



Commission des Episcopats de la Communauté Européenne
Commission of the Bishops' Conferences of the European Community
Kommission der Bischofskonferenzen der Europäischen Gemeinschaft

Draft EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief

*A Contribution by the
Secretariat of COMECE
(Commission of the Conferences of Bishops of the
European Community)*

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1.- Introduction

The Secretariat of COMECE (Commission of the Conferences of Bishops of the European Community), acknowledging the work done by the responsible drafters in the EEAS concerning the “Draft EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief”, is pleased to submit its contribution to the EEAS, containing the following comments and proposals.

2.- Comments

2.1.-Collective dimension of FORB

Individual and collective dimensions of FORB are equally essential, as recognized by International Law.

There is a legal and practical need to recognize the institutional dimension of FORB, mainly through the legal recognition of the juridical personality of Churches, religious or non religious communities and associations:

- a) Temples, religious places, cemeteries, etc., are not usually individual properties. A predominant individual approach to FORB does not cover sufficiently this fact.
- b) Social and charitable activities are inalienable part of the *ethos* of most of churches and religious communities. These activities are almost impossible to be carried out if the FORB's institutional dimension is not legally recognized. For example, to open a bank account for charitable purposes, to receive a bank transfer for cooperation aid, to access the real state Registry in order to set up a hospital, etc., are indispensable means to reach charitable goals. These actions can't be easily done by single individuals on their own behalf. The result is that the most vulnerable people in third countries will suffer the lack of legal recognition of Churches, religious and non religious entities, which impedes their charitable activities.

In fact, points 37 c), d) and e) of the Guidelines show a certain expression of this collective dimension of FORB, but it should be reinforced in II.A) 2. (“Individual and collective dimensions of the right to Freedom of religion or belief”).

2.2.- Non discrimination

Human Rights must be harmonized amongst themselves. A balanced and harmonized interpretation of FORB with other fundamental rights and principles, particularly with the principle of non-discrimination, must prevent any undue “over prevalence” of this last one, which might undermine the essence of FORB. In practice, the principle of non-discrimination must not hijack the autonomy of Churches and religious communities and other *ethos* based entities, which is essential to FORB.



2.3.- Limits to FORB

Following a Human Rights general principle, limitations to FORB as set up in International Law, should be interpreted narrowly in order to give as much as possible room for freedom.

2.4.- The moral dimension of religion and convictions

FORB is not only a matter of faith or beliefs, but it is strictly linked with human behavior and its morality. Largest religions, such as Christian or Muslim, have a general code of conduct directly connected with their religious principles, affecting private, family, social and professional life of their faithful. For this reason, it is advisable not to reduce FORB only to faith, but also to include morality.

2.5. Civil society. The principle of autonomy of Churches and religious communities

The Catholic Church is not an NGO.¹ Her self-understanding is determined by her essential divine origin and spiritual goal and vocation. Her religious understanding includes highly moral requirements towards the society and the service of every human being. The Catholic Church is very active in the promotion of the temporal common good of the society and the protection of the human dignity of every single person and her fundamental rights, throughout the activities of her institutions, faithful, priests and religious people, parishes, etc.

With this background, the Catholic Church, as such, is not part of the civil society. The principle of autonomy of Churches and religious communities is the answer to this reality, in which purely civil categories are unable to explain their essence and activities. For example: the priesthood vocation can't be merely reduced to labour categories; collective worship is much more than an exercise of the right of assembly; faithful are not only members of an association. The principle of autonomy obliges third parties (States or not state actors) not to interfere in the internal life of Churches and religious communities.

All this does not mean that certain catholic inspired institutions could not be considered as members of the civil society.

2.6.- Tolerance and minorities

FORB is much more than tolerance, particularly towards minorities. We consider that instead of tolerance, the EU should require third parties abroad a full and integral respect of FORB and not only tolerance towards religious minorities. The "majority-minority" logic does contribute to perpetuate discrimination towards minorities by

¹ Section V of the Transparency Registry includes "Organisations representing churches and religious communities", with a differentiated status from NGOs (Section III). See: http://europa.eu/transparency-register/your-organisation/who-register/index_en.htm



mainstreaming society. Instead of this narrative, the logic of integral common citizenship might help to destroy the idea that the “majority” only tolerates the “minority”, and does not positively recognise the fundamental rights of all citizens, in equal terms.

2.7. Teaching and education

Education is much broader than teaching. Moral and religious education goes beyond formal instruction and teaching in schools or universities. Instruction, from the religious point of view, includes not only teaching religion but also transmitting a religious and moral transversal perspective in all the other subjects in which moral and religious principles could be relevant. It also includes religious instruction for religious people.

Education of minors is primarily a right and a responsibility of parents. States or other social actors can't substitute or undermine this primary fundamental right, which is widely recognised in International Law. Parents are entitled to educate their children in accordance with their moral and religious convictions and beliefs..

2.8.- UN General Comments

In addition to the UN Human Rights Committee's General Comment Nr. 22, it is useful to take into account also other General Comments, amongst them:

- Nr 11 (Article 20. Prohibition of propaganda for war and inciting national, racial or religious hatred).²
- Nr 16 (Article 17. The right to respect of privacy, family, home and correspondence, and protection of honour and reputation).³
- Nr 23 (Article 27. The rights of minorities).⁴
- Nr 28 Article 3. The equality of rights between men and women) (Replaces general comment No. 4).⁵

² Adopted: 29 July 1983: “(Article 29) *“paragraph 2 is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims **which are internal or external**”.*

³ Adopted in 8 April 1988. In particular, point 11: “Article 17 affords **protection to personal honour and reputation and States are under an obligation to provide adequate legislation to that end.** Provision must also be made for everyone effectively to be able to protect himself against any unlawful attacks that do occur and to have an effective remedy against those responsible.”

⁴ Adopted in 26 April 1994. In particular, points 5.1 and 6.2. 5.1: “(...) A State party may not, therefore, restrict the rights under article 27 to its citizens alone.” 6.2: “ (...) **“positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group.”** At: <http://www.unhchr.ch/tbs/doc.nsf/0/fb7fb12c2fb8bb21c12563ed004df111>

⁵ Adopted: 29 March 2000. In particular, point 21: “States parties must take measures to ensure that freedom of thought, conscience and religion, and the freedom to adopt the religion or belief of one's choice - including the freedom to change religion or belief and to express one's religion or belief - will



-Nr 34 (Article 19: Freedoms of opinion and expression).⁶

2.9.- About the ANNEX (“Non-exhaustive list of international norms, standards and principles the EU may invoke in contact with third countries”)

A) The list should not include EU Law (which is not common with third countries). Any reference to EU law might be seen by certain third countries as an attempt to “impose” a European vision of FORB. A possible solution is to make a separate Annex II, including only EU Law.

B) It is not advisable to include the Arab Charter on Human Rights in the list. Actually, when the Arab Charter came into force in 2008, the UN High Commissioner for Human Rights, Louise Arbour, declared the incompatibility of certain provisions of the Arab Charter with international standards, which also directly affects religious freedom of women, minors and non citizens.⁷ In our view, the EU should not endorse,

be guaranteed and protected in law and in practice for both men and women, on the same terms and without discrimination. These freedoms, protected by article 18, must not be subject to restrictions other than those authorized by the Covenant and must not be constrained by, inter alia, rules requiring permission from third parties, or by interference from fathers, husbands, brothers or others”

⁶ 12 September 2011. In particular, on the application of Article 19 (3):

“32. The Committee observed in general comment No. 22, that “the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition”. Any such **limitations must be understood in the light of universality of human rights and the principle of non-discrimination”**.

33. **Restrictions must be “necessary” for a legitimate purpose. Thus, for instance, a prohibition on commercial advertising in one language, with a view to protecting the language of a particular community, violates the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression. On the other hand, the Committee has considered that a State party complied with the test of necessity when it transferred a teacher who had published materials that expressed hostility toward a religious community to a non-teaching position in order to protect the right and freedom of children of that faith in a school district.”**

“48. Prohibitions of displays of lack of respect for a religion or other belief system, including **blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”**

Available at: <http://ccprcentre.org/doc/ICCPR/General%20Comments/CCPR-C-GC-34.pdf>

⁷ “Throughout the development of the Arab Charter, my office shared concerns with the drafters about the incompatibility of some of its provisions with international norms and standards. These concerns included the approach to death penalty for children and the rights of women and non-citizens. Moreover, to the extent that it equates Zionism with racism, we reiterated that the Arab Charter is not in conformity with General Assembly Resolution 46/86, which rejects that Zionism is a form of racism and racial discrimination. OHCHR does not endorse these inconsistencies.” Available at http://www.un.org/apps/newsFr/storyF.asp?NewsID=15698&Cr=Arbour&Cr1=droits#.UV8bJYH_nfm



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directly or indirectly, any text which is not fully in line with general international law and standards.

C) We propose to change the title of the Annex: “Non-exhaustive list of general and regional international texts”, including only texts by UN (general) and 4 regions: Europe (Council of Europe and OSCE), Americas (OAS), Africa (AU) and Asia (ASEAN).⁸

⁸ <http://www.asean.org/news/asean-statement-communiques/item/asean-human-rights-declaration>