law. The EU representative to the Rep. of Moldova, Mr. Schuebel, during a press conference on this piece of proposed legislation made statements suggesting Moldova may need to adopt the proposed law under its current form in order to achieve visa liberalization. These statements reinforced earlier affirmations of the same nature made by an MEP in an interview.*

***Is it reasonable of the Commission to expect Moldova to fulfil the conditions of the Visa liberalization plan by adopting anti-discrimination legislation that goes far beyond the requirements of the EU acquis?"<sup>1</sup>***

## **Epilogue**

The situation concerning the proposed law on preventing and combating discrimination is alarming due to a combination of factors. Due to the confusion within the Moldovan Ministry of Justice concerning the purpose of the legislation, the inclusion within the visa liberalization plan of requirements based on different international instruments and with the omission of crucial exceptions, the law became quite controversial and potentially a real danger to the fundamental freedoms of conscience, speech and religion.

Permitting the anti-discrimination law, as it is worded at the moment, to be associated with visa liberalization would create a bad precedent for other countries that are part of the Neighborhood Policy. Moldova and Ukraine's Action Plans for visa liberalization both contain the paragraph on ensuring non-discrimination on any grounds as a means of facilitating free movement.<sup>2</sup> These action plans are to be used as a model for future action plans for visa liberalization in other European Neighborhood Policy Countries. Consequently, it is imperative that we do not allow the implementation of the principle of facilitating free movement by combating discrimination must to be associated with the implementation of unnecessarily liberal anti-discrimination legislation.

Let us hope that the Moldovan parliament will be wise in their decisions and push the Ministry of Justice to adapt the law with provisions that are limited to requirements of the EU directives so that the law on preventing and combating discrimination will not become a law that will prevent and combat also basic fundamental freedoms in the Moldovan society. Our hope, therefore, is that the political Alliance for European Integration will be strong enough to resist the pressure of certain EU diplomats and that they will strive for the integration of Moldova in the EU with dignity and with respect for their own rights as a sovereign European country.

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<sup>1</sup> Unauthorised English translation of the Question submitted to the Commission on 12 July in Dutch. The question has not yet published on the European Parliament website. The original text of the question in Dutch can be downloaded from: <http://www.petervandalen.eu/k/n7637/news/view/487590/116990/EU-moet-Moldavi-geen-libertijnse-agenda-opdringen.html>.

<sup>2</sup> Paragraph 2.4.

# The agreement of the People (1649)

Sfera Politicii's Archives

■ JOHANNES DE JONG

[European Christian Political Foundation]

In this number of the magazine the section on freedom of faith in 'the agreement of the people' that was the leading document of 'the levellers', one of the factions in the English Civil War (1642-1648).

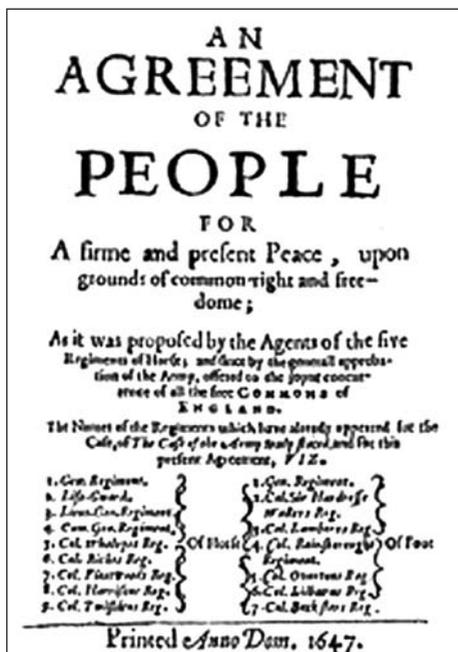
## The Levellers

The Levellers were an informal alliance of agitators and pamphleteers who came together during the English Civil War (1642-1648) to demand constitutional reform and equal rights under the law. Levellers believed all men were born free and equal and possessed natural rights that resided in the individual, not the government. They believed that each man should have freedom limited only by regard for the freedom of others. They believed the law should equally protect the poor and the wealthy. The Levellers were the social libertarians of the day (or classic liberals). „Leveller” was a term of abuse, coined by their opponents to exaggerate the threat of their ideas.

The main leader of the Levellers was John Lilburne (known as Freeborn John). Lilburne was a Lieutenant-Colonel in the Parliamentarian Army. Through his extensive writing and publishing of pamphlets, he was able to gain wide support for his ideas among army soldiers and the common people.

## Who was John Lilburne?

Lilburne „was, or became, a radical in everything – in religion, in politics, in economics, in social reform, in criminal justice – and his ideas were far ahead of his time. From 1637 when he was but twenty-three years old. until his death twenty years later, he managed to keep his government in a hectic state. In successive or-



der he defied king, parliament, and protectorate, challenging each with libertarian principles. Standing trial for his life four times, he spent most of his adult years in prison and died in banishment. Yet he could easily have had positions of high preferment if he had thrown in his lot with Parliament of Cromwell. Instead, he sacrificed everything in order to be free to attack injustice from any source. He once accurately described himself as 'an honest true-bred, freeborn Englishman that never in his life loved a tyrant or feared an oppressor.'"<sup>1</sup>

In 1649, Lilburne published the „Agreement of the People“, a manifesto for constitutional reform in Britain that gave birth to many of the ideas that are embodied in the U.S. Constitution and Bill of Rights.

### **The Agreement Of The People (1649)**

This particular version was smuggled out of the Tower of London, where Lilburne and the others were being held captive.

All Leveller soldiers, and they were the majority in many regiments, carried this agreement proudly tucked into their hat-band. The agreement proposed a written constitution to define England's government, abolish arbitrary power, set limits to authority, and remove grievances.

### **The Agreement of the People.**

***An Agreement of the People of England, and the places therewith incorporated, for a secure and present peace, upon grounds of common right, freedom and safety.***<sup>2</sup>

*Having, by our late labours and hazards, made it appear to the world at Low high a rate we value our just freedom, and God having so far owned our cause as to deliver the enemies thereof into our hands, we do now hold ourselves bound, in mutual duty to each other, to take the best care we can for the future, to avoid both the danger of returning into a slavish condition and the chargeable remedy of another war: for as it cannot be imagined that so many of our countrymen would have opposed us in this quarrel if they had understood their own good, so may we hopefully promise to ourselves, that when our common rights and liberties shall be cleared, their endeavours will be disappointed that seek to make themselves our masters. Since therefore our former oppressions and not-yet-ended troubles have been occasioned either by want of frequent national meetings in council, or by the undue or unequal constitution thereof, or by rendering those meetings ineffectual, we are fully agreed and resolved, God willing, to provide, that hereafter our Representatives be neither left to an uncertainty for times nor be unequally constituted, nor made useless to the ends for which they are intended. In order whereunto we declare and agree,*

*(...)*

*Ninthly. Concerning religion, we agree as followeth: – I. It is intended that the Christian Religion be held forth and recommended as the public profession in this nation, which we desire may, by the grace of God, be reformed to the greatest purity in doctrine, worship and discipline, according to the Word of God; the instructing the people thereunto in a public way, so it be not compulsive; as also the maintaining of*

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<sup>1</sup> Levy, Leonard W., *Origins of the Fifth Amendment*, New York: Oxford University Press, 1968, p. 272.

<sup>2</sup> January 15, 1648/9. *Old Parliamentary History*, xviii. 519. See *Great Civil War*, iv. 295.

*able teachers for that end, and for the confutation or discovering of heresy, error, and whatsoever is contrary to sound doctrine, is allowed to be provided for by our Representatives; the maintenance of which teachers may be out of a public treasury, and, we desire, not by tithes: provided, that Popery or Prelacy be not held forth as the public way or profession in this nation. 2. That, to the public profession so held forth, none be compelled by penalties or otherwise; but only may be endeavoured to be won by sound doctrine, and the example of a good conversation. 3. That such as profess faith in God by Jesus Christ, however differing in judgment from the doctrine, worship or discipline publicly held forth, as aforesaid, shall not be restrained from, but shall be protected in, the profession of their faith and exercise of religion, according to their consciences, in any place except such as shall be set apart for the public worship; where we provide not for them, unless they have leave, so as they abuse not this liberty to the civil injury of others, or to actual disturbance of the public peace on their parts. Nevertheless, it is not intended to be hereby provided, that this liberty shall necessarily extend to Popery or Prelacy. 4. That all laws, ordinances, statutes, and clauses in any law, statute, or ordinance to the contrary of the liberty herein provided for, in the two particulars next preceding concerning religion, be, and are hereby, repealed and made void.*

*(.....)*

*John Rushworth.*

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- 1 Giovanni Sartori, *The Theory of Democracy Revisited* (Chatham, New Jersey: Chatham House Publishers, 1987), 23.
- 2 Giovanni Sartori, *Teoria democrației reinterpretată*, traducere de Doru Pop (Iași: Polirom, 1999), 272-27.
- 3 Juan Linz, Alfred Stepan, *Problems of Democratic Transition and Consolidation. Southern Europe, South America, and Post-Communist Europe* (Baltimore and London: The John Hopkins University Press, 1996), 74.

#### Pentru capitole din cărți

- 4 Edward G. Carmine, Robert Huckfeldt, „Comportamentul politic – o perspectivă de ansamblu”, în Robert E. Goodin, Hans-Dieter Klingemann (coordonatori), *Manual de știință politică*, traducere colectivă (Iași: Polirom, 2005), 206.

#### Pentru referințe la o notă de subsol

- 5 Robert A. Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989), 164, n.1.

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- 6 Adrian Cioroianu, „Și totuși, Europa unită există – deși nu toți europenii votează”, *Sfera Politicii* 136 (2009): 9.

#### Pentru articole din ziare

- 7 Daniel Dăianu, „Schimbarea modelului”, *Jurnalul național*, 29 iulie 2009.

#### Pentru texte nepublicate

- 8 Ion Popescu, „Coalițiile din perioada postcomunistă. Cercetare comparată – România, Ungaria, Bulgaria” (lucrare de licență, Facultatea de Științe Politice, Universitatea București, 2009).

#### Pentru documente sau texte de pe Internet

- 9 Francis Fukuyama, „The Neoconservative Moment”, *The National Interest* 12 (2003), <http://www.thetharmaproject.com>, accesat 12.09.2009.

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- 10 ASRI, fond D, dosar 9897, f. 93.
- 11 Documentul poartă mențiunea „Strict secret de importanță deosebită. Exemplar unic”, Arhiva Comitetului Executiv al CC al PCR, dosar 264/1972, vol. VI, f. I-II.
- 12 Petre Roman, „Viziune politică asupra strategiei de dezvoltare a României în întîmpinarea secolului XXI. Pentru o bună guvernare a țării – calea social-democrată” („Caiet politic” distribuit participanților la Congresul extraordinar al Partidului Democrat, 16 martie 2001, fără alte mențiuni).

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- 13 Sartori, *Teoria*, 29.
- 14 Cioroianu, „Și totuși”, 8.
- 15 Tismăneanu, „Dynastic”, 35-38, esp 36.

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