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To:

Mr Emmanuel Macron
President of the French Republic

Brussels, the 28th October 2020

Copies to:

- Kishan Manocha, Head, Tolerance and Non-Discrimination Department, OSCE Office for Democratic Institutions and Human Rights
- Ahmed Shaheed, UN Special Rapporteur on Freedom of Religion or Belief
- Mr Gianni Buquicchio, President of the Venice Commission
- Mr Eric Dupont-Moretti, French Minister of Justice

Re: The announcements on the “Law on separatism”

Dear Mr President,

We write as an informal group of organizations and individuals who are scholars, religious leaders and human rights advocates. We are from many faiths or acting in a secular capacity, representing a high degree of diversity. While there is very little we agree on theologically, or politically, we all agree on the importance of religious freedom for all faiths and none.

We write to you following the announcements that you and members of your government have made regarding the bill on “separatism” that you plan to approve in the Council of Ministers meeting on December 9. While no draft of the bill has yet been circulated, to our knowledge, we have some concerns which have been highlighted by the announcements that have been made.

We acknowledge the cautious approach that you have taken during your official speech. We have noted your insistence on the fact that you are targeting radical Islam, and not Muslims, as well as the fact that you intend to respect freedom of religion or belief. We agree that terrorism is a real issue that needs to be tackled and that a strong response needs to be taken with regards to the dangers that are posed to the French Republic, and we deeply share the traumatizations that result from the recent tragic terrorist events which hit France.

Nevertheless, we are concerned that some of the proposals may lead to the opposite of what you intend. Furthermore, taking into account the statements made by members of your government after your speech, those statements reinforce the conviction that the measures being proposed will violate France's international commitments towards freedom of religion or belief.

For example, you announced that you plan to ban home-schooling in order to protect children from illegal schools "often administered by religious extremists". While we understand that these schools pose a threat, a global ban on home-schooling will affect the majority of parents that for many different reasons are using this freedom with satisfying results, regardless of their faith, or none. There is certainly sufficient provision in French law to organize controls and make sure that the children are effectively educated according to established educational programmes.

The "general concept" of the law was unveiled by your Minister of Interior, Gérald Darmanin, on Twitter. It explained that places of worship will be placed under increasing surveillance and "preserved [...] from the diffusion of ideas and statements hostile to the laws of the Republic." However, how will that apply to a priest or pastor criticizing abortion or same-sex marriage, which are part of the laws of the French Republic. What action will be taken against others who may speak out against certain "laws of the Republic" that penalize the poor and the immigrants? Or even if they criticize a law against blasphemy, as it existed still recently for Alsace-Moselle in France? Is anyone now criticising the law an enemy of the state?

Another announced provision that poses a problem is your statement and that of the Minister of Interior, where it is said that the law will allow religious and other associations to be dissolved directly by the Council of Ministers in the case of an "affront on personal dignity" and "use of psychological or physical pressures." These concepts are vague enough to allow the arbitrary targeting of groups that are acting quite legally and without any violent intent but are in 'disfavour' by the administrating body. Furthermore there is no guarantee of judicial process or oversight.

The Minister of Citizenship, Marlène Schiappa, also stated in an interview that, "We will use the same measures against the cults and against radical Islam." This shows that there is already a clear intent to deviate from the fight against terrorism and enter the realm of prohibiting religious associations on the basis that they do not please someone, simply because they are categorised as "cults" (sectes, in French).

Legislation aimed at terrorism is not surprising. It is a challenge that many countries face. However, States that have chosen to draft laws with such vague concepts as those cited above are States that have totalitarian tendencies (or are in fact totalitarian). Russia, for example, has passed an anti-extremism law that is now used to prosecute and jail political dissidents as well as members of peaceful religious movements such as the Jehovah Witnesses or followers of Said Nursi on the basis of their definition of "extremism".

When the Venice Commission gave its opinion on law of the Russian Federation on Combatting Extremist Activity, adopted at its 91st Plenary Session, it stated:

7. The broad interpretation of the notion of 'extremism' by the enforcement authorities, the increasing application of the Law in recent years and the pressure it exerts on various circles within civil society, as well as alleged human rights violations reported in this connection have raised concerns and drawn criticism both in Russia and on the international level

(...)

28. The only definition of 'extremism' contained in an international treaty binding on the Russian Federation is to be found in the Shanghai Convention [on Combating Terrorism, Separatism and Extremism of 15 June 2001, ratified by Russia on 10 January 2003]. In Article 1.1.1.3) of the Extremism

Law, 'extremism' is defined as 'an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties'. The latter clause allows signatory states to prosecute such 'extremist' actions according to their national laws.

It made clear that the only definitions of 'terrorism' and 'separatism' that could be used to take action against individuals or organizations require that violence is an essential element (incitement to, or encouragement of, violence or actual violence).

The European Court of Human Rights has already applied this approach to Russia, regarding a case that involved the prosecution of followers of Said Nursi accused of extremist activities, in *IBRAGIM IBRAGIMOV AND OTHERS v. RUSSIA*, which became a final judgment on April 2, 2019.

The UN Special Rapporteur on Freedom of Religion or Belief, in the unedited version of his last report on the Elimination of all Forms of Religious Intolerance (October 12, 2020), stated:

17. A concerning number of mandate communications highlight the use of inchoate terrorist offenses that are disproportionately applied to religious or belief minorities. Harassment measures broadly linked to countering terrorism and protecting national security illustrate that in almost every region of the world religious minorities appear to be at particular risk of being designated "terrorist groups" and of having members arrested under "extremism" or "illegal activity" charges. A number of communications addressed the use of national security imperatives as the stated objective by some governments in criminalizing membership in and/or activities of certain religious or belief groups. Such an approach amounts to targeting, and ultimately criminalizing, the peaceful expression of a person's identity.

19. Numerous State authorities have arrested, detained (sometimes incommunicado) and sentenced members of religious and belief minorities for undefined charges such as intent to 'disturb political, economic or social structures', to 'disrupt state sovereignty' or to 'overthrow the Government'. Such vague provisions fail to fulfil the principle of legality as enshrined in article 15 of ICCPR and give worrying leeway to States to arbitrarily limit the exercise of freedom of religion or belief of certain groups.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) recently released a new document called "Freedom of Religion or Belief and Security: Policy Guidance". It states in its introduction:

While OSCE participating States have adopted different strategies to ensure that their own security measures are fully compliant with their international obligations and commitments pertaining to freedom of religion or belief, certain laws, security policies and practices have placed freedom of religion or belief and other universal human rights under significant pressure. Such measures, especially those that are very broad or applied arbitrarily, are often enacted in the name of "national", "state" or "public" security, or in the interests of preserving or maintaining "peaceful coexistence", "social stability" or "social harmony". Experience shows that such limitations can worsen rather than improve security.

There are many more international human rights documents that deal with this delicate issue, but for reasons of brevity we are unable to carry out a full review in this letter.

We are at your disposal to meet and discuss this issue further. In any case, we respectfully but strongly recommend that you submit to both the Venice Commission and ODIHR the draft of the law when it is ready, in order to get considered international legal expertise as to how the law meets established human rights principles.

We feel that there is a real risk that contrary to your intention, the proposed measures that have been announced will lead to the targeting of Muslims in general as well as other minority faiths, and that it may well lead to a series of human rights violations.

Respectfully yours,

Organizations

Advocates International

Advocates France

All Faiths Network

CAP Freedom of Conscience

CESNUR – Center for Studies on New Religions

EIFRF – European Interreligious Forum for Religious Freedom

FOB – European Federation for Freedom of Belief

FOREF – Forum for Religious Freedom Europe

HRWF – Human Rights Without Frontiers

International Christian Concern

Law and Liberty International

LDH - Ligue des Droits de l'Homme

LIREC – Center for Studies on Freedom of Religion, Belief and Conscience

ORLIR – International Observatory of Religious Liberty of Refugees

United Sikhs

UPF The Netherlands

Individuals

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