

The Contribution of the European Court of Human Rights to Religious Freedom in the EU Space

Jurisprudence on Some Sect/Cult Issues Within the Framework of Freedom of Religion or Belief

By Willy Fautré, director of *Human Rights Without Frontiers* (w.fautre@hrwf.net)

“The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. The European Union equally respects the status of philosophical and non-confessional organizations.”

This is the official text of Joint Declaration 11 on the Status of churches and non-confessional organisations which is to be found in the Final Act to the Treaty of Amsterdam signed by the fifteen Member States of the European Union on 2nd October 1997. The main consequence of this provision is that relations between State and Churches, religious or belief associations remain a competence of the EU member states and do not fall within the mandate of the European Union. This does not mean that there cannot be a dialogue between the EU and these entities. In the Lisbon Treaty signed in December 2007, the EU committed itself to maintaining a “transparent and open dialogue” with them.¹

For many years, freedom of religion or belief was not a high priority on the agenda of the European Union but things started to change dramatically in 2013 when on 24th June the EU adopted Guidelines on the promotion and protection of freedom of religion or belief.² It must

¹ The Treaty of Lisbon is an international agreement which amends the Maastricht Treaty (1993), known in updated form as the Treaty on the European Union (2007) or TEU, and the Treaty of Rome (1957), known in updated form as the Treaty on the Functioning of the European Union (2007) or TFEU. The Treaty of Lisbon was signed by the EU member states on 13 December 2007, and entered into force on 1 December 2009. Notable articles include the appointment of a High Representative of the Union for Foreign Affairs and Security Policy (Article 18) and the creation of a European External Action Service (Article 27).

² EU Guidelines adopted before the ones on FoRB :

[Human Rights dialogues with third countries](#)

[Children and armed conflict](#) (2008)

[Human Rights defenders](#) (2008)

[Promotion and Protection of the Rights of the Child](#) (2008)

[Violence against women and girls and combating all forms of discrimination against them](#) (2008)

[International Humanitarian Law](#) (2009)

be stressed that this EU Document, of which *Human Rights Without Frontiers* along with religious communities and civil society was involved in the drafting process, is as important as the International Religious Freedom Act adopted by the United States in 1998. However, like the US Act, the EU Guidelines are not to be used and implemented domestically but outside the EU space. The European Convention on Human Rights and its sword arm, the European Court of Human Rights, therefore remain the only instruments which can be used to develop religious freedom in the member states of the European Union. Jehovah's Witnesses in particular have massively contributed to the jurisprudence of the European Court and its implementation in the EU member states and beyond in the northern hemisphere.

This paper focuses on areas of enlargement of the religious freedom space in the European Union, especially for the benefit of new religious movements. The European Court has addressed a wide range of issues and its jurisprudence has set norms for the individual and collective exercise of religious freedom that have codified the admissible behavior of state authorities towards new religious movements and their members. A number of publicly debated issues in the EU have hereby been clarified, such as:

- Is the term 'sect/cult' acceptable?
- About the assessment of beliefs
- The right to proselytism
- Improper proselytism
- Coercion
- Brainwashing and mind control
- Deprogramming
- Whether sects/cults destroy families
- Parental rights on the religious education of their children in divorce cases
- Parental rights on the religious education of their children and school education

I. Sect/ Cult: Is the use of this term acceptable?

Under most circumstances the terms "sect" or "cult" are derogatory, and public authorities must be careful when they classify a religious group as such. In the case *Leela Forderkreis E.V. and Others v. Germany* (judgment on 6th November 2008), the Court addressed the issue very cautiously. A 2009 report by Centro Studi sulle Nuove Religioni (CESNUR) reported that:

[Torture and other cruel, inhuman or degrading treatment or punishment](#) (2012)

Death penalty (2013)

[EU Guidelines on the promotion and protection of freedom of religion or belief](#) (2013)

[Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex \(LGBTI\) persons](#) (2013)

EU Human Rights Guidelines on freedom of expression online and offline (2014)

The applicants were three associations registered under German law, Leela Förderkreis e.V., Wies Rajneesh Zentrum für spirituelle Therapie und Meditation e.V., and Osho Uta Lotus Commune e.V. They are religious or meditation groups belonging to the Osho movement, formerly known as the Shree Rajneesh or Bhagwan movement, which emerged in Germany in the 1960s and 1970s.

In 1979 the German Government launched a campaign to draw attention to the potential dangers of such groups. The Government referred to them as “sects”, “youth sects”, “youth religions” and “psycho sects” and issued warnings that they were “destructive”, “pseudo-religious” and “manipulated their members”. In October 1984 the applicant associations brought proceedings in which they requested that the Government refrain from describing them in such negative terms. Following the domestic courts’ dismissal of their claims, they brought a constitutional complaint. In June 2002 the Federal Constitutional Court prohibited the use of “destructive”, “pseudo-religious” and “manipulated their members” but, considering that the Government could provide the public with adequate information about such associations, authorised the remaining terms.

The applicant associations alleged that the Government had infringed their duty to be neutral in religious matters and had embarked on a repressive and defamatory campaign against them, in breach of Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression) and Article 14 (prohibition of discrimination). The Court noted that the proceedings had lasted in total 18 years and one month, of which more than 11 years had been before the Federal Constitutional Court. Even in the unique context of German reunification, the Court considered that that length had been excessive and therefore held unanimously that there had been a violation of Article 6 § 1.

The Court assumed that the Government’s information campaign had interfered with the applicants’ right to manifest their religion or belief. That interference had, under the Basic Law, been “prescribed by law” and pursued the “legitimate aim” of providing information about the dangers of groups which were commonly known as sects. The information campaign had aimed to settle a matter of major public concern at the relevant time by warning citizens of a phenomena viewed as disturbing, that is to say the emergence of new religious movements and their attraction for young people. The campaign had not, however, in any way prohibited the applicant associations’ freedom to manifest their religion or belief. Indeed, the Constitutional Court had set certain limits by authorising some statements and not others. The authorised terms (“sects”, “youth sects” and “psycho sects”), even if somewhat pejorative, had been used at the relevant time quite indiscriminately for any kind of non-mainstream religion.^{3,4}

³ The Court held, by five votes to two, that there had been no violation of Article 9. It further held unanimously that no separate issue arose under Article 14 taken in conjunction with Articles 9 and 10. The three applicant associations were awarded EUR 4,000 for costs and expenses.

In this regard, it is worth quoting § 100 of the decision of the European Court:

100. An examination of the Government's activity in dispute establishes further that it in no way amounted to a prohibition of the applicant associations' freedom to manifest their religion or belief. **The Court further observes that the Federal Constitutional Court, in its decision given on 26th June 2002, carefully analysed the impugned statements and prohibited the use of the adjectives "destructive" and "pseudo-religious" and the allegation that members of the movement were manipulated as infringing the principle of religious neutrality. The remaining terms, notably the naming of the applicant associations' groups as "sects", "youth sects" or "psycho-sects", even if they had a pejorative note, were used at the material time quite indiscriminately for any kind of non-mainstream religion.** The Court further notes that the Government undisputedly refrained from further using the term "sect" in their information campaign following the recommendation contained in the expert report on "so-called sects and psycho-cults" issued in 1998 (see paragraph 32, above). **Under these circumstances, the Court considers that the Government's statements as delimited by the Federal Constitutional Court, at least at the time they were made, did not entail overstepping the bounds of what a democratic state may regard as the public interest.** [emphasis added]

It can however be regretted that the European Court had not taken clearer positions on the subject in line with the United Nations Human Rights Committee; Comment No. 22 on Freedom of Religion or Belief⁵ specifically provides that States must treat non-mainstream religions equally to traditional ones, and the successive UN Rapporteurs on Freedom of Religion or Belief who demanded again and again that States never use the derogative term of "sects" to stigmatise religious minorities.

II. About the assessments of beliefs

In organised campaigns against sects/cults, some EU member states took a perilous decision by assessing the religious beliefs of new religious movements that they considered harmful. Concerning such a political choice, the European Court held that the neutrality and impartiality of the State is incompatible with such a practice.

⁴ Amicarelli, A. (2009): Issues of religious freedom throughout the world – fifteen years and more: Religious freedom before the European Court of Human Rights, presented at: The 2009 CESNUR Conference, Salt Lake City, Utah.

⁵ Office of the High Commissioner for Human Rights (1993): CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), available online at: <http://www.refworld.org/docid/453883fb22.html>

In its decision in the case of *Metropolitan Church of Bessarabia and Others v. Moldova* (judgment on 13th December 2001) concerning the refusal of State registration on the grounds that this Church was only a schismatic group within the recognised Metropolitan Church of Moldova, the European Court held:

123. (...) **the State's duty of neutrality and impartiality, as defined in its case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs**, and requires the State to ensure that conflicting groups tolerate each other, even where they originated in the same group. In the present case, the Court considers that by taking the view that the applicant church was not a new denomination and by making its recognition depend on the will of an ecclesiastical authority that had been recognised – the Metropolitan Church of Moldova – the Government failed to discharge their duty of neutrality and impartiality. Consequently, their argument that refusing recognition was necessary in order to uphold Moldovan law and the Moldovan Constitution must be rejected. [emphasis added]

In its decision in the case *Church of Scientology Moscow v. Russia* (judgment on 24th September 2007) where the Church had been denied re-registration, the European Court took the same position concerning the assessment of religious beliefs:

72. (...) **The State's duty of neutrality and impartiality, as defined in the Court's case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs.** [emphasis added]

III. The right to proselytism

The European Court has consistently held through its case law that an individual's right to manifest his/her religion under Article 9 of the Convention may be violated when he/she is convicted for proselytism. The Court, however, has distinguished some circumstances where a person may be held liable for improper proselytism; for instance, when he/she proselytises a person of unsound mind, lacking the mental capacity or in an unequal power relationship as in the case *Larissis and Others v. Greece* (1998). According to the Court, a difference must be made between "bearing Christian witness" and "improper proselytism".

In the case *Kokkinakis v. Greece* (judgment on 25th May 1993), the applicant Mr. Kokkinakis, a Jehovah's Witness, was criminally convicted by the Greek courts for proselytism after he visited the home of a cantor at a local Orthodox church, and engaged in a conversation about religion with his wife. The European Court held that the conviction was a violation of Mr. Kokkinakis's rights under Article 9 as freedom to manifest one's religion includes in principle the right to try to convert one's neighbor:

31. (...) According to Article 9, freedom to manifest one's religion is not only exercisable in community with others, "in public" and within the circle of those whose

faith one shares, but can also be asserted "alone" and "in private"; furthermore, **it includes in principle the right to try to convince one's neighbour, for example through "teaching", failing which, moreover, "freedom to change [one's] religion or belief", enshrined in Article 9 (art. 9), would be likely to remain a dead letter.** [emphasis added]

In a partly concurring opinion, Judge Pettiti said in the case *Kokkinakis v. Greece*:

Freedom of religion and conscience certainly entails accepting proselytism, even where it is "not respectable". Believers and agnostic philosophers have a right to expound their beliefs, to try to get other people to share them and even to try to convert those whom they are addressing. [emphasis added]

We can therefore conclude that the European Court endorses the right for any religious or belief community and their members, including imported or emerging religious movements, to share their beliefs with others in the public space. Despite the negative connotation often associated with the term proselytism, this activity is legally and morally legitimate while improper proselytism is not.

IV. Improper proselytism

What is improper proselytism, a qualification that was first raised in the European Court's decision *Kokkinakis v. Greece* (judgment on 25th May 1993)? In this case, the Court said in regards to the limits of proselytism that:

48. First of all, a distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. The latter represents corruption or deformation of it. It may, according to the same report, take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others.

Judge Pettiti said in his partly concurring opinion in the case *Kokkinakis v. Greece*:

Proselytism is linked to freedom of religion; a believer must be able to communicate his faith and his beliefs in the religious sphere as in the philosophical sphere. Freedom of religion and conscience is a fundamental right and this freedom must be able to be exercised for the benefit of all religions and not for the benefit of a single Church, even if this has traditionally been the established Church or "dominant religion". (...)

In the holding of *Larissis and Others v. Greece* (judgment on 24th February 1998), the Court found that the applicants were within acceptable bounds for proselytising civilians. However, the Court found that improper proselytism had taken place when done by the military superiors towards their subordinates, as it was necessary to protect the lower ranking airmen from being put under pressure by senior personnel:

51. In this respect, the Court notes that the hierarchical structures which are a feature of life in the armed forces may colour every aspect of the relations between military personnel, making it difficult for a subordinate to rebuff the approaches of an individual of superior rank or to withdraw from a conversation initiated by him. Thus, what would in the civilian world be seen as an innocuous exchange of ideas which the recipient is free to accept or reject, may, within the confines of military life, be viewed as a form of harassment or the application of undue pressure in abuse of power. It must be emphasised that not every discussion about religion or other sensitive matters between individuals of unequal rank will fall within this category. Nonetheless, where the circumstances so require, States may be justified in taking special measures to protect the rights and freedoms of subordinate members of the armed forces.

54. In view of the above, the Court considers that the Greek authorities were in principle justified in taking some measures to protect the lower ranking airmen from improper pressure applied to them by the applicants in their desire to promulgate their religious beliefs.

We can draw from this example that improper proselytism can be invoked when in the context of a hierarchical relation an attempt is made by someone in an authority position to have his/her subordinates convert to certain beliefs or adhere to a religious or belief movement. This is of course valid for any situation where undue pressure is exerted in the context of fear of losing one's job, fear of disciplinary measures, and the kind.

V. Coercion

While proselytism is now written in stone with the *Kokkinakis* case, there are circumstances when the Court may find that an individual has been subjected to coercion and pressure to change one's religion.

In the case *Jehovah's Witnesses of Moscow v. Russia* (judgment on 10th June 2010), concerning the dissolution of the Moscow branch of the Jehovah's Witnesses in 2004 by the Russian government, the European Court found violations of Articles 6, 9, and 11 of the Convention. The Court found that the sanction against the Jehovah's Witnesses was unjustified and "disproportionate to whatever legitimate aim was pursued" and ordered Russia to pay 70,000 EUR in damages and costs. In regards to coercion the Court addressed the concept in the following terms:

110. The Court observes at the outset that the term “coercion” in its ordinary meaning implies an action directed at making an individual do something against his or her will by using force or intimidation to achieve compliance.

This is another useful norm setting of the European Court that can be utilised against anti-cult movements and activists in cases of forced attempts of de-conversion from a new religious movement.

VI. ‘Brainwashing’ and ‘mind control’

As previously mentioned, the Court has clearly established that an individual’s right to proselytise is essential to one’s religious freedom. Concerning the so-called brainwashing and mind control, the Court recognised that there is no generally accepted definition of mind control.

In the case *Jehovah’s Witnesses of Moscow v. Russia* (judgment on 10th June 2010), the European Court took a clear position under the heading “Allegations of proselytising, ‘mind control’ and totalitarian discipline”:

128. The Russian courts also held that the applicant community breached the right of citizens to freedom of conscience by subjecting them to psychological pressure, “mind control” techniques and totalitarian discipline.

129. (...) there is no generally accepted and scientific definition of what constitutes “mind control” and that no definition of that term was given in the domestic judgments (...).

VII. Deprogramming

Some anti-sect/anti-cult actors in Europe have advised parents to kidnap and sequester their adult children in order to de-convert them from a new religious movement. The European Court had to deal with a case of deprogramming attempt which is in fact at the intersection of other previously addressed issues such as ‘destructive’ sects, proselytism, brainwashing and mind control, de-conversion under coercion, assessment of religious beliefs by public powers, etc.

In the case *Riera Blume and Others V. Spain* (judgment on 14th October 1999), six applicants (all adults) claimed that they had been falsely imprisoned (Article 5 of the Convention) for ten days by their families and the anti-sect organisation *Pro Juventud* with the help of the police and the judiciary. They also claimed that during their confinement, they had been subjected to

pressure, including the intervention of a psychologist and a psychiatrist that had been hired by *Pro Juventud* to force them to recant their affiliation to *Centro Esoterico de Investigaciones*, a new spiritual movement.

In its decision, the European Court recognised that the plaintiffs had been sequestered by their families with the help of the police and the judiciary in order to make them change their beliefs in coercive conditions. This European case echoes numerous similar past cases that took place in the United States, where this practice was found illegal by the courts, and in Japan, which had a massive number of cases from the 1970s until the early 2010s.

In the case *Riera Blume and Others V. Spain*, the Court unanimously held that there had been a violation of Article 5 § 1 of the Convention but that it was unnecessary to examine separately the complaint based on Article 9 of the Convention. Spain was condemned to pay 250,000 (two hundred and fifty thousand) pesetas to each of the applicants for non-pecuniary damage and 500,000 (five hundred thousand) pesetas to the applicants jointly for costs and expenses.

VIII. Sects allegedly destroying families?

Minority religions that have been classified as sects or cults in the public sphere are sometimes accused of disrupting family relationships. However, the Court has established that the change of religion by a family member cannot be used as an argument to make him/her guilty of family breakup.

In the already mentioned case *Jehovah's Witnesses of Moscow v. Russia* (judgment on 10th June 2010), the ECtHR took the following position:

111. It further appears from the testimonies by witnesses that what was taken by the Russian courts to constitute “coercion into destroying the family” was the frustration that non-Witness family members experienced as a consequence of disagreements over the manner in which their Witness relatives decided to organise their lives in accordance with the religious precepts, and their increasing isolation resulting from having been left outside the life of the community to which their Witness relatives adhered. It is a known fact that a religious way of life requires from its followers both abidance by religious rules and self-dedication to religious work that can take up a significant portion of the believer’s time and sometimes assume such extreme forms as monasticism, which is common to many Christian denominations and, to a lesser extent, also to Buddhism and Hinduism. **Nevertheless, as long as self-dedication to religious matters is the product of the believer’s independent and free decision and however unhappy his or her family members may be about that decision**, the ensuing estrangement cannot be taken to mean that the religion caused the break-up in the family. **Quite often, the opposite is true: it is the resistance and unwillingness of non-religious family members to accept and to respect their religious relative’s freedom to manifest and practise his or her religion that is the**

source of conflict. It is true that friction often exists in marriages where the spouses belong to different religious denominations or one of the spouses is a non-believer. However, this situation is common to all mixed-belief marriages and Jehovah's Witnesses are no exception. [emphasis added]

We can therefore conclude that according to the European Court the responsibility of a family break-up in a context of conversion to another religion cannot systematically be imputed to the convert and/or his new religious community.

IX. Parental rights on the religious education of their children in divorce cases

A parent's right to the education of his/her children is codified in Article 2 of Protocol no. 1 of the Convention. In several cases, the Court has addressed this issue in the context of other Articles of the Convention. In divorce cases, a court decision concerning the custody of children cannot be made on the basis of religion alone, but must consider other facts and be put in a broader context: the best interest of the child, the European Court says.

In the case of *Hoffman v. Austria* (judgment on 26th May 1993), the applicant, a Jehovah's Witness, and her husband, a Roman Catholic, were involved in a custody battle over their two children. The husband did not want his children to be brought up in the Jehovah's Witnesses faith arguing that it would be permanently damaging to them for various reasons. The mother appealed the Supreme Court's order that the children live with their father, claiming that there was a violation of her rights under Article 8 in conjunction with Article 14, but her appeal was rejected. The position of the European Court on this issue was:

36. In so far as the **Austrian Supreme Court** did not rely solely on the Federal Act on the Religious Education of Children, it weighed the facts differently from the courts below, whose reasoning was moreover supported by psychological expert opinion. Notwithstanding any possible arguments to the contrary, **a distinction based essentially on a difference in religion alone is not acceptable.** [emphasis added]

The Court therefore could not find that a reasonable relationship of proportionality existed between the means employed and the aim pursued, and ruled by a very slim majority - five votes to four - that there had been a violation of Article 8 of the Convention (right to respect for family life) "in conjunction with Article 14" (discrimination on the ground of religion).

This landmark decision of the European Court is all the more important as it sets a precedent in many cases of conflictual divorces when one of the spouses is trying to use the religious argument to obtain child custody.

X. Parental rights on the religious education of their children and school education

As already said, parents' right to the education of their children is codified in Article 2 of Protocol no. 1 of the Convention. In several cases, the Court has addressed conflicting issues between family religious education and school education.

In the decision *Folgero and Others v. Norway* (judgment on 29th June 2007), the applicants were parents of elementary school children belonging to the Norwegian Humanist Association who objected to the new curriculum of primary schools teaching the subjects of Christianity, religion and philosophy all in one class. The European Court found a violation of Article 2 of Protocol No. 1 (right to education), holding in particular that the curriculum gave preponderant weight to Christianity.

Due to the multi-faceted complexities of this issue, the Court tried to delineate the duties and obligations of both parties as follows:

54. The Court, leaving aside the fact that the children's complaints under Article 9 of the Convention were declared inadmissible on 26th October 2004, considers that the parents' complain falls most suitably to be examined under **Article 2 of Protocol No. 1**, as the *lex specialis* in the area of education, which reads:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

84. (...)

(c) Article 2 of Protocol No. 1 does not permit a distinction to be drawn between religious instruction and other subjects. **It enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire State education programme (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, p.25, § 51). That duty is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the “functions” assumed by the State. The verb “respect” means more than “acknowledge” or “take into account”. In addition to a primarily negative undertaking, it implies some positive obligation on the part of the State.**

(e) It is in the discharge of a natural duty toward their children – parents being primarily responsible for the “education and teaching” of their children – that parents may require the State to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and the exercise of the right to education (ibid).

(h) The second sentence of Article 2 of Protocol No. 1 implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching,

must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. **The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded (ibid).**

(i) ... Certainly, abuses can occur as to the manner in which the provisions in force are applied by a given school or teacher and the competent authorities have a duty to take the utmost care to see to it that parents' religious and philosophical convictions are not disregarded at this level by carelessness, lack of judgment or misplaced proselytism (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, pp.27-28, § 54).

89. (...) Moreover, it should be noted that, as follows from the statement of principle in paragraph 84(g) above, **the second sentence of Article 2 of Protocol No. 1 does not embody any right for parents that their children be kept ignorant about religion and philosophy in their education.** [emphasis added]

This and other decisions of the European Court reflect the complexity of the relations between family religious education and school education, especially in public schools. Written in stone is the fact that public schools must respect the religious freedom of parents as well as their right to privacy and to family life. However, while the educational institutions and teachers must respect the beliefs transmitted by the parents to their children, the family must accept that their offspring be taught about other religions and belief systems. In this regard, the Court holds that a school curriculum is not in violation of Article 2 when it is conveyed in an “objective, critical and pluralistic manner”.

The Court upheld that a parent may not be compelled to explain reasons to exempt their child from a class for personal or religious beliefs, as this constitutes an intrusion into that parent's private and family life. This mainly concerns the religious and ethics classes at school. The position of the Court has urged some countries to adapt their offer and to leave the possibility for children to opt out, as it was recently the case in Belgium. However, it cannot be ignored that other subjects of the school curriculum can conflict with the religious beliefs of the parents and their religious affiliation: the theory of evolution recognised for a long time by the scientific community versus creationism taught by certain religions, representations of the human body in biology, the disclosure of the girls' body in mixed swimming pools, etc. Such issues might be submitted to the European Court in the future.

XI. Conclusions

In conclusion, the European Court recommended to the public powers of the member states of the Council of Europe to make a cautious use of the term ‘sect/cult’ and not to qualify it with an additional derogatory word. However, it lacked some courage in failing to refer to the UN Human Rights Committee – Comment Nr. 22 on Freedom of Religion or Belief which

specifically provides that States must treat non-mainstream religions equally to traditional ones – and to the successive UN Special Rapporteurs on Freedom of Religion or Belief who demanded again and again that States never use the derogative term of “sect/cult” to stigmatise religious minorities.

The European Court rebuffed the argument that ‘sects’ destroy families.

The European Court recognised the full right to proper proselytism.

The European Court rejected any form of coercion to be exerted in the case of a personal change of religion, and consequently any attempt of forced “deprogramming” in sequestration conditions.

The European Court declared there is no accepted or scientific definition of brainwashing and mind control and such accusations cannot be substantiated from a legal point of view.

The European Court confirmed the right of parents to educate their children in the religious beliefs of their choice and put some limits to school education when related to the beliefs of minor students.

Last but not least, it condemned any form of assessment of religious beliefs by the State for whatever purpose.

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ANNEX: Riera Blume and Others V. Spain

Description of this case of deprogramming attempt by the European Court: Excerpts

The circumstances of the case

12. In 1983 the Public Safety Department (“the *DGSC*”) of the government of Catalonia received through *Pro Juventud* (“Pro Youth”), an association formed to fight against sects, a request for help from several people who alleged that members of their families had been ensnared by a group known by the name of *CEIS* (*Centro Esotérico de Investigaciones*).

13. According to the families’ complaints, those who ran the *CEIS* managed to bring about a complete change of personality in their followers, leading them to break off ties with their family and friends and inciting them to prostitution and other activities designed to obtain money for the organisation. The *DGSC* infiltrated an officer into the *CEIS* to check the truth of the complaints and, in the light of the findings, brought the facts to the attention of the

Principal Public Prosecutor at the Barcelona *Audiencia Territorial*, who forwarded the complaints and the information gathered to the judicial authorities.

Acting on this information, Barcelona investigating court no. 6 opened a preliminary investigation in June 1984 and ordered searches of the homes of members of the *CEIS*, including the applicants.

The searches took place on 20 June 1984 and numerous people were arrested, including the applicants. After the applicants were arrested, they were transferred to the seat of the investigating court. In the light of information from an official at the *DGSC*, there was a danger that the members of the sect would react unpredictably if they were released, and might even commit suicide. The duty judge nevertheless decided to release the applicants but gave oral instructions to the police that those detained, including the applicants, should be handed over to their families, to whom it should be suggested that it would be as well to have them interned in a psychiatric centre, on a voluntary basis as regards the persons of full age, in order for them to recover their psychological balance. The judge in question confirmed his oral instruction in a decision of 26 June 1984. In that decision he also ordered the chief of the Catalan police (*mossos d'esquadra*) to interview and question all those detained during the searches who had subsequently been released.

14. Later, on the orders of the Director-General of Public Safety, the applicants were transferred to the premises of the *DGSC*. From there, on 21 June 1984, they were taken by members of the Catalan police in official vehicles to a hotel some thirty kilometres from Barcelona, where they were handed over to their families with a view to their recovering their psychological balance. Once at the hotel, the applicants were taken to individual rooms under the supervision of persons recruited for the purpose, one of whom remained permanently in each room, and they were not allowed to leave their rooms for the first three days. The windows were firmly closed with wooden planks and the panes of glass had been taken out. While at the hotel the applicants were allegedly subjected to a process of “deprogramming” by a psychologist and a psychiatrist at the request of *Pro Juventud*. On 29 and 30 June 1984, after being informed of their rights, they were questioned by the officers of the *DGSC*, in the presence of a lawyer not appointed by the applicants. On 30 June 1984 the applicants left the hotel.

15. As soon as they had regained their freedom, the applicants lodged a criminal complaint alleging false imprisonment, offences against the exercise of personal rights, falsification of documents, usurpation of functions and misappropriation of goods against the *DGSC*, and against all other persons who had taken part in depriving them of their liberty.

16. In a judgment of 7 March 1990 the Barcelona *Audiencia Provincial* acquitted the accused, holding that the acts complained of had been prompted by a philanthropic, legitimate and well-intentioned motive and that there had been no intention of depriving the applicants of their liberty, so that the offence of false imprisonment was not made out.

17. The prosecution and the applicants lodged appeals on points of law, which were dismissed by the Supreme Court on 23 March 1993. In its judgment the Supreme Court held, *inter alia*:

... A detailed examination of the facts held to have been proved shows that there is no doubt that the appellants were placed in detention, but the detention took place with the sole aim – a very laudable and plausible one – of avoiding worse evils than those complained of by the appellants, so that there was no unlawfulness strictly and properly understood. (...) Furthermore, that there was no unlawfulness, the criterion required by law, is all the plainer if it is borne in mind that it was the appellants themselves, together with the closest members of their families, who consented to undergo deprogramming tests which logically required them to be physically isolated initially. That isolation lasted for a very limited time and, it must be emphasised, with the agreement of those concerned and their families.

... It cannot be maintained, in order to argue the contrary, that the wishes of the persons who underwent deprogramming could only have been overridden by the members of their families after proceedings to establish incapacity, seeing that the position of those concerned called for immediate treatment, without any delay, as appears from the judgment under appeal, which refers to fears that the members of the sect might commit suicide.

In conclusion, the offence of false imprisonment cannot be said to have been committed since, firstly, there was no intention on the part of the defendants to deprive anybody of his or her liberty and, on the contrary, their intention, which has been fully proved, was to prevent imminent and very serious harm befalling the persons concerned, such that the *mens rea* for the offence was lacking. In the second place, the requirement of ‘unlawfulness’ was lacking inasmuch as the defendants’ conduct was in keeping with what society and the legal order, taken as a whole, require in situations and at times such as those of the instant case.”

28. The Court reiterates that in proclaiming the right to liberty, paragraph 1 of Article 5 contemplates the physical liberty of the person; its aim is to ensure that no one should be deprived of that liberty in an arbitrary fashion. In order to determine whether someone has been deprived of his liberty within the meaning of Article 5, the starting-point must be his concrete situation, and account must be taken of a whole range of criteria such as the type, duration and manner of implementation of the measure in question (see the following judgments: *Engel and Others v. the Netherlands*, 8 June 1976, Series A no. 22, p. 24, §§ 58-59; *Guzzardi v. Italy*, 6 November 1980, Series A no. 39, p. 33, § 92; and *Amuur v. France*, 25 June 1996, Reports of Judgments and Decisions 1996-III, p. 848, § 42).

29. In the instant case the Court notes that during a preliminary investigation directed by Barcelona investigating court no. 6, after the applicants’ homes had been searched, the duty judge decided to release the applicants but gave oral instructions to the Catalan police officers to hand them over to their families and suggest that it would be as well to intern them in a psychiatric centre, on a voluntary basis as regards the persons of full age, so that they could recover their psychological balance. Those instructions were confirmed in a decision of the investigating judge dated 26 June 1984. From the undisputed account of the facts it appears

that, in accordance with the judge's instructions, the applicants were transferred by Catalan police officers in official vehicles to a hotel about thirty kilometres away from Barcelona. There they were handed over to their families and taken to individual rooms under the supervision of people recruited for that purpose, one of whom remained permanently in each room, and they were not allowed to leave their rooms for the first three days. The windows of their rooms were firmly closed with wooden planks and the panes of glass had been taken out. While at the hotel the applicants were allegedly subjected to a "deprogramming" process by a psychologist and a psychiatrist at *Pro Juventud*'s request. On 29 and 30 June 1984, after being informed of their rights, they were questioned by C.T.R., the Assistant Director-General of Public Safety, aided by A.T.V., in the presence of a lawyer not appointed by the applicants. On 30 June 1984 the applicants left the hotel.

30. The Court concludes that the applicants' transfer to the hotel by the Catalan police and their subsequent confinement to the hotel for ten days amounted in fact, on account of the restrictions placed on the applicants, to a deprivation of liberty.

33. The Court notes, firstly, that it was officers of the autonomous Catalan police who, acting on the instructions of their superiors and, partly, those of the investigating judge, transferred the applicants in official vehicles from the premises of the Catalan police to the hotel. From the applicants' statements it appears that their transfer to the hotel by the police did not take place with their consent but was imposed on them. The fact that they were not handcuffed during the journey cannot alter the fact that they were transferred under duress. Once they had been handed over to their families, the applicants underwent detention similar to false imprisonment, which ended only on 30 June 1984, when they were allowed to leave the hotel. In this connection, the Court notes that on 29 and 30 June 1984, that is to say at a time when the applicants were still being held at the hotel, police officers questioned them in the presence of a lawyer after informing them of their rights. That shows that the Catalan authorities knew all the time that the applicants were still held at the hotel and did nothing to put an end to the situation.

34. Nor could the police officers be unaware that, in order to be able to derive benefit from the psychiatric assistance recommended by the investigating judge, the applicants were going to be under constant supervision. They thus did not fully comply with the judge's order, according to which the psychiatric assistance that would enable them to recover their psychological balance had to be provided on a voluntary basis as regards the persons of full age, which is what all the applicants were. At all events, even supposing that there was a danger of suicide, a risk of that kind did not justify such a major deprivation of liberty. The fact that, once free, the applicants lodged a criminal complaint alleging false imprisonment and other offences against officials of the Catalan government and all others responsible clearly shows that they had been confined in the hotel against their will.

35. In the light of the foregoing, the Court considers that the national authorities at all times acquiesced in the applicants' loss of liberty. While it is true that it was the applicants' families and the *Pro Juventud* association that bore the direct and immediate responsibility for the

supervision of the applicants during their ten days' loss of liberty, it is equally true that without the active cooperation of the Catalan authorities the deprivation of liberty could not have taken place. As the ultimate responsibility for the matters complained of thus lay with the authorities in question, the Court concludes that there has been a violation of Article 5 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
2. *Holds* that it is unnecessary to examine separately the complaint based on Article 9 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention,
 - (i) 250,000 (two hundred and fifty thousand) pesetas to each of the applicants for non-pecuniary damage;
 - (ii) 500,000 (five hundred thousand) pesetas to the applicants jointly for costs and expenses;
 - (b) that simple interest at an annual rate of 4.25% shall be payable on those sums from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 14 October 1999.

Vincent Berger Matti Pellonpää
Registrar President