



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

# **EU HUMAN RIGHTS GUIDELINES ON THE PROMOTION AND PROTECTION OF RELIGIOUS FREEDOM**

***A contribution by the Secretariat of COMECE  
for discussion with the EEAS on the occasion of  
the meeting held on 19 October 2012  
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## 1. Justification

### a. Religious freedom is a cornerstone human and fundamental right

Religious freedom is a sacred, inalienable and universal human fundamental right, recognised by the international and European instruments, including the UDHR, the European Convention of Human Rights, and the European Charter of Fundamental Rights. It is rooted in the dignity of the person, safeguards moral freedom and fosters mutual respect. Recently, the European Court of Justice reminded us in a judgment published on the 5 September 2012 that freedom of religion is one of the foundations of a democratic society, it is a basic human right and that its public dimension belongs to the core of that freedom.<sup>1</sup> This judgment applies the concept of religious freedom to be applied when serious violations of this fundamental right occur outside the European Union, and defines in which cases persecuted people on religious grounds in third countries are entitled to be qualified as refugees and receive international protection.

Religious freedom is the pinnacle of all other freedoms<sup>2</sup>, and *"to the extent that it touches upon the most intimate sphere of the spirit, one can even say that it underlies the raison d'être, intimately anchored in each person, of the other freedoms."*<sup>3</sup> It is the first of human rights *"for it expresses the most fundamental reality of the person."*<sup>4</sup> The civil and social right to religious freedom, inasmuch as it touches the most intimate sphere of the spirit, is also a point of reference of the other fundamental rights and in some way becomes a measure of them. For it is a matter of respecting the individual's most jealously guarded autonomy, thus making it possible to act according to the dictates of conscience both in private choices and in social life.<sup>5</sup>

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<sup>1</sup> Judgment in Joined Cases C-71/11 and C-99/11, Bundesrepublik Deutschland v Y and Z.

<sup>2</sup> Benedict XVI, *Ecclesia in Medio Oriente*, 14 September 2012, point 26. Viewed at: [http://www.vatican.va/holy\\_father/benedict\\_xvi/apost\\_exhortations/documents/hf\\_ben-xvi\\_exh\\_20120914\\_ecclesia-in-medio-orientis\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/apost_exhortations/documents/hf_ben-xvi_exh_20120914_ecclesia-in-medio-orientis_en.html)

<sup>3</sup> John Paul II, Religious freedom and the final Document of Helsinki, 5: cf. *L'Osservatore Romano*, 15 November 1980. See also Pope John Paul II, Letter to the heads of state of the nations who signed the Helsinki Final Act (1975) on the eve of the Madrid Conference on European Security and Cooperation, 1 September 1980. Viewed at: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/1980/november/documents/hf\\_jp\\_ii\\_spe\\_19801114\\_atto-helsinki\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/1980/november/documents/hf_jp_ii_spe_19801114_atto-helsinki_en.html)

<sup>4</sup> Pope Benedict XVI speech to the Members of the Diplomatic Corps accredited to the Holy See for the traditional exchange of New Year greetings (9 January 2012): [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2012/january/documents/hf\\_ben-xvi\\_spe\\_20120109\\_diplomatic-corps\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2012/january/documents/hf_ben-xvi_spe_20120109_diplomatic-corps_en.html)

<sup>5</sup> John Paul II, Message for the celebration of the Day of Peace, 1 January 1988. Viewed at: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/messages/peace/documents/hf\\_jp-ii\\_mes\\_19871208\\_xxi-world-day-for-peace\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_19871208_xxi-world-day-for-peace_en.html)

Religious freedom is the gateway which is intimately connected to many other fundamental rights and freedoms such as: freedom of expression (i.e., religious texts' distribution), conscience (i.e., in compulsory military service), assembly (i.e., for worship), association (i.e., founding a religious community), the right to equality and non-discrimination (e.g., employment in the public sector or opportunities in the health sector; avoiding designation of religion on identity documents), the right to education (in accordance with parents' religious convictions), the right to property (e.g., ownership of temples by churches), etc.

## **b. The increasing number of religious believers worldwide**

In today's world, peoples and nations are mainly composed of religious believers (atheism and non-religious affiliation is a minority phenomenon worldwide). In mid-2010, with an estimated global population of 6.9 billion, the percentage of religious believers of all denominations was about 88.4%, while non-religious or agnostics were a 9.6%, and atheist a 2.0% of the total population.<sup>6</sup>

The expected future world trends show that both in relative and absolute terms, the numbers and proportion of religious believers will increase. According to the study entitled *World Christian Trends*<sup>7</sup>, religious believers will increase their proportion with respect to the world population from 84.8% (in 2000) to 86.8% (in 2025)<sup>8</sup> and 88.1% (in 2050). It means that in absolute numbers religious believers worldwide will become 6.789.038.025 (in 2025) and 7.851.949.855 (in 2050).

Christian denominations will remain the majority worldwide (33.4% of global population in 2025, and 34.3% in 2050), followed by Muslims (22.8% in 2025 and 25% in 2050), and Hindus (13.4% in 2025, and 13.2% in 2050).<sup>9</sup>

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<sup>6</sup> Britannica on line, *Worldwide Adherents of All Religions by Six Continental Areas, Mid-2010*. Viewed at: <http://www.britannica.com/EBchecked/topic/1731588/Religion-Year-In-Review-2010/298437/Worldwide-Adherents-of-All-Religions>

According to the CIA Factbook, world figures (2009) were: Christian 33.35%, Muslim 22.43%, Hindu 13.78%, non-religious 9.42%, atheists 2.04%. Viewed at: <https://www.cia.gov/library/publications/the-world-factbook/fields/2122.html>

<sup>7</sup> Barrett, David and Todd Johnson, *World Christian Trends*, William Carey Library, 2001: <http://www.gordonconwell.edu/resources/documents/wct-1-2.pdf>

<sup>8</sup> Figures of religious believers (both, in relative and absolute numbers) are even higher in 2025 (90.52%), according to the "Status of Global Mission, 2010, in Context of 20th and 21st Centuries", *International Bulletin of Missionary Research*, Vol. 34, No. 1. 2025 Total population of 8,010,511,000: Religious: (7.251.543.000) Non religious (625,648,000) and Atheist (133,320,000). Viewed at: <http://www.worldchristians.info/wp-content/uploads/2011/02/ibmr20101.pdf>

<sup>9</sup> Barrett, David and Todd Johnson, *World Christian Trends*, op. cit.

According to the "Status of Global Mission, 2010, in Context of 20th and 21st Centuries", op. cit., the figures in 2025 would be: Christians: 33,80% (2.708 billion); Muslim (24%; 1,962 billion) and Hindus (13,71%; 1,098 billion).



The phenomenon of secularization in Europe, which is a complex process but a real trend, does not correspond to the general tendencies worldwide, as figures show. The particularities of social evolution in Europe –with an increasing and worrying hostility towards religions in many European countries and societies<sup>10</sup>–, might distort the understanding of the role of religions outside Europe. As Georgetown University Professor of Sociology José Casanova wrote: *“Religions are here to stay (...) and are likely to continue playing important roles in the ongoing construction of the modern world”*.<sup>11</sup>

Taking into consideration the geographical scope of action of the European Union external policies, figures clearly show that it is not reasonable to expect a reduction in the number of believers and the role of religion in social and public life in the international scene, but rather the opposite. For this reason, it is the interest of the EU external policies to avoid misunderstandings with most of third countries -whose societies are religious ones and sensitive to what they could consider as foreign political interferences in their lives- not overstressing the negative dimension of religious freedom. An opposite action could be seen as a promotion in a religious environment of non-religious beliefs, and therefore, the EU might be seen as partisan institution of non-religious –or even atheists- views, damaging the trust and impartiality which makes credible any action.

### **c. The increasing number of religious persecuted, mainly Christians, in the world**

The worrying situation of religious believers in some countries is of particular concern. In some of them, persecution, mainly of Christians<sup>12</sup>, is a daily reality. Given this situation, in terms of international justice, the goal of universal relevance is the improvement in the exercise of religious freedom throughout the world, notably for religious (including Christian) minorities. As has just been mentioned above, it is not only they who suffer from attacks on this basic right as other minorities – including Jews, Muslims and Baha'is – are likewise affected. However it is important to recall that at least 75% of all religious persecution in the world is directed against

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<sup>10</sup> See, for example, the outcomes of the Seminar on Discrimination and Intolerance against Christians, co-organised by COMECE, which took place on 2 October 2012. During the event, speakers agreed that significant efforts are required to eliminate discriminatory actions against Christians and that freedom of religion has to be ensured not only for minorities, but for Christians as well. Public attention must be raised to issues which are not covered by the media and a permanent dialogue should be established on major issues. Viewed at:

<http://www.comece.org/site/en/activities/events/article/5131.html>

See, also, the 2012 Report by the Observatory on Intolerance and Discrimination against Christians in the Year 2011. Viewed at: <http://www.intoleranceagainstchristians.eu/publications/report-2011.html>

<sup>11</sup> José Casanova, *Public Religions in the Modern World*, University of Chicago Press, 1994, page 6.

<sup>12</sup> Aid to the Church in Need, *Persecuted and Forgotten? A Report on Christians oppressed for their Faith*, 2011 Edition. Viewed at: [http://www.aidtochurch.org/pdf/P&F\\_FINAL.pdf](http://www.aidtochurch.org/pdf/P&F_FINAL.pdf)



Christians. The number of the Christian faithful discriminated against, oppressed or persecuted in this regard amounts to some approximately 100 million people.<sup>13</sup>

Because of this situation, for several decades now our world has witnessed a constant migratory flow of religious minorities, including Christian minorities. This flow has been witnessed, *inter alia*, from predominantly Muslim countries in the direction of Europe, North America and Australia. Therefore, an improvement in the respect shown towards religious freedom, *inter alia*, in countries of the Middle East, should, together with other factors (particularly economic factors), contribute to a stemming of the demographic hemorrhage which has affected these said religious minorities who have found themselves abandoned by the international community and in the assistance of which the EU is called to act.<sup>14</sup>

#### **d. The role of religions in social, economic and political issues**

A better comprehension of religion in the world is key to understand the main social, economic and political issues, and help to resolve the political and socioeconomic problems that fuel conflicts.

Unfortunately, religion is too many times misused for political interests and power fights. For example, a recent EASO Report on Afghanistan (2012) shows the misuse of religion by Taliban for recruitment purposes.<sup>15</sup> We can find some other cases in which religion is just a tool or an instrument for gaining or maintaining the political power, even using it as a “war mark”, as it is the case for the wrong and extremist interpretation of the jihad.

The abuse of religion in the political sphere is linked to discrimination and persecution against other religious minorities, mainly Christians, but also fuels international conflicts and even wars.

Religiously motivated violence, as Pope Benedict XVI stated in the Meeting for Peace in Assisi (2011), does not correspond with the true nature of religion, but rather the opposite, “*it is the antithesis of religion and contributes to its destruction.*”<sup>16</sup>

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<sup>13</sup> Secretariat of COMECE, *Religious freedom. Pillar of the Human Rights Policy in the External Relations of the European Union. A Report to the Bishops of COMECE*, May 2010 pages 6 and 7. Viewed at:  
<http://www.comece.org/site/en/activities/policyareas/fundamentalrights/religiousfreedom>

<sup>14</sup> Secretariat of COMECE, *Religious freedom. Pillar of the Human Rights Policy ...*, *op. cit.*, page 7.

<sup>15</sup> European Asylum Support Office (EASO):  
[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/european-asylum-support-office/bz3012564enc\\_complet\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/european-asylum-support-office/bz3012564enc_complet_en.pdf)

<sup>16</sup> [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2011/october/documents/hf\\_ben-xvi\\_spe\\_20111027\\_assisi\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2011/october/documents/hf_ben-xvi_spe_20111027_assisi_en.html)

Even religious tolerance, which in fact exists in a number of countries, does not have much effect since it remains limited in its field of action. In law and practice, religious majority often “tolerates” the existence of religious minorities, in countries in which fundamentalist religious law becomes state law, but they are frequently constrained, in multiple and insidious forms on the personal and social, cultural, administrative and political levels.<sup>17</sup>

For these reasons, there is a need to move beyond tolerance to religious freedom<sup>18</sup>, from a restrictive and negative perspective of religions to a wide and positive one<sup>19</sup>. While religious tolerance creates a gap between religious majority and minorities, and promotes discrimination against these last ones, religious freedom reinforces the rule of law, assures a common standard for all citizens promoting an inclusive citizenship, reinforces the equality of all members of the society before the secular state law, and prevents direct and indirect discrimination towards religious minorities. Freedom cannot be divided<sup>20</sup>. Promoting religious freedom of minorities expands social freedom of all citizens, and reinforces all freedoms and other human and fundamental rights intimately connected to freedom of religion.

Religious freedom also guarantees diversity and pluralism in a society, which is a substantial element of the democracy, as the European Court of Human Rights has maintained since decades ago.<sup>21</sup> Both extremes (either fundamentalism or ideological secularism) look for an artificial homogeneity, harming social freedom and putting at high risk the real foundations of democracy, although in different ways and manners. Only when persons, communities and institutions are integrally free in practice to follow their religious convictions, a real and natural pluralism appears in society, which is at the same time respectful of all others' believers (religious or not religious ones).

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<sup>17</sup> Benedict XVI, *Ecclesia in Medio Oriente*, 14 September 2012, point 26.

<sup>18</sup> Benedict XVI, *Ecclesia in Medio Oriente*, op. cit., point 27. Viewed at: [http://www.vatican.va/holy\\_father/benedict\\_xvi/apost\\_exhortations/documents/hf\\_ben-xvi\\_exh\\_20120914\\_ecclesia-in-medio-orientis\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/apost_exhortations/documents/hf_ben-xvi_exh_20120914_ecclesia-in-medio-orientis_en.html)

<sup>19</sup> As for example, PACE Resolution 1510 (2006), 28 June, Freedom of expression and respect for religious beliefs (point 4): “*Religions have contributed to the spiritual and moral values, ideals and principles which form the common heritage of Europe.*”

See also, the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981, Preamble: “*Convinced that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination, (...)*”.

<sup>20</sup> John Paul II, Message for the celebration of the Day of Peace, 1 January 1981. Viewed at: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/messages/peace/documents/hf\\_jp-ii\\_mes\\_19801208\\_xiv-world-day-for-peace\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_19801208_xiv-world-day-for-peace_en.html)

<sup>21</sup> See, for example, *Handyside v. UK*, 4 November 1976, paragraph 49.





The freedom of individuals and of communities to profess and practise their religion is an essential element for peaceful human coexistence. Peace, which is built up and consolidated at all levels of human association, puts down its roots in the freedom and openness of consciences to truth.<sup>22</sup>

As Pope John Paul II stated: *"True religious feeling cannot fail to promote true peace. The public authorities, by recognizing - as they should - religious liberty, favour the development of the spirit of peace at the deepest level of people's hearts and in the educational institutions fostered by believers."*<sup>23</sup>

The Catholic Church knows, from many centuries of experience, that suppression, violation or restriction of religious freedom have caused suffering and bitterness, moral and material hardship, and that even today there are millions of people enduring these evils. By contrast, the recognition, guarantee and respect of religious freedom bring serenity to individuals and peace to the social community; they also represent an important factor in strengthening a nation's moral cohesion, in improving people's common welfare, and in enriching the cooperation among nations in an atmosphere of mutual trust.<sup>24</sup>

Therefore, it is of utmost importance for social and international peace to promote freedom of religion, particularly in those cases in which the misuse for political interests is evident. That is why, not surprisingly, last 30 July 2012, the US Secretary of State Hillary Clinton provided a stalwart rationale for U.S. foreign policy on worldwide religious freedom -which is rooted in the 1998 International Religious Freedom Act (IRFA) signed by her husband- asserting: *"For the United States (...) religious freedom is a cherished constitutional value, a strategic national interest, and a foreign policy priority (...) Religious freedom is both an essential element of human dignity and of secure, thriving societies. It's been statistically linked with economic development and democratic stability."*<sup>25</sup> This statement—of religious freedom as a strategic national interest—is the most powerful statement on this issue made by Obama administration.

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<sup>22</sup> John Paul II, Message for the celebration of the Day of Peace, 1 January 1988. Viewed at: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/messages/peace/documents/hf\\_jp-ii\\_mes\\_19871208\\_xxi-world-day-for-peace\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_19871208_xxi-world-day-for-peace_en.html)

<sup>23</sup> Message for the celebration of the Day of Peace, 1 January 1979. Viewed at: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/messages/peace/documents/hf\\_jp-ii\\_mes\\_19781221\\_xii-world-day-for-peace\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_19781221_xii-world-day-for-peace_en.html)

<sup>24</sup> Message of John Paul II on the value and content of freedom of conscience and of religion, 14 November 1980. Viewed at: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/1980/november/documents/hf\\_jp\\_ii\\_spe\\_19801114\\_atto-helsinki\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/1980/november/documents/hf_jp_ii_spe_19801114_atto-helsinki_en.html)

<sup>25</sup> <http://berkleycenter.georgetown.edu/essays/clinton-declares-religious-freedom-a-national-interest>



## e. Education for peace and citizenship

In the field of worldwide education, the Catholic Church runs 70,544 kindergartens with 6,478,627 pupils; 92,847 primary schools with 31,151,170 pupils; 43,591 secondary schools with 17,793,559 pupils. The Church also cares for 2,304,171 high school pupils, and 3,338,455 university students.<sup>26</sup>

Alien to every form of proselytism, Catholic educational institutions open their doors to students of other Churches and other religions<sup>27</sup>. Catholic schools and Universities represent a hope for the future of societies in certain parts of the world, where the message of reconciliation, forgiveness, dialogue and love for all the others is the key to built up a common future for all its citizens. As for example, in Egypt<sup>28</sup>, Palestine<sup>29</sup> or Iraq<sup>30</sup>, but also in India<sup>31</sup> and Sudan<sup>32</sup>, or closer to us, in Bosnia-Herzegovina<sup>33</sup>,

<sup>26</sup> Agenzia Fides, *Catholic Church Statistics*, 2012. Viewed at: [http://www.africamission-mafr.org/statistiques\\_de\\_leglise\\_eng\\_2012.pdf](http://www.africamission-mafr.org/statistiques_de_leglise_eng_2012.pdf)

<sup>27</sup> Benedict XVI, *Ecclesia in Medio Oriente*, 14 September 2012, point 91.

<sup>28</sup> For example, Bishop Youhanna Golta, Patriarchal Auxiliary Bishop of the Coptic Catholic Patriarchate in Cairo, organizes meetings between Muslim and Christian students to talk about peace. They gather 20 students and teachers from four to five schools; so about 100 students spend a full day together. They eat together, learn and do activities to reinforce messages of peace. In his view: *"Quite frankly, I see these meetings between students as more important for promoting peace than my discussions with imams. The students will bring messages of peace back to their families, schools and neighborhoods."* Interviewed by the Catholic Relief Services in Egypt. Viewed at: <http://crs.org/egypt/church-plays-important-role-in-new-egypt/>

There are 170 Catholic schools in Egypt, and according to Bishop Kyrillos William, administrator of the Coptic Catholic Patriarchate of Alexandria in Egypt, many of the leaders of the country send their children there, although they are not Catholics: *"This it means that when their children are older and running the country, they will be more open in their relations with us Christians and more respectful."* Viewed at: <http://www.cinews.ie/article.php?artid=10479> In Egypt, Christians are a minority, making up 9 per cent of the population. There are no more than 250,000 Catholics out of a total population of 83 million.

<sup>29</sup> Around 70% of the enrollment of about 3,000 at the Bethlehem University is Muslim, with the remaining 30% Christian, even though only about 2% of the total population is Christian. *"We have a staff of about 280, including nine brothers, some sisters and priests, but the vast majority is local"*, the vice chancellor Brother Peter Bray explains, adding that about half the courses are taught in English and the other half in Arabic. Viewed at: <http://sundayex.catholic.org.hk/node/767>

<sup>30</sup> The Open University project in Baghdad, an initiative of Dominicans Fathers, is the answer to the need of creating a space of freedom. *"Iraq needs to be rebuilt physically but also humanly today many human values have been lost because of the difficulties, war, violence, ...Our project is to reach these two generations who were killed by war, violence, and rebuild all the human values of the humanities. Culture and development rights in Iraq today are not conceivable and feasible by conventional methods, both divisions, tensions and resources make obsolete the usual procedures. It was therefore necessary to dare another approach, to imagine an area of freedom, dialogue and research as a basis for knowledge sharing and personal reflection"*, said its promoter, Father Amir Jaje. Viewed at: <http://www.oeuvre-orient.fr/2012/05/24/en-irak-chretiens-et-musulmans-travaillent-ensemble-pour-la-construction-de-lhomme/>

<sup>31</sup> *"We assume the responsibility for the education of the poor and the marginalized in our institutions, as an essential part of our contribution to build an inclusive and just society. In our Indian context the marginalized would include the Dalits, Tribals, rural poor, slum dwellers, migrants, child labourers, un-organized labour, etc. We make available to them well-qualified teachers, who understand their*

catholic educational institutions spread the same message to students of a variety of religions and believes. Even in Western countries outside the EU as the USA<sup>34</sup> or Canada<sup>35</sup>, catholic education is strongly appreciated by other religious believers. Similar perception remains in the EU.<sup>36</sup>

As it was highlighted by Pope John Paul II: *"The wholesome implementation of the principle of religious freedom will contribute to the formation of citizens (...) in full recognition of the moral order"*<sup>37</sup>, citizens who *"will be obedient to lawful authority and be lovers of true freedom; people, in other words, who will come to decisions on their own judgment, and, in the light of truth, govern their activities with a sense of*

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*culture and background and are committed to them. By becoming self-empowered, they will then contribute to build a just, humane and democratic India."* Catholic Bishops Conference of India, *All India Catholic Education Policy*, 2007, chapter 3.9. Viewed at:

<http://www.cbisite.com/AICEP-2007-Chapter3.htm>

<sup>32</sup> The Catholic Conference of Bishops of Sudan decided in 2007 to set up a new Catholic University in Juba to develop responsible leaders for the country, and to form specialists in agriculture, environment, engineering, education, health sector professionals, lawyers and social scientist. Viewed at:

<http://www.gonzaga.edu/academics/colleges+and+schools/school-of-engineering-and-applied-science/Center-for-Engineering-Design/10Projects/pdf/CE-01-Sudan.pdf>

<sup>33</sup> In the archdiocese of Sarajevo (under the leadership of Cardinal Vinko Puljic), the Auxiliary Bishop Mgr Pero Sudar has created, after the Dayton Agreement, Catholic schools open to the main religions and to the whole population. He has called them "Schools for Europe", "Schools of Peace". Its objective is to educate children and thus also the (future) parents for living together in the respect of differences and in peace. These schools have taken in dozens of war orphans. Source: European Committee for Catholic Education (CEEC), *Information on Catholic Schools in Europe*, 2008, page 16. Viewed at: [www.ceec.be/telecharger/Information Catholic Schools.doc](http://www.ceec.be/telecharger/Information%20Catholic%20Schools.doc)

<sup>34</sup> Professor Brian P. Flanagan (Marymount University), Letter to *The New York Times* (6 September 2012): *"My Muslim students (...) allow our Catholic university to grow as a site of concrete interreligious dialogue. Our classrooms are places of common ground marked by mutual respect, honesty in our differences, and real love for God and neighbor. We fulfill our Catholic mission better not despite the presence of our Muslim students, but because of it."* Viewed at:

<http://www.nytimes.com/2012/09/07/opinion/muslims-and-catholics.html>

See also, *The New York Times*, *"Muslims From Abroad Are Thriving in Catholic Colleges"*, 2 September 2012. Viewed at:

<http://www.nytimes.com/2012/09/03/education/muslims-enroll-at-catholic-colleges-in-growing-numbers.html>

<sup>35</sup> 10 % of the pupils attending Catholic boards in the Greater Toronto Area are non-Catholic. Source: *The Globe and Mail*, *"Muslim students enrolling in Catholic schools"*, 5 September 2011. Viewed at: <http://www.theglobeandmail.com/news/national/muslim-students-enrolling-in-catholic-schools/article4180638/>

<sup>36</sup> *Daily Mail* on line, *"The Catholic primary school where 90 per cent of the pupils are Muslim"*, 15 July 2012. The school is in Birmingham, and around 40 pupils out of 400 are Catholics, while most of the rest are Muslims of Pakistani origin. Viewed at:

<http://www.dailymail.co.uk/news/article-2174050/The-Catholic-primary-school-90-cent-pupils-Muslim.html>

<sup>37</sup> Message of John Paul II on the value and content of freedom of conscience and of religion, 14 November 1980. Viewed at:

[http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/1980/november/documents/hf\\_jp\\_ii\\_spe\\_19801114\\_atto-helsinki\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/1980/november/documents/hf_jp_ii_spe_19801114_atto-helsinki_en.html)



*responsibility, and strive after what is true and right, willing always to join with others in cooperative effort".<sup>38</sup>*

## **f. Development Cooperation**

### **f.1. Integral approach to development**

The development is not the mere unfertile accumulation of economic wealth<sup>39</sup>. On the contrary, it is strongly linked to religious and spiritual life<sup>40</sup>, as well as to personal behaviour, which respects the fundamental ethical values, loves the others and sees the creation as a gift with intrinsic value to be safeguarded also for future generations. The creation helps us understand our vocation and worth as human beings<sup>41</sup>. In modern life, religious freedom is closely connected to development: while violence of some religious fundamentalist bring destruction and death, the deliberate promotion of religious indifference or practical atheism deprive people of spiritual and human resources.<sup>42</sup>

### **f.2. Importance of the work on the ground**

Real development of persons, communities, people and societies require a permanent, direct and long-term work with those who are in non-favourable circumstances. The Catholic Church is, at this respect, one of the most relevant actors in personal and social development all over the world. Direct cooperation between churches and religious communities in one hand, and the EU Representations in these countries in the other hand, can improve the influx of information in order to a better achievement of the goals.

Moreover, direct contact with reliable partners, as the Catholic Church, in those places in which official information can be misleading, or where there are various influential political or economic interests provoking confusion, or even where the difficulties (violence, conflicts, war situation...)<sup>43</sup> are an objective obstacle for getting reliable information for political decisions, the role that the Catholic Church and its

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<sup>38</sup> Declaration on Religious Freedom *Dignitatis Humanae*, on the right of the person and of the communities to social and civil freedom in religious matters, promulgated by Paul VI, 7 December 1965, no. 8. Viewed at:

[http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_decl\\_19651207\\_dignitatis-humanae\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html)

<sup>39</sup> Encyclical Letter, Benedict XVI, *Caritas In Veritate*, paragraph 11.

<sup>40</sup> Encyclical Letter, Benedict XVI, *Caritas In Veritate*, paragraph 79.

<sup>41</sup> Message of Benedict XVI for the celebration of the World Day of Peace, 1 January 2010, *If you want to cultivate peace, protect Creation*.

<sup>42</sup> Encyclical Letter, Benedict XVI, *Caritas In Veritate*, paragraph 29.

<sup>43</sup> For example, in the case of South Sudan, *The Economist* expressed how the church "is the only organisation that survived decades of civil war intact. In fact, it has thrived, in part because it alone could offer steady, non-violent employment to the educated." 20 January 2011. Viewed at: [http://www.economist.com/blogs/baobab/2011/01/church\\_south\\_sudan](http://www.economist.com/blogs/baobab/2011/01/church_south_sudan)



more than 1,700,000 of priests, deacons, seminarians, religious people, lay missionaries and member of secular institutes worldwide spread is remarkable.<sup>44</sup>

### **f.3. Promotion of health and social development**

Charity and healthcare centers run in the world by the Catholic Church include: 5,305 hospitals, 18,179 dispensaries, 547 Care Homes for people with Leprosy, 17,223 Homes for the elderly, or the chronically ill or people with a disability, 9,882 orphanages. 11,379 crèches; 15,327 marriage counseling centers, 34,331 social rehabilitation centers and 9,391 other kinds of institutions.<sup>45</sup> This massive number of facilities (including religious persons, and further staff involved into health and social activities) show how Catholic Church (as well as some other denominations) can actively contribute for the wellbeing of every human being, regardless of creed, particularly those who are in the poorest situation, are specially vulnerable, feel discrimination or are totally excluded from the society.

### **f.4. Millennium Development Goals (MDGs)**

Great benefits will accrue to all men and women now living in poverty, only if the MDGs are understood and pursued in harmony with objective moral standards and human nature.<sup>46</sup> As Cardinal Peter Turkson, president of the Pontifical Council for Justice and Peace, stated: *"I urge the international community not to be afraid of the poor. MDGs should be used to fight poverty and not to eliminate the poor! Instead, give poor countries a friendly financial and trade mainframe and help them to promote good governance and the participation of civil society, and Africa and the other poor regions of the world will effectively contribute to the welfare of all."*<sup>47</sup>

In this context, the disproportionate emphasis put on combating "unsafe abortion" might be one reason for the fact that MDG-5 is one MDG towards which progress is lagging behind, which casts serious doubts on the target to reduce maternal mortality by three-quarters by 2015 from being reached. It may also be viewed as ideological and even as "cultural imperialism" from the perspective of developing countries. Theresa Okafor<sup>48</sup>, for example, in the face of Europe embracing such an approach, expresses this sentiment as follows: *"Europe now seeks to radically re-*

<sup>44</sup> 5,104 bishops, 412,236 priests, 39,564 permanent deacons, 776,600 religious man and women, 26,800 members of secular institutes, 335,502 lay missionaries, 118.990 major seminarians 102,308 minor seminarians. Agenzia Fides, *Catholic Church Statistics*, 2012. Viewed at:

<http://www.fides.org/aree/news/newsdet.php?idnews=32421&lan=eng>

<sup>45</sup> Agenzia Fides, *Catholic Church Statistics*, 2012. Viewed at: [http://www.africamission-mafr.org/statistiques\\_de\\_leglise\\_eng\\_2012.pdf](http://www.africamission-mafr.org/statistiques_de_leglise_eng_2012.pdf)

<sup>46</sup> Cardinal Peter Turkson, president of the Pontifical Council for Justice and Peace and head of the Holy See delegation to the summit of heads of state and government on the Millennium Development Goals, September 2010. Viewed at: <http://www.zenit.org/article-30446?l=english>

<sup>47</sup> Ibidem.

<sup>48</sup> Director of the Foundation for African Cultural Heritage (FACH), a Nigerian civil society coalition of 20 non-governmental organizations.

*define African culture, values and morals which have been held dearly by Africans. The idea of freedom is now misconstrued, as rights have been stripped of the corresponding responsibility, which is supposed to accompany them. A woman is now told that she has the right to decide whatever she wants to do with her body, denying the existence of a life. Freedom and rights are now being cruelly misinterpreted to mean that the rights of the unborn child lie in the hands of the woman".<sup>49</sup>*

In any case, this particular understanding of MDG-5 as including the so-called "safe abortion" usually provokes strong negative reactions in religious leaders in those countries and, therefore, limits the success of the action of the EU in the implementation of its developing policies. Once again, the respect for the moral dimension of religious beliefs of those persons and societies receiving the aid will permit a chance for a better cooperation.

#### **g. A correct understanding of the role of religion in the public sphere**

A correct understanding of the role of religion in the public sphere and in their relations with the State is of utmost importance, in order to avoid two extremes: fundamentalism (which considers the law of a particular religion as applicable to all citizens, even those who do not share that religion) and ideological secularism (which emphasises religion as a threat to social peace and, therefore, intended to exclude religion -all religions-, from public space).

Concerning fundamentalism, Pope John Paul II warned us: *"Extremely sensitive situations arise when a specifically religious norm becomes or tends to become the law of a state without due consideration for the distinction between the domains proper to religion and to political society. In practice, the identification of religious law with civil law can stifle religious freedom, even going so far as to restrict or deny other inalienable human rights".<sup>50</sup>* This message pronounced 20 years ago is still valid, and has unfortunately been confirmed by the political evolution in certain countries. Unlike other great religions, Christianity has never proposed a revealed law to the State and to society, that is to say a juridical order derived from revelation.

But also ideological secularism -which is not a neutral approach towards religion but rather the opposite, an active, militant and partisan ideology-, when seeking for the breakdown of a right and fair cooperation between State and religious institutions, support social intolerance against religious believers and institutions, and restricts

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<sup>49</sup> <http://www.comece.eu/europeinfos/en/archive/issue151/article/5015.html>

<sup>50</sup> Message for the XXIV World Day of Peace, *"If you want peace, respect the conscience of every person"*, 1 January 1991. Viewed at: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/messages/peace/documents/hf\\_jp-ii\\_mes\\_08121990\\_xxiv-world-day-for-peace\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_08121990_xxiv-world-day-for-peace_en.html)



the public dimension of religious freedom, hijacking the moral integrity of the person.

To face both extremes there is a clear need to rightly give religion a positive meaning for social life as a driving ethical force and to neutralize any attempt to misuse religious or secular discourses to promote intolerance and discrimination.

#### **h. Participation of Churches and religious institutions**

Respect for the dignity of the human person would seem to demand that, when the exact tenor of the exercise of religious freedom is being discussed or determined with a view to national laws or international conventions, the institutions that are by their nature at the service of religion should also be brought in. If this participation is omitted, there is a danger of imposing, in so intimate a field of man's life, rules or restrictions that are opposed to his true religious needs.<sup>51</sup>

#### **i. Religious freedom is a priority of the EU**

A recent document published by the Secretariat of COMECE entitled *Compilation Report on Religious Freedom at the European Parliament and the European External Action Service (EEAS) (January 2010 – September 2012)*, shows the commitment by the European Parliament and the EEAS to promote and defend religious freedom in international area, as a universal non negotiable value. It is part of the EU main task to promote our values everywhere at every time, including one of the main fundamental rights as religious freedom is.

Now it is time for action, and beyond well-intentioned statements and declarations, concrete actions should be taken in the EU, and particularly in the EEAS, in order to reinforce freedom of religion in its external policies. As stated by Catherine Ashton last 17 April at the European Parliament, on the report on Human rights in the world and the EU's policy on the matter *“the EU needs to strengthen its policy on the Freedom of Religion or Belief, which is so fundamental to a free society”*.<sup>52</sup>

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<sup>51</sup> Address of Pope John Paul II to the 34th General Assembly of the United Nations, 2 October 1979, point 20. Viewed at:  
[http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/1979/october/documents/hf\\_jp-ii\\_spe\\_19791002\\_general-assembly-onu\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/1979/october/documents/hf_jp-ii_spe_19791002_general-assembly-onu_en.html)

<sup>52</sup> <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/12/270>





## **2. The concept of freedom of religion**

### **a. Introduction**

The enhancement of the efforts towards marked improvements in the respect for the right to freedom of religion in the world should be one of the top priorities in the EU initiatives concerning human rights in its external action. This because such right is commonly recognised as one of the most central ones among the human rights guaranteed at the International level, and it has been rightly underlined that without its due respect, a society cannot truly define itself as “free”. Action (and more effective mechanisms) are urgently needed because violations of freedom of religion, by some governments and non-state actors, although with different degrees of gravity and intensity, are increasing in a number of countries of the world, being compounded by episodes of discrimination, intolerance and violence against both representatives and members of Churches and religious communities, with particular reference to religious minorities. Obstacles still exist in many parts of the world to the full and effective exercise of the fundamental right to freedom of religion (as well as of the one to freedom of conscience), both at the individual and collective level, in the public as well as in the private sphere. In this context, it is specifically important to continue to monitor with intense attention the respect for the rights of religious minorities, including Christians, in the context of the so-called ‘Arab Spring’. It is finally necessary to overcome the ideological tendency to see this right (as well as the one to freedom of conscience) as ‘problematic’ and religion as a ‘danger’ or a ‘disturbance’ to society.

### **b. International and EU legal protection**

The right to freedom of religion is clearly defined in a number of International instruments. In accordance with such texts, this right includes freedom to change one's religion and freedom either alone or in community with others and in public or private, to manifest one's religion in teaching, practice, worship and observance.<sup>53</sup>

Article 18(1) of the International Covenant on Civil and Political Rights (ICCPR) refers to the right to “*have or to adopt*” a religion of choice rather than to change it. The ICCPR also explicitly refers in paragraph 2 of its Article 18 to the prohibition of subjection to coercion, which would impair one's freedom to have or to adopt a religion of his choice. As for possible limitations to the right to freedom of religion, the European Convention on Human Rights (ECHR) states at Article 9(2) that freedom to manifest one's religion shall be subject *only to such limitations* as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of

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<sup>53</sup> See Article 18(1) of the Universal Declaration of Human Rights (UDHR), Article 9(1) of the European Convention on Human Rights (ECHR), Article 10(1) of the Charter of Fundamental Rights of the EU.



the rights and freedoms of others. However, in no case this possibility must be interpreted as allowing for any kind of undue restriction to such right.

It is to be noted that the explanation to the Charter of Fundamental Rights of the EU also underlines that the right guaranteed in paragraph 1 of its Article 10 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope (as a consequence, limitations must respect Article 9(2) of the above-said Convention). The ICCPR similarly states at Article 18, paragraph 3 that the freedom to manifest one's religion may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

It is to be noted that freedom of conscience is also included in all the provisions mentioned above and is strictly linked with freedom of religion. Article 10(2) of the Charter of Fundamental Rights of the EU stresses that the right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right. The explanation to the Charter clarifies that the right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Another important aspect to be considered is the link with the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions (Art. 18, paragraph 4 of the ICCPR). Moreover, Article 2 of the ECHR states that *"(...) 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"*. Article 14(3) of the EU Charter states that *"The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right"*. The explanation to the Charter adds that the Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows: *"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"*. The explanation also stresses that *"Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24"* (concerning the rights of the child).

The above-said International instruments are sufficient to provide the *minimum* scope for the actions foreseen by the future Toolkit/Guidelines. In this sense it is not necessary to refer to the 2009 Council conclusions to define the concept of freedom

of religion as such, even though the document constituted, at the time of its approval, a positive development, as for the attention to be devoted to the topic.

The concept of freedom of religion also requires some clarifications, as in some instances there are attempts to water it down. First of all, 'freedom of worship', presented by some parties and actors as a satisfactory answer to the relevant problems, is but one aspect of the right to freedom of religion, as the latter includes (as seen above) the freedom to change one's religion and to also manifest it in teaching, practice and observance, at the individual, collective, private and public level. Therefore, ensuring mere freedom of worship does not equal with full guarantee and respect for the right to freedom of religion.

Secondly, the public element is central to religious freedom: with regard to most religions, Christianity included, to prevent believers from expressing their faith publicly, while reducing their religion to a private phenomenon, gravely violates their fundamental right to freedom of religion.

Thirdly, mere tolerance (on the part of the State and/or society and/or a particular religious community) is by no means sufficient to ensure full respect for the right to freedom of religion. Tolerance, if it is not accompanied by a full set of rights and by the complete respect for the right to freedom of religion, just leads to submission.

Fourthly, an equally firm stance should be taken against the instrumentalisation and abuse of (or through) blasphemy laws for the purpose of persecuting members of religious minorities: while such laws are often promoted with the pretext of reducing social tensions, in reality they only contribute to their increase and to the rise of intolerance, in particular towards religious minorities. We have to take into account that, as the Parliamentary Assembly of the Council of Europe recognizes in its Recommendation 1805 (2007): *"even though today prosecutions in this respect are rare in member states, they are legion in other countries of the world."*<sup>54</sup> In some European non-EU member States *"prosecution for defamation is misused in what could be seen as attempts by the authorities to silence media criticism"*, as highlighted by PACE Resolution 1577 (2007) *"Towards decriminalisation of defamation"*.<sup>55</sup>

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<sup>54</sup> PACE Recommendation 1805 (2007), Blasphemy, religious insults and hate speech against persons on grounds of their religion (point 4): Viewed at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/EREC1805.htm>

<sup>55</sup> PACE Resolution 1577 (2007) *"Towards decriminalisation of defamation"*  
<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta07/eres1577.htm>

In countries as, for example, Albania or Azerbaijan, in which such abuse leads also to a genuine media self-censorship and causing progressive shrinkage of democratic debate and of the circulation of general information (point 8). In many member states the law provides for prison sentences for defamation and that some still impose them in practice – for example, Azerbaijan and Turkey (point 11).

The UN Human Rights Committee published on 21 July 2011 its General Comment No. 34 on Article 19 of the ICCPR (freedom of opinion and expression), whose paragraph 48 states:

*"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."*<sup>56</sup>

We must pay attention to the fact that at the UN level, the joint action by some Muslim countries (in coordination with the Organization of the Islamic Conference) in the Human Rights Council aimed at a UN General Assembly Resolution 62/154 (18 December 2007)<sup>57</sup> "combating defamation of religions", an instrument strongly criticized by the restrictive implications for freedom of expression and many other fundamental rights, and the sectarian use of blasphemy laws in certain Muslim-majority countries to suppress religious minorities, particularly Christians. By the way, this Resolution only mentions explicitly the attacks towards one single religion: Islam.<sup>58</sup>

We also emphasize that there is an important difference between a certain criticism of a religion, belief or school of thought and attacks on individuals because of their adherence to that religion or belief, as explicitly was made in a joint declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information.<sup>59</sup> In this

<sup>56</sup> <http://bangkok.ohchr.org/programme/documents/general-comment-34.aspx>

<sup>57</sup> <http://www.unhcr.org/refworld/docid/47da45112.html>

<sup>58</sup> "The "defamation of religion" resolutions establish as the primary focus and concern the protection of ideas and religions generally, rather than protecting the rights of individuals to practice their religion, which is the chief purpose of international religious freedom law. Furthermore, "defamation of religion" replaces the existing objective criterion of limitations on speech where there is an intent to incite hatred or violence against religious believers with a subjective criterion that considers whether the religion or its believers feel offended by the speech." See ECLJ, "Combating Defamation of Religions" Submission to the UN Office of the High Commissioner of Human Rights. Viewed at: [http://eclj.org/PDF/080626\\_ECLJ\\_submission\\_to\\_OHCHR\\_on\\_Combating\\_Defamation\\_of\\_Religions\\_June2008.pdf](http://eclj.org/PDF/080626_ECLJ_submission_to_OHCHR_on_Combating_Defamation_of_Religions_June2008.pdf)

<sup>59</sup> <http://www.osce.org/fom/35639>

declaration the four high level rapporteurs expressed their “concerned about the resolutions on “defamation of religions” adopted by the UN Commission on Human Rights and its successor, the Human Rights Council, since 1999, and the UN General Assembly since 2005 (see General Assembly Res. 60/150, 61/164, 62/154; Commission on Human Rights Res. 1999/82, 2000/84, 2001/4, 2002/9, 2003/4, 2004/6, 2005/3; Human Rights Council Res. 4/9, 7/19)”. Therefore, they hold that “the concept of ‘defamation of religions’ does not accord with international standards regarding defamation, which refer to the protection of reputation of individuals, while religions, like all beliefs, cannot be said to have a reputation of their own” and that “International organisations, including the United Nations General Assembly and Human Rights Council, should desist from the further adoption of statements supporting the idea of ‘defamation of religions’.” This concept of “defamation of religions”, taking into account its origin and context, is a tool that clearly targets non-Muslim (or even Muslim minorities of other Muslim schools) in certain Muslim-majority countries, where religious freedom is in fact denied.

On the other hand, religious groups should tolerate, as must other groups, critical public statements and debate about their activities and teachings, provided that such criticism does not amount to intentional and gratuitous insults or hate speech and does not constitute incitement to disturb the peace or to violence and discrimination against adherents of a particular religion.<sup>60</sup> Blasphemy and defamation of religions legislation –which quite frequently are broad and not precise- can easily lead to abuse and misuse in their application, particularly in the case of targeted minority religious groups in those countries where strict religious laws become state law. In this context, this legislation usually goes beyond the above said limits, but denies the most basic rights to express publicly one’s religion, or criticise the majority religion, which is by itself many times considered as inadmissible by strict religious laws which are enforced by the states, and entails punishment.

Finally, freedom of religion cannot be understood merely as immunity from coercion, as this would gravely impoverish its value and effectiveness. It must be protected both at the level of social practices and of legislation.

Therefore, the main dimensions of the religious freedom to be protected include<sup>61</sup>:

a) at the personal level:

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<sup>60</sup> Recommendation 1805 (2007), Blasphemy, religious insults and hate speech against persons on grounds of their religion, point 5. Viewed at:

<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/EREC1805.htm>

<sup>61</sup> John Paul II, *Message on the value and content of freedom of conscience and of religion*, 14 November 1980. Viewed at:

[http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/1980/november/documents/hf\\_jp\\_ii\\_spe\\_19801114\\_atto-helsinki\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/1980/november/documents/hf_jp_ii_spe_19801114_atto-helsinki_en.html)



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

-freedom to hold or not to hold a particular faith and to join the corresponding confessional community;

-freedom to perform acts of prayer and worship, individually and collectively, in private or in public, and to have churches or places of worship according to the needs of the believers;

-freedom for parents to educate their children in the religious convictions that inspire their own life, and to have them attend catechetical and religious instruction as provided by their faith community;

-freedom for families to choose the schools or other means which provide this sort of education for their children, without having to sustain directly or indirectly extra charges which would in fact deny them this freedom;

-freedom for individuals to receive religious assistance wherever they are, especially in public health institutions (clinics and hospitals), in military establishments, during compulsory public service, and in places of detention;

-freedom, at personal, civic or social levels, from any form of coercion to perform acts contrary to one's faith, or to receive an education or to join groups or associations with principles opposed to one's religious convictions;

-freedom not to be subjected, on religious grounds, to forms of restriction and discrimination, vis-a-vis one's fellow citizens, in all aspects of life (in all matters concerning one's career, including study, employment or profession; one's participation in civic and social responsibilities, etc.).

- freedom to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

b) at the community level, account has to be taken of the fact that religious denominations, in bringing together believers of a given faith, exist and act as social bodies organized according to their own doctrinal principles and institutional purposes. The Church as such, and confessional communities in general, needs to enjoy specific liberties in order to conduct their life and to pursue their purposes; among such liberties the following are to be mentioned especially:

-freedom to have their own internal hierarchy or equivalent ministers freely chosen by the communities according to their constitutional norms;

-freedom for religious authorities (notably, in the Catholic Church, for bishops and other ecclesiastical superiors) to exercise their ministry freely, ordain priests or ministers, appoint to ecclesiastical offices, communicate and have contacts with



those belonging to their religious denomination;

-freedom to have their own institutions for religious training and theological studies, where candidates for priesthood and religious consecration can be freely admitted;

-freedom to receive and publish religious books related to faith and worship, and to have free use of them;

-freedom to proclaim and communicate the teaching of the faith, whether by the spoken or the written word, inside as well as outside places of worship, and to make known their moral teaching on human activities and on the organization of society: this being in accordance with the commitment to facilitate the spreading of information, of culture, of exchange of knowledge and experiences in the field of education; which corresponds, moreover, in the religious field to the Church's mission of evangelization;

-freedom to use the media of social communication (press, radio, television) for the same purpose;

-freedom to carry out educational, charitable and social activities so as to put into practice the religious precept of love for neighbor, particularly for those most in need.<sup>62</sup>

Furthermore, with regard to religious communities which, like the Catholic Church, have a supreme authority responsible at world level (in line with the directives of their faith) for the unity of communion that binds together all pastors and believers in the same confession (a responsibility exercised through Magisterium and jurisdiction): freedom to maintain mutual relations of communication between that authority and the local pastors and religious communities; freedom to make known the documents and texts of the Magisterium (encyclicals, instructions, etc.);

But also, at the international level: freedom of free exchange in the field of communication, cooperation, religious solidarity, and more particularly the possibility of holding multi-national or international meetings; and freedom for religious communities to exchange information and other contributions of a theological or religious nature.

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<sup>62</sup> Article 6 f) of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981: "(...) *The right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms: f) To solicit and receive voluntary financial and other contributions from individuals and institutions*".



### c. The inherent communitarian and institutional dimension of religious freedom

A community is much more than the mere sum of its members. A restricted individual approach to religious freedom does not recognise this fact, and also becomes problematic, because it does not give the due protection to an aspect which is inherent to religious freedom, as it is the right to religious association.

The case-law of the European Court of Human Rights is, at this respect, clear and rotund. In the case of *Metropolitan Church of Bessarabia v. Moldova*, the Strasbourg Court stated that: *"Since religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. (...) Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. In addition, one of the means of exercising the right to manifest one's religion, especially for a religious community, in its collective dimension, is the possibility of ensuring judicial protection of the community, its members and its assets, so that Article 9 must be seen not only in the light of Article 11, but also in the light of Article 6."*<sup>63</sup>

Apart from personal individual relationships, there are relations between the community and its members and, moreover relations of the community as such with third parties (individuals, other communities and entities, the public authority...). This collective aspect of Article 9 is indeed emphasised by recognition that a church or other religious organisation may be able to establish "victim" status within the meaning of Article 34 of the Convention. In other words, for the purpose of satisfying admissibility criteria, a church may be recognised as having the right to challenge an interference with respect for religious belief when it can show it is bringing a challenge in a representative capacity on behalf of its members.<sup>64</sup>

Furthermore, the recognition of representative status in respect of an association of members is only to extend to religious belief and not to allegations of interference with thought or conscience. In the case *Verein "Kontakt-Information-Therapie" and Hagen v. Austria* the applicant association was a private non-profitmaking organisation operating drug abuse rehabilitation centres. The dispute concerned a

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<sup>63</sup> *Metropolitan Church of Bessarabia v. Moldova*, 13 December 2001, §118.

<sup>64</sup> For example, *X and Church of Scientology v. Sweden* (dec.); and *Canea Catholic Church v. Greece*, §31. See: Jim Murdoch, *Protecting the right to freedom of thought, conscience and religion under the European Convention on Human Rights*, Council of Europe human rights handbooks, Council of Europe Strasbourg, 2012, p. 24. Viewed at: [http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/documentation/hb09\\_rightfreedom\\_en.pdf](http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/documentation/hb09_rightfreedom_en.pdf)



requirement imposed upon therapists to disclose information relating to their clients, a requirement characterised by the applicants as a matter of conscience. For the Commission, this part of the application fell to be rejected *ratione personae*: *"The association does not claim to be a victim of a violation of its own Convention rights. Moreover, the rights primarily invoked, i.e. the right to freedom of conscience under Article 9 of the Convention and the right not to be subjected to degrading treatment or punishment (Article 3), are by their very nature not susceptible of being exercised by a legal person such as a private association. Insofar as Article 9 is concerned, the Commission considers that a distinction must be made in this respect between the freedom of conscience and the freedom of religion, which can also be exercised by a church as such."*<sup>65</sup>

On the other hand, the collective dimension of religious freedom can't be fully redirect to and covered by the right to assembly (Article 21 ICCPR), among other reasons, because the limits of religious freedom and the right to assembly are not exactly the same. The right to assembly in Article 21 ICCPR can be restricted on the following grounds: *"national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."* Religious freedom under Article 18 ICCPR can be limited only on similar, but not exactly the same grounds: *"public safety, order, health, or morals or the fundamental rights and freedoms of others."* A certain disparity in the wording concerning the grounds for a lawful restriction or limitation of both rights appears in the two provisions mentioned. For example, national security is not explicitly mentioned in Article 18, while it is foreseen in Article 21. To bring the collective dimension of religious freedom under the full scope of the right to assembly might create further limitations to religious freedom, not included in Article 18 ICCPR.

For these reasons, to limit the right to freedom of religion at the individual level would go against standards set by international instruments.

#### **d. The use of standard international law terminology**

The wording of Article 17 TFEU in the EU external policies, that is to say, in relation with third countries, is inappropriate, because this provision is related exclusively to the EU internal dialogue between, in one hand, the EU, and in the other hand, the churches and religious associations or communities, as well as philosophical and non-confessional organizations.

The EEAS and their representation and staff are working in third countries in a very diverse world, which is becoming more and more religious, as figures show. In this context, the most common and practical international law binding standard on

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<sup>65</sup> Verein "Kontakt-Information-Therapie" and Hagen v. Austria (decision on the admissibility, 12 October 1988). See also, X and Church of Scientology v. Sweden, Dec. 5.5.79, D.R. 16 p. 68.



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religious freedom is Article 18 ICCPR<sup>66</sup>, taking into account that 167 States are Parties to the ICCPR.<sup>67</sup>

The substitution of the commonly accepted terminology concerning religious freedom (and believe) by other expressions is misleading and can create more difficulties in the relations with third countries which have accessed or ratified the ICCPR, but still have a limited recognition of religious freedom or tolerate or commit clear violations against this fundamental right.

To maintain the current terminological consensus at international level in the EEAS Guidelines on religious freedom will lead to a better understanding amongst the EU and third countries.

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<sup>66</sup> See also the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981

<sup>67</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)



### 3. Guidelines for the Promotion and Protection of Religious Freedom

The EEAS is invited to urgently draft a Toolkit to Promote and Protect the Enjoyment of Religious Freedom<sup>68</sup>, aimed at providing the staff in EU Headquarters, EU Member States' capitals, EU Delegations, Representations and Embassies with an operational set of tools to be used in contacts with third-countries, as well as with Churches and international and civil society organisations, in order to protect Christians within its external action.

#### a. Monitoring

Amongst the cases to be monitored, reported and countered by the EEAS are:

- killings and violence;
- prohibition, confiscation and destruction of places of worship;
- prohibition, confiscation and destruction of religious publications;
- prohibition of religious training and education;
- prohibition of public or private religious ceremonies;
- prohibition of wearing of religious objects or symbols;
- imprisonments because of teaching of one's religion/punishments for upholding truths of one's faith (in some cases even for simply worshipping, including in private places);
- abuse of defamation and blasphemy laws, and more generally speaking, undue restriction of religious expression;
- prohibition of conversion into other faith;
- forced conversion;
- requirement of the designation of religion on passports or national identity documents;
- discrimination in the access to the State public service as public servants;

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<sup>68</sup> Similar to the *Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People* already sent to the Political and Security Committee (17 June 2010). At: <http://www.consilium.europa.eu/uedocs/cmsUpload/st11179.en10.pdf>



- lack of recognition of legal personality of churches and religious communities.

## **b. Roadmap**

It could be useful to draft an annual roadmap as to respect for the rights of those who are persecuted because of their religious beliefs, mainly Christians, in the world, so as to orientate the actions of the EEAS in protecting religious freedom.

## **c. Prevention of exodus and asylum measures**

The EEAS is invited to adopt and implement a decision to prevent the expulsion of religious persecuted seeking asylum, mainly Christians, - due to the violence against them in their home countries - from any EU Member State, as already decided in some European Court of Human Rights<sup>69</sup> cases and as proposed by the UNHCR<sup>70</sup>. A comprehensive policy is needed in order to limit the exodus; in particular by granting material support to the States and communities offering a local refuge to the Christian minorities (such as Syrian Christians, Kurds, Jordanians, etc.), and helping to relocate Christian refugees in their home countries.

Of particular importance is to monitor specific aspects of the asylum process concerning applications made by religious persecuted persons. At this respect, cooperation between DG Home and EEAS is important, in order to:

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<sup>69</sup> The UNHCR sent a *Letter to the ECHR on forced returns to Iraq*, recommending "that States refrain from forcibly returning Iraqis who originate from the five Central Governorates or who belong to the specific groups which have been identified in UNHCR's guidelines to be at risk and who originate from the Southern Governorates and Al-Anbar, UNHCR recommends against such forced returns until such time as there is substantial improvement in the security and human rights situation in the country." At: <http://www.unhcr.org/refworld/docid/4cda5c362.html>

Since 22 October 2010, the Court has applied Rule 39 in a number of cases against, amongst others, the Netherlands, Sweden and the United Kingdom.

<sup>70</sup> See, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*. At: <http://www.unhcr.org/refworld/docid/49f569cf2.html>

"UNHCR recommends that, unless volunteering for return, no Iraqi from the five Central Governorates and those belonging to the specific groups which have been identified to be at risk from the Southern Governorates and Al-Anbar, should be forcibly returned to Iraq until such time as there is substantial improvement in the security and human rights situation in the country. When considering return of persons originating from the Southern Governorates or Al-Anbar Governorate not found to be in need of international protection, UNHCR recommends that caution needs to be exercised with regard to the evolving security situation in given areas, as well as absorption capacity, availability of community support and services. UNHCR, in particular, advises against the return of persons to areas from which they do not originate." Note 50 of the *Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seeker*. At: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4c4fed282&page=search>

- identify, manage and monitor the EU's technical and financial means in favour of those who are persecuted for their religious beliefs in third-countries;
- protect persecuted, when temporarily transiting via a neighbouring country, from any further economic burden (e.g. fines) in order to allow them to resettle in an available third-country;
- call for the full recognition and support of Churches and other religious entities running charitable activities in third-countries of asylum, when serving migrants and asylum seekers.

#### **d. Supporting political and legislative processes, and conditionality clause**

With respect to third-countries where religious believers, mainly Christians, are persecuted or whose rights are not fully recognized, it is key the insertion of a conditionality clause on respect for religious freedom both in private and public spheres in any agreement with those third-countries, taking into account the framework of the European Neighbourhood Policy (ENP), the Euro-Mediterranean Partnership (EUROMED), the Partnership and Cooperation Agreements (PCA), the Association Agreements (AA)<sup>71</sup>, Action Plans<sup>72</sup> and Joint Strategies<sup>73</sup>. This includes the non-negotiable need to improve national Constitutions to respect every religion or doctrine, so that all citizens are equally respected.<sup>74</sup>

The EEAS should also use this clause in its relations with those third countries to abolish all discriminatory laws against religious minorities, in particular legislation against blasphemy and apostasy.

The “more for more” principle is also a useful one to develop fair relationships with third countries, granting them funds and monitoring their appropriate use proportionally to the effective implementation of the Constitution and legislation which protect religious minorities and recognize their rights without any discrimination. The protection of the religious patrimony is of great importance, including not only the religious buildings, but also workplaces, schools, universities, etc.

<sup>71</sup> For example, in the *Proposal for a Council Decision on the conclusion of a Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part* (5-11-2010).

<sup>72</sup> e. g. Recommendation No 1/2007 of the EU-Egypt Association Council of 6 March 2007 on the implementation of the EU-Egypt Action Plan (OJ L 230, 28.8.2008, p. 19–44).

At: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:230:0019:0044:EN:PDF>

<sup>73</sup> e. g. *Cooperation between the European Union and Iraq. Joint Strategy Paper 2011 – 2013*. At: [http://www.eeas.europa.eu/iraq/docs/2011\\_2013\\_jsp\\_nip\\_en.pdf](http://www.eeas.europa.eu/iraq/docs/2011_2013_jsp_nip_en.pdf)

<sup>74</sup> Following the example of the Preamble of the Polish Constitution: “(...) We, the Polish Nation - all citizens of the Republic, Both those who believe in God as the source of truth, justice, good and beauty, As well as those not sharing such faith but respecting those universal values as arising from other sources, Equal in rights and obligations towards the common good - Poland, (...)”. At: <http://www.trybunal.gov.pl/eng/index.htm>



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The EEAS can play a major role supporting all legislative initiatives and political projects in third countries to permit the full recognition, of equal rights to religious minorities (members, communities and institutions) both *de jure* and *de facto*, avoiding any discrimination towards them, including, for example, the right to free movement and to settle down in any part of the country, the restitution of confiscated properties and the fair distribution of lands. This includes: the access to justice for those who are persecuted, the respect for their rights to a fair procedure, to prosecute the murderers and their leaders to bring them to the courts, and to guarantee the effective execution of the judgments.

The EEAS may assist emerging democracies in implementing freedom of religion.

#### **e. Soft diplomacy**

“Soft diplomacy” is also a good instrument to promote freedom of religion, including support to all social and cultural projects, which aim at developing all regions of the countries, in particular those where religious minorities are in a disadvantaged situation.

#### **f. Collecting and sharing reliable data**

The EEAS can be a key actor to collect reliable data and share information to other EU institutions in order to promote religious freedom in the external dimension of other policies (for example, migration and asylum in relation to DG Home; or trade agreements with respect to DG Trade, etc.). The EEAS can actively intervene in best practices sharing in the EU institutions and the Member States.

#### **g. Awareness**

Awareness of the importance of religious freedom amongst foreign policy decision makers in the EU is very relevant, especially by developing educational programmes and distributing material, which address also religious stereotypes and bias. Special training for EEAS staff (and of the EU Delegations) is key to understand the role of religions in international affairs, and look for solutions when they have to face a question with a religious dimension.

#### **h. Immediate reaction mechanism**

An EEAS immediate reaction mechanism for an emergency situation in which violations of religious freedom are taken place, would be advisable.



#### **i. Special rapporteur**

The appointment of a special rapporteur on freedom of religion publishing an annual country report of international religious freedom, could be a measure that not only increases awareness on the importance of that human right, but also, permits the adoption of policy decisions concerning the particular countries, when they violate religious freedom. Following the US example, and in order to facilitate his or her tasks, the rapporteur could be appointed as Ambassador-at-Large for International Religious Freedom.<sup>75</sup>

#### **j. Support towards defenders and victims in countries**

As an important element of the EU external policy, we can mention the needed support towards persons, groups, NGOs, Churches, religious institutions or any entity defending religious freedom –particularly in those countries where it is violated-.

Victims of religious freedom violations, when they remain in the country, should also be protected looking for particular solutions, including in serious cases, the possible access to asylum protection. When victims are in prison, visits are recommendable to check the situation and treatment that they receive.

#### **k. International and Intergovernmental Cooperation**

The EEAS can help to promote the establishment of an International Investigating Commission under the UN authority to prosecute the criminals of religious genocides in some countries.

EU interventions in the UN (through the EEAS), for example in the Human Rights Council, are good opportunities to highlight the importance of religious freedom and denounce its violations. International *fora* are also a good context for religious freedom discussion at high level with representatives of those countries where its violation is of high concern. In this context, the EU should counter attempts to promote and introduce the concept of “blasphemy (laws)” and “defamation of religions” in International documents and fora, in particular by those countries which misuse it.

In partnership with the Council of Europe, cooperation and joint programs (social and cultural projects) can be developed with those countries belonging to the

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<sup>75</sup> The Ambassador is the principal advisor to both the President of the United States and Secretary of State for Religious Freedom globally. Viewed at: <http://www.state.gov/r/pa/ei/biog/163202.htm>





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European Neighbourhood Policy,<sup>76</sup> in which religious minorities are persecuted, or those hosting those who suffer religious persecution and apply for asylum status.

In partnership with the US Secretary of State, the EEAS can exert real pressure on all the parties involved in the Israeli-Arab conflict, which certainly fuel extremism against religious minorities in third countries.

The EEAS can also encourage the OSCE to monitor the persecution of religious minorities in Partner countries, requiring them to adopt effective measures to prevent it. With respect to the Arab League, the EEAS can launch initiatives on any tangible cooperation regarding cultural diplomacy, democracy promotion and good governance, in order to promote an increasing improvement of religious freedom for minorities.

### **I. Follow-up**

A review on an annual basis of the implementation of the Guidelines is necessary to have a clear picture of the improvements, and to reinforce those aspects, which are not sufficiently successful, or when due to the change of the *status quo*, there is a need of updating.

### **m. Dialogue**

The EEAS is invited to comply with the obligation to have a regular dialogue with Churches in accordance with Article 17(3) TFEU, so as to discuss the issue of religious freedom, and particularly the persecution of Christians, as a priority issue on a systematic basis. Regular is not only periodical, but permanent rapports -formal and informal- in order to achieve the objectives for a better promotion and protection of religious freedom all over the world. Sporadic meetings, just to fulfill the procedure, are not enough, and a real and substantial cooperation is in the interest of the EU and those who suffer a restriction of their religious freedom, and even, persecution for their religious believes.

### **n. Elements for conclusions**

We would like to stress that the Toolkit/Guidelines should prove ambitious, and include a checklist on all the elements and aspects pertaining to the exercise of and the respect for the right to freedom of religion, in order to assess the situation, as

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<sup>76</sup> Possible actions according to the *Memorandum of Understanding between the Council of Europe and the European Union* (may 2007), (points 30, 41-3 and 52). At: [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/steering\\_committees/cdpc/Documents/1Mémorandum%20d'accord%20CE UE%20anglais\\_signé.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/steering_committees/cdpc/Documents/1Mémorandum%20d'accord%20CE UE%20anglais_signé.pdf)



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well as instruments and mechanisms to identify infringements of freedom of religion and effectively confront them.