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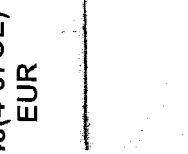

NEW RELIGIOUS MOVEMENTS AND THE LAW IN THE EUROPEAN UNION
LES NOUVEAUX MOUVEMENTS RELIGIEUX ET LE DROIT DANS L'UNION EUROPEENNE

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FACOLTÀ DI GIURISPRUDENZA
PUBBLICAZIONI DI DIRITTO ECCLESIASTICO
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EMILE POULAT
Ecole des Hautes Etudes en Sciences Sociales, Paris

SOCIOLOGUES ET SOCIOLOGIE DEVANT LE PHENOMENE SECTAIRE

RÉSUMÉ: 1. *La sociologie en chaire.* — 2. *Les sociologues en examen.*

Entre les inspecteurs des Renseignements généraux qui, en France, relèvent du ministère de l'Intérieur, et les sociologues qui dépendent de la recherche scientifique et de l'enseignement supérieur, il existe un point commun: tous ont charge d'*observer* la société et ce qui s'y passe. Là s'arrête la ressemblance. Les premiers observent pour informer les autorités responsables de l'ordre public, les seconds pour comprendre le mouvement d'une société qui ne cesse de se transformer. Ils n'ont pas même vocation.

Observer suppose une certaine distance, mais aussi une réelle proximité: un ajustement délicat, qui n'est jamais sans risques de dérèglement avec toutes ses suites, pour les uns comme pour les autres. Il arrive que le temps se gâte et que les éléments se déchaînent. Ceux qui sont sur le terrain, au contact de l'histoire immédiate, peuvent se trouver pris dans la tourmente sans y avoir été nécessairement préparés. Leur formation professionnelle et leurs connaissances théoriques ne leur suffisent plus. Connaître son métier qui est de connaître la société, peut placer dans des situations et entraîner dans des aventures qui vont au-delà du métier. Les manuels à l'intention du parfait inspecteur ou du petit sociologue ne laissent guère soupçonner ces questions.

S'intéresser aux faits religieux a longtemps paru une occupation

de tout repos, sans grand intérêt pour le progrès de notre société avancée et sans effet notable sur sa marche. *La sécularisation l'emportait sur la religion*: le « sens de l'histoire » était évident. La liberté était laissée à chacun de régler ses problèmes de conscience comme il l'entendait. Les techniques de sondage et leur vogue dans les médias permettaient de suivre ce reflux des grandes religions et le recul de leur emprise sur les esprits. On vivait dans une logique de « la mort de Dieu » et l'avènement d'un monde libéré de son « cadavre ».

Les choses se sont avérées moins simples, plus complexes, et l'histoire moins unilinéaire, plus tourmentée, largement imprévisible. L'illusion d'un « éternel retour » ne vaut pas mieux que celle du « grand soir » qui changera tout ou des « utopies futuristes » qui se donnent le monde à venir en privilégiant ce qui leur convient. Ce qui est advenu en matière religieuse est un démenti cruel, voire tragique, aux considérations et spéculations de tous bords, de tous ordres, dont se sont défaites les assurances contradictoires.

Prise de court, notre société s'affole, fantasme, improvise. Les Eglises historiques en deviennent rassurantes, comme de vieilles connaissances, d'autant plus qu'elles apparaissent en position de faiblesse, devant l'inquiétante et pullulante nouveauté des *sectes*. L'alarme est donnée par les gouvernements, les parlements, les médias. Au confort d'une sociologie magistrale, ou comptable, succède, pour les sociologues qui s'en occupent, une conjoncture difficile qui les malmène parfois avec vigueur. Certains sont publiquement disqualifiés, dénoncés à la vindicte de l'opinion ou même menacés des tribunaux.

1. La sociologie en chaire

On a beaucoup disputé sur sociologie pure ou sociologie appliquée. Aujourd'hui, il n'existe plus de sociologie sans choc en retour de la société, et celui-ci peut être brutal. Le sociologue se redécouvre citoyen, membre à part entière et sujet de la société dont il a fait son objet, alors que l'ethnologue, étranger venu d'ailleurs, tenait son extériorité pour irréductible et constitutive de sa méthode.

L'homme, disait Aristote, est un animal politique. Est-il aussi un animal religieux? Les préhistoriens se sont intéressés à l'enfance religieuse de l'humanité, comme Durkeim et son école aux formes élémentaires de la religion. Un long chemin — on le compte aujourd'hui en millions d'années —, identifié à l'œuvre de *civilisation*, a été nécessaire pour en arriver où nous en sommes. Ontogenèse, phylogenèse, anthropogenèse, sociogenèse: chacun de ces niveaux d'existence a sa spécificité, et l'on n'a que trop tendance actuellement à rabattre la sociologie sur la psychologie sociale. On ne connaît pas de société sans têtes et sans cœurs, mais on ne fait pas une société avec simplement des opinions, des croyances, des représentations, des « mentalités ».

Religion et *secte*, ce sont deux mots latins dont l'étymologie est pareillement incertaine et indécidable. Le premier, sans équivalent indo-européen, est, à la lettre, intraduisible, ce qui n'a pas empêché son expansion: on lui a fait tout avaler, jusqu' à ces « religions séculières » qui en étaient l'antipode, de manière à en faire une catégorie universelle (1). En son sein, l'usage a fini par creuser une niche pour le second, par un effet d'attraction que rien ne suggérait et moins encore imposait. Un effet d'opposition a suivi quand on a glissé de la relation taxinomique au statut social. Espèce du genre religion, apparaît aussi, à l'aune des institutions, comme une menace pour la religion qui occupe l'espace public et ne voit aucune bonne raison de le partager. Si la religion est un lien et un liant (avec la divinité, avec les morts, entre les vivants), la secte s'affiche comme rupture de ce lien, dissolution de ce liant. Cette hypothèque ne sera jamais levée.

A l'inverse de religion, qui n'a fait que gagner du terrain, ***secta*** est à l'origine une notion tous terrains, progressivement rétrécie et

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(1) Michel Despland, *La Religion en Occident. Evolution des idées et du vécu*, Montréal, Fides, et Paris, Cerf, 1979, XIV-580 p. (Préface de Claude Geffré).

Maurice Sachot, « Comment le christianisme est-il devenu *religio?* », *Revue des sciences religieuses*, 1985, 2, pp. 96-118; « *Religio/superstitio*. Histoire d'une subversion et d'un retournement », *Revue de l'histoire des religions*, 1991, 4, pp. 355-394. Repris et précisé dans *L'Invention du Christ* (Paris, Odile Jacob, 1998): « Jésus est *devenu* Christ, et le christianisme est *devenu* religion ».

Les mêmes malentendus se retrouvent autour de l'*ésotérisme*: une notion strictement cernée par les spécialistes universitaires et mise à toutes les sauces dans ses usages vulgaires.

cantonnée. Le mot latin désignait une école de pensée associée ou non à un genre de vie. L'Eglise catholique romaine est-elle « une secte qui a bien réussi », selon la formule qui circule un peu partout? Au sens latin, le judaïsme n'a jamais été perçu comme une secte, et il ne semble pas que les Romains se soient beaucoup intéressés aux courants qui le traversaient, sinon à la hauteur de leurs incidences politiques. Toute cette effervescence judéo-chrétienne rentrait mal dans ce que le monde gréco-romain pouvait qualifier de « secte ».

Si nous en parlons ainsi, ce ne peut être que par une lecture rétrospective au risque de l'anachronisme. On relèvera que l'*Encyclopédie théologique* de Migne (171 volumes en 3 séries, 1845-1866) n'a conçu aucun « Dictionnaire des sectes ». Elle s'en est tenue d'une part à un *Dictionnaire des hérésies, des erreurs et des schismes* (1847, 2 vol.), d'autre part à un *Dictionnaire universel, historique et comparatif de toutes les religions du monde* (1849-1851, 4 vol.). Reste à savoir si nous parlons bien des mêmes choses à travers les siècles et si le mot garantit le sens.

L'étymologie ne nous sera ici d'aucun secours, et pas davantage les dictionnaires de langue, quelle que soit l'autorité de Littré ou de Larousse pour le français. En revanche, ce qui nous fait défaut, c'est une étude de sémantique historique — religion, secte et leurs rapports — sur la longue durée et tout au moins depuis l'âge classique. Trois ou quatre siècles, est-ce trop demander? Les latinistes l'ont fait pour quelques mots essentiels. Mais précisons-le bien: il ne s'agit pas d'histoire des idées — religion, nature, bonheur (2) —, mais d'étude du langage: manière de parler, façons de s'exprimer, ou comment on use des mots dont on dispose pour structurer verbalement sa pensée. On se contentera ici d'un exemple.

Au XVIIe siècle, en France, le catholicisme se présente comme l'unique et seule vraie religion. Il est *la* religion. Le protestantisme — « la religion prétendue réformée » — n'est qu'une secte, génératrice de sectes par ses variations et ses divisions, tandis que le

(2) Par exemple: Robert MAUZI, *L'Idée de bonheur au XVIIIe siècle*, Paris, Colin, 1969; Jean EHRARD, *L'Idée de nature en France dans la première moitié du XVIIIe siècle*, Paris, SEVPEN, 1963 (2e éd.: A. MICHEL, 1994).

judaïsme renvoie à l'ancienne alliance. Au XVIIIe siècle commence à s'édifier une histoire des *religions* où le christianisme n'est plus que l'une d'entre elles. Cette histoire se veut rationaliste: elle ignore l'athéisme aussi bien que les sectes; elle s'intéresse à la multiplicité des Eglises chrétiennes sous leurs appellations diverses; enfin, au-delà des grandes religions du globe, s'étend pour elle le monde inconnu du paganisme, de l'idolâtrie et la superstition.

Pour Voltaire, au mot « secte » dans son *Dictionnaire philosophique* (1764, une maxime indiscutable s'impose à tous — « Dieu existe et il faut être juste » — comme « la religion universelle établie dans tous les temps et chez tous les hommes ». Dès qu'on sort de là, on tombe dans la superstition et la secte. « Il n'y a point de secte en géométrie... Jamais on n'a disputé s'il fait jour à midi ». On dit « un janséniste » ou « un moliniste », mais non « un euclidien ». Voltaire n'est pas notre contemporain.

La première réaction des apologistes catholiques dans cette nouvelle configuration sémantique, sera de montrer la transcendance de la religion chrétienne dans la spirale ascendante d'un *De vera religione* qui aboutit à Rome. La seconde réaction, plus tardive, fut le radicalisme protestant de Karl Barth: le christianisme est une *foi* qui n'a pas sa place dans ce caravansérail des religions.

Nous sommes ici dans le modèle, transcendantal, du vrai et du faux, du bien et du mal, de la norme et de la déviance. La sociologie allemande va s'engager dans une autre voie, structurale: à la manière dont Tönnies avait construit l'opposition formelle *gemeinschaft-gesellschaft* (communauté et société), qui allait prospérer en France à partir de la fin des années 30, Weber et Troeltsch ont l'un théorisé et l'autre illustré l'opposition entre deux *idealtypus* (types idéaux ou idéaltypes), l'Eglise et la Secte: ce qui les rapproche, une même offre (le salut); ce qui les sépare, des exigences différentes. Dans son grand ouvrage inachevé, *Die Soziallehren der christlichen Kirchen und Gruppen* (1912), Troeltsch a même enrichi cette typologie d'un troisième terme: les réseaux mystiques de « spirituels », rétifs à toute organisation qui impose une discipline de vie et de pensée (3).

(3) Etudes et traductions se sont multipliées en France depuis vingt ans. On retiendra

Le passage de la théologie à l'histoire des religions représentait une révolution culturelle (4), qui ne pouvait aller de soi. La sociologie selon Weber était beaucoup plus radicale tout en procédant de façon plus douce: elle n'attaquait pas la théologie mais, sans craindre d'utiliser les mêmes mots qu'elle, elle se construisait un langage qui ne lui devait rien. De là la nécessité, quand on parle d'Eglises et de sectes, de bien préciser sur quel registre on se tient. De là, inévitablement, dans la vie sociale, les confusions produites par cette absence de précaution: des confusions d'autant plus explicables que les conflits de société s'expriment dans un dualisme plus proche des catégories de la pensée religieuse que de la pensée savante.

Les deux sociologues voulaient dégager un principe d'ordre et d'intelligibilité dans le foisonnement presque bimillénaire des formes chrétiennes d'agrégation et de sociabilité, sans prévention ni contre le christianisme, ni contre telle ou telle forme au profit d'une autre. Il est évident pour eux que le mot *secte* ne peut avoir le même sens quand le christianisme ancien cherche son organisation et quand il a trouvé sa structuration, quand des « sectes » se concurrencent entre elles et quand elles s'opposent à l'*Ecclesia*, la grande Eglise.

L'inflexion se situe dans le moment qui va du marcionisme (milieu du IIe siècle) à l'arianisme qui, ni l'un ni l'autre, ne peuvent être rangés parmi les sectes. Dans une perspective wébéro-troeltschienne, il est sans pertinence, ou tout au moins équivoque, de dire que « l'Eglise (catholique) est une secte qui a réussi » puisque le genre secte à quoi l'on pense n'est pas celui dont on la croit issue. Il faudrait ajouter, avec plus de vérité, que le marcionisme et l'arianisme étaient des Eglises qui n'ont pas réussi et que l'histoire s'est jouée entre Eglises rivales.

Pour Max Weber, l'Eglise s'oppose à la secte comme, d'une part, une institution de salut ouverte à tous dès la naissance et,

ici, pour notre sujet, Jean SEGUY, *Christianisme et société. Introduction à la sociologie d'Ernst Troeltsch*, Paris, Cerf, 1980, 334 p.

(4) E. POULAT, *Liberté, laïcité. La guerre des deux France et le principe de la modernité*, Paris, Cujas et Cerf, 1988, 440 p. (en particulier la 3e partie, « La mutation culturelle », et son ch. XI, « L'institution des sciences religieuses »).

d'autre part, un groupement volontaire de croyants affichant ses conditions d'entrée, restrictives par définition. L'Eglise est une *communauté* qui repose sur son Fondateur et préexiste à ses membres; la secte est une fondation nouvelle qui entend réactiver le message originel au sein d'une *société* constituée pour répondre à cet appel particulier. C'est bien pourquoi certaines dénominations protestantes et certaines congrégations (ou ordres) catholiques pourront présenter des caractéristiques « sectaires » (5). La nature et les formes de la fondation sont au cœur du débat. Du concept à la réalité, de la réalité au concept, l'articulation n'est pas toujours évidente.

Le *salut* n'a pas les mêmes implications selon le type. L'Eglise est ordonnée au Royaume (Concile de Trente: « *Regnum Dei, quod est Ecclesia* »), auquel tous sont appelés même si tous n'y sont pas admis, mais le Royaume se fait attendre (Alfred Loisy: « Jésus annonçait le Royaume, et c'est l'Eglise qui est venue »). L'imminence de la parousie s'éloigne et les « derniers temps » se prolongent. En s'établissant dans cet intervalle, comment l'Eglise n'embrasserait-elle pas l'entière société humaine dans sa vision et sa mission? Comment la synthèse thomiste du XIIIe siècle — la *Respublica christiana*, avec son union sans confusion des deux ordres, le Sacerdoce et l'Empire — ne lui apparaîtrait-elle pas comme un sommet?

Les sectes évangéliques se replient plus facilement sur le salut personnel ou sur la proximité (datée) de la seconde venue du Christ, ou alors se découvrent vocation d'Eglise. Elles interprètent à leur manière le « moyen court » de Madame Guyon: pas d'institution, pas de médiation, pas de temporisation; pas de compromis intramondain légitimant deux catégories de chrétiens (ceux qui pratiquent les « conseils », ceux qui s'en tiennent aux « commandements »). La secte représente ainsi « une protestation laïque, véhiculant un christianisme non sacramentaire, anti-sacerdotal,

(5) L'Eglise des Frères moraves est le paradigme de cette incertitude théorique, secte tirant vers l'Eglise. A l'inverse existe la secte happée par la Révolution (la Réforme radicale et l'anabaptisme violent: Münzer et Zizka): selon Troeltsch, la plus éloignée du type pur de la secte. A la même époque, une troisième polarité s'affirme: l'humanisme.

égalitaire, visant la perfection individuelle de ses membres. [...] Pas de tentative pour s'imposer aux sociétés ou aux cultures; pas d'accommodement sur l'idéal religieux et ascétique... » (6). Il ne s'agit pour elle ni de réformer ni de transformer la société:

> La démarche même de la conversion suppose une rupture avec la culture globale et sa sacralisation relative. La secte condamne le monde comme lieu de l'activité de Satan... En fait, tout l'effort de la secte tend à couper le chrétien de la vie sociale globale. Groupe d'élus, aux conceptions élitistes affirmées, méfiantes des grands nombres, la secte s'oppose à tout ce qui ne répond pas directement aux finalités religieuses telles qu'elle les conçoit. Elle réduit donc, selon la mesure du possible, les contacts avec la société profane (7).

On l'a noté: il s'agit d'une typologie, non d'une taxinomie où chaque groupe inventorié trouverait la place qui lui revient. Troeltsch n'est pas Linné, et lui-même se demandait quelle valeur opératoire pouvait garder ce couple (ou cette triade, si on lui ajoute les réseaux mystiques) avec l'avènement de la société moderne au XIXe siècle. Encore vivait-il dans une Europe massivement chrétienne. C'est cette situation religieuse qui s'est considérablement modifiée sous nos yeux depuis une trentaine d'années.

Dès lors, le cadre académique et confessionnel de la problématique wébéro-troeltschienne vole en éclats. Le décor change. La suite se joue désormais sur la place publique. Le droit l'intéresse plus que la sociologie: un droit national perméable aux influences européennes et soumis à la pression nord-américaine. On entre dans une logique d'accusation-dénonciation. Au siècle dernier, le *Kulturkampf* européen opposait les Etats et l'Eglise catholique; à la fin du nôtre, le danger ne vient plus des Eglises qui semblent sur leur déclin, mais de mouvements émergents à l'identité incertaine dont frappe l'émiettement. Le mot « secte », repris au langage commun apparaît commode pour lier la gerbe.

Les raisons d'intervenir l'emportent donc sur le désir de comprendre. Deux notions passent au premier plan: « manipulation

(6) J. Séguy, *Op. cit.*, pp. 113-114.
(7) *Ibid.*, p. 115.

mentale » et « liberté religieuse ». L'opinion publique, alertée par les médias, s'émeut. Tout le monde en vient à se sentir plus ou moins concerné et même menacé.

A ce moment, tout bascule pour le sociologue. Il avait charge d'enseigner ce qu'il était seul à étudier avec quelques historiens et de très rares médecins. Ce monopole bénéficiait en outre de l'autorité reconnue à l'institution universitaire. Et voilà qu'il est pris à partie, sommé de descendre de sa chaire, non pas pour aller voir ce qui se passe dans la société — il le faisait —, mais pour choisir son camp, pour ou contre les « sectes » proclamées danger public. Comme dans une guerre civile où il serait pris entre les factions.

Bien sûr, il doit apprendre à marcher sans se faire tuer sur ce terrain miné. Cela s'appelle l'expérience, qui lui était déjà nécessaire en temps de paix, si l'on peut dire. Il est toujours délicat de travailler sur du vivant: plus encore quand les passions s'échauffent. Et, de fait, on constate que les sociologues sont inégalement préparés à affronter cette situation: comment ne pas reconnaître d'indéniables maladresses? Le savoir ne suffit pas, s'il a jamais suffi.

Mais le véritable problème est ailleurs. Les « sectes » apparaissent comme autant d'objets en soi, qui pouvaient être étudiés isolément dans leur différence théorique avec les Eglises considérées dans cette même perspective. Désormais, ce qui passe au premier plan, c'est un phénomène global de société. Celle-ci avait cru en finir avec l'emprise des Eglises sur la vie civile, grâce à un régime juridique de « séparation » et en raison d'un processus culturel de « sécularisation ». La religion n'était plus qu'une affaire de conscience, renvoyée à la sphère privée. Et voilà que le religieux privatisé explose au cœur même de la société: il menace l'individu, frappe la famille, inquiète l'opinion, mobilise les parlementaires, alimente les médias.

Dès lors, ce qui requiert le sociologue, ce n'est plus simplement ni l'étude empirique des « sectes », ni la théorisation du phénomène au sein d'une typologie, ni même la nouveauté de ses formes récentes, mais le complexe social où il se produit dans une série de réactions en chaîne. Force est de convenir que nous sommes loin du compte: tantôt on se complaît dans la monographie, tantôt on se

jette dans la polémique, tantôt on invoque le « retour du religieux ».

Sécularisation, le mot ne recouvre guère qu' un pseudo-concept sociologique, flottant sur le corps social qu'il voudrait habiller. Si l'un veut sortir de la confusion, il importe de soigneusement distinguer l'état de l'opinion et le régime des institutions, chacun suivant son rythme propre. Une société peut rester très traditionnelle tout en se trouvant dotée d'institutions nouvelles ou, inversement, accélérer son évolution sans toucher à ses principes et à ses institutions. Le rapport — harmonieux ou dissonant entre ces deux niveaux — est une donnée essentielle de la situation.

La religion était au fondement de l'ordre public dans les sociétés européennes d'Ancien Régime: elle n'a pas empêché l'avènement et le développement des Lumières, ni la grande Révolution. Celle-ci passée, elle l'est redevenue ou restée, avec des tempéraments, tout au long du XIXe siècle. Ce qui n'a jamais été réellement appréhendé, c'est la situation créée par la fin progressive de ce régime: le nouveau droit signait moins la relégation de la religion dans la vie privée que — expérience inédite — l'épanchement de la *liberté* de religion dans la vie publique.

Le discrédit public jeté sur les Eglises historiques était ambigu et ambivalent: il favorisait désaffection et détachement, mais sans être assuré du succès de la construction alternative qu'il proposait. Cette alternative se réclamait de la raison, de la liberté, de la science et du progrès: de la première guerre mondiale à l'effondrement du communisme soviétique et à la crise présente de l'économie libérale, combien se sont souciés des incidences *religieuses* du tour imprévu pris par cette aventure? Les théories de la sécularisation n'ont jamais pris en compte les énergies et les disponibilités de cette liberté qui peut aller dans bien des sens et pas nécessairement là où on l'attend, devant un avenir que personne ne maîtrise. De la même manière, elles ont méconnu les capacités de réaction et d'adaptation des Eglises, le *changement religieux* qui, en leur sein, accompagne le changement social qui entraîne tout.

Nous vivons dans un univers économique et scientifique qui a l'œil fixé sur ses avancées, mais indifférent à sa contrepartie, tout ce qu'il détruit pour avancer et en avançant, tous les désordres qui se

développent sur ce terrain dévasté. C'est ce que Peter Berger a appelé « les Pyramides du sacrifice » (8). Labourage et pâturage, ces deux mamelles nourricières de la vieille France, sont détrônées par clonage et chômage, l'un avec ses espoirs fous, l'autre avec sa désespérance ravageuse.

La protestation écologique et la protestation familiale sont des manifestations de cette conscience qui s'éveille devant cette rançon du progrès, cette face cachée qui suggéra à Balzac son récit, *L'envers de l'histoire contemporaine* (1847). Voilà bien le puissant courant dans lequel se trouve jeté le sociologue intéressé par le phénomène sectaire dans un monde convulsionnaire « en quête de sens » sans savoir même si cette quête a un sens.

2. Les sociologues examen

Cette situation est-elle inédite pour le sociologue et la sociologie? Peut-être moins qu'on ne le pense. Individu ou société, ce n'est jamais sans risque qu'on touche au *vivant* dont un biologiste du début de notre siècle disait que sa première caractéristique était l'*irritabilité*. Et, à la différence du chirurgien, le sociologue ne dispose pas des moyens de l'anesthésie: il travaille à chaud et à cru, comme les journalistes et photographes de guerre. Devant ce constat — ou ce rappel —, plutôt que de poursuivre l'enquête en extension, mieux vaut se concentrer sur quelques questions dans une visée programmatique.

1. Problème préalable, mais général: le rapport du sociologue (ou, si l'on préfère, du *social scientist*) à son objet.

A l'instar des sciences de la nature, les sciences de l'homme et de la société sont mues par un idéal d'*objectivité*, qui a déjà fait

(8) Peter L. Berger, *Pyramids of Sacrifice. Ethics and Social Change* (1974), — trad. fr.: *Les Mystificateurs du progrès. Vers de nouvelles pyramides du sacrifice, du Brésil à la Chine*, Paris, PUF, 1978.

On lira aussi l'étonnant Epilogue donné par Jacques Blamont à son « histoire politique de la découverte », *Le Chiffre et le Songe* (Paris, Odile Jacob, 1993, 1000 p.): « Pleine mer, plein ciel. Pleine nuit; plein brouillard », inséparable de « la volonté des puissants », explique cet astrophysicien.

couler beaucoup d'encre, et soumises à une critique parfois sarcastique des limites de cette objectivité. Ce fut, pour l'histoire, le sujet de thèse de Raymond Aron (1938), demeuré célèbre. On apprend les règles de la méthode, mais celles-ci ne confèrent pas la maîtrise de leur usage et la garantie du résultat. L'objectivité se conquiert, lentement et difficilement, à mesure que s'étend le champ de l'enquête: elle n'est jamais donnée au départ.

Mais l'objectivité ne peut être réduite au travail du savant dans son laboratoire. Elle se construit et se gagne sur le terrain, au milieu des acteurs en lutte pour qui le sociologue n'est qu' un intervenant de plus, sans privilège reconnu, surtout s'il trouble le jeu. Il ne suffit pas de s'avancer dans un champ de mines « vêtu de probité candide et de lin blanc » (Victor Hugo) pour s'en sortir sain et sauf. J'ai vu certains de nos collègues s'engager naïvement aux côtés de « mouvements religieux » qui n'étaient pas au-dessus de tout soupçon, s'étonner d'être publiquement pris à partie et pourchassés par des journalistes spécialisés, se retrouver devant la justice pour n'avoir pas su éviter les traquenards médiatiques, ou accepter de donner des consultations écrites (rémunérées) dont l'usage leur échappe...

2. Quoi qu'il en soit, sociologue ou non, croyant ou non, sectaire ou non, il est un principe qui ne résout pas tout et qui peut prêter à casuistique, mais qui s'impose à chacun: tout crime, tout délit est punissable. Le jugement prononcé définitivement, il faudra sans doute une volonté politique pour le faire exécuter, et les exemples de défaillance ne manquent pas. Il est vrai que l'Administration peut se trouver dans des situations embarrassantes et préférer un profil bas à un trouble accru, soit devant une opinion publique choquée ou peu intéressée par ces « querelles de lutrin », soit devant des pressions conjuguées — élus, médias, associations — qu'elle juge inutilement excessives.

Mais il y a une contrepartie: tout droit, toute liberté est respectable. Max Weber était juriste, mais sa problématique « Eglise-secte » ignorait délibérément le juridique: elle n'en avait, dans ses limites, aucun besoin. Aujourd'hui, la situation s'est inversée: les sociologues, sauf exception, ne s'intéressent guère au droit, et pourtant ils ne peuvent abstraire les « sectes » du cadre qui, en droit, s'impose à elles: libertés publiques, activités répréhensibles.

Mais il faut aller au nœud gordien de l'affaire. Dans les régimes de cultes reconnus ou autorisés, il y eut bien un délit d'*exercice illégal de la religion*, fondé sur un héritage théologique qui perdure laïcisé à l'encontre des dissidents et novateurs. Ce délit a progressivement disparu dans tous les pays d'Europe (en France, en 1905): va-t-il réapparaître sous des formes nouvelles?

3. Nous retombons ici sur des problèmes de vocabulaire et de définition, si l'on veut éviter confusions et amalgames. A une définition substantielle ou formelle, Max Weber avait préféré une définition structurelle: Eglise et secte se définissent dans leur opposition mutuelle au sein du christianisme. Cette opposition est devenue notre implicite généralisé où s'efface la référence chrétienne: nous mettons d'un côté les grandes religions instituées et traditionnelles, de l'autre tout ce qui perturbe soit leur fonctionnement normal (c'est *l'intégrisme*), soit leur ordonnancement normal (et ce sont *les sectes*). Dès lors, l'intégrisme devient un phénomène transversal, qui affecte toutes les religions, tandis que les sectes, coupées des religions, deviennent un phénomène proliférant et protéiforme qu'il faut typologiser en soi, de l'intérieur.

Les classifications proposées font penser à la taxinomie chinoise dont s'est amusé Michel Foucault dans *Les mots et les choses*. On a ainsi (dans le désordre) la nébuleuse New Age, les alternatifs, les chrétiens évangéliques, les petites Eglises catholiques (ou « pseudo-catholiques »), les apocalyptiques, les néo-païens, les satanistes, les guérisseurs, les orientalistes, les occultistes, les psy en tous genres, les ufologistes (OVNI et ET), les syncrétistes. Et sans doute ceux qui ne rentrent pas ou ne figurent pas dans cette énumération.

Ce qu'ils ont en commun et qui spécifie l'ensemble, c'est un certain nombre de caractères dont la présence ou l'absence détermine le profil propre à chaque secte: déstabilisation mentale, exigences financières exorbitantes, rupture avec l'environnement familial et social d'origine, atteintes à l'intégrité physique, embrigadement des enfants, discours asocial ou antisocial, troubles à l'ordre public, démêlés judiciaires répétés, détournements des circuits économiques ordinaires, tentatives d'infiltration des pouvoirs publics...

Quoi que vale cette double grille, la difficulté tient à son bon usage. Les dix critères proposés ne semblent pas avoir de prétention ou d'ambition théorique: ils ne visent qu'à désigner les groupes qui inquiètent, même s'ils s'appliquent aussi à des groupes non qualifiés de « sectaires ». Quant à la classification esquissée sur une base purement empirique — 173 sectes dans le Rapport parlementaire français de 1995, dont la moitié des effectifs revient aux seuls Témoins de Jéhovah, un mouvement chrétien qu' on ne peut dire nouveau —, le problème n'est pas ce qu'elle embrasse, mais tout ce qu'elle a délaissé. On ne s'en étonnera pas: ce repérage marche à l'*émotionalité* et à la *dangerosité:* pour la famille et les individus, pour la société, pour les Eglises, etc. C'est une préoccupation sociale, qui a sa légitimité et justifie des mesures appropriées; ce n'est pas une démarche sociologique.

Si l'on veut sortir de la confusion et de l'amalgame, il faut d'abord trancher entre une conception attrape-tout de la notion de « secte » et la conception longtemps traditionnelle qui s'accorde à la positionner dans le champ religieux. Dans cette seconde hypothèse, les critères internes à ce champ priment les caractères externes qui transforment une forme de religiosité en dépôt de police. Raymond Aron avait parlé de « religions séculières » pour rendre sensible la dimension religieuse que pouvaient prendre pour les foules des mouvements politiques totalitaires avec leurs grandes liturgies et leur exaltation sacrificielle: c'était une extension par analogie. En France, l'*Union des athées* a revendiqué (en vain jusqu'ici) les avantages légaux reconnus aux cultes: sans cacher son hostilité à toute forme de religion. On peut rester perplexe devant les raëliens qui se présentent comme une « religion athée ». Mais peut-on encore qualifier de secte des groupes qui s'affirment étrangers à toute organisation religieuse comme à toute préoccupation religieuse?

Les Renseignements généraux remplissent leur mission: observer et signaler tout ce qui bouge, susceptible de troubler l'ordre public. Il ne leur est demandé ni discernement ni la nature religieuse ou non de ce qui bouge, ni débordement au-delà de cette inquiétude. On en parle, et il n'en faut pas plus. Encore faut-il ouvrir le dossier pour voir comment on en parle: en bien parfois,

comme il est arrivé à de très respectables groupes religieux mentionnés comme « sectes » par le Rapport belge. Un incident local a suffi au Rapport français pour dénoncer une Eglise évangélique locale, tout en ignorant qu'elle était la mère d'une fédération d'une quinzaine d'Eglises ou missions qui ne suscitaient ni bruit ni rumeur.

Dès lors, une enquête préalable s'impose: quels sont les enjeux particuliers qui incitent tant de gens à recourir au mot « secte » sans qu'apparaisse nulle part le souci d'une définition commune? Gérard Dagon, pionnier en ce domaine depuis plus de trente ans et président de la Fédération évangélique de France, considère que la Bible doit être la seule référence et voit une secte à combattre dans toute Eglise ou groupe qui ajoute quelque chose à la Bible. Bernard Blandre, fondateur en 1979 d'une Association d'étude et d'information sur les mouvements religieux, caractérisée par son sérieux, observe que « la secte qui a probablement le plus perturbé la vie des Français » est le groupe islamique armé (G.I.A.), ignoré de tous les répertoires. Jean-Pierre Van Geirt, auteur de *La France aux cent sectes* (1997), considère que durer depuis quatre siècles comme les Mennonites, « ce n'est plus du sectarisme, c'est du fanatisme », tandis que l'hebdomadaire *Marianne* (18 août 1997) dénonce en couverture « la secte néo-libérale » et que *L'Evénement du jeudi* « enquête sur la secte sacrée qui nous gouverne, les inspecteurs des finances » (12 mars 1998). Et déjà, Philippe Robrieux, *La Secte* (Stock, 1985) ou le Parti communiste.

4. Le folklore s'est longtemps identifié aux sociétés rurales et traditionnelles. Depuis quelques années, les ethnologues ont découvert un folklore urbain. De toute évidence, il n'existe aucune continuité historique entre ces deux grandes formes: le second n'est pas un héritage du premier. En revanche, on peut penser qu'ils satisfont des besoins identiques ou analogues ici et là.

Dès lors, on est conduit à s'interroger sur la « nouveauté » — indéniable, mais en quoi et dans quelle mesure? — de ces nouveaux mouvements religieux. On est obligé de penser au différend séculaire qui a opposé dans nos pays l'Eglise catholique aux « croyances populaires » (dites « superstitions ») qui se sont urbanisées et acculturées. Mais la ville, c'est aussi la différenciation sociale: s'il y

a des croyances du peuple, on ne peut négliger celles des élites ou des classes moyennes. De ce point de vue, on trouvera les listes parlementaires étonnamment courtes, voire banales. Le folklore sectaire est infiniment plus riche, et ce n'est pas d'aujourd'hui qu'il attire la curiosité: depuis *La France mystique* d'Alexandre Erdan (1858, 2e éd., 2 volumes) ou « tableau des excentricités religieuses de ce temps », jusqu' à Pierre Geyraud (fonctionnaire à la Ville de Paris), *Sectes et rites* (1954) ou « Petites Eglises, religions nouvelles, sociétés secrètes de Paris ».

De tableaux de mœurs en dictionnaires ou encyclopédies, la bibliographie serait longue. Mais surtout on s'aperçoit que les frontières sont mouvantes et glissantes, comme on le voit au sous-titre de P. Geyraud. Au nom de quoi inclure ou exclure telle association, telle organisation d'une liste officielle des « sectes »? Des rationalistes demandent qu'y figure l'Eglise catholique, la plus importante. Des catholiques demandent qu'on n'oublie pas la maçonnerie. Mais, si l'Eglise catholique s'inquiète de la progression des sectes contemporaines et s'emploie à lutter contre elles, la maçonnerie se montre divisée: le Grand Orient de France hostile, la Grande Loge nationale française inquiétée par les dérives possibles ou réelles de cette hostilité.

Reste une question qui excède le phénomène urbain: la différence culturelle entre l'Europe et l'Amérique, « paradis des sectes », en particulier sur le rapport à l'argent et à la politique. Moon et la Scientologie prospèrent aux Etats-Unis et y bénéficient de hautes relations. Ils sont en France les grands suspects et, en Allemagne, la Scientologie est sévèrement contrecarrée. Vérité au-delà de l'Atlantique, erreur en-deçà. Et, en Grande-Bretagne, c'est la maçonnerie qui est visée.

Le phénomène sectaire n'échappe pas à la mondialisation. Mais, à l'heure de la mondialisation, il cache sous cette expression des réalités très disparates — taille ou nature — et les cultures restent très étroitement nationales ou régionales: chacune réagit à sa manière, difficile à comprendre quand on ne la partage pas. Ainsi s'offre une voie largement inexplorée: si le mot « secte » désigne une forme de religiosité, parfois déconcertante, il recouvre d'abord une *forme de sociabilité*, communauté de vie ou/et réseau de

relations. En quoi celle-ci diffère-t-elle ou se rapproche-t-elle d'autres formes de sociabilité? La réponse passe par l'exploration comparée d'innombrables associations volontaires que l'on évite soigneusement jusqu'ici de considérer sous cet aspect devenu compromettant.

5. « Dangerosité »? Sans doute, ou même certainement, mais il ne peut suffire de l'affirmer, indistinctement, en généralisant. Il convient que, chaque année, soit publié un bilan chiffré: plaintes reçues par les organisations de défense, déposées devant les tribunaux, jugées en première instance ou en appel; nombre de victimes et d'infractions par catégories. L'aide aux familles et aux individus a sa nécessité et ses impératifs, d'un autre ordre que la logique judiciaire. Toutes les « sectes » ne sont pas également « dangereuses »: certaines sont au-dessus de tout soupçon, hors ce qui peut arriver partout; d'autres n'en ont pas les moyens.

En ce domaine, il faut savoir garder raison plutôt que jouer sur les passions. Il faut éviter de s'affoler et d'affoler (9). La lecture de la presse française est édifiante: « Attention! sectes: elles s'avancent masquées » (*Famille chrétienne*, 28 nov. 1991). « Les sectes sont parmi nous. En France, depuis le déclin des idéologies, elles prolifèrent et se banalisent » (*L'événement du jeudi*, 2 janvier 1992). « Scientologie: les pouvoirs occultes d'une secte » (*La Vie*, hebdomadaire chrétien d'actualité, 10 juin 1993, avec une couverture époque Léo Taxil et Diana Vaughan). « Satanisme et magie noire à l'assaut de l'orthodoxie grecque » (*Libération*, 19 janvier 1994). « Le scandale des sectes sur ordonnance: 3 000 médecins envoient leurs patients se faire soigner dans de bien étranges établissements » (*VSD*, 16 juin 1994). « La perverse logique des sectes » (*La Croix*, 7 oct. 1994). « Menacés par la justice, les sectes contre-attaquent. Plongée dans le monde fou des commerçants de l'irrationnel » (*L'Evénement du jeudi*, 12 janvier 1995). « Sectes: comment en sortir?... Nous sommes tous manipulés » (*L'Actualité religieuse*, 15 juin 1995, « en lien avec France-Inter et Arte »). « Sectes: mais comment en finir? » (*La Vie*, 4 janvier 1996). « Ces

(9) Roland CAMPICHE (sociologue suisse), *Quand les sectes affolent*, Genève, Labor et Fides, 1995, 134 p.

sectes qui infiltrent la France » (*L'Evénement du jeudi*, 4 janvier 1996). « Sectes: la chasse est ouverte » (*Le Point*, 13 janvier 1996). « Sectes, mensonges et idéaux » (*Panorama chrétien*, 3 février 1996). « Manipulations mentales. Enquête sur les techniques cachées des sectes » (*Eurêka*, juin 1996). Atlanta, l'attentat: « Des extrémistes blancs manipulés par des sectes inconnues » (France Inter, 29 juillet 1996). « Sectes, attention, danger. Comment lutter contre les sectes » (*L'Express*, 28 nov. 1996). « La République dans l'enfer des sectes » (*Sous la Bannière*, mars 1997). « Les ayatollahs vont-ils débarquer sur les stades de France? » (*Marianne*, 8 décembre 1997)...

Maccarthysme à la française? Métamorphose de l'anticléricalisme — « les hommes noirs » — du siècle dernier? Lynchages et progroms n'ont pas eu d'autre origine. Il nous faut apprendre à évaluer objectivement ce que, de façon très légitime, on peut appeler *le risque sectaire* dans un monde que le risque fascine jusqu'à la démesure et sans assurance possible. Dès lors, ce risque sectaire demande à être situé sur l'échelle de ceux que nous mesurons le mieux, où il occupe une place encore modeste relativement aux grands fléaux sociaux en France: la drogue (500 morts par surdose en 1995), le tabac (160 000 morts par an, *Le Figaro*, 5 février 1998), les handicapés moteurs (un million et demi dont le tiers en fauteuil roulant), 74 000 enfants en danger de maltraitance (*France-Soir*, 13 novembre 1997, et *La Croix* le lendemain, contre 54 000 en avril 1995 et 65 000 un peu plus tard), 80 000 naissances sans père légal, le sida (mortalité en augmentation, même si l'on escompte une décrue), le suicide (12 000 en 1995, un millier chez les adolescents), accidents de la route (8 à 10 000 tués chaque année) ou de montagne (44 tués entre le 15 juin et le 5 août 1996), le hooliganisme (qui est « loin d'être mort ») et la violence dans les quartiers déshérités, le département de la Seine Saint-Denis « scolairement sinistré »...

Deux formes de risques ont été nettement surévaluées par les médias. En premier lieu, « l'argent caché des sectes » (*Challenges*, janvier 1993, ou *L'Express*, 19 septembre 1996): ces « révélations » se situent dans la fourchette des millions, ce qui est maigre comparé

aux 160 milliards engloutis dans la faillite du Crédit Lyonnais ou aux sommes en jeu dans certaines affaires de corruption. En second lieu, « les sectes, nouvelles forces électorales » (*Libération*, 12 février 1990), dont les candidats « bénéficient d'une tribune à la radio et à la télévision » (*Le Monde*, 17 mai 1997). Il s'agit du Parti de la loi naturelle (représentant la Méditation transcendantale) et du Parti humaniste, qui ont obtenu aux élections législatives de 1997 respectivement 12 000 et 3 000 voix, avec, pour frais de campagne, une dotation de 100 000 F et de 30 000 F. Faut-il rappeler qu'en 1946, le M.R.P. (démocrate chrétien) avait connu la même objection, mais un tout autre succès?

Il est vrai que, quand il frappe, le malheur perd tout caractère statistique. Il est vrai, en outre, ici, que le *risque* ne se mesure pas seulement au nombre des adeptes ou des électeurs, mais à quelque chose de beaucoup plus diffus et insaisissable: la capacité de pénétration et le degré d'infiltration dans la société civile, qu'il s'agisse des administrations publiques, des entreprises privées (10), du corps médical (11), des classes moyennes (12), du milieu scolaire (13), de la formation permanente, etc. Mais alors le problème change de nature: il ne s'agit plus seulement de défendre des individus vulnérables contre eux-mêmes et contre des influences jugées néfastes ou même perverses. Il faut comprendre comment toute une société peut offrir complaisamment — sous couvert de culture, de formation ou de thérapie — de tels espaces d'activité à ce que par ailleurs on condamne impitoyablement. N'y a-t-il pas là un symptôme de schizophrénie sociale? La « lutte contre les sectes » ne relève-t-elle pas du cachet d'aspirine ou du tranquillisant qui dispense d'examens plus poussés dont on craint le diagnostic? Nous sommes écartelés entre le désir de savoir et la peur de découvrir.

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(10) « L'entreprise face aux sectes » (*Le Monde*, 18 septembre 1996). L'Institut des Cadres dirigeants (Paris) a organisé une session de formation les 18 et 19 décembre 1997: « Les entreprises face aux sectes. Evoluer et gérer les risques ».

(11) Rapport du Conseil National de l'Ordre des Médecins (27 sept. 1996), qui confirme le chiffre de 3 000 médecins donné par *VSD* en juin 1994.

(12) On a parlé de « l'analphabétisme spirituel et religieux » des techniciens et ingénieurs si pointus dans leur domaine.

(13) « L'école lance le plan *Vigisectes* » (*La Croix*, 25 janvier 1997).

6. Devant cette situation, on peut s'interroger longuement sur ses causes, sa gravité, les responsabilités. Allons brièvement à l'essentiel.

Les Lumières ont annoncé le règne de la raison par le progrès de la conscience et l'essor de la science, et ce sont les vents de l'irrationnel qui se sont levés. Les habiles ont même su y voir une source d'énergie renouvelable pour un marché profitable. Il y a aujourd'hui en France 40 000 voyants et 30 000 guérisseurs payant patente. *L'Annuaire du paranormal*, 1ère édition en 1989, propose « le classement rationnel de l'irrationnel » en 5 000 adresses: astrologie, voyance, radiesthésie, magnétisme, chirologie, cartomancie, tarots, hypnose, sophrologie, spiritisme. La liste aurait pu être allongée sur cette lancée, puis se prolonger vers les « parasciences », les thérapies non médicales et la nébuleuse « psy ». On ne prendra pas pour un « retour du spirituel » ce déferlement d'irrationnel.

Nous vivons dans une société qui, certes, se rationalise dans toutes les procédures de la vie publique et professionnelle, mais en même temps, elle se médicalise, se médicamentalise, se psychologise, se subjectivise. Un monde dur, soucieux d'efficacité et de rentabilité, qui nourrit en contrepartie le souci de soi, de son développement et de sa sécurité, où l'angoisse et la souffrance intime accroissent leur territoire. Nous avons connu le conflit de la science et de la religion: aujourd'hui, entre eux, s'étend l'immense espace à explorer qu'elles ont toutes deux négligé. On parle aussi bien de « parascientifique » que de « parareligieux ».

Une société anxiogène, stressée et intoxiquée (14), pour des raisons trop réelles, ou irréelles, mais aussi fantasmées: « Internet, l'utopie et l'enfer: la naissance d'une ville virtuelle de cinquante millions d'habitants » (*Valeurs actuelles*, 3 février 1996). « Plus de 100 000 personnes pratiquent régulièrement des jeux de rôle » (*Le Monde*, 6 juin 1995). « Pour saluer 95, un numéro magique. Apprenez à lire l'avenir avec les stars de la voyance... » (*Madame Figaro*, 31 décembre 1994). « Quand le paranormal séduit les jeunes » (*La Croix*, 27 septembre 1996). Les adultes aussi: « La fièvre du paranormal » (*Quo*, janvier 1997). « L'An 2000 augmente l'angoisse de la fin du monde » (*La Croix*, 4 mars 1998). Et puis les commerçants: « Les arcanes secrètes de la vente » (*Action commerciale*, juillet-août 1993)...

(14) Martine XIBERRAS, *La société intoxiquée*, Paris, Méridiens-Klincksieck, 1989.

Dans cet intervalle, il arrive que science et religion se mélangent. « Les suicides collectifs sectaires: entre religion et science-fiction » (*Réforme*, 3 avril 1997). « La secte de San Diego croyait aux ovnis et à Internet » (*La Croix*, 29 mars 1997). Ou la science et l'irréel: « Antimatière, vitesse de la lumière. Voyages dans le temps enfin possible » (*Sciences et avenir*, février 1996). « La génétique a créé un champignon immortel. A quand l'homme? Un pas vers l'immortalité » (*Eurêka*, février 1997). Le satanisme veille: *Les O.V.N.I. identifiés: les Extraterrestres dans le mystère d'iniquité* (Alain Kérizo, 1997), ou « Le Diable, le rock et les images » (*Le Monde*, 24 juin 1993)...

Il est facile et profitable, pour la presse, de dénoncer « marchands d'illusion » et « profits de la crédulité », plus encore d'exploiter cette mine qui flatte le goût du public. Mais journalistes, mages et gourous sont loin d'occuper à eux seuls tout le terrain: « La Française des jeux mise sur le goût des Français pour l'astrologie » (*Le Monde*, 10 mai 1997). Là coulent le lait et le miel, et on y retrouve aussi bien les affaires, la finance et la politique. Obstacle: dans une société qui invoque la science, la raison et le désenchantement du monde, comment pousser une grande enquête sur les formes de croyance et de crédulité qui la mènent et qui ne doivent rien aux orthodoxies religieuses, moins encore à la tradition chrétienne? Combien de clubs, de cercles, de réseaux, de sociétés ou d'associations poursuivent discrètement des buts forts étrangers aux critères idéaux et aux grands principes enseignés dans les écoles publiques?

Suspicion et désaffection ne frappent pas seulement la religion, mais également la science, touchée à son tour et à sa manière par « la fin des certitudes » (Il y a Prigogine). En revanche, tandis que la religion a beaucoup perdu de son emprise sur nos sociétés avancées — sauf à se réfugier dans les violences du fanatisme —, la science inquiète par sa puissance démesurée — les secrets de la vie après les secrets de la matière — et l'usage qu'elle en peut faire.

Georges Suffert n'est pas le seul à dénoncer le *risque* scientifique de « transformer cette jolie planète en une espèce de zoo surveillé par des Big Brothers gâteux » (éditorial du *Figaro*, 12 mars 1998). *Le Monde diplomatique* en partenariat avec la Mutuelle générale de l'Education nationale publie un cahier, « Ravages de la technoscience » (15).

Mais déjà, pour lui, « ce n'est plus une planète, c'est un souk ». Nous vivons dans une société qui sait faire commerce de tout et particulièrement de l'irrationnel. Peut-elle s'étonner de voir des sectes naître sur ce terreau et leur reprocher de prendre leur part de marché? Elle doit choisir ce qu'elle veut pour elle. Elle a joué, dans un vaste *Kulturkampf*, la critique de la religion au nom de la raison, la permissivité généralisée contre la vieille morale publique, l'absolue liberté individuelle contre les normes et repères traditionnels. Sans doute avait-elle quelques bonnes raisons, mais pouvait-elle s'en tenir à celles-ci sans se préoccuper des fruits qu'elles porteraient? Il ne suffit pas de faire table rase du passé pour reconstruire un monde, ni même de laisser libre cours à de zélés constructeurs pour en faire un monde harmonieux, la « cité radieuse » que chacun porte en soi.

Une sociologie des « sectes » doit aller jusque-là: elle ne peut s'en tenir à des études de cas et de mécanismes, ni même à un observatoire chargé d'élaborer une politique. Un sociologue préoccupé par ces phénomènes doit, lui aussi, aller jusque-là: il ne peut en rester ni à ses classiques, ni à ses méthodes. Ni elle, ni lui ne peuvent tout à eux seuls. Ils ne peuvent surtout pas persuader de leur utilité ceux qui jugent suffisante une action défensive sans plus de réflexion.

(15) *Manières de voir*, 38 (mars-avril 1998).

GRACE DAVIE
Department of Sociology, University of Exeter

THE PATTERNS OF EUROPEAN RELIGION: AN OVERVIEW (*)

The following paragraphs introduce, albeit briefly, the broad patterns of European religion as they relate to both religious belief and religious practice; in so doing they provide a context within which the socio-legal work on new religious movements can be better understood. They do not, in contrast, introduce the sociological literature on new religious movements as such. The latter is extremely extensive (1) and includes the work of some of the most distinguished sociologists in the field, for example Eileen Barker, James Beckford, Danièle Hervieu-Léger, Massimo Introvigne, Jean Séguy, Roy Wallis and Bryan Wilson. Any comprehensive study of new religious movements in modern Europe should make direct reference to the numerous publications of these internationally-known scholars (2).

Two points stand out in the following summary. The first concerns the mismatch in the statistics between those that relate to belief and those that reflect practice, more especially regular practice (see below for a fuller explanation of these terms). In a

(*) A fuller version of the material in this paper can be found in Grace DAVIE, *European religion: a memory mutates*, (Oxford, Oxford University Press, forthcoming).

(1) See, for example, Elizabeth ARWECK and Peter CLARKE, *New religious movements in Western Europe: an annotated bibliography*, (Westport Connecticut: Greenwood Press, 1997), a volume with well over 300 pages.

(2) For a recent collection of papers that covers Western Europe as a whole, see Helle MELDGAARD and Johannes AAGAARD (eds.), *New religious movements in Europe*, (Aarhus, Aarhus University Press 1997).

situation where the former persists but the latter declines, it is likely that significant numbers of individuals will look for spiritual satisfaction outside the mainline churches. Some, though by no means all of these people, will be attracted by the alternatives offered by new religious movements. The second point concerns the perplexing — and largely unresolved — questions posed by the new religious movements themselves: what is regarded as normal or abnormal, as acceptable or unacceptable, as tolerable or intolerable in the name of religion in European societies and how does this vary for place to place or time to time? The papers that follow pursue this point in terms of the legal debates that have taken place in the different countries of the European Union. This overview introduces the religious context within which such debates take place.

What, then, do the countries of Western Europe have in common from a religious point of view? There are several ways of looking at this question. There is, first, an historical perspective. O'Connell (3) (amongst others) identifies three formative factors or themes that come together in the creation and re-creation of the unity that we call Europe: these are Judaeo-Christian monotheism, Greek rationalism and Roman organisation. These factors shift and evolve over time, but their combinations can be seen forming and re-forming a way of life that we have come to recognise as European. The religious strand within such combinations is self-evident.

It is, however, equally important to grasp from the outset the historical complexity of European identity. O'Connell approaches this question by introducing a series of interlocking and overlapping blocs which exist within the European whole. There are seven of these: the Western islands, Western (Atlantic) Europe, the Rhinelands, the Nordic/Baltic countries, the Mediterranean group, the former Ottoman territories and the Slav peoples. Not all of these will concern us in this paper, but the 'building

(3) James O'Connell, *The making of modern Europe: strengths, constraints and resolutions,* (University of Bradford, Peace Research Report, no 26, September 1991).

bloc' approach underlies a crucial aspect of modern as well as historical Europe:

> If I have taken this building bloc approach, it is to make clear, on the one hand, how closely knit Europe comes out of its history and how important it may be to make a future unity, and to suggest on the other hand, how complex Europe is and, in consequence, how varied might future unity mosaics prove to be (4).

There is nothing deterministic about the future shape of Europe: several approaches are possible; so, too, are several outcomes.

For the time being, however, we need to stress one point in particular: the shared religious heritage of Western Europe as one of the crucial factors in the continent's development — and, possibly, in its future — and the influence of this heritage on a whole range of cultural values. Other very different sources reinforce this conclusion. One of these, the European Values System Study Group (EVSSG) (5), provides a principal source of data for this article. In contrast with O'Connell's primarily historical approach, the European Values Study exemplifies — for better or worse — sophisticated social science methodology (6). Using

(4) Ibid., 9.

(5) The European Values Study is a major cross-national survey of human values, first carried out in Europe in 1981 and then extended to other countries worldwide. It was designed by the European Values Systems Study Group (EVSSG). Analyses of the 1981 material can be found in Stephen Harding and David Phillips, with Michael Fogarty, *Contrasting Values in Western Europe,* (London, MacMillan 1986) and in Jean Stoetzel, *Les valeurs du temps présent,* (Paris, Presses Universitaires de France, 1983). A restudy took place in 1990. Published material from this can be found in Noel Timms, *Family and Citizenship: values in contemporary Britain,* (Aldershot, Dartmouth, 1992), Sheila Ashford and Noel Timms, *What Europe thinks: a study of West European Values,* (Aldershot, Dartmouth, 1992), David Barker, Loek Halman and Astrid Vloet, *The European Values Study 1981-1990: summary report,* (published by the Gordon Cook Foundation on behalf of the European Values Group 1993) and Peter Ester, Loek Halman and Ruud de Moor, *The Individualising Society: value change in Europe and North America,* (Tilburg, Tilburg University Press, 1994). Barker *et al.* includes a useful bibliography of the whole enterprise. A further restudy is planned for the turn of the century. The longitudinal aspects of the study enhance the data considerably.

(6) The European Values Study reveals both the advantages and limitations of survey

carefulsampling techniques, the EVSSG aims at an accurate mapping of social and moral values across Europe. It has generated very considerable data and will continue to do so. It is essential that we pay close — and at the same time critical attention to its findings.

Two underlying themes run through the EVSSG study. The first concerns the substance of contemporary European values and asks, in particular, to what degree they are homogeneous; the second takes a more dynamic approach, asking to what extent such values are changing. Both themes involve, inevitably, a religious element. The first, for example, leads very quickly to questions about the origin of shared value systems: 'If values in Western Europe are to any extent shared, if people from different countries share similar social perceptions on their world, how had any such joint cultural experience been created?' (7) As the European Values Study indicates, the answer lies in deep-rooted cultural experiences which derive from pervasive social influences which have been part of our culture for generations, if not centuries. A shared religious heritage is one such influence.

Both in historical and geographical terms, religions — or more specifically, the Christian religion — provides an example of an agency which through the promulgation of a universal and exclusive faith sought to create a commonality of values and beliefs across Europe, and elsewhere. A shared religious heritage based on Christian values, therefore, may be seen as one formative cultural influence at the heart of and giving substance to 'European' civilisation (8).

So much is unproblematic and confirms O'Connell's historical conclusions. On the other hand, as soon as the idea of value change is introduced, the situation becomes more contentious. A series of unavoidable questions immediately present themselves. How far is the primacy given to the role of religion in the creation of values still appropriate? Has this role not been undermined by the

methodology. These are discussed in the introductory sections of HARDING *et al.*, *Contrasting Values*.

(7) Ibid., 29.

(8) Ibid.

process known as secularisation? Can we really maintain in the 1990s that religion remains a central element of our value system? The influence of religion is becoming, surely, increasingly peripheral within contemporary European society. Or is it?

It is these questions that perplex sociologists. In the meantime it is important to indicate the principal findings of the 1981 and 1990 EVSSG surveys for a variety of religious indicators. (For a fuller picture of these data — essential for any detailed work — see the references cited in note 5, together with the analyses for each European country involved in the survey.) There are, broadly speaking, five religious indicators within the data: denominational allegiance, reported church attendance, attitudes towards the church, indicators of religious belief and some measurement of subjective religious disposition. These variables have considerable potential: they can be correlated with one another and with a wide range of socio-demographic data. In this respect the survey shows commendable awareness of the complexity of religious phenomena and the need to bear in mind more than one dimension within an individual's (or indeed a nation's) religious life.

However, what emerges in practice with respect to these multiple indicators is a clustering of two types of variable: on the one hand, those concerned with feelings, experience and the more numinous religious beliefs; on the other, those which measure religious orthodoxy, ritual participation and institutional attachment. It is, moreover, the latter (the more orthodox indicators of religious attachment) which display, most obviously, an undeniable degree of secularisation throughout Western Europe. In contrast, the former (the less institutional indicators) indicate a considerable persistence in some aspects of religious life.

In particular, some form 'of religious disposition' and acceptance of the moral concepts of Christianity continues to be widespread among large numbers of Europeans, even among a proportion for whom the orthodox institution of the Church has no place (9).

(9) Ibid., 70.

The essentials of this contrasting information are presented in the following tables, reproduced from the EVSSG data. These tables can be used in two ways: either to indicate the overall picture of the continent or to exemplify some of the contrasts between different European nations.

TABLE: *Extent of religious belief 1990 / %* (*)

Belief in:	God	A soul	Life after death	Heaven	The Devil	Hell	Sin	Resurrection of the dead
European average	70	61	43	41	25	23	57	33
Catholic Countries								
Belgium	63	52	37	30	17	15	41	27
France	57	50	38	30	19	16	40	27
Ireland	96	84	77	85	52	50	84	70
Italy	83	67	54	45	35	35	66	44
Portugal	80	58	31	49	24	21	63	31
Spain	81	60	42	50	28	27	57	33
Mixed Countries								
Great Britain	71	64	44	53	30	25	68	32
West Germany	63	62	38	31	15	13	55	31
Netherlands	61	63	39	34	17	14	43	27
Northern Ireland	95	86	70	86	72	68	89	71
Lutheran Countries								
Denmark	64	47	34	10	8	19	24	23
Finland	76	73	60	31	27	55	66	49
Iceland	85	88	81	19	12	57	70	51
Norway	65	54	45	24	19	44	44	32
Sweden	45	58	38	12	8	31	31	21

(*) Table adatpted from ASHFORD and TIMMS (1992: 40); additional figures for the Lutheran contries from EVSSD data.

TABLE: *Frequency of church attendance 1990 / %* (*)

	At least once a week	Once a month	Christmas, Easter, etc.,	Once a year	Never
European average	29	10	8	5	40
Catholic Countries					
Belgium	23	8	13	4	52
France	10	7	17	7	59
Ireland	81	7	6	1	5
Italy	40	13	23	4	19
Portugal	33	8	8	4	47
Spain	33	10	15	4	38
Mixed Countries					
Great Britain	13	10	12	8	56
West Germany	19	15	16	9	41
Netherlands	21	10	16	5	47
Northern Ireland	49	18	6	7	18
Lutheran Countries		Once a month or more			
Denmark		11			
Finland		—			
Iceland		9			
Norway		10			
Sweden		10			

First, though, the trends common to the continent as a whole. We should start, perhaps, by echoing one conclusion of the European Values Study itself: that is to treat with caution statements about the secularisation process — particularly unqualified ones — either within Europe or anywhere else. For the data are complex, contradictory even, and clear-cut conclusions become correspondingly difficult (10). Bearing this in mind — together with the clustering of the

(*) Table adatpted from ASHFORD and TIMMS (1992: 40); additional figures for the Lutheran contries from EVSSD data.

(10) Ibid., 31-4.

variables that we have already mentioned — it seems to me more accurate to suggest that West Europeans remain, by and large, unchurched populations rather than, simply secular. For a marked falling-off in religious attendance (especially in the Protestant north) has not resulted, yet, in a parallel abdication of religious belief. In short, many Europeans have ceased to belong to their religious institutions in any meaningful sense, but they have not abandoned, so far, many of their deep-seated religious motivations (11).

Two short parentheses are important in this connection. The first may seem obvious, but the situation of believing without belonging (if such we may call it) should not be taken for granted. This relatively widespread — though fluctuating — characteristic within European religion in the late twentieth century should not merely be assumed; it must be examined, probed and questioned. The second point illustrates this need for questioning. It introduces two contrasting situations where believing without belonging is not the norm. Indeed, in parts of East and central Europe prior to 1989, the two variables were reversed, for the non-believer quite consciously used Mass attendance as one way of expressing disapproval of an unpopular regime. The second, very different, contrast comes from the United States. Here religious attendance appears to maintain itself at levels far higher than those that prevail in most of Europe; around 50 per cent of the American population report that they both believe and belong. Once again the situation should not be taken for granted; it must be examined, sociologically as well as theologically (12).

If we return now to the West European data and begin to probe

(11) One of the crucial questions raised by the EVSSG material concerns the future of European religion. Are we on the brink of something very different indeed: a markedly more secular twenty-first century? It is, however, very difficult to tell how the relationship between believing and belonging will develop. Nominal belief could well become the norm for the foreseeable future; on the other hand, the two variables may gradually move closer together as nominal belief turns itself into no belief at all. At the moment we can only speculate.

(12) The real extent of religious participation in the United States has been subject to considerable debate. See Kirk C. HADAWAY, Penny MARLER and Mark CHAVES, *What the polls don't show: a closer look at US church attendance*, *American Sociological Review*, 58, 1993. Rates of belief are less disputed and remain astonishingly high — well over 90% — compared with those in Europe.

more deeply, we find further evidence of consistency in the shapes or profiles of religiosity which obtain across a wide variety of European countries. One very clear illustration of such profiling can be found in patterns of religious belief, about which Harding et al. make the following observation:

> Varying levels of belief in each country are similar to those seen on other indicators. Interestingly, irrespective of level of belief, the rank order among items is almost identical across Europe. The one exception to a consistent pattern, paradoxically, is the higher ranking given by English speaking countries to heaven than to life after death (13).

This kind of consistency is persuasive, the more so in that it is not easily predictable.

Correlations between religious indices and socio-economic variables confirm the existence of socio-religious patterning across national boundaries. For throughout West Europe, it is clear that religious factors correlate — to varying degrees — with indices of occupation, gender and age (social class as such is more problematic). The correlation with age is particularly striking, and raises once again the future shape of European religion. Indeed, it prompts the most searching question of the study: are we, in West Europe, experiencing a permanent generational shift with respect to religious behaviour, rather than a manifestation of the normal life-cycle? The EVSSG findings seem to indicate that this might be so:

> The survey data are consistent with the hypothesis that there has been a degree of secularisation in Western Europe. Markedly lower church attendance, institutional attachment, and adherence to traditional beliefs is found in younger compared with older respondents, and data from other sources support the notion that these are not life-cycle differences (14).

If this really is the case, the future shape of European religion may be very different indeed. The data from the 1990 restudy reinforce this point.

(13) HARDING et al., 47.

(14) Ibid. 69-70.

So much for the similarities across West Europe. What about the differences? The first, and most obvious, of these lies between the notably more religious — and Catholic — countries of southern Europe and the less religious countries of the Protestant north. This variation holds across almost every indicator; indeed, they are interrelated. Levels of practice, for example, are markedly higher in Italy, Spain, Belgium and Ireland (closer in its religious life to continental Europe than to Britain) than they are elsewhere. Not surprisingly, one effect of regular Mass attendance is a corresponding strength in the traditional orthodoxies through most of Catholic Europe (15).

There are, however, exceptions to this rule. France, for example, displays a very different profile from the other Catholic countries, a contrast that cannot be explained without reference to the particular history of the country in question. Other exceptions to a European pattern, or patterns, should be looked at in a similar light; notably, the countries which do not conform to the believing without belonging framework. Conspicuous here are the two Irelands. Once again, the particular and problematic nature of Irish history accounts for this; for religion has — regrettably — become entangled with questions of Irish identity on both sides of the border. The high levels of religious practice as well as belief in both the Republic and Northern Ireland are both cause and consequence of this situation. In the Republic especially, the statistics of religious practice remain very high indeed.

One further variation within the overall framework is also important. In France, Belgium, the Netherlands and, possibly, Britain (more especially England) there is a higher than average incidence of no religion, or at least no denominational affiliation. Indeed Stoetzel (16) — in the French version of the 1981 EVSSG analysis — distinguishes four European types in terms of religious

(15) Protestant Europe is undoubtedly more secular. One question posed by the EVSSG data concerns the extent to which Catholic Europe will or will not follow suit a generation or so later. The former seems the more likely outcome.

(16) STOETZEL, *Les valeurs du temps présent*, 89-91.

affiliation rather than three (17): the Catholic countries (Spain, Italy and Eire); the predominantly Protestant countries (Denmark, Great Britain and Northern Ireland); the mixed variety (West Germany); and what he calls a 'région laïque' that is, France, Belgium, the Netherlands and, possibly, England) where those who recognise no religious label form a sizeable section of the population. In many ways this analysis is more satisfying than groupings suggested elsewhere in the European Values material, where countries which have very different religious profiles find themselves grouped together.

The EVSSG data — like all survey data — tells us some things; it fails to tell us others. There is no way of grasping, for example, why a particular country should be similar to or different from its neighbours. Apparently similar statistical profiles can mask profound cultural differences. A second concerns the presence of religious minorities. The EVSSG sample sizes for each country are too small to give any meaningful data about such communities. It would be grossly misleading, however, to present an image of Europe at the end of the twentieth century without any reference to these increasingly important sections of the European population.

The first of these, the Jews, has been present in Europe for centuries; a presence, moreover, that has been inextricably bound up with the tragedies of recent European history. Nor can it be said, regrettably, that anti-Semitism is a thing of the past. It continues to rear an ugly head from time to time right across Europe, itself an accurate indicator of wider insecurities. Estimations of numbers are always difficult, but there are, currently, around 1 million Jews in West Europe, the largest communities being the French (500,000-600,000) and the British (300,000). French Judaism has been trans-

(17) HALSEY, for example, places British attitudes in a European perspective, offering three categories: Scandinavia (Denmark, Sweden, Finland and Norway); northern Europe (Northern Ireland, Eire, West Germany, Holland, Belgium and France); and Latin Europe (Italy and Spain). The northern Europe category includes some very different religious profiles. See A.H. HALSEY, *On methods and morals*, in: Mark ABRAMS, David GERARD and Noel TIMMS (eds.), *Values and social change in Britain*, (London, MacMillan, 1985).

formed in the post-war period by the immigration of considerable numbers of Sephardim from North Africa (18).

Former colonial connections also account for other non-Christian immigrations into Europe. The Islamic communities are, probably, the most significant in this respect, though Britain also houses considerable numbers of Sikhs and Hindus. Islam is, however, the largest other-faith population in Europe, conservative estimates suggesting a figure of 6 million (19). Muslims make up approximately 3 per cent of most West European populations (20). More specifically, the links between France and North Africa account for the very sizeable French Muslim community (2-3 million). Britain's equivalent comes from the Indian subcontinent (1.2 million). Germany, on the other hand, has absorbed large numbers of migrant workers from the fringes of south-east Europe, and from Turkey in particular. The fate of these migrants in the face of growing numbers of East Europeans looking for work within the new Germany remains to be seen.

Whatever the outcome of this particular situation, however, one fact remains increasingly clear: the Islamic presence in Europe is here to stay. It follows that Europeans can no longer distance themselves from the debates of the Muslim world. Whether they like it or not, the issues are present on their own doorstep. Admitting that this is the case is not easy for many Europeans, for the Islamic factor undoubtedly challenges the assumptions of European life, both past and present. Peaceful coexistence between Islam and Judaeo-Christian Europe cannot — and never could be

(18) Information (including statistics) about the Jewish communities in West Europe can be found in A. LERMAN, *The Jewish communities of the world,* (London, MacMillan, 1989).

(19) Estimates of the size of Europe' s Muslim population are, inevitably, related to questions about immigration. Statistics relating to illegal immigration are particularly problematic.

(20) For additional information on the Muslim communities of Europe, see Peter CLARKE, *Islam in contemporary Europe,* in: Stewart SUTHERLAND, S. STEWART, Leslie HOULDEN, Peter CLARKE and F. HARDY (eds), *The World's Religions,* (London, Routledge 1988), Jørgen NIELSEN, *Muslims and Western Europe,* (Edinburgh, Edinburgh University Press, 1992) and Bernard LEWIS and Dominique SCHAPPER, (eds), *Muslims and Europe,* (London, Pinter, 1994).

— taken for granted (21). Nor can Muslims accept unequivocally the live-and-let-live religious attitudes assumed by the majority of contemporary Europeans. This, surely, remains the problem at the heart of the Rushdie controversy.

The final source of diversity relates to the subject matter of this volume: the controversial presence of new religious movements in all European societies. There can be no doubt that new religious movements attract considerable media attention which is often negative in tone; the numbers involved, however, are relatively small. Be that as it may, such movements fulfil an important function for the sociologist of religion. Inadvertently, they have become barometers of the changes taking place in contemporary society (22). New religious movements 'represent an "extreme situation" which, precisely because it is extreme, throws into sharp relief many of the assumptions hidden behind legal, cultural, and social structures' (23). We can use this perspective to examine one of the most urgent questions facing Europe at the present time; the need to create and to sustain a truly tolerant and pluralist society, both in Europe as a whole, and in its constituent nations. A society, that is, which goes well beyond an individualised live and let live philosophy and which is able to accommodate 'that unusual phenomenon' in contemporary Europe, the person (24). By examining the divergent attitudes displayed towards new religious movements in different European countries, we can learn a great deal about their underlying attitudes. Or to put the same point in a different way, tolerance of religious differences in contemporary Europe must mean tolerance of all religious differences, not just the ones we happen to approve of. If a country fails in its tolerance of new religious movements, it is unlikely, or at least very much less likely,

(21) The outstanding example of creative toleration comes from medieval Spain, where Jews, Muslims and Christians lived harmoniously for four centuries. The forcible expulsion of both Jews and Muslims from a re-Catholicised Spain in 1492 rendered the 1992 celebration of this year a very ambivalent European anniversary.

(22) James BECKFORD, *Cult Controversies,* (London and New York, Tavistock Publications, 1985), and (ed.), *New religious movements and rapid social change,* (London, Sage/UNESCO, 1986).

(23) BECKFORD, *Cult Controversies,* 11.

(24) Oliver LEAMAN, *Taking religion seriously, The Times,* 6 February 1989.

to succeed with respect to other, more significant (numerically speaking) religious minorities.

The following articles exemplify the socio-legal dimensions of the controversies surrounding new religious movements; it is crucial that sociologists pay close attention to their findings.

RIK TORFS
Faculty of Common Law, University of Leuven

LES NOUVEAUX MOUVEMENTS RELIGIEUX ET LE DROIT DANS L'UNION EUROPÉENNE

RAPPORT GÉNÉRAL

RÉSUMÉ: 1. *Introduction.* — 2. *Le modèle de confiance.* — 3. *Le modèle de vigilance.* — 4. *Le modèle de scepticisme structurel.* — 5. *Conclusion finale.*

1. INTRODUCTION

Les nouveaux mouvements religieux — qui ne sont d'ailleurs pas tous nouveaux en tant que tels, mais parfois seulement nouveaux sur un certain territoire — défient bien souvent, dans nombre de pays, le droit existant des religions. La raison en est bien compréhensible. Les mouvements concernés font plus que simplement rechercher leur place au sein du système en vigueur. Ils posent également des questions concernant le cadre lui-même dans lequel le contenu de la liberté religieuse s'exerce.

Car la plupart des pays européens connaissent un cadre implicite dans lequel le contenu de la liberté religieuse se développe. Ce cadre traditionnel prit forme dans une société relativement statique: l'autorité de l'Etat y est incontestée, la liberté religieuse quant à elle dispose d'une zone libre, garantie par l'Etat, où elle existe, se développe, se manifeste et s'amplifie à son gré.

Inutile à dire que ce cadre clair et paisible, fort marqué par les idées du Siècle des Lumières, se voit contesté voire même mis en péril par l'ascension des nouveaux mouvements religieux. Souvent,

ces derniers n'acceptent point cette division rationnelle entre le champ d'action du profane et celui du religieux. Ainsi l'Islam ne se contente pas d'un coin bien limité au sein de la société organisée. Pour nombre de musulmans, la religion détermine la vue d'ensemble de la société. La vie économique, culturelle, politique: tous ces secteurs sont colorés par les contours que fixe l'Islam (1). En simplifiant un peu, on pourrait dire qu'au lieu du politique qui attribue une zone libre au religieux, c'est le religieux qui indique où et comment la vie politique doit se concrétiser.

Très souvent, ce problème soulevé de toute sa force par l'Islam, joue aussi lorsque la position juridique des nouveaux mouvements religieux se voit discutée. Eux aussi défient souvent le système existant, qui se construit tacitement à partir des idées du christianisme et à partir du compromis que celui-ci a su faire avec le pouvoir temporel.

Mais ce compromis ne fait donc pas l'affaire des nouveaux mouvements religieux. Ceci devient claire lorsqu'on se penche sur la définition de secte telle qu'elle a été donnée par l'auteur britannique Bryan Wilson. Pour lui, une secte est "a distinctive, persisting and separately organised group of believers who reject the established religious authorities but who claim to adhere to the authentic elements of faith" (2).

On se rend compte immédiatement que ceux qui contestent la légitimité des autorités religieuses établies, ne respecteront pas plus les compromis réalisés par ces derniers. D'une certaine façon, en effet, on peut dire que le *cadre légal* dans lequel fonctionne la liberté religieuse en Europe, et qui présuppose la plupart du temps l'existence d'un Etat de droit, est plutôt faite pour des *religions raisonnables* qui connaissent leur place au sein du système tout en voulant jouir de leur liberté, que pour des *religions pures et dures* qui dénoncent dans tout compromis une forme de faiblesse inacceptable, trahissant les vrais sentiments religieux.

(1) Cf. S. FERRARI, "Church and State in Europe. Common Pattern and Challenges", *European Journal for Church and State Research*, 1995, 155.

(2) Cette definition est citée par DAVID MCCLEAN dans son rapport *New Religious Movements and the Law in the United Kingdom*. La référence est A. RICHARDSON et S. BOWDEN (ed.), *A New Dictionary of Christian Theology*, London, SCM Press, 1983, "sects", 532.

Autrement dit: les nouveaux mouvements religieux interrogent le cadre général du droit des religions. Cela est sans doute déjà relativement menaçant pour d'aucun. Toutefois, il s'agit là toujours d'une question de droit et de politique juridique. A cette question s'ajoute une autre, à savoir la peur parfois difficilement contrôlable que les nouveaux mouvements religieux suscitent auprès de beaucoup de nos contemporains. A un scepticisme juridique se joint donc une peur plus existentielle. Cette combinaison mène à des attitudes divergentes de la part des autorités étatiques. Dès lors, trois modèles différents — et d'ailleurs pas toujours séparables de façon cartésienne — se présentent.

D'abord, il y a le *modèle de confiance*. La liberté religieuse s'y trouve accentuée de façon plus convaincante et plus déterminée que les éventuelles mesures nécessaires cherchant à protéger la société. Ce modèle est caractérisé par une grande simplicité. L'Etat de droit démocratique et son législateur ne s'inquiètent pas trop du phénomène des nouveaux mouvements religieux. Le système et les institutions inspirent la confiance.

Ensuite, il y a le *modèle de vigilance*, qui tout en partant de la liberté de religion, s'avère conscient d'abus possibles. Des mesures tendant à protéger la société sont clairement ou tacitement mises en perspective. L'équilibre entre la liberté religieuse et la protection de la société est important. Ni l'un, ni l'autre aspect n'a le droit d'éclipser son pendant.

Enfin, le *modèle de scepticisme structurel* se présente comme l'image inverse du modèle de confiance. La protection de la société s'annonce comme le facteur déterminant. Si à cause de cet angle, la liberté se voit limitée, il faudra, avec peut-être quelques regrets, en accepter les conséquences. La protection de la population est prioritaire.

Autrement dit, on peut comprendre ces trois modèles en se basant sur l'article 9 de la Convention européenne des droits de l'Homme.

Le *modèle de confiance* s'inspire du premier paragraphe énonçant le principe de la liberté. Le *modèle de scepticisme structurel* se concentre sur les exceptions tendant à protéger la société, telles qu'elles sont formulées dans le second paragraphe. Enfin, le *modèle*

intermédiaire, celui *de vigilance*, tend à harmoniser les deux paragraphes dans une construction équilibrée, qui part donc de la liberté mais en assume les limites.

Les trois modèles offrent sans aucun doute un point de repère important. Ils permettent de cataloguer les systèmes selon l'attitude conductrice adoptée par les autorités. Cependant, il faut que ce cadre théorique soit affiné. En effet, on ne peut pas affirmer sans coup férir que, dans un seul pays, ce soit par exemple le modèle de confiance qui domine entièrement la situation. La plupart du temps, il faut distinguer les différents niveaux du droit. Ainsi on peut dire que les trois modèles cités jouent à cinq niveaux juridiques théoriquement séparables.

1. *Le niveau du droit international* est largement soustrait à la compétence des pays individuels. Tout au plus, les réflexes de la part de la jurisprudence nationale peuvent différer. Dans certains pays, les traités et autres documents de droit international seront plus facilement cités et pris en considération par les cours et tribunaux que dans d'autres.

2. *Le niveau du droit constitutionnel.* Bien que la liberté religieuse soit protégée partout en Europe, des nuances restent possibles. Ainsi, la protection de la liberté religieuse peut être influencée par la définition donnée à la notion de *religion.*

3. *Le niveau législatif.* Quelle sera l'attitude des parlements nationaux? Ici on se trouve au niveau des éventuelles commissions parlementaires, mais aussi au niveau des initiatives législatives spécifiques telles l'instauration d'observatoires, la promulgation de lois pénales spécifiques, etc.

4. *Le niveau jurisprudentiel.* Même si le cadre législatif demeure inchangé, des évolutions jurisprudentielles seront souvent en mesure de jouer un rôle de prédilection. Par exemple la question de savoir si tel ou tel mouvement peut être perçu comme une religion, se verra souvent tranchée par une décision jurisprudentielle.

5. *Le niveau administratif* concerne la pratique quotidienne des autorités administratives qui, de toute évidence, dans leurs activités quotidiennes ne peuvent se concentrer sur tous les dossiers et tous les problèmes de façon égale. En fait, l'administration pourrait, le

cas échéant, particulièrement tenir à l'oeil certains mouvements. A la limite, il peut s'agir de la revanche du niveau administratif jugeant la législation trop molle et trop inclinée à la tolérance.

Au fil des pages qui suivent, j'analyserai donc les trois modèles (de confiance, de vigilance, de scepticisme structurel) aux cinq niveaux juridiques (droit international, droit constitutionnel, législation, jurisprudence, administration). Ceci signifie que trois fois cinq, donc quinze combinaisons sont théoriquement possibles. Cependant, au lieu d'offrir un aperçu abstrait, j'essaierai d'explorer la situation générale à partir des rapports nationaux présentés à Lisbonne et reproduits dans ce livre ainsi que des évolutions ultérieures jusqu'au milieu de l'année 1998.

2. Le modèle de confiance

Aujourd'hui, le modèle de confiance a indiscutablement quelque peu reculé. Dans un grand nombre de pays européens, une certaine crise de la crédibilité des institutions s'accentue. Moins qu'auparavant, la confiance générale règne. Dès lors, au niveau psychologique, le modèle de confiance a sans doute perdu un peu de son élan. Néanmoins, au niveau juridique, ce modèle reste puissant, ce qui n'étonne peut-être pas. Un système juridique tend plutôt à rassurer les citoyens qu'à semer la panique.

a) Le modèle de confiance est clairement dominant au niveau international, comme l'a encore souligné dans son rapport le professeur Duffar. A ce niveau, la liberté religieuse est protégée, mais aussi le droit à la liberté de réunion et de manifestation pacifique ainsi que la liberté d'association. Ce cadre international est d'ailleurs plutôt stable et n'est pas directement à la portée des pays concernés.

Au niveau du Conseil de l'Europe, on constate néanmoins une certaine évolution. En 1992, l'assemblée parlementaire du Conseil de l'Europe a énoncé la Recommandation 1178 qui disait qu'une législation trop poussée concernant les sectes était à déconseiller. Une législation spéciale trop élaborée pouvait à la fois mettre en péril la liberté de conscience et de religion de l'article 9 de la

CEDH ainsi que le fonctionnement des religions traditionnelles. Ainsi, le texte de 1992, adoptant pleinement le *modèle de confiance*, demanda seulement au comité des ministres de prendre des mesures afin d'informer les jeunes et le public en général tout en demandant une attitude juridique favorable vis-à-vis des nouveaux mouvements religieux.

On doit constater néanmoins que, depuis 1992, le climat général vis-à-vis des nouveaux mouvements religieux s'est détérioré. Dans un projet de recommandation du 15 mai 1998, le rapporteur roumain Adrian Nastase se montre plus *vigilant* voire même *sceptique* que *confiant*. Ainsi, il propose l'érection d'un *observatoire européen* afin d'échanger, entre centres d'observation nationaux déjà existants ou à installer bientôt, toute information concernant les sectes. A part cette mesure spécifique bien défensive, d'autres mesures sont suggérées comme l'établissement d'un appareil pénal sanctionnant l'endoctrinement ainsi que l'interdiction de groupes dont les membres conduisent régulièrement des activités illégales n'aboutissant pas à l'exclusion de ceux-ci du groupe concerné.

Bien évidemment, ce projet préliminaire de recommandation ne fait pas partie du droit international dans le sens réel du mot. Cependant, il reflète une certaine tendance, une tendance à une rigueur plus poussée vis-à-vis des nouveaux mouvements religieux. Il n'est désormais plus exclu que la domination du modèle de confiance au niveau du droit international ne demeure pas incontestée.

b) Au niveau du droit constitutionnel, le modèle de confiance reste bien établi. Il se présente sous différentes formes.

Un signal constitutionnel bien spécifique référant au modèle de confiance, se présente dans la façon dont on définit la religion. Le modèle de confiance laissera une vaste autonomie au mouvement lui-même. Cette autonomie n'est cependant pas absolue. Une ouverture d'esprit à cet égard ne garantit nullement aux religions le droit d'auto-définition. Tout le monde prétendant constituer une religion ou d'en faire partie, ne sera pas reconnu comme tel pour autant (3). Ceci dit, les exigences peuvent être minimales. Ainsi, Carbonnier

(3) Cf. par ex. F. MARGIOTTA BROGLIO, "Il fenomeno religioso nel sistema giuridico dell'Unione Europea", in F. MARGIOTTA BROGLIO, C. MIRABELLI et F. ONIDA, *Religioni e sistemi giuridici. Introduzione al diritto ecclesiastico comparato*, Bologna, il Mulino, 1997, 101.

reconnaît dans la religion un aspect subjectif, la foi, et un aspect objectif, l'existence d'une communauté de croyants. Voilà tout. Carbonnier demeure en tout cas plus souple, plus minimaliste que la Cour de Cassation belge en 1834, qui, afin que l'on puisse parler d'une *religion*, exigea l'implication d'une *divinité*. Ceci constituerait déjà un problème pour le bouddhisme. Il est évident qu'une simple référence à la foi, comme celle formulée par Carbonnier, témoigne d'un degré de tolérance plus poussé.

Une définition généreuse de la religion va de pair, très souvent, avec un refus de définir la notion de *secte*. La Constitution ne la définira pas, et on remarque en général que les juristes, tout comme les sociologues, et ceci contrairement aux théologiens, n'aiment pas définir une secte. Ainsi, lorsque en 1984 déjà, Tobias Witteveen rédigeait le rapport parlementaire sur les nouveaux mouvements religieux au Pays-Bas (4), il ne formulait pas de *vraie* définition, mais seulement une *définition de travail*, afin de ne stigmatiser aucun des nouveaux mouvements religieux sans que ceci ne soit nécessaire.

Cette référence au fameux rapport néerlandais de 1984, caractérisé par sa modération et son sang-froid, me conduit à une autre question concernant le problème de la définition de la religion et de la secte. La question se présente comme suit: y-a-t-il un lien entre la facilité avec laquelle on adopte le modèle de confiance et les rapports juridiques entre les Eglises et l'Etat dans le pays concerné? J'essaie de m'expliquer. Si le fait de constituer une Eglise ou un mouvement religieux n'entraîne que peu de conséquences juridiques, comme par exemple des avantages financiers, il y aura peut-être moins de raisons conduisant à l'exclusion de la définition de certains mouvements. Ainsi le *Hoge Raad*, la Cour Suprême des Pays-Bas, décida en 1986, comme le décrivent T. Witteveen et S. van Bijsterveld, que l'on peut parler d'une Eglise

(4) T.A.M. WITTEVEEN, Overheid en nieuwe religieuze bewegingen. Tweede Kamer der Staten Generaal. Vergaderjaar 1983-1984, 16635 nr. 4. Onderzoek betreffende sekten, 's-Gravenhage, Staatsuitgeverij, 1984, VII 320 p.

lorsqu'il y a une organisation structurée dans laquelle la religion se voit impliquée (5).

Il me semble que, plus le système du droit des religions est compliqué, plus l'ordre juridique et le droit constitutionnel posent des exigences additionnelles aux mouvements religieux pour qu'ils puissent être protégés par la liberté religieuse. Cette importance de l'ordre juridique existant, sa prise en compte lorsqu'il s'agit de définir une religion, est d'ailleurs reconnue par A. von Campenhausen dans le rapport allemand lorsqu'il écrit: "Solutions have to be found that correspond to the self-understanding of the religious community concerned, without therefore suspending the legal order regarding churches of the German constitution."

En d'autres mots, la définition d'une Eglise ou d'une religion n'est pas neutre. Elle se trouve influencée par le *Staatskirchenrecht* tout entier en Allemagne, comme elle l'est également par le régime de séparation relative subsistant aux Pays-Bas.

Quoiqu'il en soit, une étude plus poussée concernant le lien éventuel entre *le degré de séparation* d'une part et *l'ouverture et la tolérance au niveau de la définition de la notion de religion* d'autre part pourrait être très intéressante.

Enfin, une troisième remarque concernant la définition de la notion *secte*, concerne l'utilité possible de la *via negativa*. Comment en effet définir le lieu exact où la religion s'arrête et autre chose commence? De toute évidence, il est presque impossible de définir une religion. Et il est peut-être davantage difficile de définir une secte.

Certes, de multiples tentatives ont été faites, mais alors moins par les juristes que par les sociologues et, surtout, par les théologiens. Je l'ai déjà signalé. Quoiqu'il en soit, ce dernier phénomène reste curieux. Qu'est-ce qui mène certains théologiens à partir, avec une agitation convulsive, à la recherche d'une définition? Leur courage? Ou encore, leur soif de certitude? Un exemple d'une telle tentative de définition est offerte par l'abbé Adelbert Denaux, chargé de cours principal à l'université de Louvain, qui devant la commission parlementaire belge, proposa la définition

(5) Hoge Raad, 31 octobre 1986, NJ, 1987, 173.

suivante: « Une secte est un groupe composé d'individus qui partagent une conviction philosophique ou religieuse, et qui présente un certain nombre de caractéristiques négatives. Ces caractéristiques concernent les relations d'autorité à l'intérieur du groupe, les techniques visant à contrôler les membres, les abus ou l'exploitation dont sont victimes les membres, les relations avec le monde extérieur et les campagnes de recrutement ou d'autoprésentation douteuses » (6).

Monsieur Denaux propose donc cinq critères, dont les trois principaux sont l'obéissance inconditionnelle, la programmation mentale et l'exploitation organisationnelle. Il s'agit de trois principes qui ne reposent pas sur des catégories religieuses.

Il est clair que, pour un juriste, tout ceci reste très difficile à saisir. Le juriste, la plupart du temps, évite de donner une définition de la notion de secte. Ainsi R. Potz signale qu'une majorité écrasante de juristes s'abstient dans ce domaine. Et dans le rapport luxembourgeois A. Pauly et A. Schiltz expliquent pourquoi: "Une définition d'un Nouveau Mouvement Religieux semble difficile, car il n'existe pas de définition claire et précise de ce qu'est un culte." Donc: la *via negativa* demeurera le seul critère possible, en tout cas si l'on adopte le modèle de confiance.

En tout état de cause, dans le modèle de confiance qui, tout de même au niveau digne et élevé de la Constitution, semble dominer, la religion et le nouveau mouvement religieux reçoivent beaucoup d'espace libre. Il n'y a que les quelques limites que l'on découvre par le biais de la *via negativa*. Ces limites pourraient concerner les activités commerciales éclipsant les activités religieuses.

c) Au *niveau législatif*, le modèle de confiance pourrait aussi être le modèle dominant. Cependant, ici, l'angoisse et la peur de la population se verront traduites plus facilement qu'au niveau constitutionnel. Plutôt que d'envisager d'amender la Constitution, on se concentrera sur des initiatives parlementaires bien précises. Ceci

(6) Enquête parlementaire visant à élaborer une politique en vue de lutter contre les pratiques illégales des sectes et le danger qu'elles représentent pour la société et pour les personnes, particulièrement les mineurs d'âge. Rapport fait au nom de la commission d'enquête par MM. Duquesne et Willems (Partie I), *Documents parlementaires*, 1996-97, n° 313/7, 74.

dit, le modèle de confiance régnera au niveau législatif si deux conditions sont remplies.

D'abord, il devrait y avoir l'absence de lois spéciales visant à limiter ou à contrôler les activités religieuses. La confiance signifie que le législateur se contente du cadre légal existant. Ce cadre légal, qui inclut évidemment le droit pénal tel qu'il a été conçu en général, suffit à faire face aux dangers réels ou soupçonnés causés par les sectes. Ceci est, entre autres, la conclusion à laquelle aboutit la commission parlementaire espagnole, conclusion formulée le 1er février 1989. Selon ce rapport, le cadre législatif existant suffit. Une législation spéciale est donc rejetée, et A. Motilla explique pourquoi: une telle législation pourrait impliquer un nouveau concept légal pour les sectes modifiant le cas échéant les droits fondamentaux comme établis dans la Constitution.

Une telle approche confiante se dessine aussi ailleurs, comme en témoigne par exemple David McClean dans le rapport britannique. Au Royaume Uni, il n'y a pas de législation spécifique traitant des sectes ou des nouveaux mouvements religieux. L'auteur signale une loi qui s'approche d'une mesure spéciale, la loi de 1985 interdisant la circoncision féminine. Pourtant ici, il s'agit plus d'une coutume locale dans certains milieux d'immigrés que d'une matière authentiquement religieuse. Donc la législation relative aux nouveaux mouvements religieux n'est qu'indirectement impliquée. En revanche, la loi en général contient nombre de stipulations qui couvrent certaines pratiques et activités des nouveaux mouvements religieux, sans pour autant se concentrer spécifiquement sur ces derniers.

Ceci dit, l'absence d'un arsenal législatif spécifique ne suffit pas pour que l'on puisse parler de la victoire du modèle de confiance. Il y a aussi les autres initiatives parlementaires, tels les rapports spéciaux ou les commissions parlementaires. La simple existence de telles initiatives n'est pas dérangeante en tant que telle. Certes, on pourrait argumenter que le fait même d'instaurer une commission ou d'écrire un rapport fait déjà témoignage d'un scepticisme qui n'a pas sa place dans le modèle de confiance. J'estime pourtant qu'un tel verdict serait trop dur. Les commissions parlementaires sur les sectes ne trouvent pas exclusivement leur origine dans un certain

scepticisme vis-à-vis des nouveaux mouvements religieux. Elles sont tout aussi bien le signe d'une certaine crise des parlements qui, devant les grands problèmes économiques et sociaux de notre temps, se sentent éclipsés par les gouvernements et, plus encore, par les principaux acteurs de l'économie internationale. Les enquêtes parlementaires, qui émergent un peu partout en Europe, peuvent donner un nouveau sens d'existence à l'assemblée parlementaire à la recherche d'un second souffle. Ce qui précède, bien évidemment, ne signifie nullement que le *contenu* des rapports parlementaires soit toujours neutre ou objectif.

Tout d'abord dans un modèle de confiance, on peut attendre d'un rapport parlementaire qu'il soit aussi objectif que possible et qu'il se base sur des données empiriques, comme c'est le cas du rapport néerlandais de 1984, décrit par la presse comme "a study in disillusionment." Un rapport *peut* donc être un argument contre la polarisation des concepts au lieu d'être un catalyseur de la crainte ou de l'intolérance vivant auprès de l'opinion publique.

Un rapport récent qui va dans ce sens est le rapport allemand publié le 19 juin 1998, le fruit de deux années de travail (7). Le rapport fut d'ailleurs ouvertement loué par la conférence épiscopale allemande. En revanche, d'autres instances et individus l'ont critiqué. Toutefois, en général, le rapport s'avoue moins négatif que d'aucuns ne l'avaient pensé. L'approche suivie est d'ailleurs assez neuve, le point de départ de l'analyse étant l'idée que l'Etat a la tâche de protéger les consommateurs contre des pratiques illégales ou inéquitables mises en oeuvre par les cultes ou les groupes psychologiques. Ce n'est donc pas la peur de l'inconnu qui figure comme idée centrale. Dans ses conclusions, la commission d'enquête constate que les sectes et les groupes psychologiques ne menacent pas l'Etat démocratique: des conclusions qui vont dans le même sens que celles formulées par le rapport néerlandais de 1984. Une exception a été introduite concernant l'Eglise de Scientologie. Aux yeux de la commission, celle-ci n'est pas une organisation religieuse, mais un mouvement politique extrémiste.

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(7) Endbericht der Enquête-Kommission "Sogenannte Sekten und Psychogruppen", Deutscher Bundestag, 13. Wahlperiode, Drucksache 13/10950, 236 p.

Ceci dit, en général, le rapport allemand se situe dans le courant de pensée du rapport néerlandais de 1984, faisant confiance au système existant.

En résumé, on peut conclure que, au niveau législatif, le modèle de confiance se rencontre là où une législation spéciale concernant les sectes fait défaut et où les commissions parlementaires soit n'existent pas, soit sortent des rapports basés sur des données empiriques et inspirant la confiance.

d) Au *niveau de la jurisprudence*, le modèle de confiance peut aussi être retrouvé. C'est en effet la jurisprudence qui établit le lien entre les règles abstraites et les cas spécifiques. Le travail de qualification qu'elle fait, déterminera en grande partie la position juridique des nouveaux mouvements religieux. Un exemple illustrant ce rôle crucial a été fourni par la Cour Suprême italienne dans une décision de 1997, concernant l'Eglise de Scientologie (8).

La Cour réaffirme que l'Eglise de Scientologie est un groupe religieux, ce qui implique que ses activités sont en principe autorisées. Tout ceci ne contredit pas la possibilité que les membres du groupe puissent commettre des crimes qui, bien entendu, doivent être punis. L'opinion de la Cour Suprême se situe dans la lignée de la jurisprudence de la Cour Constitutionnelle (9) et est partagée par les tribunaux et la doctrine.

Il va sans dire que cette jurisprudence fait usage de critères bien larges, et peut être considérée comme caractéristique du modèle de confiance. La décision contient en effet quatre des options typiques de ce modèle: (*a*) une définition de la notion *religion* bien large; (*b*) l'absence de lois spécifiques afin de lutter contre les activités sectaires; (*c*) une certaine confiance dans les activités du groupe jusqu'à la preuve du contraire; (*d*) une confiance en l'arsenal législatif pénal tel qu'il existe. De toute façon, le point de départ dont jouit l'Eglise de Scientologie s'avère solide: elle est une *religion* et non une simple *association*, encore moins un *groupe*

(8) Cf. à ce sujet D. JOUVENAL LONG, "Church and State in Italy 1997", *European Journal for Church and State Research*, 1998, à paraître.

(9) Décision n° 195 de 1993, cf. D. JOUVENAL, "Church and State in Italy 1993", *European Journal for Church and State Research*, 1994.

extrémiste ou *criminel*. La confiance règne, sans que l'on puisse parler pour autant d'une certaine naïveté.

Ce qui demeure frappant, c'est que les cours ou tribunaux, même s'ils se montrent ouverts et tolérants au niveau des principes, éprouvent souvent des difficultés lorsque les problèmes et questions des nouveaux mouvements religieux entrent *indirectement* en ligne de compte. Un bel exemple est fourni par A. Motilla qui mentionne un décret d'une cour à Madrid, daté du 13 octobre 1992. A l'occasion d'un divorce, le droit de garde du fils est accordé au père et non à la mère, cette dernière étant membre de l'Eglise de Scientologie. Dans ce décret, l'Eglise de Scientologie est décrite de façon négative, car elle fait l'objet d'investigations criminelles et ses activités pourraient influencer la formation de la personnalité de l'enfant.

Ici se pose une question importante: le simple fait de reconnaître un mouvement comme religion, le simple fait de tolérer ses activités, exige-t-il nécessairement une neutralité totale dans tous les dossiers juridiques concernant ce mouvement? Autrement dit: le modèle de confiance implique-t-il l'exigence d'une stricte neutralité de la part de la jurisprudence? Cette question demeure intéressante. On pourrait, je crois, argumenter sans trop de problèmes que l'enlèvement du droit de garde de *deux* parents scientologues par l'autorité civile porte atteinte à la liberté religieuse. Mais que dire du choix que le juge se voit contraint de faire entre l'éventuel droit de garde du père et celui de la mère? Dans un tel choix le style de vie, le projet d'éducation etc. jouent un rôle. La façon de vivre résultant de l'appartenance à une certaine religion est-elle vraiment toujours neutre? Ou doit-on, artificiellement, séparer l'appartenance à un mouvement religieux des autres activités déployées par les anciens époux dans la vie quotidienne?

Bref, la question qui consiste à savoir si le *modèle de confiance* implique oui ou non une attitude jurisprudentielle complètement neutre, mérite une analyse plus poussée.

e) Au *niveau administratif*, le modèle de confiance aura très souvent bien du mal à se voir réaliser. Une égalité au niveau de la loi ne signifie pas encore automatiquement une pareille égalité au niveau de son application administrative.

Ainsi, par exemple, comme le décrit F.O. Overgaard dans le rapport danois, les nouveaux mouvements religieux se plaignent parfois de la vulnérabilité de leur position juridique, parce que toutes les décisions affectant leur vie quotidienne sont prises au niveau administratif, une remarque que le ministère des affaires ecclésiastiques ne partage d'ailleurs point.

De toute évidence, il est très difficile d'identifier une attitude administrative quelque peu discriminatoire. Deux exemples peuvent aider à illustrer ce problème.

Un mouvement religieux faisant l'objet de multiples contrôles fiscaux se trouve *de facto* dans une position désavantageuse. Également, dans d'autres secteurs de la société, toutes les personnes physiques et juridiques ne sont pas contrôlées avec le même acharnement. Ainsi les indépendants et les industriels en règle éprouvent un contrôle plus poussé que ne le subissent les salariés, dont les revenus plus stables sont bien connus de l'administration. Où se situe la différence entre les contrôles plus stricts dus aux activités atypiques déployées par les contribuables individuels d'une part et ceux qui trouvent leur origine dans le scepticisme vis-à-vis des idées et des activités du groupe religieux d'autre part?

Un autre exemple concerne les permis de bâtir. Un bâtiment destiné aux activités cultuelles risque d'être plus atypique et de causer plus de problèmes imprévisibles qu'une habitation ordinaire. Cependant, jusqu'à quel point et sous quelles conditions cette différence justifie-t-elle une politique administrative plus sévère? Autrement dit, quels sont les motifs qui dominent? Ceux qui concernent l'urbanisation? Ou s'agit-il plutôt d'une peur de l'inconnu qui dépasse la minutie administrative?

Il n'est donc pas toujours évident de faire le discernement entre une pratique administrative qui se situe encore dans les limites du modèle de confiance et une attitude qui, sous prétexte de problèmes techniques compliqués, développe une politique discriminatoire. Parfois on pourra parler avec certitude d'une revanche du niveau administratif, comme d'ailleurs déjà signalé plus haut. Le combat contre les sectes qui s'avère difficile au niveau des grands principes, devient accessible au niveau des petites décisions quotidiennes.

En guise de conclusion, l'analyse du modèle de confiance peut donner aux constatations suivantes:

1. Le modèle de confiance part de la liberté religieuse et pas de la protection de l'ordre public. C'est une idée optimiste. Partir de la liberté est toujours plus réconfortant que devoir se concentrer sur une stratégie défensive qui donne l'impression de vouloir protéger l'homme contre soi-même.

2. Le modèle de confiance est souvent le modèle effectivement en place. Toutefois il faut nuancer. Il est certain que le modèle de confiance règne surtout aux niveaux les plus élevés, ceux du droit international, de la constitution. Au niveau de la législation ordinaire et de la jurisprudence, le "bon sens" plus sceptique tend déjà à éclipser quelque peu les grands principes du droit international et du droit constitutionnel. Et c'est surtout au niveau de la pratique administrative qu'un scepticisme vécu mais inadmissible au niveau des principes trouve souvent son chemin.

3. Le modèle de confiance, s'il fonctionne bien, se montre à la fois rassurant et réaliste. Rassurant, car il part d'un Etat de droit conscient de la force de ses structures. Réaliste, car il ne sous-estime pas le danger potentiel émanant de certains nouveaux mouvements religieux. Seulement, l'idée générale demeure sereine: il ne faut pas que l'on définisse sa stratégie à partir des dangers qui s'annoncent ou qui s'annonceraient, mais à partir du bon fonctionnement de l'Etat de droit.

3. Le modèle de vigilance

Le *modèle de vigilance* est caractérisé par quelques nuances vis-à-vis du *modèle de confiance*. La liberté religieuse reste hautement respectée, continue de figurer comme point de départ de toute réflexion, mais doit d'une certaine façon partager cette position avantageuse avec la protection de l'ordre public et la défense de la société. Pour paraphraser un peu cette approche, on pourrait dire que, dans le modèle de vigilance, l'article 9 §1 de la CEDH se voit appliqué avec le §2 déjà bel et bien dans la tête. Le modèle de vigilance, tout en partant de la liberté religieuse, veut faire quand

même un certain pesage, plus prononcé que dans le modèle de confiance, avec la protection de la société. A l'instar du modèle de confiance, on peut découvrir le modèle de vigilance aux cinq niveaux juridiques explicités plus haut.

(*a*) Au niveau du *droit international*, le modèle de vigilance s'accentue dans la jurisprudence de la CEDH comme J. Duffar le décrit rigoureusement dans son rapport *Les nouveaux mouvements religieux et le droit international*. Une attitude typique du modèle de vigilance se situe dans une définition moins généreuse de la notion *religion*. Tandis que dans le modèle de confiance les définitions larges et généreuses dominent, le modèle de vigilance quant à lui s'avoue plus restrictif. J. Duffar cite, à juste titre, la Commission lorsqu'elle dit « que le principe qui est énoncé au 1er paragraphe de l'article 9 — quant à la manifestation d'une conviction par les pratiques — ne protège pas des professions de prétendue foi religieuse qui apparaissent comme des 'arguments' de vente dans des annonces à caractère purement commercial, faites par un groupe religieux » (10).

Et la Cour s'est clairement prononcée dans l'affaire Manoussakis: « La Cour reconnaît que les Etats disposent du pouvoir de contrôler si un mouvement ou une association poursuit, à des fins prétendument religieuses, des activités nuisibles à la population » (11).

Ce dernier passage est intéressant, car il offre une illustration très claire de la situation exacte du modèle de vigilance, c'est à dire à mi-chemin entre le *modèle de confiance* et le *modèle de scepticisme structurel*. Le passage cité dit, d'une certaine façon bien que pas exclusivement, qu'il faut séparer les vrais et les faux objectifs religieux, car les faux objectifs peuvent conduire à des activités nuisibles à la population. Donc, il faut surveiller les effets nuisibles de la pseudo-religion. Dans le modèle de confiance, il ne faut pas trop se concentrer sur un pouvoir de contrôle. Dans le modèle de scepticisme structurel, il ne faut pas seulement observer les fins *prétendument* religieuses, mais aussi les fins qui *sont* manifestement

(10) C.E.D.H., n° D 7805/77, 5 mai 1979, *D.R.* n° 16, 74.

(11) Cour des Droits de l'Homme, arrêt Manoussakis / Grèce du 26 septembre 1996, *Publ. Cour. Eur. D.H.*, Série A, n° 40.

religieuses, mais qui sont quand même nuisibles. Dans le modèle de scepticisme structurel, c'est la religion elle-même qui peut revêtir un caractère de danger.

D'autres indices au niveau international donnent l'impression qu'ici, une tendance qui mène lentement du modèle de confiance à celui de vigilance s'affiche. Ainsi, le 13 juillet 1998, le Parlement européen a rejeté pour la seconde fois le rapport concernant les sectes de Madame Maria Berger (Autriche). Une des raisons inspirant à cette attitude se trouve sans doute dans le ton trop confiant et trop modéré ressenti dans ce rapport.

(*b*) Au niveau du *droit constitutionnel*, le modèle de vigilance se concrétise aussi par le biais de la définition éventuelle de la religion. Un pas assez dangereux pourrait être l'attention qu'on porte au *contenu* de la religion. Comme déjà signalé, en Belgique, une religion au sens constitutionnel du mot, est liée à la référence à une *divinité*, ce qui ne signifie pas nécessairement la présence d'un Dieu classique. Toutefois une simple idéologie ou conception du monde ne semble pas être suffisante.

La définition belge peut être critiquée à deux niveaux.

D'abord, une distinction nette entre une religion et une idéologie est souvent impossible, car une définition solide des deux notions fait défaut. A. von Campenhausen souligne cette idée à juste titre dans le rapport allemand.

Ensuite, la nécessité d'une *divinité* dans une religion s'explique difficilement dans le système belge. L'article 19 de la Constitution garantit, entre autres, la liberté des cultes. Un culte devrait donc faire référence à une divinité, comme le dit l'interprétation donnée à cette notion. Or, l'article 181 de la même Constitution prévoit que les traitements et pensions des ministres des cultes sont à la charge de l'Etat. Les cultes reconnus sont les cultes catholique, protestant, anglican, israélite, musulman et orthodoxe. Il s'agit donc de six cultes qui reconnaissent l'existence d'une *divinité*. Seulement, depuis la révision de la Constitution belge en 1993, l'Etat prend aussi à son compte les traitements et pensions des délégués des organisations reconnues par la loi qui offrent une assistance morale selon une conception philosophique non confessionnelle. Autrement dit, au niveau de base de la simple liberté la référence à une divinité

serait requise pour que l'on puisse parler de liberté de culte, tandis qu'au niveau supérieur où des avantages sont attribués à certains cultes, certaines organisations philosophiques non confessionnelles sont assimilées aux cultes. J'approuve complètement cette assimilation. Mais ne démontre-t-elle pas que l'exigence de la référence à une divinité au niveau de base reste trop restrictif? On a l'impression que cette définition peut servir pour tenir à l'écart certains mouvements peu connus et peu appréciés, tandis qu'un solide statut juridique est attribué aux organisations philosophiques non confessionnelles bien établies et traditionnelles. Le modèle de vigilance peut donc cacher des mécanismes de défense tendant à protéger les religions et les organisations bien établies contre le hasard de l'inconnu.

(*c*) Au *niveau législatif*, le modèle de vigilance se caractérise par la prise de certaines mesures de protection en faveur de la société, sans que ceci conduise à l'élaboration d'un arsenal législatif spécifique aux sectes et aux nouveaux mouvements religieux.

Un bon exemple d'un tel instrument constitue l'*Observatoire national des sectes* créé en 1996 en France par le Premier ministre. Un tel observatoire semble donc nécessaire lorsqu'il s'agit de sectes, tandis qu'il ne l'est pas vraisemblablement pas dans le cadre de la lutte contre la maffia ou contre le crime organisé. Voilà tout de même un choix politique nullement innocent.

En Belgique, une loi relative à l'érection d'un Centre d'information et de consultation concernant les organisations sectaires nocives a été adoptée par la chambre des représentants le 28 avril 1998. Elle entrera sans doute en vigueur cette année-ci. Le Centre sera divisé en deux sections, l'une compétente pour l'information et la consultation concernant les mouvements sectaires nocifs, l'autre étant une cellule coordinatrice pour la lutte contre les organisations sectaires.

Cette nouvelle loi belge, se situe-t-elle encore dans les limites du modèle de vigilance ou entre-t-on ici dans le modèle de scepticisme structurel? Je crains qu'en Belgique une frontière a été franchie. Les notions vagues comme « mouvement sectaire nocif » (12) mettent

(12) La Belgique est désormais vue ici et là comme un pays où la liberté religieuse est en danger. Voyez par exemple les commentaires fournis par *The Rutherford Institute*, une organisation américaine conservatrice plaidant en faveur de la liberté religieuse: "The Rutherford Institute wrote Prime Minister of Belgium Jean-Luc Dehaene about the discriminatory Belgian law titled 'Centre for information and advice regarding harmful sectarian movements and regarding the establishment of an administrative coordination cell' which was passed by the Belgian Parliament. The Rutherford Institute expressed its concern about this law because it permits unnecessary state intervention in religious matters. In particular, The Rutherford Institute mentioned the law's vague use of the term 'harm' and 'harmful' when referring to 'sectarian movements'." Cf. *Rutherford International*, 1998, vol. 2, n° 8, 3.

l'accent moins sur des crimes concrets mais sur une idée plus générale de nocivité, ce qui pourrait être un pas vers le scepticisme structurel. En d'autres mots, si *nocif* est lié à *illégal*, le modèle de vigilance domine. Si par contre *nocif* devient l'objet d'un jugement de valeur qui n'est plus lié à la loi pénale, il n'est plus question de vigilance mais de scepticisme structurel. Le texte de l'article 2 de la nouvelle loi belge plaide pour une compréhension autonome et donc dangereuse de la notion *nocif*: « Pour l'application de la présente loi, on entend par organisation sectaire nuisible, tout groupement à vocation philosophique ou religieuse, ou se prétendant tel, qui, dans son organisation ou sa pratique, se livre à des activités illégales dommageables, nuit aux individus ou à la société ou porte atteinte à la dignité humaine. »

Mais revenons au modèle de vigilance. Bien entendu, il n'y a pas que des lois qui reflètent ce modèle au niveau législatif. Il y a aussi le travail des multiples commissions, les rapports, les résolutions et les questions parlementaires. En tant que telles, ces activités peuvent se situer aussi bien dans le modèle de confiance, comme d'ailleurs signalé ci-dessus. Mais très souvent, le ton, la teneur et les recommandations se laissent plutôt situer dans le modèle de vigilance.

Un exemple de cette tendance est fournie par la résolution que le Parlement autrichien a adoptée le 14 juillet 1994. Dans cette résolution, décrite par R. Potz, le parlement demande au gouvernement d'*informer* le public des activités des sectes et des mouvements similaires.

Mais informer, c'est quoi au juste? Dans le cas concret de l'Autriche, l'information était rassemblée dans une publication du ministère de l'Environnement, de la Jeunesse et de la Famille. La

brochure était titrée *Sekten-Wissen schützt* et connaissait un succès énorme: plus de 200 000 exemplaires ont été demandés et distribués. Dans son rapport, R. Potz signale les points forts de cette publication: elle donne un aperçu assez complet des nouveaux mouvements religieux en Autriche et contient des informations utiles d'un point de vue psychologique et pédagogique. Mais l'auteur souligne aussi les faiblesses du document: le volet juridique n'est pas très fort et contient des erreurs, les nouveaux mouvements religieux entre eux ne font pas l'objet d'une distinction assez nette, des adeptes de certains mouvements cités dans la brochure par la suite ont été victimes de réactions hostiles de la part du public.

Cette brochure, son contenu et ses réactions montrent comme il est difficile de bien organiser la vigilance sans pour autant aller trop loin, donc sans entrer dans le domaine du scepticisme structurel et sans menacer, même indirectement, la liberté religieuse.

Au *niveau jurisprudentiel*, le modèle de vigilance se traduit par une attention plus prononcée pour les possibilités du système pénal existant, sans pour autant envisager des lois spécifiques.

P.H. Prélot, dans son rapport concernant la France, donne un bel exemple à ce sujet. Le 29 février 1996, le ministre de la Justice a envoyé aux procureurs une circulaire où il énonçait la liste des textes susceptibles d'être utilisés contre les sectes. L'énumération comporte les infractions suivantes: escroquerie, homicide ou blessures volontaires ou involontaires, non assistance à personnes en danger, agressions sexuelles, proxénétisme, incitations des mineurs à la débauche, séquestration de mineurs, violences, tortures, abus de faiblesse, mise en péril des mineurs, trafic de stupéfiants, exercice illégal de la médecine, fraude fiscale, travail clandestin.

Cette liste non exhaustive et le fait qu'une circulaire ait été envoyée sont deux éléments intéressants. Ils se situent au coeur même du modèle de vigilance. Sans promulguer de nouvelles lois, on met pleins feux sur l'arsenal législatif disponible.

P.H. Prélot signale d'ailleurs nombre de jugements récents concernant les adeptes des nouveaux mouvements religieux. Il évoque aussi les trois difficultés principales qu'éprouvent à leur égard les tribunaux: la prescription, qui est de trois ans pour les délits, le

consentement de la victime, qui a généralement contribué à la situation où elle se trouve, et enfin des problèmes de preuve.

Surtout le deuxième élément, *le consentement de la victime*, mérite quelques réflexions. Jusqu'à quel niveau le *consentement* est-il libre? Une attitude très sévère serait non seulement conçue comme paternaliste, mais mettrait aussi en péril beaucoup de transactions qui ont été rendues possibles grâce à une publicité commerciale faisant abus, au moins d'une certaine façon, de la faiblesse du consommateur. Doit-on être plus rigoureux dans le secteur religieux que dans le secteur commercial? On pourrait argumenter que, contrairement au niveau commercial, le niveau religieux influence la personnalité dans son ensemble. Mais cette distinction est devenue artificielle dans une société où l'argent est souvent la valeur suprême. Autrement dit, l'exigence d'un consentement très conscient pourrait peut-être sanctionner certaines activités sectaires, mais menacerait sans doute tout aussi bien beaucoup d'autres aspects de la vie quotidienne dans lesquelles le consentement a un rôle à jouer.

De toute façon, ce que l'on aperçoit dans l'exemple français, c'est que la liberté religieuse n'est pas l'unique point de départ de toute réflexion. La protection de l'ordre public, de la santé publique, des bonnes moeurs.. sont directement prises en compte.

Enfin, il y a le *niveau administratif*. Le modèle de vigilance sera caractérisé par une attention accrue aux activités des nouveaux mouvements religieux. Plus spécifiquement, une analyse de leur situation financière à l'occasion de l'application de la législation fiscale, pourra être importante. Dans un modèle de vigilance, la loi constitue une frontière que l'administration ne peut pas franchir. En plus, il n'est pas facile dans des pays où, heureusement d'ailleurs, l'initiative privée est importante, de s'organiser d'une telle façon que l'on parvienne à tout contrôler.

Illustratif dans ce cadre est la réponse que l'ancien Premier ministre luxembourgeois Jacques Santer donna le 18 novembre 1998 à une question parlementaire. Cette réponse, évoquée dans le rapport de A. Pauly et M. Schiltz, concerne les comptes bancaires de l'Eglise de Scientologie. D'abord, J. Santer déclare à juste titre que le secret bancaire interdit au gouvernement en dehors de toute

activité délictueuse ou criminelle de faire des investigations à ce sujet. Mais la question parlementaire va plus loin et suggère qu'il serait indiqué de recommander aux banques de renoncer à entrer en relation avec de telles sectes, évitant ainsi de leur offrir une couverture et une honorabilité. Le Premier ministre partage ce souci et ajoute ceci: « ...en raison de l'absence de toute base légale habilitant le gouvernement à entreprendre une action dans le sens suggéré, je n'ai pas manqué de saisir l'Association des Banques et Banquiers de la demande en question » (13).

Cette réponse rend claire certaines choses. D'abord, toute pratique administrative doit se situer dans les limites de la législation. Ensuite, dans l'Etat de droit moderne, le gouvernement n'est pas tout-puissant. Enfin, des démarches formelles ou informelles préconisant une certaine vigilance vis-à-vis des nouveaux mouvements religieux sont tout à fait possibles.

Dans le cas des banques luxembourgeoises, une dernière observation peut être faite. La question parlementaire concerne, initialement, l'Eglise de Scientologie. Mais lorsqu'elle est spécifiée, il s'agit des relations bancaires avec « de telles sectes », au pluriel. Un critère permettant le cas échéant de séparer les sectes honorables des sectes non-honorables fait bien évidemment défaut, car le passage du singulier au pluriel reste presque inaperçu.

Comment faut-il évaluer le modèle de vigilance? Deux remarques me semblent être essentielles.

D'abord, et c'est important, les droits fondamentaux comme pierre angulaire de la démocratie occidentale ne sont nullement abandonnés. Mais la protection de la société joue aussi. La liberté, qui demeure le point de départ, et la protection de l'ordre public sont mises en balance. On remarque ces tendances aux cinq niveaux juridiques décrits dans ce rapport.

Ensuite, le modèle de vigilance peut être vu de deux côtés. Du point de vue des gouvernants, il constitue un équilibre entre la liberté religieuse et la protection de la société. Du point de vue des gouvernés, il essaie de mettre en équilibre la *liberté* du citoyen et sa *responsabilité*. Ici aussi, une balance est établie.

(13) Compte-rendu des débats 1991-1992, p. 191.

4. Le modèle de scepticisme structurel

Le troisième modèle, celui de scepticisme structurel, est le miroir du premier modèle, celui de confiance. Pourquoi? Dans le troisième modèle, la liberté religieuse n'est plus l'idée centrale comme elle l'était encore dans le modèle de confiance. Même une liberté religieuse redéfinie, excluant à la limite les sectes, n'est plus le point de départ: le modèle de vigilance est donc lui aussi dépassé. Le modèle de scepticisme structurel met l'accent ailleurs. Ce ne sont plus les finesses de la définition de la liberté religieuse qui occupent une place de prédilection, mais bien les mesures à prendre afin de protéger la société. Le thème central n'est donc plus le même.

Une fois ces mesures à prendre acceptées comme point de départ, beaucoup semble être possible. Il y a, bien entendu, les limites de l'article 9 §2 CEDH. Mais les autorités qui préfèrent le modèle de scepticisme structurel vont bien au-delà de ces limites. En effet, ce ne sont pas les frontières d'une liberté qui sont en cause, mais il s'agit bel et bien d'une autre politique tout à fait délibérée, une politique voulant faire face aux dangers multiples des nouveaux mouvements religieux.

(*a*) De prime abord, le scepticisme structurel ne se rencontrera pas au niveau du *droit international*. Cependant, le fait qu'à ce dernier niveau il y ait un certain glissement vers le modèle de vigilance, est déjà significatif en soi.

(*b*) Au niveau du *droit constitutionnel*, une certaine évolution se précise. Certaines valeurs sont protégées plus solidement que par le passé. Ainsi *l'égalité* comme principe constitutionnel a des conséquences pratiques beaucoup plus radicales qu'au dix-neuvième siècle, par exemple en ce qui concerne l'égalité entre les sexes. Les motifs religieux justifiant la subordination de la femme auront sans doute la vie difficile.

La protection des animaux n'est pas encore un principe constitutionnel, mais se trouve tout de même à la base de beaucoup de lois d'ordre public. La priorité de la liberté religieuse n'est plus évidente, des compromis sont recherchés comme en témoigne par exemple le rapport danois.

Concernant le bien-être des enfants, la tendance au niveau national est celle que l'on rencontre aussi au niveau de la CEDH. Par exemple, lorsqu'au lieu de le conforter, les droits des parents entrent en conflit avec le droit de l'enfant à l'instruction, les intérêts de ce dernier priment (14).

En résumé, on pourrait peut être — tout en restant prudent en la matière — constater un léger recul de la liberté religieuse vis-à-vis de certains autres droits fondamentaux déjà existants ou en train de s'établir. De toute façon, une étude plus poussée pourrait être révélatrice sur ce terrain: il est certain que la liberté de religion se voit solidement protégée en tant que telle dans les constitutions nationales. En tant que telle. Mais qu'est-ce qui arrive lorsqu'elle entre en compétition avec d'autres droits et valeurs? Peut-on vraiment parler d'un léger recul? Et, si oui, est-il dû partiellement à la lente installation du modèle de scepticisme structurel, ou faut-il en chercher la cause uniquement au niveau de l'importance croissante d'autres libertés fondamentales?

(*c*) C'est au *niveau législatif* que le modèle de scepticisme structurel connaît son plein épanouissement. Au niveau du droit international et du droit constitutionnel, les principes de l'Etat de droit freinent un peu l'appel radical à la protection de la société. Déjà au niveau législatif, c'est le cas dans une moindre mesure.

L'exemple type d'une telle protection ambitieuse vient des Etats-Unis dans les années soixante-dix. A cette époque, les nouveaux mouvements religieux constituaient un danger tout aussi neuf qu'inattendu. D'aucuns insistaient sur l'établissement de mesures préventives imperméables. Ainsi, on songeait à introduire la notion de *mental kidnapping* pour décrire la situation d'une personne entrée dans une secte sans auparavant être complètement informée des tenants et des aboutissants de l'organisation en question. Si le *mental kidnapping* était reconnu comme tel, le juge pouvait désigner un *temporary conservator* de la personne (15). Il s'agit donc d'une personne qui devrait prendre soin des intérêts du

(14) C.E.D.H., n° D 17187/90, 8 septembre 1993, *D.R.* n° 75, 57.

(15) T.A.M. Witteveen, *o.c.*, 203.

'kidnappé'. Il va de soi que cette attitude hyperprotectrice s'avère très difficile à approuver.

Mais *toute* législation particulière voulant protéger la société contre les sectes me semble être discutable. Prenons l'exemple de la Belgique. En ce pays, *l'enquête parlementaire visant à élaborer une politique en vue de lutter contre les pratiques illégales des sectes et le danger qu'elles représentent pour la société et pour les personnes, particulièrement les mineurs d'âge* se trahit déjà par son nom. La lutte contre les pratiques illégales peut se faire aussi au sein du modèle de confiance ou de vigilance. Mais ceci ne vaut plus pour la lutte contre le *danger* qu'elles représentent pour la société. Ici, il s'agit plutôt d'une façon de formuler qui indique la présence d'un scepticisme structurel. Ceci dit, l'enquête aboutit à des propositions davantage inquiétantes encore. Ainsi, l'insertion de nouvelles dispositions pénales spécifiques est proposée (16). Parmi elles, l'article suivant attire l'attention: « Seront punis d'un emprisonnement de deux à cinq ans et d'une amende (...) ceux qui, par voies de fait, violence, menaces ou manoeuvres de contrainte psychologique contre un individu, soit en lui faisant craindre d'exposer à un dommage sa personne, sa famille, ses biens ou son emploi, soit en abusant de sa crédulité pour le persuader de l'existence de fausses entreprises, d'un pouvoir imaginaire ou de la survenance d'événements chimériques, auront porté atteinte aux droits fondamentaux visés au titre II de la Constitution coordonnée et par la Convention de sauvegarde des droits de l'Homme et des libertés fondamentales » (17).

Cette proposition exige, pour être appliquée convenablement, que le juge se prononce sur des notions comme *la fausse entreprise*, ou encore le *pouvoir imaginaire* et l'*événement chimérique*. C'est donc le juge belge qui va résoudre définitivement le problème théologique de la résurrection du Christ.

(16) Enquête parlementaire visant à élaborer une politique en vue de lutter contre les pratiques illégales des sectes et le danger qu'elles représentent pour la société et pour les personnes, particulièrement les mineurs d'âge. Rapport fait au nom de la commission d'enquête par MM. Duquesne et Willems (Partie II), *Documents parlementaires*, 1996-97, n° 313/8, 224-225.

(17) *Ibid*, 224, note 1.

De toute évidence, cette proposition, qui n'a d'ailleurs pas encore été reprise par le législateur, 'protège la société' avec un tel zèle que la liberté de religion devient théorique. En plus, l'idée qu'un magistrat étatique doive analyser le contenu de certaines idées théologiques, va à l'encontre de tout bon sens, et du droit fondamental qu'est toujours la liberté de religion.

Un autre danger possible au niveau législatif concerne la protection de la liberté religieuse individuelle. De toute évidence, l'appartenance à une minorité religieuse crée déjà des problèmes pratiques.

Ainsi, une décision de la Commission européenne des droits de l'Homme, citée par J. Duffar, et concernant un adventiste du septième jour (Konttinen), s'avère quelque peu discutable. En l'occurrence, l'adventiste interrompait son travail le vendredi dès le coucher du soleil. Il fut licencié. Comme le résume J. Duffar, la Commission estime que le requérant n'a pas été licencié en raison de ses convictions religieuses mais pour avoir refusé les horaires de travail. La liberté de religion ne le protège pas: le requérant est d'ailleurs libre d'abandonner son emploi, garantie suprême, pour la Commission, du droit à la liberté de religion (18).

Dans ce dossier, les horaires de travail sont le point de départ. S'ils correspondent aux convictions religieuses, tant mieux. Dans le cas contraire, tant pis. Cette attitude donne peu d'espace aux convictions religieuses. Le pesage avec d'autres intérêts leur offre une position bien faible. Mais il n'y a pas de discrimination directe.

Pire serait bien entendu l'exclusion de certaines personnes de la fonction publique *à cause* de leur appartenance à un mouvement religieux. Ainsi, en Allemagne, un débat a eu lieu afin de savoir si oui ou non des membres de l'Eglise de Scientologie pouvaient trouver un emploi dans le service public (19). Refuser la fonction publique aux membres de cette Eglise, sans que ceux-ci ne commettent une faute professionnelle, est inadmissible. D'abord, une

(18) C.E.D.H., n° D 24949/94, 3 décembre 1996, *D.R.* n° 87A, 68.

(19) Cf. W. Cremer et T. Kelm, "Mitgliedschaft in sogenanten 'Neuen Religions-und Weltanschauungsgemeinschaften' und Zugang zum öffentlichen Dienst", *Neue juristische Wochenschrift*, 1997, 832-837.

telle attitude est difficilement conciliable avec le droit constitutionnel et le droit international. Ensuite, d'un point de vue politique, la solution est trop simple et ne résout rien. On frappe l'individu, mais les mécanismes de travail des sectes restent à l'abri de cette mesure limitée. Or, si l'on veut se protéger contre les effets négatifs des nouveaux mouvements religieux, il ne faut pas se concentrer sur l'individu mais sur les activités du groupe religieux tout entier.

Bien entendu, le fait que les autorités civiles ne sont pas autorisées à exclure les membres de l'Eglise de Scientologie de la fonction publique, ne signifie pas que des associations privées à tendance comme les partis politiques doivent agir de la sorte. R. Potz évoque le cas du Parti Populaire Autrichien (ÖVP) qui, au sujet d'un maire adjoint d'une petite ville, a décidé que l'appartenance au parti est incompatible avec l'appartenance à l'Eglise de Scientologie. Il va de soi qu'il faut avoir le droit de se distancier des idées très prononcées de ce mouvement.

(*d*) Au *niveau jurisprudentiel*, le scepticisme structurel peut se manifester soit par une absence quasi-totale de la religion à l'occasion d'un pesage juridique comme dans le cas de l'adventiste Konttinen cité ci-dessus, soit par une hostilité presque ouverte vis-à-vis du phénomène religieux. Une décision qui va un peu dans ce dernier sens, a été prise par le tribunal de Milan et est citée dans le rapport italien par G. Long. Cette décision dit que, au moins à partir de 1981, la nature de l'Eglise de Scientologie est devenue telle qu'il s'agit désormais d'une organisation criminelle.

Dans une société occidentale où le religieux est souvent en perte de vitesse, des décisions négatives vis-à-vis de certains mouvements religieux ne sont pas exceptionnelles. Parfois, il s'agit sans doute d'une intolérance implicite de la société sécularisée. Et de temps en temps un autre élément jouant un rôle est la peur de tout ce qui est non-conventionnel.

(*e*) Enfin, au *niveau administratif*, les nouveaux mouvements religieux ont peut-être encore le plus à craindre. De toute façon, ils rateront la plupart du temps les avantages attribués aux religions traditionnelles. En plus, bien souvent, l'administration fera usage d'une définition administrative de *la secte*, le point de départ de mesures souvent peu réconfortantes, comme l'accumulation de

contrôles dans le domaine de la fiscalité, du droit du travail, de la sécurité sociale.

Enfin, comment faut-il évaluer le modèle de scepticisme structurel, qui met la protection de la société au centre des débats et qui inspire aux mesures radicales? Deux éléments sautent aux yeux.

D'abord, le modèle de scepticisme structurel est d'une certaine façon caractéristique d'une société sécularisée. Le phénomène religieux ne fait plus intégralement partie de l'expérience quotidienne de la plupart des citoyens. Dans une telle société, il est tout simplement fort difficile de développer des raisonnements juridiques à partir de la notion de *religion*. L'intérêt spontané se concentre sur la protection de la société, et pas sur la religion et son épanouissement possible. Ainsi, à long terme un tas de préceptes non seulement des sectes mais aussi des grandes religions seront mis en cause, et ceci avec une soi-disant objectivité hautement discutable.

Ensuite, le troisième modèle contient aussi un aspect quelque peu ambigu. Les Eglises elles-mêmes ne savent pas trop si elles doivent oui ou non rejeter le modèle de scepticisme structurel, du moins lorsqu'il s'agit de sectes. L'exemple des Etats-Unis est éloquent: au niveau local, les Eglises traditionnelles se montrent sceptiques vis-à-vis des nouveaux mouvements religieux. En revanche, lorsque des mesures générales sont prises et lorsque ces mesures semblent menacer tout aussi bien le champ d'action des religions anciennes, ces dernières lèvent la voix et invoquent la liberté religieuse. Sans doute, cette attitude quelque peu paradoxale stimule la mise en pratique du troisième modèle.

5. Conclusion finale

La situation des nouveaux mouvements religieux ne s'annonce pas parfaitement claire. C'est d'ailleurs aussi le cas des notions *nouveaux mouvements religieux* ou *sectes* elles-mêmes. Ceci dit, on peut distinguer trois modèles qui reflètent des attitudes différentes vis-à-vis des nouveaux mouvements religieux. Il y a le *modèle de confiance* qui, à partir de la liberté religieuse, croit à l'efficacité de

l'arsenal juridique existant et aux valeurs de l'Etat de droit. Le *modèle de vigilance*, quant à lui, trouve également son origine dans la protection de la liberté de religion, mais se concentre aussi sur la protection de la société. C'est précisément cette protection qui constitue l'idée conductrice du modèle de scepticisme structurel, affichant en même temps une attitude peu enthousiaste vis-à-vis des nouveaux mouvements religieux.

J'ai brièvement analysé ces trois modèles et j'ai essayé de vérifier leur présence à cinq niveaux juridiques différents, à savoir les niveaux (*a*) du droit international; (*b*) du droit constitutionnel; (*c*) de la législation ordinaire; (*d*) de la jurisprudence; (*e*) de la pratique administrative. Car, de toute évidence, une analyse basée sur des éléments empiriques demande une classification plus fine que celle en trois grandes catégories distinctes.

Cette analyse plus détaillée, examinant donc quinze hypothèses possibles, mène à trois grandes conclusions:

1. Les trois modèles existent simultanément aux cinq niveaux juridiques. On est donc confronté à un grand degré de diversité.

2. Toutefois, en général, aux niveaux juridiques supérieurs, au niveau des principes, le modèle de confiance domine. Il joue aussi un rôle aux niveaux inférieurs. En revanche, au niveau de la pratique, le scepticisme structurel, absent au niveau des principes, saisit sa chance. Et le modèle de vigilance est vraiment présent à tous les niveaux, au niveau des principes, certes, mais tout aussi bien au niveau législatif, jurisprudentiel, administratif.

3. Globalement on peut conclure que la plupart des pays se situent généralement quelque part entre le modèle de confiance et le modèle de vigilance, avec toutefois ces dernières années un certain renforcement du deuxième modèle qui, en fait, ne menace pas encore la liberté de religion comme le fait, en revanche, le modèle de scepticisme structurel.

Comment faut-il évaluer ces tendances? En général, la situation est relativement satisfaisante. Il faut toutefois essayer d'éviter les pièges du modèle de scepticisme structurel qui, sous la pression d'une partie de l'opinion publique et d'une certaine presse à la recherche de succulents drames de famille, semble progresser.

D'un point de vue juridique, les modèles de confiance et de

vigilance demeurent les seuls à correspondre aux exigences de la liberté de religion. On voit d'ailleurs très mal comment une société puisse protéger ses membres de façon radicale contre des idées bizarres, tandis que les produits commerciaux tout aussi bizarres ainsi que leurs campagnes publicitaires envahissent le monde sans opposition réelle. Les idées sont-elles vraiment plus dangereuses que les biens de consommation?

Bien entendu, la liberté juridique ne dit rien concernant le niveau des idées religieuses ainsi librement répandues. Ce n'est pas parce qu'elles doivent être respectées qu'elles sont respectables. Mais il est toujours plus agréable de combattre des idées qui peuvent être répandues librement, que d'entrer en débat avec celles qui sont opprimées et qui, par ce fait même, inspirent à une complicité compatissante, quelque soit leur valeur intrinsèque.

SPECIAL STUDIES
ETUDES PARTICULIERES

RICHARD POTZ
Institut fuer Kirchenrecht, University of Vienna

NEW RELIGIOUS MOVEMENTS IN AUSTRIA

SUMMARY: *1. Introduction.* — 2. *Active New Religious Movements in Austria.* — 2.1. NRM in general. — 2.2. The NRM in Austria. — 2.3. NRM inside the traditional religious communities. — 2.4. Catholic Tradition-Protestant Tradition. — 2.5. The social composition of NRM. — 3. *The NRM in legal definitions and court decisions.* — 3.1. Definition of religion. — 3.2. Definition of NRM. — 3.3. The quantitative importance of NRM in court decisions. — 3.4. Official inquiries concerning NRM. — 3.5. Organizational structures for NRM. — 4. *Legal advantages for religious communities and the NRM.* — 5. *Conscientious objection by NRM followers.* — 6. *The protection of welfare of minors and parental custody.* — 7. *New Laws concerning the status or the activity of NRM.*

1. INTRODUCTION

In Austria the traditional legal situation of religious communities is characterised by a distinction between legally recognised churches and religious communities on the one hand, which have a public-law status, and non-recognised communities on the other hand, which even can't be founded as such, because the law governing civil associations is not applicable to churches and religious communities.

At this moment 12 churches and religious communities are recognised (1) and another 20 communities have applied for

(1) Roman-Catholic Church, Protestant Church (Lutheran and Helvetic), Orthodox Church (Greek, Serbian, Rumanian, Russian and Bulgarian Community), Israelite Religious Community, Old Catholic Church, Muslim Religious Community, Methodist Church,

recognition. The reason for this great number of actual applicants was a longlasting practice, that there is no enforceable claim to be recognised for those who fulfil the legal conditions. According to this practice of the Ministery for Education, confirmed by the High Administrative Court (2), recognition can only be granted by statutory instrument. This opinion had important juridico-dogmatical consequences. As there is no right to provoke the issue of a statutory instrument, the possibility of appeal against a refusal also was denied. Since 1988 the Austrian Constitutional Court (3) has critizised this practice stating, that, because of the legal consequences of the recognition of religious communities, the differentiation between recognised and non-recognised religious communities is compatible with the constitution only if there is an enforceable claim for those who fulfil the legal conditions for recognition. In case of a refusal of recognition the Ministery of Education should issue a negative administrative decision to give the applicants the chance for appealing to the High Courts.

After years of dissent between the Constitutional Court and the High Administrative Court, in a decision of 1997 the High Administrative Court joined the legal view of the Constitutional Court (4). Therefore a new situation in Austrian law on religion was created. As a reaction the government hastened to present a draft of a "Federal Law concerning the Legal Personality of Religious Denominational Communities" (Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften). The first draft was sent out in order to get opinions with the deadline of 30 September. Although there were serious objections, the bill was drafted on 1 December with a number of corrections, but unchanged in regard to some important defects. The Law entered into force on 10 January 1998 (5).

Church of Latter Day Saints (Mormons), Armenian-Apostolic Church, New Apostolic Church, Buddhist Religious Community, Syrian-Orthodox Church.

(2) GAMPL/POTZ/SCHINKELE, *Österreichisches Staatskirchenrecht*, vol. I, Vienna 1990, 147 seqq.

(3) VfGH 1988/12/12, B 13/88, B 150/88.

(4) VwGH 1997/04/28, 96/10/0049/15.

(5) BGBl. I 1998/19. A translation of this Law is given in the Annex.

This law initiates a new juridical status for religious communities in Austria on a lower level than the traditional public-status of recognised Churches and Religious Communities. In the future this status in principal will be open to NRM with more than 300 adherents (§ 3 sec. 3). At the moment we have therefore a transitory situation in Austrian law on religion, especially concerning the legal position of NRM, because nobody knows which of them will be accepted according to the new law.

At the same time the law renders more difficult the conditions for the public-law status, so that it is apparently impossible that any other religious community can get public-law status in the near future. In application to the already existing recognised communities only five of the twelve would fulfil the number of members — 2/1000 of the population of Austria according to the most recent census (that means ca 16.000 members) — provided for in § 11 sec. 1 lit. 2.

2. Active New Religious Movements in Austria

2.1. *NRM in general*

It is even hard to define a "sect" in terms of religious science or sociology, but it is impossible to find a legal definition (6). If we ask for the main religious movements that established themselves in Austria in this century we can find either globally acting groups, like different Protestant denominations (Baptists, Adventists), Mormons, Jehova' s witnesses, Scientology and the Mun-Movement or groups, which have their center in a geographical area, which comprises the southern German-speaking countries (Austria, Switzerland and Southern Germany), like Divine Light Zentrum, Fiat Lux, Universelles Leben, Bewußtseins-Erweiterungs-Programm and some movements which are more or less situated inside the Catholic Church, like the Opus Angelorum.

Some of the NRM are already recognised, therefore it is

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(6) Cf. below III, 2.

impossible to identify the non-recognised communities with NRM. On the one hand we find religious movements like Methodists, Mormons and the New Apostolic Church among the recognised churches. On the other hand the Anglican Church or one of the oldest churches, the Coptic-Orthodox Church, are among the non-recognised churches because of the small number of adherents.

Principally the Evangelical Free Churches should be excluded from a presentation of NRM in Austria. These Churches have a certain tradition in Austria, because some of them like Mennonites and Herrnhuter (Moravian Brethren) — both of them actually don't have a religious community in Austria — had the status of a recognised church already in the times of the Habsburg Monarchy. Another denomination, the Methodist Church is recognised since 1951.

There are also Non-Christian denominations which are to be excluded from this presentation, although they are a new phenomenon as well as a sect in the terms of religious science. The most important group are the Alevi, which have no relations to the Islamic Community in Austria recognised by the state. Probably one third of the Turks and Curds living in Austria are Alevi. Because of their doctrine and practice respectively their roots in familiary bonds the Alevi are not problematic in social life or in legal respect.

Only a few groups have more than a few hundred adherents. In the last 15 years most of the greater groups — with more than thousand members — have applied for recognition without success (Baha' i, Freie Christengemeinden — Pentecostals, Jehovah's Witnesses, Sahaja Yoga, Scientology).

2.2. *The NRM in Austria*

According to an information booklet on sects of the Ministry for Environment, Youth and Family (7) the following groups are of some importance in Austria:

(7) SEKTEN — Wissen schützt, Eine Information des Bundesminsteriums für Umwelt, Jugend und Familie, Vienna 1996.

a. Movements with an Asian background: Brahma Kumaris, Divine Light Zentrum, Eckankar, ISKCON (Hare-Krishna-Bewegung), Holosophische Gesellschaft (former Kirpal Ruhani Society), Osho-Bewegung (Rajneeshism — Bhagwan Movement), Sahaja-Yoga, Sai Baba, Sri Chinmoy, Transzendentale Meditation;

b. New Revelations: Fiat Lux, Universelles Leben;

c. Movements with a Western psychological concept: Bewußtseins-Erweiterungs-Programm (Bep), Landmark Education (Jack Rosenberg), Scientology, Zentrum für experimentelle Gesellschaftsgestaltung;

d. Movements with a Christian background: Die Familie, Vereinigungskirche (Mun), Zeugen Jehovas;

e. Movements with an Islamic background: Two groups have to be mentioned, because of their missionary acitivities: the Baha'i and the Ahmadiya;

f. Movements with a theosophical background: Neue Akropolis.

2.3. *NRM inside the traditional religious communities*

The already mentioned information booklet on sects of the Ministry for Environment, Youth and Family explicitly exclude NRM inside the traditional religious communities. It was critizised, therefore, especially with regard to the exclusion of Opus Angelorum (Engelwerk) referring to a Belgian example, where groups inside the traditional churches are mentioned.

2.4. *Catholic Tradition*

Especially the Opus Angelorum (AO) is of greater significance for Austria (8). First of all because it is of Austrian origin, the founder was Gabriele Bitterlich, a born Viennese, living in Innsbruck. 1947 she started to write down her inspirations. The doctrine of the OA is a mixture of the Christian doctrine on angels and

(8) BOBERSKI, *Das Engelwerk — Theorie und Praxis des Opus Angelorum*, Salzburg 1993; GSTREIN, *Engelwerk oder Teufelsmacht? Hintergründe über eine Grauzone kirchlicher Aktivitäten: Neues Heil oder innerkirchliche Sekte*, Mattersburg 1990.

gnostic-kabbalistic elements. The central document was an arcanum for a long time. Since 1965 parts of Bitterlich's work have been distributed. After her death in 1978 her son Hans-Jörg Bitterlich became leader of the OA. Up to now the center is in St. Petersberg, a Tyrolean castle. 1977 for the first time the German Bishops Conference asked for a Roman investigation about the OA. The first result was the imposition of some restrictions in 1983. In 1988 and 1990 the Austrian bishops forbade the propagation of the doctrine of the OA. After a renewed investigation the Holy See (Decree of the Congregation for Doctrine from 6. 6. 1992 (9)) condemned the doctrine of demons and parts of the practice of the OA, especially the so-called "Engelweihe" (Angel-consecration). A few years ago the activities of the OA were of great public interest in Austria, a series of critical articles and books was published. In the last years the OA kept rather quiet, probably because of the Roman judgment. According to an information of the OA it has 40.000 members and adherents in Austria. That means — if this number is really correct — that the OA by far is the greatest group among the problematic NRM.

2.5. *Protestant Tradition*

Pentecostal and Evangelical Movements which one may count to the NRM in Austria are only of minor importance, although since 1992 they have a common forum: the "Bund evangelikaler Bewegungen" (Assembly of evangelical movements).

2.6. *The social composition of NRM*

Recent investigations are showing that principally members of all social groups are "endangered" by sects (10). Nethertheless in particular they attract attention of certain social groups and age groups, respectively of people who are in a serious life crisis.

(9) AAS 84 (1992) 805 f.

(10) Jugendreligionen, Sekten, destruktive Kulte, Sozialwissenschaftliche Arbeitsgemeinschaft — Studienarbeit 112, Wien 1997.

Obviously in the last years we can find rather more *midlife-crisis-sects* than *youth-sects*. It seems to me that there is more and more the phenomenon of a religious market, which is to some greater extent orientated by the demand side than by the offer side. Especially in the western developed countries we can find increasing needs for spiritual orientation, which were not satisfied by the traditional churches. Because of the economic possibilities of many people these needs don't only appear as demand on the free market of ideas but also provoke flourishing offers of pseudo-religious economically orientated groups.

3. The NRM in legal definitions and court decisions

3.1. *Definition of religion*

The "explanations" (Erläuternde Bemerkungen) to the new law on religious denominational communities for the purpose of differentiation to "Weltanschauung" define "Religion" as "a historically developed concept of convictions explaining man and world with a transcendent reference, including specific rites and symbols giving precepts for acting according to its fundamental doctrines, and which is presentable regarding its contents." In future there will be the necessity to ask for opinions by experts of religious studies in case of an application by a "suspicious" religious community for legal personality, a task quite underestimated by the legislator.

In the fifties the Austrian Constitutional Court (VfGH) has stated in connection with the "Gotteserkenntnis Ludendorff"(11), that the practice of an at least primitive and rudimen-

(11) This movement was accused of having an ideology close to national-socialism and racism. In principal in Austria there is no NRM activity outlawed as such. A possible exception could be the prohibition of national-socialism and racism according to the Verbotsgesetz StGBl. 1945/13 idF BundesverfassungsG BGBl. 1947/25 and Art. 9 Staatsvertrag von Wien 1955.

tary cult is a necessary precondition for being protected as manifestation of religion (12).

3.2. *Definition of NRM*

There is no legal definition of NRM or sects given by law or by courts. Only as an *obiter dictum* we can find in a decision (13) the statement, that according to *Gerhard Schmidtchen* it is part of the nature of a sect that "the border of the group becomes for the members the border of the reality of their life ("Lebenswirklichkeit").

As already mentioned there is no definition of "sects" in legal literature. The term is also very rarely used in court decisions. Sometimes the High Court (OGH) used it characterizing some movements which are called "sects" in colloquial language (14). In one case the Commission for Broadcasting and Television stated, that the use of the term "sect" for a NRM (in the concrete case: Sahaya Yoga) in mass media constitutes no breach of objectivity (15). The question wether using the term "sect" is discriminating arose in case of compensation for defamation according to § 1330 ABGB (16), that means somebody claims damages for being mentioned in connection with a "sect".

3.3. *The quantitative importance of NRM in court decisions*

As a yardstick for the importance of NRM from a juridical point of view I want to refer to the number of decisions of the Constitutional High Court (Verfassungsgerichtshof — VfGH), the Administrative High Court (Verwaltungsgerichtshof — VwGH)

(12) VfSlg. 1950/2002. This decision was confirmed in connection with Jehova' s Witnesses: VfSlg. 1953/2494, 1953/2610.

(13) OGH 1995/03/29, 3 Ob 34/95.

(14) E.g. Jehova' s Witnesses: OGH 1986/09/03, 1 Ob 586/86; 1986/10/01, 1 Ob 627/86; 1993/05/12, 3 Ob 521/93; Hare Krishna: OGH 1987/02/24, 1 Os 148/86; Mun: 1992/12/16, 2 Ob 593/92.

(15) Rundfunkkommission (Commission for Broadcasting and Television) SGZ 531/ 3-RFK/92.

(16) OGH 1993/06/08, 4 Ob 59/93; 1993/06/29, 4 Ob 94/93; 1994/08/10, 6 Ob 21/94.

and the High Court for civil and criminal cases (Oberster Gerichtshof — OGH) in which different groups were involved.

On top we find Jehovah's Witnesses with 72 proceedings, on the second place follows Scientology with 15 proceedings. Only a few cases (altogether 11) deal with other groups mentioned above (Sahaja Yoga, the Mun-Movement, Transzendentale Meditation and Divine Light Zentrum). This statistic shows, that the legal problems of NRM in Austria are concentrated on Jehovah's Witnesses and Scientology, although Austria seems to be only a scene of secondary importance for the expanding strategy of these two groups, especially Scientology.

It is interesting to have a look at the problems the court has to deal with in connection with the different NRM. Regarding Jehovah's Witnesses problems of blood transfusion and the custody of children after divorce are predominating. Quite different the situation of Scientology, although we have cases concerning the custody of children, problems with a clearly economic background are prevailing: e.g. exemption from taxes, defamation cases, trading licenses. The very few cases regarding other NRM have no particular significance, nearly all of them refer to the question of their legal status or to the custody of children.

3.4. *Official inquiries concerning NRM*

Like in other countries public discussions were determined by spectacular individual cases, which were brought to public by the engagement of affected persons, who either had left the sect with great problems or are related to "Victims of sects", but also by dramatic incidents (Sonnentempler, Davidianer), although in these cases there is no reference to the Austrian scene. The discussions of all these incidents in mass media caused political activities.

On 14 July 1994 the Austrian Parliament adopted a resolution, in which the government was requested to inform the public about the activities of sects and similar movements. As a result the information booklet already mentioned was sent out last year by the Austrian Ministry for Environment, Youth and Family with the title "Sekten — Wissen schützt" (Sects — Knowledge protects).

This booklet was of great success, 200.000 copies were demanded and distributed. It gives a good overwiew about the NRM scene in Austria, it contains useful information from a psychological and pedagogical point of view. But it was also critizised, mainly because of three reasons: First of all the legal information is rather poor and even erroneous, secondly there is not enough differentiation between the single NRM and thirdly: in some cases adherents of those NRM, which were cited in the booklet, meanwhile were objects of outcasting reactions.

There was also a consequence inside a political party: In connection with the case of a Vice-Mayor of a little town the Austrian Peoples Party has decided, that party membership is incompatible with the membership in the "Scientology Church".

3.5. *Organizational structures for NRM*

According to § 3 lit. a Vereinsgesetz (Act on Associations) 1951, the law governing associations is not applicable to churches and religious communities. For this reason in administrative practice only the foundation of associations with a partly religious function has been seen as admissible. However, there is a tendency now — with reference to Art. 11 and 14 ECHR, which guarantee the freedom of association without discrimination for reasons of religion or philosophy — to allow the formation of associations in the case of religious communities which do not fulfil the preconditions for recognition or do not desire such recognition. Therefore most of the NRM are organised in non-profit-associations — in the case of Scientology even formally as "Scientology Kirche Österreich". A reform of the Law on Associations also has been in discussion since two years, but the topic has been postponed (without reference to the problem of NRM!) at the beginning of this year.

According to the new law on religious denominational communities a further organizational structure is available for NRM. At the moment it is open, if this law only has to do Cindarella' s job: The good one' s in the pot of a new organised special legal status so that the bad one' s could be outcasted more clearly.

A rather strange alternative consists in a foundation according to the liberal Austrian Law on Political Parties (17). This way was chosen by the "Transzendentale Meditation" founding the "Österreichische Naturgesetz-Partei" (Austrian "Law of nature"-Party) and by the Mun-Movement.

4. Legal advantages for religious communities and the NRM

The NRM do not have the same possibilities to receive the legal advantages which are provided for recognised religious communities, but as far as they are organised in non-profit associations they have the same position like other non-profit associations. Church purposes are purposes the fulfilment of which promotes legally recognised religious communities. In the case of exclusive and direct dedication to a particular "ecclesiastical" purpose they are also exempt from some taxes (18). Pastoral activity of the recognised religious communities is treated like State activity in revenue law, the enterprises concerned are consequently liable to neither trade nor value added tax (19). Another advantage for recognised churches and religious communities consists in granting subsidies towards the costs of personnel for private schools with public law status (20).

At the moment it is open whether the status of religious denominational communities is going to develop in direction of the status of the recognised Churches and Religious Communities or will stay on the level of "ordinary" non-profit associations.

5. Conscientious objection by NRM followers

According to the Austrian Federal Constitution (Art. 9a) a non-military service for conscientious objectors is provided. A person liable for military service needs to declare expressly that he

(17) ParteiG BGBl. 1975/404 as amended.
(18) § 38 Bundes-Abgabenordnung BGBl. 1961/194 as amended.
(19) § 2 Abs. 3 UmsatzsteuerG BGBl. 1972/446 as amended.
(20) § 17 PrivatschulG BGBl. 1962/244 as amended.

objects for reason of conscience — except in cases of self-defense or defense of another from imminent attack — to using force of arms against other human beings. In this case he has to serve in alternative civil services. For several years there was the practice, that adherents of Jehovah's witnesses, who rejected even civil service, were neither called to arms nor to non-military civil service. Since two years this practice has been changed, so that recently some young men, belonging to the Jehovah's witnesses and rejecting even civil service were sentenced to imprisonment.

In school law there is one example where conscientious objection by an adherent of a non-recognised church is accepted: According to the Law on School-time the possibility is granted to keep away from school instructions for religious reasons on Saturday. In decrees of the education authorities this possibility explicitly is regulated not only for the recognised Hebrew Community but also for the Seventh-Day-Adventists, although they do not belong to the recognised churches (21).

6. The protection of welfare of minors and parental custody

Regarding the protection of welfare of minors there were some spectacular cases of Jehova' s Witnesses concerning the refusal of blood transfusion in the last years, so that this problem was of nationwide interest. The persons having care and custody of a child carry the obligation for the "Protection of the physical well-being and health of the child" (§ 146 Austrian Civil Law Code), regardless of their religious commandmends. These persons cannot refer to their constitutionally guaranteed right of religious freedom and of freedom of conscience in this matter of obligation. In the case of parents refusal, their consent has to be replaced by the consent of a legal representative who is to be appointed after a partial withdrawal of the parents' custody of the child (22).

(21) Gampl/Potz/Schinkele, *Österreichisches Staatskirchenrecht*, vol. 2, Vienna 1993, 238 seq.

(22) § 8 Abs. 3 KrankenanstaltenG BGBl. 1957/1 as amended in connection with § 176 ABGB.

In a decision on granting parental custody, the Supreme Court decided 1986 (23) that if a child is forced into the role of an outsider in society because of its upbringing according to the beliefs of Jehovah's Witnesses or runs health risks (prohibition of blood transfusions), this must be considered as a relevant factor. The matter was taken to the European Court of Human Rights in Strasbourg which found that there had been a violation of the right to family life according to Art. 8 ECHR and Art. 14 (24). In the last two years, therefore, the Austrian Supreme Court has decided twice — one case refered to a Jehova' s witness (25), one case to an adherent of Scientology (26) — that membership to these groups could not be the only reason for denying parental custody in case of divorce. In one case the lower instance ordered a child's mother being a member of Scientology who was granted parental custody to keep away Scientology's ideas from the child. In the case of a 13-year old boy who was sent by his mother for 7 months to a school of Sahaja Yoga in Dharamsala (India) the grandparents asked for transfering the custody or at least granting a visiting right. The Austrian High Court refused the application of the grandparents arguing that staying at a boarding school is no damage to the child's welfare (27).

7. New Laws concerning the status or the activity of NRM

1. Besides the Federal Law concerning the legal personality of religious communities a draft for a "Law on the establishment of a public-law institute for information about sects and similar institutions" was sent out for opinions in october 1997. At the moment it is unclear if this draft bill has a chance to pass legislation.

(23) SZ 59 (1986) 144, in ÖAKR 37 (1987) 88, 104 seqq.

(24) ECHR 1993/06/22, 15/1992/360/434.

(25) OGH 1996/06/04, 1 Ob 601/95.

(26) OGH 1996/08/13, 2 Ob 2192/96.

(27) OGH 1996/01/30, 1 Ob 623/95.

2. Text of the *Federal Law concerning the Legal Personality of Religious Communities* (28):

The National Council has resolved:

DEFINITION OF A RELIGIOUS DENOMINATIONAL COMMUNITY

§ 1. Religious denominational communities in the sense of the Federal Law are those organizations of followers of a religion which have not been legally recognized.

ACQUISITION OF A LEGAL PERSONALITY FOR A RELIGIOUS COMMUNITY

§ 2. (1) Religious denominational communities can acquire legal personality according to the federal law by applying to the Federal Minister for Education and Cultural Affairs following a six-month waiting period subsequent to submission of said application, if they have not been refused legal personality (§ 5) during this waiting period.

(2) The Federal Minister for Education and Cultural Affairs has to announce in the official gazette of the *Wiener Zeitung* the receipt of applications in accordance with sec. 1.

(3) A notice of assessment has to be issued concerning the acquisition of legal personality which is to bear the name of the religious denominational community and all organs of external representation in a general designation.

(4) With the notice of assessment in acccordance with sec. 3, the Federal Minister for Education and Cultural Affairs is to associate the dissolution of all associations whose purpose is the spreading of the religious doctrines of the religious denominational community in question.

(5) If a religious denominational community is reorganised following the dissolution of an association supporting the religious denomination in question, then in accordance with tax law it is to be assumed a mere change of legal form, but continued legal existence of one and the same tax-liable party.

(6) Religious denominational communities with legal personality according to this Federal Law have the right to designate themselves "Officially registered religious denominational community" (staatlich eingetragene religiöse Bekenntnisgemeinschaft).

APPLICATION BY A RELIGIOUS DENOMINATIONAL COMMUNITY FOR LEGAL PERSONALITY

§ 3. (1) The application by a religious denominational community for legal personality must be done by the representative body of the religious denominational community. This power of representation must be made credible. In addition, a mailing address must be submitted.

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(28) This translation is based on a translation of the draft bill of this law by the Congressional Research Service — The Library of Congress — Washington D.C.

(2) The application must include statutes and supplementary materials showing the content and practice of the religious denominational community.

(3) Proof must be submitted with the application that the religious denominational community has at least 300 members residing in Austria, who are not part of a religious denominational community with legal personality nor of a legally recognized church or religious community.

(4) Any assocations within the country whose purpose is the spreading of the religious doctrines of the religious denominational community have the status of a party in the proceedings and are to be named in the application.

STATUTES

§ 4. (1) The statutes must contain:

The name of the religious denominational community, which must be such that it can be related to the doctrines of the religious denominational community and that there can be non confusion with existing religious denominational communities with legal personality legally recognized churches and religious communities or their institutions.

A description of the religious doctrine, which must be differentiated from the doctrines of existing religious denominational communities in accordance with this law as well as the doctrines of legally recognized churches and religious communities.

A description of the goals and purposes of the religious denominational community arising from its doctrines, as well as the rights and duties of members of the religious denominational community.

Regulations concerning the beginning of membership and its termination, whereby termination in any case is to be guaranteed in accordance with § 8 sec. 1.

The way of appointment of the organs of the religious denominational community, their material and local area of activity, legal domicile and responsibility in the public area.

External representation of the religious denominational community,

Method of raising funds to meet economic needs,

Regulations in the event legal personality is terminated, whereby it must be guaranteed that claims on the religious denominational community are dealt with in an orderly fashion and the assets of the religious denominational community are not used for purposes which are in contradiction to its stated aims.

(2) It can be provided in the statutes that even local branches of the religious denominational community acquire their own legal personalities. In this case, the statutes relating to the local branches must determine:

The name of the local area of activity,

Their own bodies with power of representation,

Regulations concerning the legal transition in the event this legal entity is disolved.

DENIAL OF ACQUISTITION OF LEGAL PERSONALITY

§ 5. (1) The Federal Minister for Education and Cultural Affa
obliged to deny acquisition of legal personality, if

this is necessary with regard to the doctrine or its application fo
protection of the interests of public safety, public order, health and m
or the protection of the rights and freedoms of others in a demo
society; this is especially the case with incitement to commit an i
punishable action, with preventing the psychological developme
young adults, damaging the psychological integrity and using psychot
peutic methods, especially for purposes of indoctrination,

the statutes are not in accordance with § 4.

(2) The denial of legal personality must be announced in the of
gazette of the *Wiener Zeitung*.

ACQUISITION OF LEGAL PERSONALITY FOR LOCAL BRANCHES OF A RELIG
DENOMINATIONAL COMMUNITY

§ 6. Acquisition of a legal personality for local branches of a relig
denominational community require an application be made by the
gious denominational community to the Federal Minister of Educa
and Cultural Affairs and becomes effective the day of delivery.
Federal Minister of Education and Cultural Affairs is to confirm deli
of the application.

OBLIGATIONS TO GIVE NOTIFICATION ON THE PART OF THE RELIGIOUS D
NOMINATIONAL COMMUNITY

§ 7. Religious denominational communities and their branches havi
legal personality are obligated to notify immediately the Ministry
Education and Cultural Affairs of the names and addresses of any orga
representing them as well as any change in their statutes. Notification is
be refused by administrative act if the authorities have been inform
about an appointment of organs contrary to the statutes and or a
amendment to the statutes constitutes ground for denial in accordan
with § 5.

TERMINATION OF MEMBERSHIP IN RELIGIOUS DENOMINATIONAL COMMUNITY

§ 8. (1) Termination of membership in a religious denominationa
community is accomplished by declaration at the district administrati
office. This office has to inform the religious denominational communit
of the withdrawal.

(2) Fees for withdrawal of membership may not be levied.

TERMINATION OF LEGAL PERSONALITY

§ 9. (1) Legal Personality may be terminated by

self-dissolution, of which the Ministry of Education and Cultura
Affairs must be notified in writing,

deprivation of legal status.

(2) The Federal Minister of Education and Cultural Affairs is obli
gated to deprive a religious denominational community or a branch of
same of its legal personality if

it is unable, or no longer able, to meet one of the determing pre
sites for acquisition of legal personality.

it has not had any authorised representatives for the public area for at
a year,

in the presence of conditions which would lead to denial of legal
sonality according to § 5, these conditions continue to exist despite a
quest to discontinue the grounds for withdrawal, or

activities in violation of the statutes persist despite notice requesting
redress of same.

(3) Withdrawal of legal status is to be announced in the official
zette of the *Wiener Zeitung*.

REGISTER OF RELIGIOUS DENOMINATIONAL COMMUNITIES WITH LEGAL PER
NALITY

§ 10. (1) The Federal Minister of Education and Cultural Affairs must
maintain a register of religious denominational communities with legal
rsonality. This register must contain:

The name of the religious denominational community.

Legal status of its branches,

Reference number and date of notification according to § 2 sec. 4,

Representative bodies with authority to sign,

The reason in case of termination of legal personality.

(2) The register is open to public.

(3) Anyone may receive information on demand about the address of
he religious denominational community and about its members who are
uthorised to represent them outside the community. At the request of the
religious denominational community or another person or institution, who
can make credible a legitimate interest, a certification has to be issued,
ascertaining who is authorized for external representation in conformity
with the existing statutes and to the notifications according to § 7.

ADDITIONAL PREREQUISITES FOR RECOGNITION ACCORDING TO THE LAW

§ 11. (1) Additional prerequisites to those determined in the law
concerning legal recognition of the religious communities, RGBl. No.
68/1874 are as follows:

Continued existence as a religious community for at least 20 years, 10
of which must have been spent as a religious denominational community
with legal personality in the sense of this Federal Law,

Number of followers must equal at least 2/1000 of the population of
Austria according to the most recent census,

Use of income and assets for religious purposes (for which those
purposes founded in the religious objectives can be counted which are
useful for general welfare and for charity),

A positive attitude to the society and the state,

No illegal disturbance of relations with existing legally recognised
churches and religious organisations or any other religious communities.

(2) This federal law is used in proceedings before administrative
authorities on the basis of the law pertaining the legal recognition of

religious communities. Applications for recognition as a religious community are to be evaluated as applications in accordance with § 3, whereby the day the law goes into effect is considered the day of submission.

CONCLUDING REGULATIONS

§ 12. This federal law is to go into effect the day subsequent to publication.

§ 13. The Federal Minister of Finance is acquainted with the acting of the execution of § 2 sec. 5, in all other matters the Federal Minister for Education and Cultural Affairs.

PAUL LEMMENS
Instituut von der Rechten van le Mens, Catholic University Leuven

NEW RELIGIOUS MOVEMENTS AND THE LAW IN BELGIUM

SUMMARY: I. *Some Facts.* — II. *Legal Situation.* — A. Freedom. — 1. Principle. — 2. Restrictions. — B. Rights. — III. *Future Developments.*

I. SOME FACTS

1. It is difficult to write a report on new religious movements (NRM) in Belgium, since there is no legal definition of that term (as such), nor a comprehensive description of the phenomenon.

However, the recent report of a commission of enquiry of the Belgian House of Representatives, submitted on 28 April 1997, offers some valuable tools of reference. The commission was set up on 13 March 1996, and was given the task "to elaborate a policy in view of combatting the illegal practices of the sects and the dangers they represent for the society and for the individuals, in particular minors" (1).

The commission of enquiry, chaired by Mr. Serge Moureaux, held 58 meetings, and heard 136 witnesses (members of the government, public officials, academics, authors, representatives of associations in defence of victims, members and former members of NRM, and representatives of NRM who had requested to be heard

(1) See the initial proposal by Mr. Duquesne, *Parl.Doc.*, House Repr., 1995-96, No. 313-1, and the report on that proposal by Mr. Borin on behalf of the commission for justice, *Parl.Doc.*, House Repr., 1995-96, No. 313-5.

by the commission). Its report, authored by Messrs. Duquesne and Willems, runs to 670 pages (2).

The report contains detailed summaries of the evidence, given partly in public, partly behind closed doors. It then goes on to describe some general features of NRM. In its conclusion, it points to a number of shortcomings in the approach of public authorities, and gives a list of recommendations. Appended to the report is a synoptic chart, listing 189 associations whose names have been brought up to the commission, either by public authorities or by witnesses. It should be noted that many of these associations have not been heard by the commission itself.

The said list immediately brought about a wave of protest, especially from a number of catholic and other organizations who refused to be labeled as "sects". The warning, in the report, that the enumeration did in no way reflect an opinion or value-judgment of the commission itself, was not enough to make the list acceptable for a majority within the House. When the House, on 7 May 1997, accepted the conclusions and recommendations of the report, it decided at the same time that the synoptic chart did not form part of the conclusions, and therefore was not the object of any approval or disapproval by the House (3).

2. One of the findings of the commission of enquiry was that not all sects deserved to be regarded as dangerous to their members, to third persons, to society or to democracy. This lead the commission to distinguish between the terms "sect" and "harmful sectarian organization".

By the term "sect", the commission understood "an organized group of persons who have the same doctrine within a religion"; as such, the term referred to respectable organizations. To the extent that such organizations resulted from "new" views of a philosophical or religious nature, they could receive the even more neutral denomination of "NRM" (4).

(2) Report by Messrs. Duquesne and Willems on behalf of the commission of enquiry, *Parl.Doc.*, House Repr., 1995-96, Nos. 313-7 (Part I) and 313-8 (Part II).

(3) Motion adopted in the plenary meeting of the House, *Parl.Doc.*, House Repr., 1995-96, No. 313-9. The motion was adopted by 126 votes against 17 (*Parl.Proceedings*, House Repr., 7 May 1997, p. 5732).

As for the term "harmful sectarian organization", the commission proposed to define it as "a group with a philosophical or religious vocation, or pretending to have such a vocation, which in its organization or practices engages in harmful illegal activities, harms individuals or society, or affects human dignity" (5). The commission also gave a number of criterions which could give an indication of the harmful character of a sectarian organization: fraudulent or misleading recruitment methods; recourse to mental manipulation; bad physical or mental treatment of the adepts or their family; denial to adepts or their family of adequate medical treatment; violence, including of a sexual nature, to the adepts, their family, third persons or even children; the obligation for the adepts to break with their family, their spouse, their children, their relatives and their friends; kidnapping of children, or their withdrawal from their parents; the deprivation of the freedom to leave the sect; disproportionate financial demands, fraud and embezzlement of money and goods, at the expense of the adepts; abusive exploitation of the work of the adepts; a complete break with democratic society, considered as evil; the will to destroy society in favor of the sect; recourse to illegal methods in order to acquire power (6).

Finally, the commission noticed that there were also organizations of criminals operating behind the screen of a "sectarian" appearance. Such organizations could not be considered as "sects", and not even as "harmful sectarian organizations", but simply as "disguised" criminal organizations (7).

When the legislator recently decided to set up an "Information and Advisory Centre on the harmful sectarian organizations", as well as an "Administrative Coordination Cell for the combat against harmful sectarian organizations" (see infra, no. 17), he

(4) Report, Part II, p. 99.
(5) Report, Part II, p. 100.
(6) Report, Part II, pp. 100-101.
(7) Report, Part II, p. 101.

literally took over the definition of the term "harmful sectarian organization", as quoted above (Article 2 of the Act of 2 June 1998). That definition has thus acquired a legal value. As for the term "sect", the definition proposed by the commission of enquiry has thus far not yet found its way to a statute; it nevertheless seems to be the most authoritative one at this moment.

3. In the report of the commission of enquiry, as well as in the literature on the subject, the names of a number of NRM regularly appear.

The most important NRM in Belgium seem to be Jehova's witnesses (among 20.000 to 25.000 adepts), the Church of Scientology (among 5.000 adepts) and the mormons (among 4.000 adepts). Other NRM, each numbering some hundreds of adepts, include Krishna Consciousness, Sûkyô Mahikari and the Raëlian movement. Many NRM seem to number less than 150 members: The Family, Soka Gakkai, the Moon sect, "Nouvelle Acropole", Sahaja Yoga, "Fraternité blanche universelle", Human and Universe Energy, "Ingreja universal do reino de Deus", Church of Christ (of Brussels), Ogyen Kunzang Chôling, "Le Mouvement", "Institut gnostique d'anthropologie", Ecoovie, the "Antoinism", etc. (8)

A few words have to be said about two sects which have actually originated in Belgium: the sect of the "Antoinists" and Ogyen Kunzang Chôling.

"Antoinism" was created in 1906 by Father Antoine. He was known for his mass healings, during which he or a minister spread a fluid over the people assembled. These healing sessions constituted in fact the rite of the cult. When Father Antoine died, in 1912, there were several tens of thousands of adepts. Since then, the movement has lost its attraction. It is believed that at the present time there are at the most 400 adepts in Belgium, all wearing black clothes. There are also temples or lecture houses in France, Congo, Canada, Italy and Germany (9).

A movement which has been in the news recently, is Ogyen

(8) For an overview, see A. LALLEMAND, *Les sectes en Belgique et au Luxembourg*, EPO, Brussels, 1996, 2nd ed.

(9) A. LALLEMAND, *o.c.*, 48-53.

Kunzang Chôling. It was founded in 1972 by Robert Spätz, after a stay of a couple of years in the Far East. The movement is based on Buddhist traditions, and the name refers to a monastery in Tibet; it literally means "domain of the clear light". It has about 80 adepts in Belgium (Brussels); furthermore, there are centers in France ("Château des Soleils" in Castellane, Alpes de Haute-Provence), Portugal (Lisbonne and the Algarve), and Tahiti. Adepts live in a community, where meditation is important. Children are sent to the center in France, where they receive their education. The adepts put their work at the disposal of the community; income is generated through a number of companies with commercial activities (distribution of agro-biological food, vegetarian restaurants, vegetarian shops, construction and renovation, real estate). On 30 May 1997, the movement was the object of coordinated house searches, both in Belgium and in France, based on suspicions of financial crimes and violation of labor laws. Mr. Spätz and another person were under arrest during some time and charged of a number of crimes, in particular the sequestration of individuals and the non-assistance of persons in danger. The investigation seems still to be going on.

4. Sects or NRM seem to operate mostly as "non-profit associations", having as such a legal personality. This allows them to own property and to engage in legal transactions.

The setting-up of a non-profit association does not require any prior authorization. The founders have to draft articles of incorporation, which have to be published in an annexe to the "Moniteur belge" (official gazette). The list of administrators has to be published in the same way, whereas the list of formal "members" has to be filed with the registry of the court of first instance (10).

The adoption of the legal personality is not a requirement. Organizations such as NRM can be active as simple "de facto" associations, in which case the members themselves are the holders of the rights and obligations.

Finally, as has been pointed out already with respect to Ogyen Kunzang Chôling, it arrives frequently that ancillary activities of

(10) See the Act of 27 June 1921 granting the legal personality to non-profit associations and to public interest institutions.

NRM are carried out by commercial companies related to the movements. These companies, of course, fall outside the scope of protection granted to philosophical or religious associations.

II. Legal Situation

5. There is in Belgium no specific law dealing with the rights and obligations of NRM. Their legal status has to be considered in the light of the freedom of thought, conscience and religion, guaranteed by the European Convention on Human Rights (Art. 9), the International Covenant on Civil and Political Rights (Art. 18) and the Constitution (Arts. 19-21).

In order to briefly discuss the practical implications of the said fundamental right, it seems useful to distinguish between the "freedom" aspect and the "rights" aspect.

A. Freedom

1. *Principle*

6. Before entering into the contents of the freedom of thought, conscience and religion, it is necessary to examine to what extent NRM can claim the protection offered by it.

In 1834, the Court of Cassation seemed to hold that a cult was characterized by its purpose, being "the adoration of the divinity, the conservation and the propagation of its doctrines, and the practice of its ethics" (11). Nowadays, the reference to the divinity does no longer cover the whole range of religious expressions: a wider definition is necessary (12).

In this respect, it is necessary to take into account the case law of the European Court of Human Rights on Article 2 of the First Protocol to the European Convention on Human Rights. Accord-

(11) Court of Cassation, 27 November 1834, with opinion of Procureur général I. Plaisant, *Pasicrisie*, 1834, I, 330.

(12) J. Velaers, and M.Cl. Foblets, "L'appréhension du fait religieux par le droit. À propos des minorités religieuses", *Revue Trimestrielle des Droits de l'Homme*, 1997, (273), 276-277.

ing to that provision, States are obliged to respect the "religious and philosophical convictions" of the parents in matters of education. The Court has held that the word "convictions" is akin to the term "beliefs" in Article 9 of the Convention, and denotes "views that attain a certain level of cogency, seriousness, cohesion and importance" (13). One can therefore conclude that as soon as a structured group "conserves and progagates" such views, it is a "religious" or at least a "philosophical" group, falling under the application of the freedom of thought, conscience and religion clause.

In order to ascertain whether or not one has to do with a religious movement, the public authorities have no discretion to determine whether the religious beliefs or the means used to express them are legitimate (14). This does not exclude, however, that the authorities may verify whether a group or an individual, invoking its freedom of religion, can describe with a minimum of precision the beliefs relied upon (15). Once the existence of religious beliefs is established, it remains to be shown that these beliefs are also object of conservation and propagation; evidence of a formal exteriorisation of religious feelings therefore seems to be a necessary condition (16).

On the basis of the said criterions, which ask for a broad interpretation (17), it seems difficult to deny the qualification of "religious movement" to most of the existing sects (18).

(13) E.Ct.H.R., 25 February 1982, Campbell and Cosans, *Publ.Court*, Series A, vol. 48, p. 16, § 36; E.Ct.H.R., 18 December 1996, Valsamis, *Rep.*, 1996-VI, p. 2323, § 25, and Efstratiou, *Rep.*, 1996-VI, p. 2358, § 26. Of course, this does not mean that a religion (or a philosophical conviction) should always have or try to have "answers to every question of a philosophical, cosmological or moral nature" (see E.Ct.H.R., 7 December 1976, Kjeldsen, Busk Madsen and Pedersen, *Publ.Court*, Series A, vol. 23, p. 26, § 53): some religions do fit that description, others not.

(14) E.Ct.H.R., 26 September 1996, Manoussakis, *Rep.*, 1996-IV, (1346), p. 1365, § 47.

(15) Council of State, 10 July 1990, Sluijs, No. 35.441, and Vermeersch, No. 35.442.

(16) Van Haegendoren, G., "Sekte of Kerk: de niet-erkende erediensten in België" ("Sect or church: the non-approved cults in Belgium"), *Tijdschrift voor Bestuurswetenschappen en Publiekrecht*, 1986, (387), 390.

(17) See, albeit implicitly, Council of State, 12 January 1994, Ibrahim, No. 45.652, with note Rigaux, F., *Revue belge de droit constitutionnel*, 1995, 39, and with note Christians, L.L., *Revue Régionale de Droit*, 1995, 114.

(18) In the past, under more strict criterions, the quality of "cult" has been given to

7. According to Article 9, § 1, of the European Convention on Human Rights, the freedom of thought, conscience and religion includes, among other things, the "freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance". Article 18, § 1, of the International Covenant on Civil and Political Rights is drafted in practically identical terms. Article 19 of the Constitution guarantees the freedom to manifest a religion and to worship publicly.

In Belgian law, this freedom is protected also by criminal law. It is indeed a crime to disturb a religious manifestation (Articles 142 to 146 of the Criminal Code).

Article 21 of the Constitution prohibits the State from interfering with the appointment of ministers of a cult. This prohibition illustrates the general prinicple that cults (or religious movements) enjoy an autonomy as far as their doctrine and their organization is concerned. This means, in practice, that if a "civilian" act has to be based on an act of a religious nature (e.g. the payment of the salary of a minister, see infra, no. 15.2), the civilian authorities have to rely on the judgment of the religious authorities (19).

2. *Restrictions*

8. Freedom of religion is not absolute. As the European Court of Human Rights has held, "in democratic societies, in which

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the Baha'i (Court of appeal Brussels, 12 October 1960, *Commentary Code of income tax 1992*, No. 253/28), and to Jehova's witnesses (Court of appeal Brussels, 24 January 1962, same *Commentary*, No. 253/29). On the other hand, that quality has been denied to the "antoinists" (Court of appeal Liège, 7 January 1944, same *Commentary*, No. 253/27; Court of appeal Liège, 21 November 1949, *Pasicrisie*, 1950, II, 57) and to a spiritist group (Court of appeal Liège, 28 February 1949, said *Commentary*, No. 253/25).

The Adventist Church of the Seventh Day has been accepted as a "religion" (Labor court of appeal Mons, 8 November 1985, with opinion of substitute general P. Anciaux, *Revue de droit social*, 1986, 98, and with note Gosseries, Ph., *Journal des tribunaux du travail*, 1986, 293).

(19) Arbitration Court (Constitutional Court), 4 March 1993, No. 18/93, § B.3.5; Council of State, 29 April 1975, Van Grembergen, No. 16.993; Council of State, 22 February 1984, Petit, No. 24.004; Council of State, 20 December 1985, Van Peteghem, No. 25.995.

several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected" (20). Nevertheless, such restrictions can constitute a threat to "true religious pluralism, an inherent feature of the notion of a democratic society"; for that reason, restrictions imposed on the freedom of religion call for "very strict scrutiny" (21).

9. Under the Belgian Constitution, the possibility for the State to interfere directly with the freedom to manifest a religion is relatively limited.

9.1 According to Article 26, meetings "in open air", i.e. open to the public, are subject to the laws aimed at protecting public order. This means that for such meetings, even if they have a religious character, the need for a prior authorization can be imposed. The competent authority can thus prohibit a given manifestation, if the circumstances thus require; on the contrary, a general prohibition to organize public meetings would not be compatible with the Constitution (22).

Apart from situations where public order, in the narrow sense of the word, is at risk, no preventive action is possible.

9.2 Article 19 of the Constitution leaves open the possibility to take criminal action, i.e. action "a posteriori", against those who have abused the freedom of religion to commit an offence.

It is quite clear, given the practical difficulty to prove that a NRM has engaged in a criminal activity, that reactions by judicial authorities are bound to remain exceptional (23).

However, NRM have been the object of criminal proceedings. Two of these have been described in the report of the parliamentary commission of enquiry.

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(20) E.Ct.H.R., 25 May 1993, Kokkinakis, *Publ.Court*, Series A, vol. 260-A, p. 18, § 33.

(21) E.Ct.H.R., 26 September 1996, Manoussakis, quoted above, p. 1364, § 44.

(22) Borginon, A., and De Pooter, P., "De religieuze vrijheden in een multiculturele samenleving" ("The religous freedoms in a multicultural society"), *Recht en verdraagzaamheid in de multiculturele samenleving*, Antwerp, 1993, (65), 70.

(23) See the statement by Mr. Wathelet, Minister of Justice, *Parl.Proceedings*, Senate, 10 November 1994, p. 210.

On 30 April 1975, the Court of first instance of Mons convicted three of the brothers Melchior, leaders of the sect of the "Trois Saints Coeurs" ("three holy hearts"), for manipulation of a minor. On 1st October 1987, the fourth brother was convicted by the Court of first instance of Brussels for violations of tax laws and corporate laws (24).

On 2 December 1993 the Court of first instance of Brussels convicted Joseph Maltais, alias Norman William, leader of the ecological sect Ecoovie, for a number of criminal activities, including fraud, embezzlement, association of criminals and illegal stay in Belgium (25).

Finally, it should be recalled that at the present time a criminal investigation is being carried out against the leader of Ogyen Kunzang Chôling (see supra, no. 3).

10. Even if direct interferences with the activities of NRM are of an exceptional nature, this does not affect the validity of the statement that freedom of religion can be the object of restrictions. In most cases, these restrictions act in a more indirect way.

In this respect, the question arises to what extent adepts of NRM can raise conscientious objections against civic and other obligations. To this question, the case law seems to give answers in different directions.

A classical example is the objection to military service and to any alternative service, systematically raised (26) by Jehova's witnesses. The courts never have accepted this objection, and the Jehova's witnesses generally underwent their sentence without too much fuss (27).

Another example is offered by the issue of compulsory classes either in one of the major religions or in a non-religious philosophy. Here the Council of State has upheld the claims of parents belonging to a NRM, who requested an exemption for their children (28).

(24) Report, Part I, pp. 45-48, and Part II, pp. 124-125; LALLEMAND, A., *o.c.*, 120-122 and 123.

(25) Report, Part I, pp. 48-52, and Part II, pp. 51-88 and 125.

(26) The military service has been abolished by an act of 31 December 1992.

(27) VAN HAEGENDOREN, G., *o.c.*, 388.

(28) Council of State, 14 May 1985, Sluijs, No. 25.326; Council of State, 10 July 1990, Vermeersch, No. 35.442; Council of State, 13 November 1990, Davison, No. 35.834.

Religious obligations are sometimes invoked as an excuse for being absent at work, or for not accepting a work offered to an unemployed. In some cases the conscientious objections have been accepted (29), in others not (30). In the latter cases, the freedom of religion effectively has undergone a restriction.

Finally, mention should also be made of objections relating to interventions of a medical nature. It seems that these objections cannot be invoked against a legal obligation in the course of a criminal investigation (31), nor against an obligation imposed for the benefit of third persons (32).

11. Members of a NRM sometimes also have to undergo the consequences of their adherence to that movement for their marital and parental rights.

When such a case came before the European Court of Human Rights, it held that a national court could validly take into account the effects on the partner or the children of the adherence to a religious movement. It was unlawful, on the contrary, to base a decision against the member of a religious movement only or essentially on the mere fact that he belonged to such a movement (33).

Belgian case law seems to take the same position.

In matters of divorce, it has been held that the mere fact that one of the spouses became a witness of Jehova, without this having significant consequences for his attitude towards his partner, did not constitute a valid ground for a divorce (34). If, on the other hand, the converted spouse starts to adopt a different lifestyle, thus

(29) See, with respect to the refusal of a work offered, Labor Court of appeal of Mons, 8 November 1985, quoted above; Labor Court of appeal of Ghent, 28 March 1988, *Rechtskundig Weekblad*, 1988-89, 232.

(30) See, with respect to the absence at work, Labor Court of appeal of Antwerp, 18 April 1989, *Limburgs Rechtsleven*, 1989, 105.

(31) Police tribunal of Hasselt, 18 November 1988, *Journal des Juges de Paix*, 1990, 135 (mandatory blood test).

(32) Court of appeal Ghent, 20 March 1996, with note LEMMENS, P., *Rechtskundig Weekblad*, 1996-97, 1258 (mandatory vaccination of children).

(33) E.Ct.H.R., 23 June 1993, Hoffmann, *Publ. Court*, Series A, vol. 255-C, p. 59, § 33, and p. 60, § 36.

(34) Court of appeal Antwerp, 19 December 1977, with note RIGAUX, F., *Revue Critique de Jurisprudence Belge*, 1980, 195; with note PAUWELS, J., *Rechtskundig Weekblad*, 1979-80, 707.

neglecting his essential duties at home, this could constitute a ground for a divorce against him (35).

The same is true in the matter of child care. The mere fact that a person continues to adhere to a NRM (or to convert to a NRM) should not be a reason to restrict his parental rights (36). On the other hand, if the adherence to a NRM appears to be harmful for the child, the courts can restrict the parental rights, but only to the extent required in order to eliminate the harmful effects (37).

12. A particular form of restriction of the freedom of a NRM has to do with the situation of individuals within the movement. It is quite clear that the freedom of religion of the organization can be restricted "for the protection of the rights and freedoms of others" (Art. 9, § 2, European Convention on Human Rights; in the same sense, Art. 18, § 3, International Covenant on Civil and Political Rights).

In general, if the requirements imposed upon a person by a religious movement are in conflict with his convictions, he should be free to leave the movement (38). The same applies where the requirements bring him into a situation which he subjectively considers to be intolerable. In some circumstances, it may even be for the public authorities or others to intervene, and to "save" the individual from worse.

The case law in Belgium offers at least one example of a favorable attitude towards those who consider, on legitimate grounds, that it is necessary to try to withhold a person from returning to a religious community. In a judgment of 4 February

(35) Court of first instance Hasselt, 12 June 1984, with note PINTENS, W., *Rechtskundig Weekblad*, 1984-85, 1087; Court of first instance Liège, 20 December 1988, *Jurisprudence de Liège, Mons et Bruxelles*, 1989, 134.

(36) Court of appeal Liège, 27 October 1988, *Revue Trimestrielle de Droit Familial*, 1989, 93.

(37) Court of appeal Liège, 24 June 1987, *Jurisprudence de Liège, Mons et Bruxelles*, 1987, 1036; Court of first instance Verviers, 26 June 1987, *Jurisprudence de Liège, Mons et Bruxelles*, 1987, 1038; Court of appeal Liège, 27 June 1989, *Revue Trimestrielle de Droit Familial*, 1991, 400; Court of first instance Liège, 13 June 1991, *Jurisprudence de Liège, Mons et Bruxelles*, 1991, 1287.

(38) E.Comm.H.R., 8 September 1988, Karlsson/Sweden, 12.356/88, *D.R.*, vol. 57, (172), p. 175, § 1.

1993, the Court of first instance of Dinant decided on a civil claim filed by a young adept of the Moon sect against a doctor and another person who had "sequestrated" her while she was on visit to her parents. The court found that nothing was wrong with an attempt to convince a person to leave a sect. Moreover, it could not resist to observe that the claim had been filed more than three years after the facts, and suggested that this step had been clearly inspired by the leaders of the sect (39).

It should, moreover, be recalled that the "kidnapping" (or manipulation) of minors is an offence, as is illustrated by the conviction of the leaders of the "Trois Saints Coeurs" in 1975 (see supra, no. 9.2).

B. Rights

13. The right to freedom of religion does not only imply that there shall be no interference with that freedom, at least not in principle. In addition to such primarily negative obligation, it may also imply some positive obligation on the part of the public authorities (40).

The degree to which "rights" are granted, in fulfilment of this obligation, can vary from one religious movement to another, depending on the circumstances.

14. Only exceptionally are rights granted to all religious movements, without any distinction.

This is for instance the case for the right to exemption from taxation of real property used for the activities of a public cult (41). However, not all religious movements meet the requirements for qualification as a "public cult" (42).

15. Most rights are reserved for the so-called "recognised" religions.

(39) Report of the parliamentary commission of enquiry, Part II, pp. 125-126.

(40) Compare E.Ct.H.R., 25 February 1982, Campbell and Cosans, quoted above, p. 17, § 37; E.Ct.H.R., 18 December 1996, Valsamis, quoted above, p. 2324, § 27, and Efstratiou, quoted above, p. 2359, § 28.

(41) Article 12, § 1, of the Code of income tax 1992.

(42) See the case law concerning "antoinism" and a spiritist group mentioned above, note 18.

15.1 It is for the legislator to recognise a religion. From the very beginning of the independence of Belgium (1830), four religions have received the official recognition: the catholic cult, the anglican cult, the protestant cult and the jewish cult. In the last decades, the islamic cult (1974) and the orthodox cult (1985) have been added to the list.

It is generally accepted that a "recognition" does not mean — and, indeed, could not mean — that the legislator attaches a particular importance to the doctrine of the religion concerned. As the Council of State has held, the legislator recognises a religion — and thus grants it certain advantages — on the basis of its "social utility for the public interest" (43). Recently, the Minister of Justice has declared that a religion could receive a legal recognition, if it fulfills four conditions: it should have a relatively important number of adepts (some ten thousands), it should be structured, it has to be established in the country during a relatively long period, and it has to present a certain social utility (44).

This being so, and apart from the question of discrimination between different religions (see infra, no. 15.3), one can wonder wether some NRM have not met the conditions for "recognition" (45).

15.2 "Recognised" religions enjoy a number of rights.

First of all, according to the Constitution (Article 181, § 1), the salaries and pensions of the ministers of recognised religions are at

(43) Council of State, 12 January 1994, Ibrahim, No. 45.652, quoted above. In the same sense: MAHILLON, P., and FRÈDÉRICQ, S., "Het regime van de minoritaire erediensten" ("The regime of the minority cults"), *Rechtskundig Weekblad*, 1961-62, (2367), col. 2372, no. 12; VANWELKENHUYZEN, A., "Les relations entre l'État et les Églises", *Rapports belges au VIIIe Congrès international de droit comparé (Pescara, 1970)*, Brussels, 1970, (593), 603-604; TORFS, R., "La position juridique des minorités religieuses en Belgique", *The legal status of religious minorities in the countries of the European Union, Proceedings of the Thessaloniki meeting (1993)*, Thessaloniki-Milano, 1994, (47), 53-54.

(44) Answer to a question by Ms. Bastien, *Parl.Questions and Answers*, House Repr., 1996-97, pp. 11.131-11.132; answer to an interpellation by Mr. De Man, *Parl.Proceedings (Commissions)*, House Repr., 9 June 1997, No. C 353, pp. 4-5.

(45) The question has been raised specifically with respect to Jehova's witnesses, given the relatively important number of adepts (see, e.g., BREMS, E., VAN DE PUTTE, M., and VANLERBERGHE, B., "Enkele bedenkingen over godsdienstvrijheid" ("Some thoughts on freedom of religion"), *Jaarboek Mensenrechten 1993*, Antwerp, (205), 217-218).

the expense of the State. This is clearly the most important advantage.

Secondly, provinces and municipalities have an obligation to contribute financially to the material needs of recognised religions.

Thirdly, recognised religions qualify for being the subject of courses taught in public schools.

There are some other rights, of less importance, which need not to be mentioned here (46).

15.3 With the emergence of numerous NRM, together with the secularisation of society as a whole, critical voices have been heard against the present system which advantages only some of the "major" religions.

There can be no doubt that religions have to be treated without discrimination. The equality of religions does not mean, admittedly, that each religion has to be subject to an identical treatment (47). The question remains, however, whether a consistent respect for religious pluralism does not require that NRM — provided that they respect the law — receive the same opportunities as the traditional religions (48).

III. FUTURE DEVELOPMENTS

16. Which attitude to adopt towards NRM?

From a point of view of freedom of religion and of pluralism in a democratic society, it is of most importance to ensure a "fair and proper treatment of minorities" (49). Even more, an active pluralism supposes that the State not only tolerates, but also encourages the development of divergent beliefs, provided that they remain within the limits of what is socially acceptable (50).

This cannot but lead to the conclusion that, in principle, a

(46) Consult, e.g., TORFS, R., *o.c.*, pp. 54-58.

(47) Council of State, 26 May 1966, "Association protestante pour la radio et la télévision", No. 11.838.

(48) See VAN HAEGENDOREN, G., *o.c.*, 394-398. See also TORFS, R., *o.c.*, 79-80.

(49) E.Ct.H.R., 18 December 1996, Valsamis, quoted above, p. 2324, § 27, and Efstratiou, quoted above, p. 2359, § 28.

(50) VAN HAEGENDOREN, G., *o.c.*, 398.

favorable attitude has to be adopted towards the phenomenon of NRM.

17. It is, however, not sufficient to look at the principles above. The factual situation should be taken into account too, and it should receive great weight.

The parliamentary commission of enquiry was aware of the fact that, especially in academic circles, there was a clear dichotomy between advocates and opponents of NRM, and that there were emotional disputes between both groups (51). On the basis of its own findings, in particular the hearings with victims of activities of NRM, the commission came to the conclusion that those who, like religious sociologists, advocated a maximum degree of non-interference, could not be followed. It explicitly declared that the possible risks of sectarian organizations could not be underestimated (52).

The attention of the commission focused, quite rightly, on the possible abuses of freedom of religion, and on the means to combat them effectively. In general, the commission was of the opinion that the existing laws already provided ample opportunities to react against harmful practices. The problem in any event lay more with the implementation of the laws than with the laws themselves. For that reason, the commission insisted on more coordination and cooperation between the various police and security services, and between these services and the judicial authorities. It also suggested the creation of an independent fact-finding "observatory" (53).

This part of the recommendations has meanwhile been adressed by the legislator. He adopted the Act of 2 June 1998 "establishing an Information and Advisory Centre on the harmful sectarian organizations and an Administrative Coordination Cell" (54).

(51) For a recent contribution to the debate, see MORELLI, A., *Lettre ouverte à la secte des adversaires des sectes* ("Open letter to the sect of the opponents to sects"), Labor, Brussels, 1997, in which the author critically examines all the arguments of the opponents.

(52) Report, Part II, pp. 114-118.

(53) Report, Part II, pp. 220-222 and 226.

(54) By the end of September 1998, the Act, adopted on 28 April 1998 by the House of Representatives, has not yet been published in the "Moniteur belge". The date of the Act, i.e. the date on which it has been signed into law by the Head of State (2 June 1998), results from a statement by the Minister of Justice (statement by Mr. Van Parys, Minister of Justice, *Parl.Proceedings (Commissions)*, House Repr., 8 July 1998, No. C 621, p. 2).

(55) Report, Part II, pp. 223-225.

The Information and Advisory Centre is set up as an independent body, composed of "eminent personalities" (Articles 3 and 4). Its task is to study the phenomenon of harmful sectarian organizations, to organise a public documentation centre, to give information to the public, and to give opinions and recommendations, in particular on the policy to be adopted (Article 6). The Centre is thus created in order to become the motor of further developments.

The Administrative Coordination Cell for the combat against harmful sectarian organizations is a body presided by the Minister of Justice or his representative (Article 13). Its task is to coordinate the actions of the different public authorities, to examine the development of the illegal practices of harmful sectarian organizations, to propose measures to improve the coordination and the efficiency of the different actions, to promote a policy of prevention, and to cooperate with the Information and Advisory Centre (Article 15).

18. Even if the commission of enquiry was in general satisfied with the existing state of criminal law, it nevertheless also suggested to include some new provisions in the legislation. In the first place, it suggested to make it generally an offence to violate fundamental rights through acts of violence or psychological coercion. It further suggested, with explicit reference to the French Criminal Code, to make punishable, on the one hand, abuse of a situation of weakness of a person, and on the other hand, active incitement to suicide. It finally suggested to adapt the legislation on the protection of minors, in order to enable a more rapid reaction by public authorities in case of a situation of danger, as well as the legislation on non-profit associations, in order to enable a strengthened control on their (financial) activities (55).

Thus far, the legislator has not adopted any of these measures. Proposals introduced by Mr. Duquesne, aimed at prohibiting the violation of fundamental rights through violence, threats or psy-

chological coercion (56), viz. at making it a punishable offence to induce a person to commit suicide (57), remain pending since Mid-1997.

When it comes to the punishment of activities of NRM, the legislator should avoid to hurt these movements as such. As had been observed by the commission of enquiry, it are not the sects in general, but the harmful activities of some of them, which deserve a reaction under criminal law. One can refer to the case law of the European Court of Human Rights relating to the activities of religious groups aimed at gaining new members. According to the Court, only "improper proselytism" can be made punishable, i.e. activities which are "not compatible with respect for the freedom of thought, conscience and religion of others" (58). This idea can be generalized: only activities which are incompatible with human dignity should be prohibited.

It would probably be wise to wait for clear findings of the Information and Advisory Centre before any specific criminal legislation is adopted. The risk that, while the protection of some citizens is sought, the freedom of others is in fact unduly restricted, should not be underestimated.

A cantious approach with regard to further steps thus seems to be advisable.

(56) *Parl.Doc.*, House Repr., 1996-97, No. 1191-1.

(57) *Parl.Doc.*, House Repr., 1996-97, No. 1197-1.

(58) E.Ct.H.R., 25 May 1993, Kokkinakis, *Publ. Court*, Series A, vol. 260-A, p. 21, § 48. Referring to a report of the World Council of Churches, the Court explicitly mentions activities "offering material or social advantages.. or exerting improper pressure on people in distress or in need" (ibid.). See also, in the same sense, E.Ct.H.R., 24 February 1998, Larissis, § 45.

FRANDS OLE OVERGAARD
Institut for Kinkekundskab, Faculty of Theology, University of Aarhus

NEW RELIGIOUS MOVEMENTS IN 20TH CENTURY DENMARK

SUMMARY: 1. *The concept* — 2. *The new religious movements in Denmark in the 20th Century* — 2.1. Background — 2.2. The new century and its NRMs — 3. *National legislation on religion and NRMs* — 3.1. Constitutional freedom — 3.2. Other provisions in domestic Danish law concerning NRMs — 4. *Conflicts between NRMs and the administration* — 5. *Final remarks, Literature, Appendix 1, Appendix 2*

1. THE CONCEPT

The topic for this "national report" is the movements known as the "new religious" ones or — as many prefer to call them — "new religions"; a phenomenon that has manifested itself increasingly during this century and most noticeable since the late sixties. In Denmark as in other modern European countries they are a growing challenge to traditionel religious thinking and life inside and outside the old main churches and also a factor that parliament, politicians and authorities will have to take in serious consideration in the years to come.

As to the concept "new religious movements" (hereafter NRMs) it must by way of introduction be stressed that the term itself is not in Denmark really part of the general language. In popular parlance the word "cult" and most of all "sect" — and as in the media-world almost always understood in a negative sense — are used to cover roughly the same spectrum of movements as those

referred to as NRMs. There has not been appointed any special committees by the government or parliament and therefore no official inquiries about NRMs. Parliament has never really had the religious minorities on its agenda. The topic has solely been discussed along with the passings of new matrimonial laws. Parliament, laws and courts do not use the term NRMs, but prefer — due to history and tradition — older and wellknown designations: "religious communities" (trossamfund) or "religious minorities" and further distinguish "religious communities" recognized by the authorities from those which are not.

Only scholars use the term NRMs frequently, but most of them find the words difficult to use not to say rather impossible. It has been said that "a new religion is simply a religion, which only existed in a country for a shorter time than other religions" (Warburg 1996, 10). One can of course use the term NRMs as a collective designation, but must be aware of why this is problematic. Even if some of the new religious movements contain original elements of religious teaching and rites, they are generally based on old and well-known elements from the already existing ones. According to the sociology of religion neither of the new ones imply anything basic new in proportion to earlier movements which once themselves were new. Many of the NRMs are not new or necessarely religious. Some of them deny that they are, but are still wrongly or justly counted in. Most NRMs are — it must be admitted — however new in the sense that they became visible in the 20th century in their present form. Several can trace their roots back one hundred years or more, but they are still "new" in that their institutional form did not exist until this century. When the term NRMs is used it is as a rule done as an attempt to define different types of new religions and see a connection between them and the society to which they belong. This is understandable, but it would be better to study the movements one by one. The term may be used but then with care and only until a better concept will be at disposal (1).

(1) Concerning the concept and the Danish discussion see IVERSEN/RIIS 1980; KRISTENSEN/RIIS 1986; MOGENSEN 1976; ROTHSTEIN 1993 and 1997; WARBURG 1995(I) and 1996.

2. THE NEW RELIGIOUS MOVEMENTS IN DENMARK IN THE 20TH CENTURY

2.1. *Background*

From the era of Reformation The Evangelic Lutheran Church was for centuries the only one allowed. Revivals were watched carefully by the state and sects persecuted or suppressed. In the 17th and 18th century other religious groups arrived, mostly through immigration. By the grace of the king and in the economic and commercial self-interest of the state Jews, Calvinists, Roman Catholics and Moravians were as time went allowed to settle, but only in connection with embassies or in strictly limited areas, where they could worship God in their own buildings or rooms and use their own priests or elders at marriages, burials and so on. But as a matter of principle Danes had to be Lutherans. Religious and civic rights of minorities were therefore strongly reduced and their members not ranking with other citizens of the kingdom of Denmark.

With the abolition of the absolute state 1848 and Denmarks transformation to a constitutional monarchy with a new constitution one year later freedom of expression, association, assembly, printing and religion was secured. Revival movements inside and outside and free churches or communities outside the Evangelic Lutheran Church — which in the constitution was titled The Folk Church (Folkekirken, the church of the people) — could now missionize. At once a "sect-storm" broke out. Baptists (1839/1849), Mormons (1849), Methodists (1858) and Irvingites (1838/1861, Catholic Apostolics) tried in an often aggresive way to win members or supporters. The free church propaganda was strong in the first decades but subsequently decreased. A series of often minor and mostly anglo-american originated or inspired revival groups turned up, but did only gain little foothold (among others: Quakers, The Congregation of Christ or Brethren, The Covenant Church of Denmark, Seventh Day Adventists, The Nazareen Church and Salvation Army). Many small religious communities disappeared after a short while, almost without leaving footmarks. The more succesfull often stagnated and most of them suffered from internal disintegration. The Danish soil did not seem to favour free church formation and for many reasons.

For one thing the Danes did and do until this day seldom and then mostly with great hesitation leave the cosy comfort of the ancestral church. Secondly the structure of the Folk Church became in the second half of the 19th century rather elastic thanks to the existence of two major and influential revival movements — the Home Mission (Indre Mission) and the Grundtvigianism (Grundtvigianismen) — which from the start represented a critical attitude to much inside the Church, but after all still appreciated it so much that they did not seriously think of leaving it for the more unsecure life outside with its minor surface of contact.

And why should they. Thanks particularly to the Grundtvigian movement it was all the time possible to satisfy one's need for more radical or independent viewpoints inside the Folk Church. With their constant fight for religious and civic freedom the Grundtvigians helped to develop the Church in a more liberal direction. From the 1860s it was possible for a group of at least 20 families to establish an almost totally free congregation inside the Folk Church with members across the parish boundaries and a priest elected by themselves. The congregation could now and then use the parish church or build one of its own. Some of the Grundtvigians wished to be totally free and formated free congregations outside the Church, but without severing the bonds to the major part of their movement inside it. The liberal conditions, which were later extended, functioned as a kind of "safety valve" and was in the long run of great importance for others inside a thus more comprehensive and indulgent Folk Church and in many ways for people outside it. The Grundtvigian motto was freedom for all, friend and antagonist. Instead of separating the Grundtvigians with their affection for creed, service and sacraments became a solid bulwark against among others the Baptists, and the Home Mission functioned as a buffer between the new pietistic free churches coming from the west; at the same time a "front and a bridge" which contributed to the diminish the attraction of the free churches. About the year 1900 only a few percentages of the population were not members of the Folk Church (2).

(2) P.G. LINDHARDT, *Vækkelse og kirkelige retninger*, 1978 (3rd ed.); Frands Ole

2.2. *The new century and its NRMs*

The new century had just begun when the Unitarians, Jehovas' Witnesses, Christian Science and the Pentecostals started their work (the Pentecostals followed later by the connected Apostolic Faith, Evangelical Missionswork and Christian Fellowship ("White Fields")). Later on between the World Wars several other NRMs tried to gain grounds, among them the Spiritist and Theosophical Societies. With the exception of new Grundtvigian Lutheran Non-Conformist congregations (see above), the so-called Oxford-movement and new general anglo-american inspired religiousness the newcomers were not connected to the Folk Church. It was however characteristic that exclusively up to the 1880s and with few exceptions until after World War II the new religious movements tended in one way or another to be related to the judaic-christian tradition.

This was not any longer the case from the 1960s. Groups and movements of the "old" kind still emerged in the following three decades, but many NRMs now owed their origin to well established non-christian traditions. The new ones exemplified an inordinate array of traditions, distortions and innovations. Since the late sixties and especially the arrival of the main stream of the present NRMs in the 1980s Denmark has besides the general economic, political, structural and above all cultural pluralism also experienced a growing religious multitude. Many NRMs have started to missionize and thousands of immigrants from countries with non-christian religions — Hindus, Buddhists and especially Muslims from Europe, Africa and Asia — have become a conspicuous part of the Danish society in the 1990 s.

The NRMs can be classified in different ways. It is popular among scientists of the sociology of religion to distinguish between different types: 1. The "world-recognizing" ones — new religions that support the established order and build their religious life on wellknown norms of the society. 2. The "world-denying" religions

OVERGAARD, *Den danske folkekirke upartisk betragtet*, in: Lolland-Falsters Stiftsbog 1982, 27-37; ØSTERGAARD 1986, 26-29.

that deliberately and actively oppose the ideals and norms of the surrounding society. 3. Religions that adapt themselves to the surroundings and neither try to be recognized nor to be in opposition (cf. ROTHSTEIN 1997, 131-161).

In the following a more elementary classification will be used, dividing the NRMs into four groups. If one regards the 100.000 to 120.000 Muslims in Denmark as a separate group the rest can be distributed in the following way. Secondly there are NRMs that are connected with Indian-Eastern religions. It is not known for certain which elements in the present neo-religiosity that are Indian/Eastern. The influences did not arrive at the same time or as a closed system, but over the decades as either religious ideas, different systems and techniques of yoga and meditation (Transcendental Meditation, Divine Light, ISKCON and others) or whole religions or member-organized religious groups with immigrants and refugees from Hindu and Buddhist countries (Tibet, Sri Lanka, Thailand, Somaliland and others) and adherents also of modern Japanese religions. Indian and Eastern religions have been the dominating NRMs of the 1990s. Movements of lesser substance come and go, but especially the guru-groups seem to abide.

Thirdly there is a group of movements that are influenced by Christianity and Christian thinking in some way (Jehovas' Witnesses, Mormons, Children of God, The Unification Church, Pentecostals, different charismatic groups and others). The fourth consists of several NRMs — among them often the particulary new ones — which can best be characterized as some kind of syncretistic, spiritualistic and occult movements of a more or less subtle form (Scientology, Shan the Rising Light, Liberal Catholic Church, the Martinus Institute, Bahá'i, New Age, The White Eagle Lodge, etc.). They are often outbreakers from the great religions or groups or associations based upon a form of philosophical, spiritual or mental development. Noticeable is in this connection also certain satanic groups and especially the healing and therapy ones that since the 1980s together with current trends of astrology have come to the forefront of a more and more atomized new-religious market,

where people can choose and mix ad libitum and dream of new reincarnations (3).

The great majority of NRMs in the 20th century Denmark are a result of "import". Only a few originated in the country, all small and belonging to the fourth of the above mentioned groups: The Church of Transfiguration (Forklarelsens Kirke, a ritual superstructure of Theosophic Fellowship (Theosofisk Fellowship) and a philosophical religious association which wish to serve the "cosmic worldpeace" and is tightly connected with the following NRM); Shan the Rising Light (a theosophic reform-movement that wants to realize the ideals which the Theosophical Society is claimed to have failed. It had around 1993 about 300 members, but the number has since decreased because of internal split-up; Towards the Light (Vandre mod Lyset), a likewise religious philosophical association rooted in anthroposophy and spiritualism. It has no rules and wants no members, but organize study-circles in order to reform the Folk Church from within. It is said to have contacts in Germany, England and Spain; The Martinus-Institute (an occult movement which believes that everything is life and on its way to even higher forms through new reincarnations); The Center of Growth (Vækstcenteret), a modern exampel of a syncretistic movement with a combination of parts taken from different religions, modern psychology, etc. and focusing on meditation and tantra — experiences. It has a core of 60 people, but is in touch with about 1000 per year; the Scandinavian Yoga — and Meditation — center (Skandinavisk Yoga — and Meditationscenter) — a border — phenomenon of religion, but Indian inspired and said to gather about 1400-1600 persons per year in Copenhagen alone (4).

It is difficult to find out how many NRMs there are, the number of members and their social contexts. There exists no satisfactory scholarly statistics. Besides those who try to be officially recognized by the authorities — until now 63 — the last one in January 1998:

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(3) ROTHSTEIN 1993, 24-26; WARBURG 1995 (I); JENSEN 1991, 15-28; IVERSEN/RIIS, 25-28; KRISTENSEN/RIIS, 3-9, 24-28.

(4) JENSEN 1991 and 1994; MOGENSEN 1976; ROTHSTEIN 1993 and 1997; PADE 1998. See also: P.B. ANDERSEN, *"Indiske ideers* udbredelse i Danmark — yoga og reinkarnation", in: Chaos No. 21, 1994, 30-48 (Scandinavian Yoga-and Meditationcenter).

The Hindu inspired Brahma Kumaris — have been accepted and a minor group rejected (see Appendix 1 and 2) — there are no registrations at all. What especially makes it difficult to get a clear and true picture of the NRMs as a whole is the existence of the many very small groups that do not and try not to attract public attention. It has been estimated that there about 1990 — excluding the older churches and free churches — were about 50 NRMs and in 1997 a handful more. The problem is that as a rule the information comes from the NRMs themselves and is not always reliable. The movements often differ widely in belief, organization and degree of commitment. Most of them have a first-generation membership, but as NRMs they are liable to change in a number of ways far more rapidly than the longer established movements or religions. The original charismatic leadership often change, too. The "older" NRMs are characterized by growing organization and power structure, but with the death of a leader new paths are easily taken. Much becomes different when the NRMs accomodate to the messy contingencies of social life. Worst of all some of them vanish as suddenly as they entered the stage; without notice they sometimes change names or fuse with another NRM if they not just cease to exist. When this is said, one must not forget that a NRM with few members still can survive thanks to bigger and better consolidated groups in other countries (cf. ROTHSTEIN 1993 and 1997).

It is even more difficult to find out how many members the NRMs really have; who is in and who lives and works on the fringe of the movement; who belongs to the core-group and who is only a casual supporter or adherent. Again the informations available come predominantly from the NRMs and are frequently arranged and exaggerated. The number of truly engaged members is small and in most cases surely smaller than the NRMs will know. Only a minority of people are active for a longer period. According to Transcendental Meditation the movement until 1991 shall have initiated about 36.000 persons, but the core-group includes probably only 300 to which must be added 2500 sympathizers. Scientology claims to have 13.000 followers, but again the number is too high and more likely there are 500 core-members and 2-3000 regularly active persons besides 2-3000 with more occasional

attachment. The estimated reasonable figures of some other NRMs are: Jehovas' Witnesses (25.000 with 16.000 active members); Baptists (6.000); Pentecostals (5.000); Adventists (3.500); Mormons (4.500); Hindus (5.000); members of Bahá'i (215); Children of God (200), ISKCON (40); the Unification Church (30-45 fulltime adherents); just to mention af few (5).

The members of the NRMs come strictly speaking from all strata of society, but the majority belongs to the better off middleclass. The more organized movements seem to attract many young persons, but now and then also highly educated ones. Generally speaking the members can be from 18 to 80 years of age. In the New Age movement and therapeutic/healing and yoga groups a majority of mostly middleaged women gather (cf. ROTHSTEIN 1993, 31-33, and 1997, 161-175; PADE 1998).

3. National Legislation on Religion and NRMs

3.1. *Constitutional freedom*

For many reasons undoubtedly several of the NRMs during the last decades have made Copenhagen their Scandinavian and/or North European/European headquarters. One of the more conclusive reasons most likely has been the permissiveness of the Danish society. Anyone can almost anything and anywhere create any religion one can imagine and recruit adherents. The freedom of religion is extensive. Human beings can of course do wrong and there may be maladministration, but the system is open and misuse therefore always a possibility.

The freedom of not only religion, but also of expression, association, assembly and printing was an essential part of the first democratic constitution in 1849, even if the words "freedom of

(5) Rothstein 1993, 27-28; Pade, 1998; Jensen 1994. Concerning Bahá'i, Iskcon, Jehovas' Witnesses and Scientology see also Jensen 1991 and Rothstein, *"Tm og Iskcon i historisk perspektiv"*, in Chaos No. 21, 1994, 121-137; the newspapers *Politiken* 1995-08-01 and *Kristeligt Dagblad* 1994-10-24.

religion" were not used. The citizens were entitled to freedom of worship. They had the right to unite in a community to worship God according to their convictions, on the condition that nothing was taught or carried out that was inconsistent with morality and public order. The legislators were precluded from regulating the activities of a religious community if these related to or took aim at worship. Organization, financing and rites could not be banned. The freedom of thought, conscience, religion and belief included freedom to establish and maintain places for purpose of worship and association. No one was any longer obliged to contribute to a religion the person concerned did not affiliate with. Nobody could be deprived of civil and political rights because of his or her religious conscience.

Still it was not to be expected that the former religion of the state — the Lutheran Church — should be of the same standing as other religious groups especially when they were so small. About 98% of the population were still its members and the Evangelic Lutheran Church should in a protecting and economic way as the "Danish Folk Church" be supported by the state. Furthermore the king (and now the queen) had to be one of its members. The Folk Church and all its members thus got a status and prestige denied to all other religious communities. The constitution was replaced by a new one in 1953, but the parliament just repeated the old sections on religious matters. New was only the addition (conscience) "or origin". Otherwise it was the old wording in all sections (6).

The fathers of the constitution expected in 1849 that the conditions of both the Folk Church and dissenting religious communities should be "regulated by (a constitutional) law". The Folk Church was to be separated from the rest of the public administration as a part of the principle of religious freedom. Also the conditions of the "dissenters" were supposed to be regulated by a law that should contain provisions about the criteria of obtaining official recognition and thus be a guidance for the legal status of recognized religious minorities and their duties towards the state.

(6) The Danish Constitution, Law No. 169 of 1953-06-05 Articles 4, 6, 67, 68, 70, 71 and 78; FLEDELIUS/JUUL, 1992, 30-33; ØSTERGAARD, 26-27.

Neither of the provisional clauses were ever fulfilled (7). The Folk Church was continuously in many ways linked to the state but has not to this day been under and is still outside the control of the parliament. A partial self-governing system developed through electionrules, but an organization that combines the different elements does not exist and it seems to be a special feature for the administration of the Folk Church that it is governed by administrative regulations without proper title in law. The "dissenters" had to accept a regulation of their conditions through separate acts and by administrative practice of various authorities without proper title in law. The result has been a rather incoherent regulation that has been difficult for the minorities to operate (FLEDELIUS/JUUL, 39, 43-44).

From the start the situation was unsatisfactory for the "dissenters". There was freedom of religion, but not religious equality in the kingdom of Denmark. The sections on religious freedom were undoubtedly formulated with references to a christian context ("worship God") and the fathers of the constitution seemed in 1849 to have forgotten that freedom of religion is not only a matter of belief and speech, but must include the right for different religious communities to perform rites and as they like. A law concerning legal marriage outside the Folk Church 1851 constituted an improvement, but only for members of the so-called "recognized religious communities". The constitution operated with the possibility of an administrative recognition by the state so that ministers or priests of the recognized communities under certain conditions could carry out certain rites with civil validity (especially in connection with baptism and marriage). Furthermore they were authorized to keep the relevant registers and issue transcripts of them after the fashion of the Folk Church. From 1862 the Minister of Ecclesiastical Affairs was allowed by parliament administratively to come to a decision in connection with applications for recognition. It was in the future possible for a religious community to be recognized without legislation (the Methodist Church was recognized at once). Members of nonrecognized groups had to go to the

(7) The Danish Constitution Articles 66 and 69; FLEDELIUS/JUUL, 30-31.

city hall to be legally married and without the ceremonies of their religion. A new Law of Marriage of 1922 was more liberal allowing all citizens to be married before a registrar, but still only members of the Folk Church and the recognized communities could be married in a church (8).

Many religious communities tried to become recognized, but between 1865 and 1969 the Ministry only took a favourable attitude to the Methodist Church, The Danish Baptist Society, The Russian Orthodox Church and the Norwegian, Swedish and Anglican colony churches in Copenhagen. Jews, Roman Catholics and members of the Danish, French and German Reformed Churches had been recognized alongside the new constitution in 1849. Besides the Jews all large and well-established Christian communities. It was still as if "worship of God" could only be understood in a Christian way. Among the rejected were Jehovas' Witnesses, the Mormons, the Adventists and in 1961 "Islam Denmark" (the rejection of the last-mentioned was put before the Ombudsman who however supported the decision of the Ministry, referring to the small number of adherents (45 at that time) (9).

The procedure behind the process of recognition was disclosed by the Ministry in connection with the application of the Baptist Society in 1952. It was stressed that the leadership of the comunity should exercise some jurisdiction over the congregations and their priests and inform the Ministry about the specific rules of nomination and ordination and about the sufficient education of the priest. According to the Ministry the leadership was responsible for the keeping of the register and the supervising of the same. The priest had to be a member of a specific congregation of a reasonable size and with non-scattered members, just as he had to be of good conduct and master the Danish language. It was necessarily for him to observe the Danish legislation and the governmental decrees and orders in general, but especially concerning the civil side of his officiating at a wedding. If he did not live up to his responsibility

(8) STENBÆK, 123-133; WARBURG 1996, 18; WARBURG/WARMIND, 33-35.

(9) Folketingets ombudsmands beretning 1961, 1962, 84-85; WARBURG 1996, 9, 11; FLEDELIUS/JUUL, 40-41; ØSTERGAARD, 27-30.

towards the Danish legislation and the general civil courts he could be deprived of his recognition. Much had changed since the 19th century. The problem of recognition had on the way been secularized. Recognition was no longer a question of a qualitative evaluation of the theology and church practice of the religious communities. It had become a matter of civil law instead of church law (STENBÆK 130-133).

With the new wav of NRMs the old procedure had had its day and a new matrimonial law made way for a more liberal practice. Interesting was the previous discussion in parliament. A working committee wished to make it possible that church weddings could be performed also within other religious communities than the recognized ones. It was proposed that powers should be vested in the Minister of Ecclesiastical Affairs so that he or she could authorize ministers of non-recognized religious communities to officiate at weddings. "This rule will be of importance to religious communities which have not been recognized due to low membership or other reasons, as well as to independent congregations, and it will be possible to use the rule as a basis for both standing authorizations and for the officiating at single specific weddings" (1969). According to the Minister an authorization should only be granted in connection with a true religious community in the "usual meaning" of the expression: "that is, not just a religious "movement" or a religious or philosophical society, but an association or an assembly whose primary purpose is worship (cult) according to more elaborate teachings and rites". Furthermore it must be assured that nothing is taught or done which can offend public morality and order. The religious community shall be organized in such a way that there are duly elected representatives who on behalf of the community or the individual churches can request that one or more of the ministers or elders are authorized to officiate weddings. The Ministry can ask the police for information concerning possible disadvantages of the proposed priest and require a certificate that shows his good conduct. If the priest in question is not a Dane he must have residence permit and "be able to speak and write Danish" for the sake of the necessary reports to the authorities.

It was a statement which had no validity in law, but it has

alongside the confirmation of the law 1969 until now been the basis of the practice of the Ministry of Ecclesiastical Affairs in these matters. The new law stated in section 16.1.3. that church weddings can take place in the Folk Church and the recognized communities, but also in other religious communities, when one of the couple belongs to the community in question and its priest is authorized by the Minister of Ecclesiastical Affairs to officiate at a wedding (10). The alteration in administrative procedure did not result in an annulation of the previously granted recognitions. Unlike the former 11 (including 3 Reformed groups) the new ones were not allowed to registrate marriages officially, but had to send the requisite documents to the city hall for registration; a procedure that can be seen as a limitation, but probably was the price to be paid for the new more liberal order. The Ministry has until this summer recognized 63, among them Jehovas' Witnesses, the Mormons and the Pentecostals, but also several Muslim imams and a Sikh priest (see Appendix 1 and 2). The Ministry was from the new beginning aware of that it could be necessary to compromise and estimate. In 1979 after a long respite a member of the priestless Bahá'i group was given an ad hoc-recognition in connection with isolated marriages (11). According to the newspapers also a small group of adherents of the old Nordic gods Odin and Thor now wish to be recognized, but they have not so far approached the Ministry.

Most cases have been unproblematic, but not all. A few months ago also members of ISKCON (Hara Krishna) were accepted. It is a decision that very likely will make it rather difficult, perhaps even impossible, to refuse Scientology which in the last 25 years has been rejected several times and with variable explanations: with references to the moral conduct of the priest, the organization of the movement and the question if Scientology at all is a religious community. Critics find that the considerations of the Ministry from a legal point of view only with difficulty can motivate a rejection. In 1978 and 1983 the Ministry resorted to what was called "a total

(10) Law of Marriage of 1969-06-04 section 16.1.3.; STENBÆK 133-138.

(11) STENBÆK, 133-138; ØSTERGAARD, 30-32; Folketingstidende 1968-69, Tillæg B, 1929; FLEDELIUS/JUUL, 38-44; WARBURG/WARMIND, 35-38; WARBURG 1996, 18-21; HVIDTFELDT, 87-88.

estimate" or "a total valuation". The Department did not concretize which new aspects besides the above mentioned concrete considerations have been decisive for its rejection and it is therefore impossible to judge the basis of the overruling. Most probably the Ministry has estimated that Scientology is unfit to administer an authorization of matrimonial officiating because of its well-known reputation for controversial recruiting policy and faded economy (in 1995 the tax authorities in Copenhagen made a trenching of the movements conditions. Scientology had by the way for some years a "representative" in the tax department). The latest application from the movement has just been forwarded by the Ministry to its consultant. The expert of the Ministry finds that the case is so controversial that the application may not end in the Department but as a subject of discussion in a cabinet meeting in parliament (WARBURG 1996, 21-27; JENSEN 1991, 200).

It is open to discussion whether it is morally just to make use of an estimate of confidence or not, but it is nevertheless legitimate that a state wishes to decide who is allowed to share its executive power or not. It has been much criticized that the bishop of Copenhagen and his assistant — a Lutheran priest — in the present administrative practice are used by the Ministry as religious experts (WARBURG 1996, 27-28). This is due to an old tradition according to which the bishop was regarded as the king's counselor in religious and clerical matters. The problem is that no matter how qualified an estimate of the Lutheran churchleader may be it cannot in the nature of the case be said to be objectively founded. When the Minister of Ecclesiastical Affairs in August 1997 maintained that the old practice had had its day it was to be expected. The same was true of his suggestion that the applications in the future should be examined by an unpartial consultative committee. In February 1998 such a committee was appointed with four university-teachers as members representing the judicial system, the science of religion, the sociology of religion and church history and church law (the last person is a theologian and a specialist on Christianity, but has no direct connection to the Folk Church).

It is understandable that so many NRMs wish to be recognized. As everebody else they need money. The economic support of the

state to the Folk Church is in accordance with the constitution. In another section the very same basic law makes it impossible to support other religious communities. This is why the Danish authorities cannot use the Norwegian solution with support on the basis of registration of members or the Belgian with direct payment of the salaries of the priests again on the basis of member-registration. Instead Denmark has the negative solution with freedom of tax. If the buildings of the recognized religious communities are used for church purposes they are exempted from valuation of and tax on property. Furthermore economic contributions are according to certain conditions deductible. Exemption from freedom of tax seems to have been unproblematic, but there has been misuse of the settlement concerning taxfree gifts. At the moment the Ministry of Ecclesiastical Affairs must recognize that the recipient is a religious community and only 15% of a yearly income are deductible when given away. Until recently it was necessary to have at least 200 members in order to get fiscal advantages. With the raising of the number to 500 the smaller NRMs got jammed and now try to be recognized by the Ministry and consequently by the fiscal authorities. Until 1993 the Ministry received only one application per year, but now about 50 (12).

3.2. *Other provisions in domestic Danish law concerning NRMs*

Several NRMs are discontended with the way they are treated in the media. Transcendental Meditation, Hara Krishna, Jehovas' Witnesses, a Muslim radio and Scientology have complained to the Press Council with attacks on the media and their untrue and distorted stories. Scientology that again and again makes the headlines has just published a newspaper in which the movement turns against what is called the superficiality of the Danish newspapers and most of all the Danish television.

Most NRMs try to avoid attention but may if they are unsatisfied with the treatment they get as plaintives seek redress in the

(12) STENBÆK, 137-138, 141-42; FLEDELIUS/JUUL, 44 and 97; WARBURG 1996, 19; ØSTERGAARD, 32-33.

administrative system. If redress is not obtained here the Ombudsman may be requested to examine the case. He cannot however consider cases that have been brought before a court or up in parliament. On the other hand he is independent of parliament. Finally redress may be sought before the courts (13).

The NRMs in general find that the criteria behind the concept "religious communities" is too unspecific. The religious reality has changed radically since the late sixties. There are still — it is said — not enough rules in the Danish legislation on religious minorities and the position of the NRMs is legally unsafe because almost all decisions are taken on an administrative basis. The Ministry of Ecclesiastical Affairs disagrees. One must not forget — it is said — that the decisions always are open for criticism; they can be put before the Ombudsman and controlled by the media and the Minister of Ecclesiastical Affairs is as the responsible decision-maker constantly subject to the control of parliament in agreement with the rules for ministerial responsibility.

The Ministry is convinced that the lack of a firm framework is promoting rather than reducing freedom of religion. The religious communities can according to the Ministry broadly do what they like; acquire or rent land and buildings, build houses for their religious purposes (synagogues, temples, chapels and mosques), keep schools and hospitals of their own and publish books and magazins. The religious communities may lay out burialgrounds of their own or be allowed by the Ministry and the board of a cemetary to have a section of a cemetary of the Folk Church as their own. They may also use the chapels of the Folk Church for burials involving their own priests and rites. The Mosaic community has had its own burial grounds since 1814. The same is true to the Grundtvigian free congregations later in the 19th century. There are Roman Catholic sections in 17 cemetaries and special divisions for Muslims in the area of Copenhagen, Odense and Aarhus (JENSEN 1994, 99-100). In January 1998 the city council of Copenhagen discussed the question of a specific Muslim cemetary, but

(13) The Danish Constitution Article 55 and Law No. 642 of 1986-09-17 sections 1-4, 6 (Folketingets ombudsmand); FLEDELIUS/JUUL, 98-99.

without result (around 80% of the Muslims living in Denmark are now after their death transported to their native countries for burial (Kristeligt Dagblad, 1998-01-28)).

The Ministry further points out that nobody interfere with the elections, appointments and paying of priests, but the authorities will not change the rules for residence. Religious minorities as e.g. Islam and Scientology need to get priests from other countries. The Danish Aliens Act is very strict, but residence permit can be granted to aliens if specific reasons favour this. It has been applied to ministers, missionaries and other with similar tasks who are to function as such in a church or religous entity resident in Denmark. A much debated issue is whether this provision has been applied equally to all ministers and missionaries or if the residence permit only has been granted to representatives of religious communities which the authorities sympathize with. After a staggering start it is now practise that priests from the recognized religious communities, including Islam, are granted up to four years, but others with Scientology only two. Freedom of religion imply only limited positive special treatment, but it could be in the interest of the Danish society if e.g. the Muslims did get Danish second-generation imams. There have been arduous cases concerning the withdrawals of residence permits of Scientology priests (14).

Fortunately the right to religious liberty is not only protected at the level of constitutional law, but has been refined and developed in statutory law. The Penal Code, Non-discrimination, Administrative, Public Information, Public Register and Private Register Acts prohibit blasphemous statements and statements offending or insulting a person or a group of persons of a certain faith on grounds of their religion and belief. Grave accusations against Muslims resulted in 1980 in a High Court sentence. Today the crime-making of blasphemy — or to be more exact insult to the feelings of others — seems to have lost its power. Very little is now considered sacred. The words of Alexander Pope is no longer considered true: "Only fools enter where angels dare not step". Only a minority however

(14) The Danish Aliens Act of 1983, 9:2; ØSTERGAARD, 33; FLEDELIUS/JUUL, 47-48; GARDE, 41-42.

wish the Act to be repealed. Among others the majority of the journalists that in the bigger media have made a speciality of belief and religion are convinced that it is necessary to keep it and most of all because of the many NRMs (15).

4. CONFLICTS BETWEEN NRMS AND THE ADMINISTRATION

In spite of all this it does not follow that the situation of the NRMs is satisfactory. There are and must be limitations. No matter how much freedom and equality of religion is promoted there is always in a society like the Danish certain limits. Due to history and tradition the majority has its rights. The legal system is and will be Danish which is also true in connection with a superior weighing out of opposite considerations in concrete questions of doubt. Foreigners may enter the kingdom with their political, social and religious culture, but they cannot demand that their foreign say Muslim laws shall replace the Danish ones.

It is often said that true freedom is incompatible with the existence of a favoured confession. But it is also true that the religious majority has its rights. A moderate favouring of the Folk Church is not necessarily against the fundamental freedom of the minority. The very existence of the Folk Church does not conflict with human rights if only the negative freedom of religion is respected. It is true that state and society in this generation in many ways have emancipated and that legislation and practice in the judicial system and administration do not explicitly invoke the Christian cultural heritage, but it is still in many ways manifest.

The freedom to manifest one's religion and belief is also limited in other and more serious ways due to laws that are indispensable in a democratic society in the interests of public safety, for the

(15) The Penal Code Article 140 and 266b; The Non-discrimination Act No. 626 of 1987-09-29; The Administrative Act No. 517 of 1985-12-19; The Public Information Act No. 572 of 1985-12-19 section 12; The Public Register Act No. 621 of 1987-10-02 and additions of 1989-03-29 No. 192 on Public Register; The Private Register Act No. 622 of 1987-10-02; FLEDELIUS/JUUL, 33-34, 83-84; GARDE, 40.

protection of public order, health and moral or the rights and liberties of others. It is necessary to make judicial and social weighing of the right to freedom of religion in regard to other human rights provisions that apply to individuals and not to groups or communities (FLEDELIUS/JUUL, 43; GARDE, 33-34, 42-43; WARBURG 1996, 28) (16).

As a rule Danish authorities and courts try if possible to find pragmatic reasonable arrangements rather than a theoretically optimum solution when dealing with violation of different laws (17). Though religion is a matter of freedom and a "private" one they do now and then consider religious and cultural elements in connection with the settling of minor criminal offences. This does understandably not or seldom apply to serious crimes. Besides criminal cases — that often are of the most grave nature belief and religious affiliation however also create conflicts in many other legal connections as it will be demonstrated below.

In Denmark Sunday and in general Saturday are days of rest for most people on the labour market. A conflict may arise with regard to Muslims and members of other NRMs who have *ritual duties during week-days*. In practice a person who wishes to have time off from work in order to respect these duties will not have this right unless his employer agreed to this when entering the contract with the employee or at a later stage. If the worker is not satisfied he or she can resign from the job. Only religious holidays of the majority of the population are celebrated as public ones (18) (FLEDELIUS/ JUUL, 70-73).

A serious problem arises when someone makes objections to *medical treatment* on religious and conscientious grounds. A

(16) Lately an interesting case has been brought to court. A Muslim Somalian, who prayed during a post-educational course, was expelled. Among other things he was told that his prayer during the pauses had offended the atheisme and non-belief of the Danes present. The court is expected to pronounce its sentence in the autumn of 1998.

(17) The Sikhs for instance, who according to their religion must wear turbans, have since 1978 been allowed to drive a motor-assisted cycle of motor-bike without a crash helmet (Kristeligt Dagblad, 1998-01-15).

(18) The Act on Holidays No. 279 of 1983-06-17 and No. 277 of 1991-05-08; Act on Protection against Dismissal on Grounds of Organization No. 285 of 1982-06-09 (cf. No. 347 of 1990-05-29).

distinction must here be drawn between compulsory treatment intended to prevent or combat diseases which may endanger the health of other people and compulsory treatment concerning only the health or life of the person in question. Sometimes parents refuse to apply preventive or curative measures to their child or children. According to Danish law fit adults can decide over their own body and health. They may not be subject to compulsory medical treatment unless they are suffering of a dangerous contagious disease and the lives of others are in danger. Objection on religious grounds will then not be accepted. He and she can only refuse treatment when it is only their own life that is in danger. The doctor is obliged to inform the patient about the consequences (19).

The question on *conscientious objection* has in Denmark especially been discussed *with regard to blood transfusion* and the objection by members of Jehovas' Witnesses. Where a life has been at stake doctors have not always respected the will of the patient, but no charges have yet been raised. The rules are not clear, but there is an increasing tendency to respect the right of patients to self-determination. When a woman was knocked down and seriously wounded by a car she refused to have a blood transfusion and died. The driver was accordingly only sentenced for serious body harm. The problem of transfusion is most difficult to handle where it involves minors and incapable people. They are in general not considered as capable of taking such decisions which however do not exclude the possibility that the decision of an incapable child or mature minor in some situations should be respected. Normally parents or legal guardians make the decisions, but they are not considered competent when life is in danger and doctors have a duty to act against the wish of the parents and give blood transfusion or they will be punished (20).

(19) Act of Performance of Medical Practice No. 426 of 1976-08-19 and Law No. 278 of 1990-05-02; The Penal Code Articles 260-261; Act on Measures against Contagious Deseases No. 114 of 1979-03-21; The Circular of the Health Administration of 1991-05-17; FLEDELIUS/JUUL, 74-75.

(20) The Penal Code Articles 250, 253 and 260; Report No. 1184 of 1989, Ministerial Order on Information and Consent, issued by the Health Administration Article 14 of May 1991; FLEDELIUS/JUUL, 75-77; GARDE, 38.

Another problematic issue concerns *ritual circumcision*. Doctors do circumcision on boys and men for reasons of religion and cleanness, but not on girls and women which is considered as mutilation and the performing person can be punished, even if it is done by a Dane in another country. So far female circumcision has not lead to conflicts in Denmark, but the issue may arise with the many migrant workers, refugees and others who come from countries where circumcision is a cultural or religious intervention (21).

Ritual slaughtering of animals has this spring been much discussed in the media and parliament. Since 1808 it can be practised under certain circumstances. The legislation was examined in 1988, where a new Act on Protection of Animals stated that livestock as a general rule shall be anaesthetized before being slaughtered. Exception is possible in connection with Jewish and Muslim rites in which case the slaughtering must take place in slaughterhouses certified for export. When three persons — two councilmen (one an ethnic Turk) and a local government officer — in 1988 allowed 50 to 100 persons to use one of the municipal farms for slaughtering in connection with the Feast of Pilgrims they were fined (22).

A special problem in connection with freedom of expression constitutes *conscentiδus objection of military service* (23). With the Danish compulsory system it is not possible to be totally exempted from performing service, even if it is acknowledged that e.g. members of Jehovas' Witnesses and other religious groups refuse to perform all kinds of service. Conscripts can be transferred to civil labour, the duration of which corresponds to the duration of the military part. Members of religious groups such as Jehovas' Witnesses cannot claim a right to exemption from civil service on

(21) The Penal Code sections 244-246; Act on Performance of Medical Practice No. 426 of 1976-08-19 and Law No. 278 of 1990-05-02; FLEDELIUS/JUUL, 79.

(22) Act on Protection of Animal No. 386 of 1991-06-06 and Ministerial Act No. 200 of 1986-03-26; FLEDELIUS/JUUL, 80-81; GARDE, 36-37.

(23) The Danish Constitution Article 81; The Conscript Act No. 213 of 1980-05-30; The Civil Conscript (Act No. 588 of 1987-09-08); Ugeskrift for Retsvæsen 1977, 860 H; FLEDELIUS/JUUL, 89-90; GARDE, 38-40.

grounds of religious convictions or conscience (there has been an unusually long and continuous row of cases in the Supreme Court, 9 since 1954. All of them ended with unsuspended sentences even when lower courts wished to use suspended ones or civil service). It became a well-established practice that members of Jehovas' Witnesses were posted in the Civil Defence for six months. If they refused they were first fined and later brought to court and sentenced six months imprisonment and then released on parole after three months. In May 1st of 1996 "The Watchtower" however announced that Jehovas' Witnesses had reevaluated their position. As a result it is today possible for the members worldwide to agree to a civil service under non-military administration. They now acknowledge the right of the State to require certain services of the citizens.

Should anyone go to prison because of his or her religious convictions they like the other prisoners have the right to see a minister and participate in religious services in the institution. If many prisoners of the same faith wish to do so they may in an open prison be allowed to leave the institution and participate in a service outside the prison. The authorities of the institution also acknowledge the need of prisoners for positive discrimination with regard to working days, food, clothing and books (24).

Some of the most serious problems are concerned with *family and children* and their relations to religion. The question of *access to children on the breaking up a marriage* is a much debated issue, whether the holder of access has the right to have a child educated in accordance to his or her religious conviction or must endure limitations in the right to freedom of religion during the periods of access. The Danish Act on Legal Capacity prescribes that the authorities are to make decisions on the extent and exercise of the right to access if the parents cannot reach an agreement. Conflicts over the moral and religious education is taken into account. The extent and exercise can be limited with reference to religious influence coming from the holder of access. A male member of

(24) According to Departemental Orders issued by the Ministry of Justice 1973-07-21 section 11 and 1973-06-21 sections 11 and 34; FLEDELIUS/JUUL, 93-94.

Jehovas' Witnesses was restricted because he took the child to events arranged by his religious community (the father applied in 1984 in vain to the Ombudsman) (25).

It has also been much debated whether *adoption* authorities legitimately can apply religion as a criterion when exercising their discretion. It has been recommended that parents from very singular religious movements should be made the object of further appraisal before a possible approval. Previously the adoption authorities had a very strict practice turning down applications from members of religious communities and especially Jehovas' Witnesses because of their singular and orthodox lifestyle and possible isolation of a child, not to mention their objection of blood transfusion. Parents from the movement asked the Ombudsman to examine their cases. He found the procedure too strict, the increasing tolerance towards religious minorities taken in consideration, and he recommended with the support of the Ministry of Justice a more individualizing treatment of applications from members of Jehovas' Witnesses. The religious affiliation was to be seen as only one of many personal elements (FLEDELIUS/JUUL, 64-65; GARDE, 37-38).

According to the Act on Legal Capacity the *holder of custody* has to see to the *upbringing of the child*. The obligation involves the right to bring up the child in accordance with the holder's religious and moral conviction. It is necessary here to make a distinction between the children who have been adopted anonymously and those who still have contact with the biological parents. An increasing number of unaccompanied minors come in these years to Denmark. Nearly all still have contact with their families. As a consequence the adoption authorities place them in families with similar cultural and religious backgrounds.

Childrens right of religious freedom is an issue which arises in different contexts. In general the family and parents play the primary role in the care and protection of the children. With regard to religious and moral education parents normally provide direction to their children in conformity with their own conviction. If a child adopts a religion different from that of the parents a conflict may occur. Other problems emerge when the child enters the *educational system* where subjects can be taught that are infringing the religious conviction of the child or its parents. If the parents are unsatisfied with the religious and moral education they may inscribe the child in a private school. There is no general rule requiring the consent of children with regard to decisions taken by holder of custody concerning the personal life of children. With regard to membership of or resignation from the Folk Church the child's consent must be obtained if it has reached the age of 15. Membership of other religious communities is not regulated by law in Denmark (26).

(25) The Danish Act on Legal Capacity No. 443 of 1984-10-03; FLEDELIUS/JUUL, 62-63, 66.

In the public schools children or their parents e.g. of Islamic faith now and then claim that their religion prohibits the children from taking part in classes on religion, music and gymnastics. If problems for instance arise in connection with gymnastics in schools they are mostly taken care of without the involvement of the authorities. Muslim boys and girls are allowed to take a bath in a separate room or wear swimming suits. But not all schools and teachers are flexible. A short time ago an 8-year-old Muslim boy was expelled from a Private Secondary School in Frederikssund in Sealand because he refused to take a bath naked with his classmates.

The question of clothing was raised in 1991 by some teachers from a school in Copenhagen. Neither the Ministry of Education nor the Danish Organization of Teachers reacted and school children can today wear religious signs showing their affiliation to a religious community. Until now everything has been solved in an informal manner. A few weeks ago two teachers (a married couple) who demanded that three daughters of a Somalian imam should remove their headscarfs were stopped by the school board. The question of headscarfs will however still be pro-

(26) Act on Legal Capacity No. 443 of 1985-10-03 Article 7:1 No. 793 of 1990-11-27; Act on Membership of the Folk Church etc. No. 352 of 1991-06-06 sections 3 and 11 and Government Notice No. 57 of 1982-01-24 section 8; FLEDELIUS/JUUL, 51-52, 66.

blematic. Recently a Muslim girl was expelled, when she turned up as a trainee in a municipal office in Copenhagen wearing a headscarf.

In Denmark the children generally have a right to manifest their religion in Danish public schools, but the parents have to accept the curriculum offered. Classes in Christian Religious Knowledge are compulsory so that the children can get a knowledge of Christianity in a historical and contemporary context and become familiar with fundamental values in Danish culture. The instruction also aims at giving the children knowledge of foreign ways of living and foreign attitudes. A child can be exempted from attendance in classes of Christian Religious Knowledge if the holder of custody states that he or she will take care of the moral and religious education. There has been only little problems with subjects of swimming, physical education and home economy (where special food can be the problem) (27).

Parents who experience a conflict between their philosophical or religious conviction and the education in a public school may choose to teach their children at home or to inscribe them in a private school. Schools with religious orientation may be established in accordance with certain conditions laid down in the Act of Free Schools and Private Basic Schools. They are subsidized by the state when the conditions e.g. with regard to the number of pupils are fulfilled. Presently the state is subsidizing up to 85% of the costs to e.g. a Muslim school. The curriculum can be different but must cover the same fields of education. It is possible to have more classes than normal in e.g. religion. In practice private schools have been established to prepare the pupils to live in the Danish society without giving up their culture and religion (28).

(27) Governmental Notice 524 of 1990-06-10; Instruction in Christian Religious Knowledge 37:13, The Ministry of Education 1989/1; FLEDELIUS/JUUL, 52-53; Kristeligt Dagblad 1998-01-15.

(28) Act of the Folk School section 33, Act No. 411 of the Free Schools and Private Basic Schools No. 411 of 1991-06-06 sections 18-20, 34-35; FLEDELIUS/JUUL 55-57.

5. FINAL REMARKS

On the whole Denmark fulfils international responsabilities concerning the rights to freedom of religion and belief, but it has been questioned whether the Danish state of law fully secures the standards in international provisions on non-discrimination and the right to equality. Many find the present practice of administrative authorities to be too intransparent and difficult to access and maintain that this is not only caused by the administration of various public authorities but is also due to the fact that the NRMs never had their freedom established by law. It is often suggested that it would be a good idea to establish a sort of frame inside which the NRMs can function if they fulfil certain necessary obligations. Others propose a registration of the NRMs by the Ministry of Ecclesiastical Affairs on the basis of informations from the religious communities themselves; a solution that according to others again easily might be turned into an instrument of control. Whether this is true or not it is a fact that there presently does not exist any form of controlling instance that take care of an reexamination of a recognized but changing community. At the moment the recognition is like a carte blanche for all time.

The NRMs live an often unsecure life in the shadow of the Folk Church and are to be found where the balance between freedom (individually or collectively) and the public order might easely tip. They are often accused of breaking the customary law and must always take care that they are not doing anything which may collide with public moral and order, phenomena that are very subjective and variable in a modern society.

The members and supporters of the NRMs in Denmark amount only to a modest minority group and even though with the growing internationalization of the society the number may increase in the years to come. Denmark probably about the year 2000 will be a society where the religious life still will be dominated strongly by the Folk Church. Even though the greater part of its member are "believing without belonging" on a daily basis and its

membership has decreased from 94, 8% in 1977 and 92, 1% in 1993 to 86, 1% in 1997 it is still a major force in the Danish society and its religious life. If the Muslims are left out the number of members in the recognized communities — according to their own informations — amounts only to 86.149 (1993), 87.302 (1994), 93.028 (1995) and 94.164 (1996), compared with the now about 4.542.000 of the Folk Church. Denmark seems not in the near future to become as pluralistic as some other European countries and especially not USA. On the other hand it is true that Danes will have to live with the growth of a bewildering variety of NRMs. In Denmark, too, the weakening of traditional belief in the wake of ethical and cultural pluralism has given rise to a contemporary transformation of religion, the result of which in many ways is still to be seen.

It is certain that the growing immigration for people with another ethnic and religious background do and will create problems. The Parliament is aware of it, but many of the politicians are against a more specific regulation of the religious rights. Still the Minister of the Interior has decided to ask the Board of Ethnic Equality to look into the question of the rights of religious minorities in the labour market and the schools. As in the past it will be difficult to balance between equality and positive preferential treatment.(Statistisk Årbog the years mentioned; Kristeligt Dagblad 1998-01-18).

LITERATURE:

Hanne FLEDELIUS, Birgitte JUUL; *Freedom of Religion in Denmark.* The Danish Center for Human Rights, Copenhagen 1992.

Peter GARDE, *Legal status of minority churches and religious communities in the Kingdom of Denmark. Liberty without equality*, in: European Consortium for Church and State Research, Università degli Studi di Milano, Publicazioni di Dritto Ecclesiastico, 10, Thessaloniki-Milano, 1994, 80-114.

Peter GARDE, *De religiøse minoriteters juridiske perspektiv*, in Chaos, Dansk-Norsk Tidsskrift for Religionshistoriske Studier, København, 1996, 33-43.

Arild HVIDTFELDT, *Denmark*, in: Conscience and liberty. International Journal of Religious Freedom (English edition of Conscience et Liberté). Issue on New Religious Movements, Grantham, Lincs. England 1989, 85-90.

Hans IVERSEN/Ole RIIS, *Nyreligiøsitetens baggrund i Danmark*, in: Sækularisering, nyreligiøsitet og hvad så? Nyt Synspunkt nr. 11, København 1980, 24-40.

Tim JENSEN (ed.), *Minoritetsreligioner i Danmark — religionsociologisk set*, Columbus, København, 1991.

Tim JENSEN, *Religionsguiden,* København 1994.

Ragnhild KRISTENSEN, Ole RIIS, *Religiøse minoriteter*, Aarhus, 1987.

Kaj MOGENSEN, *Nyreligiøse bevægelser*, København, 1976.

Mikkel PADE (with contribution of Dorit WIUM ANDERSEN and Helle HINGE), *Opslagsbog over Nye religiøse bevægelser i Danmark*, Aarhus 1998 (unpublished survey, but soon in print).

Michael ROTHSTEIN, *Gud er blå. De nye religiøse bevægelser*, København 1997 (4th edition).

Michael ROTHSTEIN, *Er Messias en Vandmand? En bog om nye religioer og New Age*, København 1993.

Michael SCHELDE (ed.), *Religionsfrihed*, Nyt Synspunkt nr. 25, København, 1986.

Jørgen STENBÆK, *Ægteskabsindgåelse, anerkendelse af trossamfund og religionsfrihed*, in: Regnhild KRISTENSEN/ Ole RIIS (ed.): Religiøse minoritets-og majoritetsforhold, Aarhus, 1986, 124-142.

Margit WARBURG (ed.), *Studying New Religions*, Copenhagen, 1995 (I).

Margit WARBURG, *De nye religioner og den danske statsmagt: Sager i forbindelse med Scientology,* in: Religion, Tidsskrift for Religionslærerforeningen for Gymnasiet og HF, 1995, 17-25 (II.)

Margit WARBURG, *Lige ret for Loke så vel som for Thor? Religionsbegreber og retspraksis i forbindelse med religioner udenfor Folkekirken*, in: Chaos, København, 1996, 9-32.

Margit WARBURG, *Restrictions and Privileges: Legal and Administrative Practice and Minority Religions in the USA and Denmark*, in: Eileen BARKER and Margit WARBURG, New Religions and New Religiosity, Aarhus University Press, Aarhus, 1998, 268-282 (will be published in May 1998).

Bent ØSTERGAARD, *Religionsfrihed og indvandrere*, in: Michael SCHELDE (ed.): Religionsfrihed i Danmark. Nyt Synspunkt nr. 25, København, 1986, 24-34.

Appendix 1:

Tabel 121. Trossamfund med vielsesbemyndigelse
Recognized religious denominations, excluding the National Church APPENDIX 1

1996	Antal medlemmer 1	Antal kirker, sale 2	Antal sædepladser 3	Dåbshandlinger o.l. 4	Konfirmationer o.l. 5	Vielser 6	Kirkelige begravelser 7	
Anerkendte trossamfund mv. i alt	94 164 [1]	658	79 027	1 718	419	703	957	Recognized religious denominations, total
Aalborg Menighedscenter	210	1	180	2	1	2	2	Aalborg Church Centre
Amager Kristne Center	70	2	200	4	.	.	1	Amager Christian Centre
Apostolisk kirke i Danmark	2 359	41	3 751	36	39	17	23	Apostolic Church in Denmark
Bahai	290	1	80	•	•	1	2	Bahai
Buddhistcenter Karma-Kadiy Skolen	1 180	4	650	120	.	4	.	Buddhistic Center
De danske Pinsemenigheder	5 012	58	7 330	131	•	45	40	The Danish Pentecoastals
De Evangelisk-Lutherske Frimenigheder	140	5	500	1	3	.	1	Lutheran, Non-Conformist Congregations
Den Finske Kirke i Danmark	•	1	60	6	3	5	3	The Finnish Church in Denmark
Den Makedonske Ortodokse Kirke	338	1	300	.	.	.	.	Macedonian Orthodox Church
Den Nyapostolske Kirke i Danmark	381	6	450	5	.	1	3	The New Apostolic Church in Denmark
Det dansk-reformerte trossamfund	304	1	260	3	.	2	4	Danish Reformed
Det danske baptistsamfund	5 500	75	8 514	76	.	49	105	Baptist
Det danske Missionsforbund	1 942	25	2 500	26	39	13	28	The Covenant Church of Denmark
Det fransk-reformerte trossamfund	50	1	300	.	1	.	.	French Reformed
Det tysk-reformerte trossamfund	312			1	.	.	2	German Reformed
Det mosaiske troessamfund	2 601	1	720	•	22	10	68	Jewish
Det ortodokse russiske trossamfund	120	1	. . .	72	.	10	8	Russian Orthodox
Det romersk-katolske trossamfund	32 756	88	8 980	633	269	144	354	Roman Catholic
Frelsens Hær	1 271	38	3 345	2	2	2	6	The Salvation Army
Guds Menighed	115	2	210	2	.	1	.	The Church of God
Holstebro Frikirke	30	1	70	2	.	.	.	Free Church of Holstebro
Islændingers menighed i København [2]	6 330	4	. . .	15	4	5	1	Icelandic Church in Copenhagen
Jehovas Vidner	16 111	174	24 500	342	•	118	162	Jehovas's Witnesses
Jesu Kristi af sidste dage's hellige	4 592	22	3 000	82	•	11	18	The Latter-Day Saints
Karmapa-Trust	450	1	120	.	•	2	.	Karmapa-Trust
Kong Haakons kirke	2 000	1	250	7	4	114	7	Norwegian King Haakon Church
Kristent Center Herning	185	1	500	.	6	4	3	Christian Centre of Herning
Kristent Centrum	1 813	10	2 000	15	.	1	3	Christian Centre Church
København Bibeltræenings Center	170	1	600	10	.	.	.	Copenhagen Centre of Biblical Studies
Livets Træ Bibelcenter	35	1	100	.	.	1	.	The Tree of Life Biblical Centre
Metodistkirken i Danmark	1 441	22	2 834	22	15	9	39	Methodist
Nazaræerens Kirke (Distrikt)	65	2	240	.	4	.	.	Nazarene Church
Rhema Bibelcenter	55	1	75	1	•	1	.	Rhema Biblical Centre
St. Alban's English Church	108	1	200	3	•	2	3	St. Alban's English Church
Sunnataram Copenhagen	1 015	1	200	.	•	5	.	Sunnataram Copenhagen
Svenska Gustafskyrkan [3]	750	1	315	20	4	100	12	Swedish Gustav Church
Syvende Dags Adventistsamfundet	2 838	49	4 155	29	.	12	55	Seventh Day Adventists
The Brethren	64	1	180	1	.	.	.	The Brethren
The International Church	200	2	200.	6	3	1	.	The International Church
Trossamfundet Troens ord	150.	1	250	11	.	6	.	The World of Faith
Østens Assyriske Kirke	242	.	.	2	.	1	.	Assyrian Church of the East
Billund Frikirke	12	1	30	.	.	.	.	Billund Free Church
Dansk Teltmission menighed	48	2	148	.	.	.	.	Danish Tent Mission
Den Koptisk-Ortodokse Kirke	270	1	170	2	.	.	1	Coptic Ortodox Church
Den koreanske Kirke i Danmark	40	.[4]	.[4]	7	.	.	.	Korean Church in Denmark
Frikirken på Havnen	156	1	150	14	.	1	1	The Free Church at the Harbour
Kristanostova	•	3	290	1	•	2	1	Kristanostova
Livets Kilde	43	1	120	6	.	1	1	The Fountain of Life

[1] Ekskl. muslimer, i bogen Islam i Danmark, Århus 1990, har Jørgen Bæk Simonsen skønnet den i Danmark bosatte muslimske befolkning ud fra antallet af udenlandske statsborgere pr. 1/1 1990 til ca. 56.000. Efter samme metode er den muslimske befolkning skønnet pr. 1/1 1991 til ca. 60.000, pr. 1/1 1992 til ca. 68.000, pr. 1/1 1993 til ca. 72.000, pr. 1/1 1994 til ca. 74.000, pr. 1/1 1995 til ca.76.000 og pr. 1/1 1996 til ca. 84.000. [2] Medlemmer for hele landet. [3] Ekskl. samandsburkene i Skagen og Hirtshals. [4] Fælles med Det fransk-, tysk-reformerte trossamfund.

Kilde: Meddelt af trossamfundene.

TRANSLATION - Columns, 1: members of congregations. 2: churches or church rooms. 3: seats in churches or church rooms. 4: baptisms. 5: confirmations. 6: marriages. 7: funerals.

Appendix 2:

Besides the religious communities mentioned in Appendix 1 the total list of the now recognized ones contains the following, unfortunately without the relevant figures (source the Ministry of Ecclesiastical Affairs):

Yeshuat Tsion. Den messianske synagoge i Danmark (The Messianic Synagogue in Denmark)
Kristne i Danmark (Christians in Denmark)
Fonden Guds Verdensvide Kirke (The Foundation God's Worldwide Church)
Bibel og Missions Center (The Center of Bible and Mission)
Wai Thai Danmark (Denmark)
Forklarelsens Kirke ("The Church of Transfiguration")
Sikh Foundation, Denmark
Kristent Center (The Christian Center)
Sathya Sai Baba
Kristensamfundet (The Christian Society)
Krishnabevægelsen, ISKCON (The Krishna-Movement)
Den rumænsk-ortodokse menighed i Danmark (The Romanian Orthodox Congregation in Denmark)
Kristenfællesskab i Nordsjælland (Christian Fellowship in North Sealand)
Kristent Fællesskab København (Christian Fellowship Copenhagen)
Brahma Kumaris

In July 1997 the following had lately been rejected:

Liberal Katolsk Kirke (Liberal Catholic Church)
Vishna Hindu Parishad — Denmark
Siddha Yoga Danmark (Denmark)
Martyrernes Røst. Kristen Mission (The Voice of the martyrs. Christian Mission)
Rosenkreuzts Internationale Skole (The International School of Rosenkreuz)
Dansk Forening for Missionsfly (Danish Association of Mission Planes)
Friluftsmissionen (Open Air Mission)
Vægterne (The Watchmen)
White Eagle Centret (The White Eagle Center)
Martinus Institut (The Martinus Institute)
Orgasmens Madonnas Kirke (The Orgasm's Madonna's Church)

HARRI HEINO
The Research Institute of the Evangelical Lutheran Church
of Finland, Tampere University

RELIGION AND CHURCHES IN FINLAND

SUMMARY: 1. *The historical background.* — 2. *The position of the Churches and religious communities.* — 2.1. The Evangelical-Lutheran Church. — 2.2. The Orthodox Church. — 2.3. The Catholic Church. — 2.4. The Anglican Church. — 2.5. Other religious communities. — 2.6. Protestant minority communities of long standing. — 3. *The attitude of the Finns to different religions, churches and religious communities.* — 3.1. Non-denominational and other Christian communities. — 3.2. Ethnic minority religions. — 3.3. New religiosity and new religious communities. — 3.4. Communities emerging from a Christian background. — 3.5. Communities and movements stemming from Hinduism. — 3.6. The influence of Buddhism. — 3.7. Theosophical associations and communities. — 3.8. Other communities. — 4. *An example of dialogue with new religions.* — 5. *Religious communities in Finland.*

1. The Historical Background

Christian influences from both East and West reached Finland a thousand years ago. Missionary efforts on the part of the Western church were, however, stronger, and by the beginning of the 14th century most of Finland was under the Roman Catholic Church, and Swedish domination. The Catholic Church brought European civilisation to Finland. It united dispersed tribes into a single nation and provided an advanced system of administration. The church ministered to the destitute and infirm by maintaining houses for the poor and hospitals. It fostered learning and the arts. By the end of the Middle Ages Finns had learned to live with the church and its sacraments. The Bishop of Turku was the most powerful man in

medieval Finland. He also represented the Finns in the Royal Council of Sweden.

The Protestant Reformation reached Sweden and Finland by the 1520s. Its strength derived not from the people or the clergy but from the fact it was instituted by royal decree.

The Reformation severed all ties to Rome. The Pope' s power was replaced by that of the King of Sweden, who stripped the church of its income and property.

In the period of orthodoxy at the turn of the 17th and 18th centuries the church again had a similar cultural monopoly to that of the Middle Ages. The church preached loyalty to the state, instilled a strong sense of Christian morality in the people and taught the Finns to read.

Swedish domination of Finland came to an end in 1809, when Finland became a Grand Duchy in the Russian Empire. Although the ruler was now an Orthodox emperor rather than a Lutheran king, the Lutheran Church remained the state church of Finland. The Ecclesiastical Act of 1869 loosened the bonds between church and state and increased the independence of the church. The supreme decision making body of the church, the synod, was founded.

Civil war broke out in Finland after independence was declared in 1917. Virtually the entire clergy supported bourgeois Finland. Ties between the church leadership and the organized working class remained distant, while the victors began to see the church as the protector of the legal order, the national tradition and Western culture. It was expected to foster moral citizens loyal to the state.

The Winter War against the Soviet Union (1939-40) has been characterised as a struggle for home, faith and fatherland. The church was a source of support and unity in this struggle. The will to defend the administrative and financial independence of the church increased during the war.

In the mid-sixties Finnish culture was shaken by migration from rural to urban areas, immigration, growing influences from abroad, the pluralistic image of the world conveyed by television, and the universal crisis of authority. The church, too, was branded undemo-

cratic and conservative. From the 1970s on discussion of ethics and interest in religion have increased.

In the post-war period secularization has increased in all the Nordic countries. The sacred has become estranged from the secular. The position of religion as the centre of society's set of values has become weakened and many areas of life have formed their own morality and values with tenuous links to religion and the Church.

In recent years in particular a renewal of interest in religion has been apparent. The position of the revival movements — otherwise than was reckoned two decades ago — has become stronger and the number of new religious groups has multiplied. The interest of the mass media in religious life has increased. The press tells of the conversion of public figures and of great religious meetings. Ethical questions and issues relating to one' s way of life have shown be a matter of the future of mankind.

2. The Position of the Churches and Religious Communities

Up to the end of the last century every Finn had to belong to either the Lutheran or the Orthodox Church. It was not until the 1889 Act on Nonconformity that the position of other Protestant Churches was made official and membership in them permitted. The Baptists and Methodists were the first religious denominations to gain official recognition.

Freedom of religion was guaranteed in 1923. It granted citizens the right to freely found religious denominations or to remain entirely outside them. The state no longer affirmed the Lutheran faith, thereby assuming a neutral attitude to religion. The rights and duties of citizens do not depend on the religious denomination to which they belong or on whether they belong to such a community at all.

Schools give religious education according to the confession of the majority of the pupils in the school. If at least three pupils belong to a particular denomination, their parents or guardians can demand instruction in that confession. Pupils who do not belong to

any denomination study different philosophies of life, if their parents or guardians so desire.

The legal status of the Evangelical-Lutheran Church is defined in the Constitution and in a separate Ecclesiastical Act. In independent Finland the state has taken over some of the functions that were formerly carried out by the church. Nevertheless, the Evangelical Lutheran and Orthodox Churches still have duties that could in principle be performed by either the state or local government. The parishes keep local population registers of their members, and people belonging to other denominations and those listed on the civil population register are buried in the more than one thousand cemeteries maintained by the Lutheran parishes. The relationship of the Orthodox Church to the state is virtually the same as that of the Evangelical-Lutheran Church.

2.1. *The Evangelical-Lutheran Church*

In 1995 the Evangelical-Lutheran Church of Finland had more than 4,3 million members. This means that 85, 6% of the population are registered with a parish.

The Evangelical-Lutheran Church comprises eight dioceses with eight bishops and approximately 600 autonomous parishes. The average parish has 7000 members, with the smallest parishes comprising only a few hundred members and the largest tens of thousands.

The parishes obtain 80% of their income in the form of a church tax levied along with state and local taxation. This tax is paid both by individual parishioners and by companies and associations. In 1995 the parishes had income from taxes totalling FIM 4.500 million.

Active members of the Lutheran Church attend services at least one a month, receive Holy Communion somewhat less often, participate in small group activities and vote in parish elections. Although the majority of church members seldom take part in such activities, they still prefer to marry in church, have their children

baptized, send them to parish children day clubs and have them confirmed. They also want a Christian burial for themselves and their relatives.

The church best reaches its members through various church ceremonies and rituals and every Finn attends an average of at least one service every year. 90% of all infants are baptised and even higher percentage of teenagers are confirmed. Only about 1% of Finns are buried without a church service, and as many as 80, 5% of couples are married in church.

In the last few decades the Evanceligal-Lutheran Church of Finland has started to show far greater awareness of its international responsibility. This is reflected in increased support for missionary work and development aid and in a greater interest in ecumenical work. Support for missionary work has more than doubled since the mid-1970s, and the proceeds of church collections for foreign aid have increased many times over.

Lutheran revivalist movements are an accepted element of the Lutheran Church and national culture, and the previously negative attitude of these movements towards many areas of culture has mellowed. They are seen as part of the church's heritage, with a considerable impact on decision-making within the church. Support for them is strongest in rural areas, which explains why they tend to be politically aligned towards the centre and moderate right.

2.2. *The Orthodox Church*

Christian influence reached the easternmost part of Finland, Karelia, from Novgorod in the 12th century. The word of God was spread by monks and their monasteries developed into bastions of the faith. In 1809 Finland became a Grand Duchy of Imperial Russia, and the Orthodox Church was the Emperor's church and part of the Russian state church. Orthodox Christianity spread to western Finland chiefly through Russian soldiers and merchants.

In the late 19th century attempts were made to use the Orthodox Church as a vehicle for Russification. In the aftermath of the

Russian Revolution and Finnish Independence (1917), the church's ties with the Patriarchate of Moscow were broken, and in 1923 it received autonomous status under the Patriarch of Constantinople. The early years of independence saw an increasing tendency towards Finnishness in the Orthodox Church in this country.

During the Second World War the church lost its monasteries and 90% of its assets, and more than two-thirds of its members had to flee their homes. The period after the war was a period of vigorous rebuilding, with the state funding the building of new churches, chapels, vicarages and cemeteries. Valamo monastery and Lintula convent from the Karelia region were relocated and reopened at Heinävesi.

Membership of the Orthodox Church fell in the 1950s and 1960s as a consequence of the large proportion (close to 90%) of marriages between Lutherans and Orthodox; the children of these marriages were usually baptized as Lutherans. The trend has changed in 1980s and the membership of the Orthodox Church has begun to grow with more people joining than leaving the Church. It currently has 56,000 members, which is 1% of the Finnish population. Interest has grown particularly in the Orthodox traditions of Karelia and in the worshipping life of the church. Valamo and Lintula have become important centres of pilgrimage. Valamo monastery attracts more than 100,000 visitors a year.

2.3. *The Catholic Church.*

After the Reformation, the Catholic Church disappeared from Finland for centuries, finally being officially reinstated in 1929 when it was registered as the Catholic Church in Finland. It has a membership of around 6, 400 (1995) the majority of whom live in Helsinki and the other major cities of southern Finland. There are six parishes and one independent diocese that covers the whole country. The majority of the priests and nuns are from the Netherlands and Poland. Finland has diplomatic relations with the Vatican.

2.4. *The Anglican Church*

The Anglican Church in Finland is a part of the work carried out by the Church of England among its members — and in general among the English-speaking — population — resident in this country. Its activities commenced in Helsinki as early as 1920. Its congregation comprises about 100 members, most of them living in the Helsinki area.

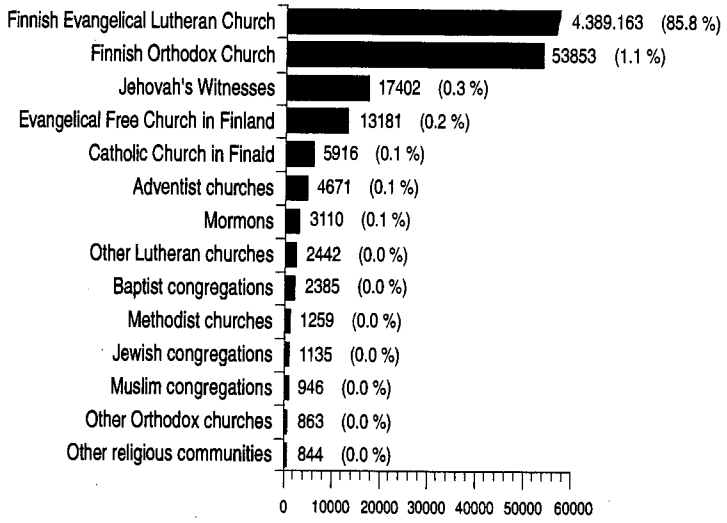
2.5. *Other religious communities*

Judged by the yardstick of the percentage of the population belonging to different religious denominations and associations, the religious situation in Finland is remarkably homogeneous. Approximately three percent belong to other religious communities than the Lutheran churches. 1.1% are Orthodox, less than one percent belong to other registered religious communities and in addition over one percent belong to the unregistered Pentecostal movement.

TABLE *Finnish population by religion 1920-95*

Year	Lutherans %	Orthodox %	Members of other religious denominations %	Members of no registered religious groups %
1920	98,1	1,6	0,3	—
1930	96,3	1,9	0,3	1,5
1940	95,9	1,8	0,3	2,0
1945	96,0	1,8	0,3	1,9
1950	95,1	1,0	0,5	2,7
1960	92,4	1,4	0,7	5,5
1970	92,4	1,3	1,1	5,2
1980	90,2	1,1	0,9	7,8
1990	87,3	1,1	0,9	10,6
1995	85,6	1,1	0,9	12,1

Membership of churches and religious communities in numbers and as percentages of the population of Finland 31.12.1995. Statistics Finland.



2.6. *Protestant minority communities of long standing*

The roots of most of the Protestant minorities in Finland lie in the Reformed Christianity of England or America; at the same time they come close to what is known as the new evangelicalism. Most of them have also received impulses from the charismatic renewal movement. In general they represent a conservative interpretation of Scripture and seek to maintain their members' purity of faith and way of life with the ideal of a "congregation of true believers". They expect their members to participate actively in the work of the congregation and in its financing. Politically they are for the most part conservative, and they prefer to regard Church and State as in principle distinct entities.

The Pentecostal Revival. The largest of the Protestant minorities is Pentecostalism, which spread to Finland through Norway and Sweden about 1910. Earliest support for this movement came in Finland from the Baptist and Congregational Churches. The Pentecostal congregations have not registered as official religious communities nor formed an entity as a Church or registered religious community; however, for the coordination of most of their activities national organizations have been established.

The congregations comprising the main branch of the Pentecostalism embrace 50,000 baptized members. The largest Pentecostal congregation in the country, Saalem in Helsinki, numbers about 3, 500 members. Among Pentecostal groups that have reached this country later from America, mention may be made of the group known as "Branhamists", after the evangelist-healer William Branham. Jyväskylä is the centre of the Church of God, a branch of the Pentecostalist Church of God of Prophecy which reached Finland from America at the turn of the eighties. Of movements in Finland which have split off from the mainstream of Pentecostalism one of particular note is Siiloan (the Congregation of Shiloh).

The Evangelical Free Church in Finland. The roots of this community lie in the revival emerging in the Lutheran Church in the 1870s and stressing the significance of personal faith and the unity of believers. Its impulses came mainly from Sweden (the Svenska Missionsförbundet) and England (the Plymouth Brethren, the Keswich movement and the Evangelical Alliance). Its first members came from among the Swedish-speaking educated class. In 1889 the Free Church movement organized itself as the Free Mission and seceded in practice from the Lutheran Church. The Free Church in Finland was registered in 1923 as the first independent body to emerge under the new law of religious freedom in Finland. Its membership has increased in recent years — including those living abroad, the figure now approaches 13.000. Its Swedish-language sister community is the Fria Missionsförbund.

Adventism reached this country in the early 1890s. The first Adventist congregation was established in 1894 and the Finnish Conference founded in 1909. The Finnish Adventist Church registered as a religious community in 1943 and the Swedish-language

Finlands Svenska Adventkyrka in 1944. There are five thousand Seventh Day Adventists in Finland today.

Finland's first *Baptist* community was established in 1856 in The Åland Islands and assumed an official position in 1889. Its membership stands at 2, 400 including its Swedish-speaking counterpart.

Methodism was brought to Finland by immigrants and seamen in the 1850s and 60s; the first official Methodist congregation, however, was not established until 1881. The membership of both the Finnish-and Swedish-speaking Methodist Churches comprise 1300. Both are members of the Finnish Ecumenical Council.

The Salvation Army, born in England in 1865, has not registered in this country as a separate religious community in spite of having been active here since 1889. Practically all of its members nowadays belong to the Evangelical Lutheran Church of Finland. The Salvation Army has about 40 active sections, with 75 serving officers and some 1, 400 soldiers.

The Quakers have been active on a small scale in Finland since the second world war. In 1992 they founded a non-profit association, which had 60 members in 1994.

3. The Attitude of the Finns to Different Religions, Churches and Religious Communities

Finnish attitudes to the traditional churches are the most positive. Almost three quarters (72%) state that they have a positive view of the Evangelical Lutheran church, 63% have a positive view of the Salvation Army and 54% of the Orthodox Church. Positive attitudes to the Lutheran church have been somewhat on the increase in recent years, but the popularity of the Salvation Army has been growing even more strongly.

Negative attitudes among Finns towards foreign relgions and religious minorities have been diminishing in recent years. This is most apparent in attitudes towards the Mormon Church and Jehovah's Witnesses, but also to some extent in the attitudes to Hinduism, Buddhism and Islam. There is, however, no question of a wave

of enthusiasm for these religions; only about one percent of Finns have an extremely positive attitude towards them.

Percentage of Finns who take a positive view of various religions and religious communities and of those who take a negative view of them. (Gallup Fennica 1996).

Among the traditional world religions, Islam is the one that has tended to attract the largest number of negative assessments from the Finns. In the last few years, however, attitudes to Islam have become more tolerant.

The Finnish view of Islam has been shaped first and foremost by the media, and especially by recurrent international news items featuring terrorist acts, demonstrations, and demands for violent retribution by Muslim extremists, or indeed internecine warfare among the Arabs.

The Finns find it more difficult to define their attitude to other traditional religions, but only one tenth of them take a favourable view of Hinduism and Buddhism. The positive impact of religious education and internationalization is evident in the relatively favourable attitude to these religions among the young, the highly educated, and those resident in Greater Helsinki.

Surveys have shown that 'foreign religions' are of greater-than-average interest to the young, the highly educated, residents of Greater Helsinki, and those who are generally more open to new influences and new ways of life. Doctrinal differences between religions are not the main issue: the decisive factors are a spiritual openness, a respect for new alternatives, and a willingness to take risks. Less familiar religions are a source of excitement, creativity, new experiences, and individuality, whereas traditional Christianity has tended to offer security, continuity, and a sense of community.

At least in the Finnish context, such a view of religious dialogue can lead to the taking of unreasonable precautions. Competition between religious communities should not be regarded as a major concern: a vast majority of those withdrawing from the membership of a religious community remain outside religious life altogether. According to the preliminary results of a survey which is now being carried out, approximately 95% of those who left the Evangelical Lutheran Church in 1993 have reimained outside all religious

communities. Some two per cent transferred to Pentecostalism, one per cent to the Orthodox Church, and less than one per cent to other Christian communities. The proportion of those moving to non-Christian communities was also substantially below one per cent. Only 2.6% of the respondents regarded the adoption of a new religious allegiance as the main reason for their withdrawal from the Church.

3.1. *Non-denominational and other Christian communities*

The number and the extent of Christian movements transcending the demarcations of the traditional Churches have been rapidly increasing in recent decades. The main channels of expansion have been the evangelicals and the charismatics. Some of the movements to emerge have organized themselves into non-profit associations. Their chief objectives are mission work and evangelizing.

A wave of these international interdenominational movements, representing almost exclusively the evangelical stream, reached Finland in the 1960s. The influences of the charismatic movement were not felt until the 1970s and 80s. The interdenominational groups deriving from America have attracted interest in this country perhaps above all among young people and in the university cities, which are generally marked by the trend to internationalism and the influences of American culture.

Particularly since the 1960s a considerable number of international organizations stemming from America and subscribing to the evangelical movement have gained a footing in Finland as in other countries. Among these mention might be made of the Wycliffe Bible Translators, the Gideons in Finland, Christian Ashram, Operation Mobilization, the Navigators and World Vision.

International charismatic communities active in this country include the *Full Gospel Businessmen's Fellowship, Youth with a Mission, and the Bible Speaks.* In addition we have around ten different charismatic communities which originated in Finland.

Besides the mainline baptists there are three other baptist

groups in Finland: Seitsemännen päivän baptismi (Seventh Day Baptists), Baptistilähetys (Finnish Baptistmission) and Perinteinen Baptistiseurakunta (Baptist Mid-Missions). A few congregations are based on the American Faith movement.

Apart from the evangelical and charismatic communities Finland has also received other Christian-based international communities such as the New Apostolic Church, the Boston Church of Christ and the Family. In addition there are 13 other movements which originated in Finland.

3.2. *Ethnic minority religions*

There are very few followers of the traditional, so-called high religions other than the Christian in this country. Among those of established status are the Jewish Faith and Islam, which in Finland constitute the religions of ethnic groups with memberships more or less exclusively confined to national minorities. They have had no mission activity among other denominations or faiths.

The Jewish Faith came to this country with men serving in the army of the Czar of Russia at the beginning of last century. For many decades Jews were permitted to live only in certain cities and to pursue only a limited range of professions. In the early 1880s there were already some 1,000 Jews living in Finland. A synagogue was completed in Helsinki in 1909 and in Turku in 1912. At present the Jewish community number about 1,000, the majority of whom are resident in the large cities of Southern Finland — about 800 in Helsinki and about 200 in Turku.

Islam was brought to Finland in the latter half of last century by Turkish merchants, though in fact there were also followers of that faith among the Russian troops serving in Finland in the early 1800s. The majority of this community are resident in Helsinki and other cities in the South. The Finnish Islamic Faith, registered in 1925, embraces over 800 members, with more than 100 in Tampere. In the 80's and 90's, Muslim immigrants have founded four religious communities or associations in Finland including sunnites, shiites and sufi's.

3.3. *New religiosity and new religious communities*

The Finnish people have lived both geographically and culturally somewhat remote from the sources of the new religious movements which have otherwise attained international proportions. Their influence, where felt, has touched but the fringe of religious life in this country.

The stream of impulses of both American and Oriental origin has still extended to Finland, particularly the country's youth, and has smoothed the path for religious stimuli from that quarter. The interest of the news-hungry press in all unusual phenomena has also focused somewhat on new religious communities.

In the background of those cultural and religious changes lie the structural changes in Finnish society in the 1950s and 1960s-rapid urbanization and the transformation of the country's economy from predominantyly agricultural activity to the service and informational system of today. Such change was more rapid in Finland than in perhaps any other western European country. Improved standards of training have increased the knowledge of English, especially among young people. Nevertheless, language barriers and the geographical position of the country have somewhat reduced the possibilities for migration of new religious movements to Finland.

The critical stand of public opinion and the media may well have contributed to the situation wherein many new communities, already familiar elsewhere, started their activities in Finland in the late seventies. Such movements as Scientology, Hare Krishna, Sri Chinmoy's mission, Summit Lighthouse, the Alice Bailey's Lucis Trust, the neosannyasis of Bhagwan Shree Rajneesh, and the followers of Satya Sai Baba and Meher Baba were still unknown in this country at the end of the 1970s. With the exception of the latter, all of those communities now have some form of organized activity here.

New religious communities exert relatively little infuence on organized society. Only a very few have been able to avail themselves of state assistance in some measure. Those few include the Finnish Yoga Association (Finland's largest Yoga community)

which represents a therapeutically oriented mode of the practice considerably removed from Indian impulses and particularly favourable towards Christianity, and Steiner schools which function under special legislation.

The new religious movements publish a wide range of journals of their own, but circulation is largely restricted to the movements' immediate membership. That is also true of the "fringe" publishers and bookshops whose background lies mainly in Theosophy. Subscribers to the largest nonaligned fringe paper, *Ultra,* number a few thousand. The big commercial publishers conceived an interest in the late '70s for literature dealing with Yoga and have since produced literature especially on parapsychology, astrology, and spiritualism. Actual new religious movements, on the other hand, have featured little in big commercial publishers' lists.

Public opinion has been mainly critical of new religious bodies. That attitude has also been reflected in writings in the press, although there has been an increasingly favourable reception of the loosely religious groups especially. Movements more active on their own behalf have exploited the ignorance and gullibility of reporters. On the other hand, the papers have generally been willing to criticize in retrospect. Periodicals, particularly women's magazines, have carried an abundance of articles on Yoga, parapsychology, and the various therapies aligned with religious beliefs or philosophies. Television has offered mainly objective accounts of new religious communities.

Loosely religious communities, lacking their own clearly definable profile, are thus relatively easily identified with Finnish culture. They establish an image as semi-scientific, philosophical, or therapeutic movements. They include the New Age movement, spiritualism and parapsychology. Substantial interest has also been shown in astrology and other modes of prediction, in therapeutic movements that promote overall health (for example, a considerably Westernized form of Yoga, macrobiotics, and therapies based on the Taoist worldviews). The same applies to the variously manifested influence of Anthroposophy.

3.4. *Communities emerging from a Christian background*

The Jehovah's Witnesses and the Mormons are examples of communities whose point of departure has been the Christian Faith but which do not accept the old-established confessions of undivided Christendom or which set up alongside the Bible other authorities which they regard as divine revelation.

The *Jehovah's Witness* movement spread to Finland in 1910 and was registered as an official religious entity in 1946. The movement is active throughout the country. The Witnesses had 301 congregations in 1995.

The Mormons or the Church of Jesus Christ of Latter Day Saints commenced systematic mission work in Finland only after the Second World War; their first missionaries, however, passed through Sweden into this country as early as the 1860s. In 1947 a mission field was established in Finland, and the Mormons were registered as an official religious community. Today the Mormon Church embraces a total of about 4,000 members, functioning in over 28 congregations (1995) mostly in the larger cities. Their outward-oriented activity is largely in the hands of American mission workers.

Among other communities of Christian origin active in this country today is the *Unification Church,* initially established in Korea and registered in Finland as a nonprofit organization in 1973; its members number about 100. The Finnish *Community of Christ,* influenced by the anthroposophy of Rudolf Steiner, was founded in Finland in the mid sixties and registered as a religious community in 1969. Its actual members in 1995 numbered 46, but some 500 were attending its services.

Christian Science, the healing movement that emerged in America in the last century, came to Finland via Germany in 1919. Its most active phase was in the 1930s, whereafter it declined almost into oblivion until 1955, when an official Christian Science society was formed as a non-profit association; comprising today some dozen members but maintaining contact with about 50 interested persons. Other movements with isolated followers in Finland include Herbert W. Armstrong's *Worldwide Church of God, Unity*

Church of Christianity, the Lorber Society, Swedenborgs New Church, Rastafaris, and the *Way International.*

3.5. *Communities and movements stemming from Hinduism*

A number of communities of Hindu origin which have spread to the West since the 1960s have established activities in Finland; for example, the *Divine Light Mission* (Elan Vital), which reached this county from Copenhagen in late 1972 and which has had some 100 supporters, mainly in Helsinki and Turku, and *Ananda Marga,* which found a foothold here at about the same time, also via Denmark.

The *Krishna movement* began in the late seventies to undertake mission work from Sweden to Finland, but carried out no permanent activity until 1982, when the building of a temple commenced in Helsinki. Krishna movement was registered officially as a religious community in 1984. It has 30 full-time members and 400 "Friends of Krishna". The first disciples of *Bjagwan Shree Rajnees* (neosannyas) settled in this country in 1983 and in the following year the movement opened its meditation centre in Helsinki. In 1994 the amount of disciples was 60 and there were in addition, several hundred participants of different kinds. Similar followings grew up at the turn of the present decade in Finland for the *Muktanandas* siddha yoga and the activities based on the teachings of *Satya Sai Baba* and *Sri Chimnoy.* The following of Sai Baba is about one hundred. A small publishing house Atma was established in 1982, and an Atma-community in 1988. Shri Chinmoy has about 50 disciples in Finland. The Sahaja-yoga — movement started in Finland in 1988 and it has about one hundred followers living in seven towns. *Brahma Kumaris, Eckankar and Mavatar Babaji (Hadakha-Baba)* have also had isolated followers in Finland.

The Transcendental meditation (TM) — movement reached Finland in 1971. The strongest growth of TM in Finland took place at the end of 1976. During the last couple of months of the year there was a real rush to TM courses. From the beginning of the 80s the activity of the movement dropped sharply. About 15,000 Finns

have been initiated into TM but very few of them have remained active meditators.

3.6. *The influence of Buddhism*

Buddhism extended its activities to Finland at the beginning of the twentieth century. It comprised in the first place Theravad Buddhism and found its earliest supporters among those of the theosophist movement. The *Friends of Buddhism,* registered in 1947 as a non-profit association, represented in the main the Theravada stream and joined as a member in the World Fellowship of Buddhists organization. By the beginning of the 80s the society's activities had gradually ceased.

In 1973 a new Buddhist community commenced activities in Finland, the *Friends of the Western Buddhist Order,* a part of the international community of the same name founded in England in 1967 by the Western Buddhist monk Sangharakshita. It was registered as a non-profit association in Finland in 1978. Sixteen Finns have been initiated as real members of the Order and in addition there are about 60 visitors per week in their centre. Likewise the Buddhist-based *Soka-Gakkai* community which expanded explosively in Japan after the last war has been active on a small scale in Helsinki, and especially in the 1950s and 1960s *Zen Buddhism,* spreading to the West from Japan, met with a certain amount of response in this country, albeit not to the extent of creating actual religious communities.

3.7. *Theosophical associations and communities*

The theosophical movement arrived in Finland at the turn of the century and organized in 1907 as a part of International Theosophical Society. It has at present some dozen offshoots in this coutry and a few thousand members. Of the various branches of international proportions, Finland has representatives of the *Liberal Catholic Church,* Alice Bailey's Lucis Trust, the Sumit Lighthouse and The Theosophical Fellowship. The biggest theosophical associations in Finland are The Theosophical Society of Finland (500

members), Ruusu-Risti the Rosicrucians (more than 300), and Valon Kantajat the Bearers of the Light (300).

3.8. *Other communities*

The influence of the *Bahai'i* movement spread to Finland as early as the 1920s, but the first group commenced activities only in 1952 in Helsinki and the non-profit association was established a year later; official registration as a religious community was not before 1963. At present its followers number 500 (including children).

Mission work by the *Scientology* movement was undertaken from Stockholm to Finland in 1978. The Scientology mission was founded in 1980 as part of the Scientology Church of Stockholm. In contrast to most other countries, Scientology has not so far registrered in Finland either as a Church or as a religious community. It is a non-profit association, but it has applied recently for the position of a registered religious community. Its followers here was a little over 1000 in 1995, but only some of these participate actively in church activities. Small groups of supporters have arisen for the teachings of *Gurdjieff* and *Urantia Book.* The *Eckankar* movement, *Mahikari* and the *Fellowship of Isis* founded in Ireland in 1976 have also found some response in Finland since 1979.

4. An Example of Dialogue with New Religions

In 1992, the governing body of the Finnish Association for Mental Health instituted a working group on religion and mental health with the purpose of establishing in what ways religion supports, and to what extent it may damage, mental health. The aim was to analyse the views of a variety of religious communities on this issue and to seek ways of helping people who have problems with their mental health. The members of the working group included representatives of the Jehova' s Witnesses, the Krishna movement, the Mormons, the Pentecostal revival, the Adventist Church, the Evangelical Lutheran Church, and the association

'Support for the Victims of Religions'. Dr Harri Heino was invited to act as chairman, and representatives of the social welfare authorities and the health service were enlisted as experts.

In order to safeguard and promote human rights, mental and spiritual well-being, and freedom of religion, and in order to eradicate all intolerance and discrimination on the grounds of religion and personal convictions, we, who have taken part as representatives of various churches, religious communities, and associations in the Project on Religion and Mental Health under the auspices of the Finnish Association for Mental Health, request our own and all other religious communities in Finland to adhere to the following guidelines.

5. Religious Communities in Finland

(1) shall actively promote compliance with all the provisions regarding freedom of religion and other basic human rights that are enshrined in Finnish law, the UN Declaration of Human Rights, the European Convention on Human Rights, and other relevant international documents ratified by Finland,

(2) shall respect the right of each individual to make an independent decision about joining any religious community without being subjected to pressure or discrimination of any kind,

(3) shall strive to promote mutual respect between members of different religious communities in their provision of information and education, both within their own community and in public,

(4) shall clearly and openly identify the religious community concerned when publicizing their activities and when inviting non-members of the community to participate in such activities,

(5) shall ensure that everyone considering the option of joining the community (or, in the case of minors, the parent or legal guardian) shall have an accurate understanding of the aims of the religious community, the nature of its activities, and the rights and obligations involved in membership of the community,

(6) shall respect the right of parents and legal guardians to take

decisions concerning the religious education and affiliation of a child who is under age,

(7) shall ensure that any member is able to withdraw from membership of the community without being subjected to pressure or discrimination of any kind (and without being summoned for an interview with any person or body representing the religious community),

(8) shall ensure that anyone threatened with the prospect of dismissal from the religious community or limitation of membership rights shall have the opportunity to present a case against such dismissal before any decision is taken, and shall afterwards have the right to appeal to a higher authority within the religious community against any decision with which they are dissatisfied,

(9) shall ensure that their members are entitled to privacy; have the right to vote in national and other elections, or to refrain from doing so; are free to decide whether they wish to pursue their legal rights in an independent court of law; are free to choose their preferred partner for marriage, and to marry and have children or refrain from doing so; and have the right to own and control property, or to relinquish their property,

(10) shall support their members in mental and spiritual crises, and shall when appropriate help them to make contact with social welfare authorities and the health service.

PIERRE-HENRI PRELOT
Faculté de Droit de Cergy-Pontoise

LES NOUVEAUX MOUVEMENTS RELIGIEUX ET LE DROIT: LA SITUATION FRANÇAISE

1. Il n'existe pas de définition légale des Nouveaux Mouvements Religieux (NMR) en France. La raison en est simple. La liberté de religion en France inclut la neutralité de l'Etat, c'est à dire son refus de privilégier ou au contraire de défavoriser une ou plusieurs religions. Dès lors une définition juridique des NMR est sans objet en l'absence de régime spécifique qui pourrait le justifier. Tout au plus existe-t-il une définition administrative implicite de la secte, mouvement religieux qui par ses activités porte atteinte à l'ordre public. Mais tous les NMR ne rentrent pas dans cette classification.

2. La volonté des pouvoirs publics de mieux connaître les NMR est récente en France. A ma connaissance la première enquête publique est celle du député Alain Vivien, à la demande du Premier ministre, en 1985, intitulée: « *Les sectes en France: expression d'une liberté morale ou facteur de manipulation* ». Cette enquête présentait un panorama du phénomène sectaire et formulait un certain nombre de propositions pour lutter contre leurs influences néfastes. Plus récemment une Commission parlementaire s'est réunie en 1995, présidée par un autre député, Alain Gest. Son rapport a été largement diffusé dans les médias. Pour autant son travail ne présente guère d'originalité. La Commission parlementaire a en effet largement utilisé un rapport rédigé antérieurement par les services des renseignements généraux, qui a quant à lui un caractère confidentiel, et qui n'a été porté à la connaissance du public que par ce qu'en a dit la Commission Gest. Par ailleurs les

conclusions de la Commission Gest ont été fortement critiquées pour leur imprécision et leur tendance à l'amalgame par les spécialistes du droit des religions. On peut penser qu' à l'avenir les travaux ne manqueront pas de se développer car la question intéresse beaucoup les pouvoirs publics mais également le public. L'Observatoire national des sectes créé en 1996 par le Premier ministre pourrait être l'instrument de telles recherches.

3. Les NMR peuvent accéder à plusieurs types de structures légales:

— le statut d'associations de la loi de 1901, qui se créent et exercent leurs activités librement, sans contrôle des pouvoirs publics;

— le statut d'associations cultuelles, qui sont très proches structurellement des associations simples, et qui se constituent également en toute liberté. Ce qui caractérise ces associations, outre certains aspects formels, c'est le fait qu'elles doivent avoir exclusivement pour objet l'exercice d'un culte, c'est à dire subvenir aux frais, à l'entretien et à l'exercice public d'un culte;

— le régime des congrégations reconnues. En France, les congrégations religieuses, pour exister légalement en qualité de congrégations, doivent bénéficier d'une autorisation gouvernementale accordée par décret en Conseil d'Etat. La congrégation se caractérise juridiquement par l'existence d'une vie communautaire consacrée par des voeux, et par le rattachement de la communauté à une doctrine religieuse. Il existe aujourd'hui des congrégations reconnues non catholiques, à savoir protestantes, orthodoxes ou bouddhistes. Des demandes de reconnaissance ont été formulées par des mouvements religieux que l'Etat considère comme étant des sectes, et elles ont été refusées de manière systématique. A l'heure actuelle il n'existe pas de décision juridictionnelle statuant sur les refus, qui n'ont jamais encore été contestés devant le juge.

— le régime des partis politiques. En France, les partis politiques se constituent en toute liberté. Ils sont financés par l'Etat sur la base des résultats qu'ils ont obtenus aux élections. La France a ainsi découvert, à l'occasion des élections législatives de 1997, que plusieurs formations politiques (2 ou 3 en fait) étaient les faux-nez

de groupes religieux, présentant des programmes assez ahurissants, mais qui ont perçu de l'argent public compte tenu des voix obtenues.

— indépendamment des formes sociales qui ont pu être décrites, les groupes religieux ont le droit d'exister sans recourir à une forme sociale organisée, chaque membre agissant en tant que particulier. Ils peuvent le cas échéant constituer des structures destinées à gérer le patrimoine commun (société anonyme ou à responsabilité limitée, société en nom collectif, SCI...). Par ailleurs la jurisprudence civile applique la notion de société de fait à l'action conjointe de personnes non regroupées juridiquement dans une structure commune. De la même manière les associations n'ont pas besoin d'être déclarées pour exister matériellement. Nombre de NMR choisissent ainsi la discrétion, les éléments patrimoniaux étant gérés par des structures juridiques contrôlées par les dirigeants du mouvement.

En conclusion à cette présentation on retiendra qu'aucune des formes présentées ne correspond à proprement parler à une reconnaissance légale d'un groupe religieux en tant que groupe religieux. L'Etat se contente de mettre à la disposition des religions des structures juridiques leur permettant d'exister légalement, mais il respecte leur liberté organisationnelle, et ne leur confère pas d'avantage particulier qui s'apparenterait à une reconnaissance légale.

4. En France, la loi du 9 décembre 1905 portant séparation des Eglises et de l'Etat interdit toute subvention aux cultes. Autrement dit ni les Eglises traditionnelles, ni les NMR ne peuvent recevoir de financement public. Les avantages à caractère patrimonial réservés aux organisations religieuses sont en pratique très limités. Il s'agit principalement d'avantages fiscaux, et du droit de recevoir des dons et legs de particuliers, précisément des membres desdites organisations religieuses.

Les avantages fiscaux tiennent principalement dans la possibilité qu'ont les particuliers de déduire, dans certaines limites (5%du revenu imposable), les dons qu'ils font aux associations cultuelles. Pour y prétendre les associations cultuelles doivent faire l'objet

d'un agrément préfectoral, pour 5 ans. La circulaire ministérielle relative à la procédure d'agrément indique en substance que s'il n'y a pas de difficulté particulière pour les *« cultes traditionnels »* (catholiques, protestants, juifs, musulmans), pour lesquels l'autorisation doit être délivrée de manière systématique, en revanche il convient de faire procéder à une enquête à chaque fois que la demande émane d'un nouveau mouvement religieux. Concrètement les associations cultuelles ne relevant pas des cultes traditionnels se voient systématiquement refuser cette autorisation.

Quant à l'autorisation de recevoir des dons et legs, elle concerne les associations cultuelles et les congrégations religieuses. Mais elles doivent, à chaque fois qu'elles souhaitent recevoir une donation, solliciter une autorisation préfectorale. Or celle-ci est refusée systématiquement aux associations cultuelles non rattachées aux religions traditionnelles. Ce refus repose officiellement sur deux fondements:

— l'association qui sollicite l'autorisation prétend qu'elle est juridiquement une association cultuelle, mais en réalité les conditions posées par la loi ne sont pas réunies. Notamment, l'association n'a pas *« exclusivement pour objet l'exercice d'un culte »*, car elle exerce d'autres activités (ventes d'ouvrages par exemple). N'étant pas une vraie association cultuelle malgré ce qu'elle prétend elle ne peut revendiquer le droit de recevoir des dons et legs, réservé aux seules cultuelles;

— l'association poursuit des buts contraires à l'ordre public, et l'Etat refuse de contribuer, fût-ce indirectement, au bien être d'un groupe religieux antisocial.

On retiendra que la jurisprudence du Conseil d'Etat entérine systématiquement cette position de l'administration qui, si elle peut se justifier du point de vue de l'intérêt public, est très discutée du point de vue de sa cohérence juridique.

5. Le droit à l'objection de conscience est peu reconnu par le droit français, avant tout soucieux d'égalité de tous devant la loi commune. Depuis 1963 la loi reconnaît le droit à l'objection de conscience de ceux qui *« pour des motifs de conscience, se déclarent opposés à l'usage personnel des armes »*. L'objecteur effectue alors

un service civil de substitution d'une durée double du service militaire légal. Sans entrer dans le détail du dispositif on retiendra que la loi ne définit pas la nature précise de l'objection de conscience, qui peut être philosophique ou religieuse, le candidat à l'objection ayant à justifier de la sincérité de ses convictions et non de leur bien-fondé. Autrement dit l'opposition à l'usage des armes peut résulter d'une morale laïque ou des prescriptions d'un mouvement religieux minoritaire. En conséquence les Témoins de Jéhovah, qui forment une part significative des objecteurs de conscience en France, bénéficient de ce statut. La difficulté s'agissant de ces derniers concerne le fait que les Témoins de Jéhovah sont hostiles à toute forme de service civique, et qu'ils refusent en conséquence toute forme de service de substitution, accomplissant ainsi la durée du service en prison pour insoumission. Il semble toutefois que cette situation ait pu être réglée depuis un an ou deux par les autorités militaires. On notera pour conclure sur ce point que depuis quelques années le nombre des objecteurs a beaucoup augmenté, l'Etat accordant assez systématiquement le statut aux demandeurs surtout lorsqu'ils disposent d'une structure d'accueil prête à les recevoir. Mais que la suppression programmée de la conscription devrait rendre caduques toutes ces dispositions.

Il existe également d'autres formes d'objection de conscience. La loi de 1975 légalisant sous conditions l'interruption volontaire de grossesse (IVG) précise qu' « un médecin n'est jamais tenu de pratiquer une interruption volontaire de la grossesse mais il doit informer, au plus tard lors de la première visite, l'intéressée de son refus ». Cette clause de conscience est admise largement, et il n'est pas demandé au médecin qui l'oppose d'en justifier. En revanche elle n'est pas admise au profit des autres personnels médicaux ou paramédicaux. Toujours en matière de médecine, la loi du 29 juillet 1994 précise que *« le prélèvement d'éléments du corps humain et la collecte de ses produits ne peuvent être pratiqués sans le consentement préalable du donneur »*. Ceci signifie qu'une personne peut, pour des motifs religieux, s'opposer à des prélèvements sur son organisme. Il y a là une forme particulière d'objection de conscience. Toutefois s'agissant des prélèvements à des fins thérapeutiques ou scientifiques sur des personnes décédées le consentement

est présumé, dès lors que la personne n'a pas fait connaître de son vivant son refus de tout prélèvement.

6. La protection de l'individu dans les nouveaux mouvements religieux, c'est en fait la protection de l'adepte contre la secte à laquelle il appartient. Inutile de dire que cette protection est difficile, voire impossible dès lors que la victime est consentante. Comment empêcher une personne de quitter son travail, d'abandonner sa famille ou de donner tous ses biens à un gourou dès lors qu'elle le fait volontairement? Autrement dit la protection de l'adulte dans le NMR de type secte est quasiment impossible. Les associations de défense réclament la création d'une incrimination pénale visant les manipulations mentales, mais celle-ci est extrêmement difficile à définir. Pour le rationnel sceptique toute croyance mystique est une forme de dépendance psychique. Les pouvoirs publics sont tout aussi impuissants que les proches ou la famille pour faire quitter un groupe religieux à un de ses adeptes.

Dès lors la protection de l'adulte ne peut être envisagée qu'à posteriori, lorsque d'anciennes victimes engagent le combat contre le mouvement qui les a abusées. Ce sont alors les plaintes pour escroquerie, viol, séquestration, ou les actions civiles en responsabilité. Ce type d'action n'est pas inutile, car il peut conduire les sectes à une certaine prudence pour éviter de tomber sous le coup d'actions juridictionnelles.

S'agissant de l'enfant les moyens d'action théorique sont plus importants. Les pouvoirs publics ont le pouvoir de s'assurer que l'enfant a bien reçu les vaccinations obligatoires. Ils ont également le droit de contrôler que l'enfant reçoit une éducation domestique effective à l'intérieur du NMR s'il ne fréquente pas l'école. La loi prévoit des sanctions, notamment le non versement des allocations familiales. Mais en pratique ces contrôles sont très peu mis en oeuvre. Il n'est pas exclu compte tenu de l'actualité récente que la pratique change dans les temps qui viennent.

Les enfants peuvent également être retirés à leurs parents et faire l'objet d'un placement d'office, dans les hypothèses les plus graves où le maintien auprès des parents les mettrait en danger. Par exemple, si les enfants sont victimes de violences. Mais cette

procédure est très rarement appliquée. Les pouvoirs publics hésitent généralement à séparer les enfants de leurs parents, en tout cas l'appartenance à un NMR n'est pas en soi suffisant à justifier la séparation. Il y a quelques années, une communauté de la secte « La famille », près d'Aix en Provence, avait fait l'objet d'une enquête de police pour inceste et violences sur enfants. Les enfants ont été retirés à leurs parents, pour leur être rendus rapidement, parce que les faits n'étaient pas absolument prouvés.

7. Il n'existe pas à l'heure actuelle d'activités sectaires définies spécifiquement comme des infractions pénales. Les membres des sectes sont, comme chacun, susceptibles de commettre les infractions de droit commun, mais il n'y a pas de délit propre aux NMR. Cela étant, la loi pénale s'applique tout particulièrement à des activités illégales coûtumières à certains NMR.

L'actualité récente des NMR en France a conduit le ministre de la Justice à envoyer aux procureurs une circulaire (circulaire du 29 février 1996) où il énonçait la liste des textes susceptibles d'être utilisés contre les sectes. L'énumération comporte les infractions suivantes: escroquerie, homicide ou blessures volontaires ou involontaires, non assistance à personnes en danger, agressions sexuelles, proxénétisme, incitation des mineurs à la débauche, séquestration de mineurs, violences, tortures, abus de faiblesse, mise en péril des mineurs, trafic de stupéfiants, exercice illégal de la médecine, fraude fiscale, travail clandestin.

Ces actions ne peuvent être diligentées que si l'autorité publique en a connaissance. Il y a donc généralement à la base une plainte de victimes anciens adeptes. Il y a régulièrement des procès à l'encontre de certains NMR. Dans la plupart des cas les juridictions se trouvent face à trois difficultés pour entrer en voie de condamnation: la prescription, qui est de 3 ans pour les délits, le consentement de la victime, qui a généralement contribué à la situation où elle se trouve, et enfin des problèmes de preuve. Exemples: des plaintes pour viol ont été déposées contre le gourou de la secte du Mandarom en 1996, mais la preuve de ces viols, plusieurs années après, est quasiment impossible; en 1997 toujours, les adeptes de la Scientologie ont été condamnés pour le suicide

d'un de leurs adeptes, qualifié d'homicide (L'arrêt de la Cour d'appel de Lyon a surtout été remarqué parce qu'il contenait une phrase assimilant la scientologie à une religion). La question de savoir si les pressions exercées par une secte sont de nature à transformer un suicide en homicide, même involontaire, est très controversée en droit. On pourrait multiplier les exemples à l'infini.

Quant à la question de savoir s'il est possible d'interdire un NMR, la réponse est négative dans la mesure où il existe une liberté de pensée et une liberté d'aller et venir des personnes, de telle sorte que l'on ne peut empêcher des personnes partageant des convictions communes de se réunir en-dehors de tout contrôle. Pour être plus précis d'un point de vue juridique il faut ajouter toutefois que la loi permet de dissoudre les associations ou les associations cultuelles dans un certain nombre d'hypothèses gravissimes. Par exemple, exercice d'activités criminelles ou complot contre l'Etat. La dissolution peut être selon les cas administrative ou judiciaire. Mais il n'existe pas de procédure de dissolution propre aux NMR. Au contraire, c'est plutôt par extension qu'on va appliquer la procédure de dissolution. Pratiquement il existe un cas recensé de dissolution administrative d'une secte, dans les années 1970, à savoir les Enfants de Dieu, qui s'étaient constitués en association, pour prostitution et proxénétisme. Mais le mouvement s'est immédiatement reconstitué sous d'autres apparences, il est devenu La Famille, et continue d'exister sous cette appellation.

8. L'appartenance à un NMR est un facteur important de l'équilibre ou du déséquilibre des familles. Les règles applicables ne sont pas fixées par la loi mais par les décisions des juges. Or les décisions en la matière sont extrêmement nombreuses, et renvoient toutes à un contexte particulier qui détermine la solution. Autrement dit il est difficile de résumer en quelques mots un ensemble de solutions parfois très imprécises, et toujours susceptibles d'évolutions. On s'efforcera de dégager certaines lignes directrices.

Tout d'abord, s'agissant des relations matrimoniales, il y a lieu de distinguer selon que l'un des conjoints était membre d'un NMR au moment du mariage, ou qu'il l'est devenu. Dans le premier cas la situation était connue du conjoint et ne peut être discutée. Dans

le second cas la tendance unanime de la jurisprudence est de respecter la liberté de conscience de chacun des époux, de telle sorte qu'un changement de religion ne peut être un motif de divorce. En revanche, le juge appréciera le changement de comportement que peut entraîner l'appartenance à une religion, et prononcer le divorce aux torts de l'adepte si son comportement constitue une violation des obligations du mariage et rend impossible la poursuite de la vie commune: absence permanente, refus de relations sexuelles. Autrement dit ce n'est pas l'appartenance à un NMR qui est en cause, c'est ses incidences sur la vie commune.

S'agissant des enfants, deux questions se posent fréquemment: la garde en cas de séparation, et le choix de leur religion.

En ce qui concerne la garde des enfants, il faut tout d'abord observer que dans l'immense majorité des cas elle échoit à la mère. Concrètement, la décision est prise en fonction de l'intérêt de l'enfant, intérêt de l'enfant qui tend de plus en plus, aujourd'hui, à être apprécié en fonction de la volonté qu'il exprime. L'étude de la jurisprudence en la matière montre que l'appartenance d'un parent à un NMR n'est pas nécessairement un critère pour lui refuser la garde. Par exemple, s'agissant des Témoins de Jéhovah, certaines décisions accordent la garde au parent Témoin. Ici encore, tout dépend de la nature de la sujétion religieuse et de son influence sur les relations du parent avec les enfants.

Quant au choix de la religion de l'enfant, il s'agit en principe d'une décision conjointe des parents. En cas de désaccord des parents, ou en cas de séparation, l'arbitrage du juge pourra être requis, afin de décider quelle pourra être la meilleure solution dans l'intérêt de l'enfant. Souvent de telles difficultés se présentent lorsqu'un parent change de religion et souhaite que les enfants le suivent. Certains auteurs proposent que la majorité religieuse des enfants soit abaissée, de 18 ans à 16 ou 14 ans. Ceci résoudrait une partie des difficultés. Dans l'ensemble il semble, à observer la jurisprudence, que le juge cherche à faire prévaloir les solutions de stabilité, c'est à dire que lorsqu'une religion avait été donnée consensuellement à l'enfant cette décision commune initiale doit prévaloir sur celle, unilatérale et nouvelle, d'un des parents.

S'agissant des adoptions, la question est très controversée. La

discussion porte sur un arrêt du Conseil d'Etat de 1992 qui avait estimé que l'administration était en droit de refuser une adoption à des Témoins de Jéhovah dans l'intérêt de l'enfant. Le refus des transfusions sanguines pourrait en effet l'exposer à un danger de mort en cas d'accident. Autrement dit l'appartenance à un NMR est un motif d'opposition à l'adoption. Mais cette décision reste unique, et de nombreux auteurs estiment la solution contraire au principe de liberté religieuse.

9. Il existe un débat sur la question d'une législation propre aux NMR. Mais ce débat est très confus et on peut penser qu'il n'aura pas d'aboutissement immédiat. Les demandes en faveur d'une législation sont contradictoires. D'une part, les membres des associations de lutte contre les sectes, mais aussi d'une manière générale l'opinion publique, demandent une protection renforcée contre les agissements irréguliers des sectes (conditionnement psychologique, manipulations, exploitation économique, violences psychiques ou physiques). D'autre part, les membres des NMR estiment que la législation actuelle, sous couvert de neutralité, les défavorise en fait considérablement au profit des religions traditionnelles. Selon eux, il faut adapter la loi de 1905 pour leur permettre d'exister à côté des nouvelles religions au profit de qui la loi de séparation avait été conçue. Par exemple, la loi de 1905 a maintenu au profit des cultes traditionnels les lieux de culte publics existant avant 1905 (églises, temples, synagogues) sans permettre que l'autorité publique s'associe à la construction de nouveaux édifices cultuels publics. La nouvelle législation permettrait aux NMR de se doter de nouveaux lieux de culte, de mieux s'organiser juridiquement, d'être reconnus pour leur intérêt social... Une loi portant sur l'exercice de la liberté religieuse comprendrait donc deux axes: les moyens de répression à l'encontre des sectes nocives, et un assouplissement des principes traditionnels qui définissent notre compréhension de la laïcité.

Concrètement de telles questions échappent en France à l'organisation de référendum, et ne peuvent être réglées que par le Parlement. Mais on peut douter dans les circonstances actuelles que sa volonté soit de revenir sur la loi de 1905, qui reste malgré une pacification certaine des esprits un des plus importants points de clivage de la société française.

Annexe 1

1. Liste (non exhaustive) et brève présentation des N.M.R. nés en France

Nom du groupement ALLIANCE UNIVERSELLE (Montlavet) **Date et lieu de naissance** à Avignon (84) en 1954 **Fondateur/initiateur** George ROUX (1903-1981) se dit « Christ de Montlavet » **Profil du groupe** Années fastes 1955-1965. 5 000 membres. Auj. : 500 à 2 000 adeptes **Doctrine** Trois livres(1950-51) : - Journal d'un guérisseur - Paroles du guérisseur - Mission divine Jésus n'est pas le Fils de Dieu, il n'est qu'un guérisseur parmi les autres. Culte, alimentation végétarienne, guérison par intercession divine. **Relations avec les religions du pays** G. Roux a écrit au Pape Pie XII pour qu'il reconnaisse sa qualité de nouveau Christ.	**Nom du groupement** LA CITADELLE **Date et lieu de naissance** au Vézinet (près de Paris) en 1966 **Fondateur/initiateur** Dimitriscu et Delia Milhaies, couple d'origine roumaine **Profil du groupe** Rassemble des personnes de "bonne valeur morale" et de niveau socio-professionnel plutôt élevé **Doctrine** Mystique et pratiques souvent référées à la Bible. Inutilité de la vie familiale et nécessité de se couper du monde extérieur.	**Nom du groupement** CHEVALIERS DU LOTUS D'OR (MANDAROM) **Date et lieu de naissance** à Castellane (Vaucluse) le 27 août 1967 **Fondateur/initiateur** Gilbert Bourdin (né en 1923 en Martinique) Se dit « sa Sainteté le Seigneur Hamsah Manarah » **Profil du groupe** Adeptes rassemblés dans l'Ordre initiatique des Chevaliers du Lotus d'Or. Groupes dirigés par des aumistes dans env. 20 villes. Les chevaliers résident à l'ashram de Mandarom. Auj. : de 2 000 à 10 000 adeptes **Doctrine** - Aumisme - Hamsananda : identité, mission, réalisations. - Epopée héroïco-démoniaque. - Cité sainte de Mandarom Shambhasalem. - Temple-pyramide de l'Unité des religions	**Nom du groupement** CONTRE-REFORME CATHOLIQUE (COMMUNION PHALANGISTE) **Date et lieu de naissance** à Saint-Parres-lès-Vaudes en 1970 **Fondateur/initiateur** Georges de Nantes (né en 1924 à Toulon) **Profil du groupe** Communauté des Petits Frères du Sacré Coeur de Jésus et en 1984 une communauté féminine la Maison Sainte-Marie **Doctrine** Défense de l'intégrité de « la foi traditionnelle » de l'Eglise catholique romaine: moines-soldats, dictateur, combat politique, thèses de haine. **Relations avec les religions du pays** 9 août 1969 : sentence de « disqualification » prononcée par Rome.	**Nom du groupement** ECOLE PSYCHO-ANTHROPOLOGIQUE (Groupe Hermès, Associations Estia, Domaine d'Ephèse, Editions de la Lumière...) **Date et lieu de naissance** Metz (Moselle) 1983 **Fondateur/initiateur** Patrick-Jean PETRI **Profil du groupe** Plusieurs centaines de personnes en Moselle (Metz, Béning-lès-St Avold) et en Alsace (Eichhoffen). **Doctrine** Le fondateur se dit *Grand Maître de l'Ordre Hermès-Michaël* uni à *l'Ordre oriental antique et primitif de Memphis et Misraïm.* Ésotérisme. Anthroposophie. Pratiques et philosophies orientales (zen, soufisme).

2. Liste (non exhaustive) et brève présentation des N.M.R. nés en France

Nom du groupement ENERGO-CHROMO-KINESE (ECK) et ORDRE NOUVEAU DES TEMPLIERS OPERATIFS Date et lieu de naissance à Villefranche-sur-Mer (06) en 1987 Fondateur/initiateur Dr Patrick Véret (né en 1942) et Mme Danièle Drouant Profil du groupe P. Véret, médecin homéopathe, acupuncteur propose séminaires, stages pour enfants, et adultes. Ecoles ECK, Sarl Energo conseils. En 1990. ass. COURBE : connaissance ontologique universelle et recherche biologique Doctrine Ecole initiatique proposant une voie ésotérique faisant appel à la tradition parallèle de l'Occident et eu courant hindouiste : panthéisme gnostique	Nom du groupement FACULTE DE PARAPSYCHOLOGIE DE PARIS Date et lieu de naissance à Paris le 2 décembre 1987 Fondateur/initiateur Marguerite Preux (née Colombani.en 1935 à Ajaccio) Profil du groupe Cursus ésotéro-occulto-psychologique en 3 degrés d'initiation. Incitation à la vie en communauté, mixité non autorisée. Auj. 50 à 500 adeptes. Doctrine Parvenir à «l'unification du soi» en commençant par découvrir sa vraie personnalité (individuation) Mme Preux : « nouvelle mère » Relations avec les religions du pays Figure dans l'Annuaire national officiel de l'Enseignement privé édité sous le haut patronage du Comité National de l'Enseignement Catholique	Nom du groupement FAMILLE DE NAZARETH (APE-Analyse et Psychologie Existentielle) Date et lieu de naissance à Fribourg et Saint Louis (à proximité de Mulhouse) en 1969 Fondateur/initiateur Daniel BLANCHARD né en 1940 Profil du groupe Groupes d'évolution et d'analyse existensielle. D. Blanchard : « syndic » chargé de maintenir l'unité de ces associations. Auj. 50 à 500 adeptes Doctrine Pratiques psychanalytico-religieuses.	Nom du groupement FRAYERNITE BLANCHE UNIVERSELLE (née en France, quoique l'initiateur soit de nationalité étrangère) Date et lieu de naissance à Sèvres en 1938 Fondateur/initiateur Omraam Mikhaël Aïvanhov (1899-1986 en Macédoine) Profil du groupe Plusieurs organismes, recrutement par approches personnelles et cours de yoga vers des gens du spectacle, des arts et de la recherche scientifique... 20 000 adeptes Doctrine Ecole initiatique, ésotérisme syncrétiste. Aïvanhof prétend tenir un savoir secret d'un maître libétain. Voyance, magie blanche... Science initiatique, religion universelle, nouvel ordre mondial.	Nom du groupement FRATERNITE du FRECHOU-ANDIRAN Date et lieu de naissance au Fréchou-Andiran (47) en 1977 Fondateur/initiateur Roger Kozic et Michel Fernandez, prêtres et évêques auto-proclamés Profil du groupe Communauté masculine (Fraternité Saint-Joseph) et communauté féminine (Fraternité Notre-Dame). Ecole primaire privée sans contrat, camps d'adolescents. auj. 500 à 2 000 adeptes Doctrine Se présentent comme des catholiques traditionnels. (Condamnation pour usage des fausses qualités ecclésiastiques et gestion frauduleuse des ressources de la communauté « religieuse ») Relations avec les religions du pays Se répandent dans leurs écrits en insultes et calomnies contre les prêtres et les évêques catholiques.

3. Liste (non exhaustive) et brève présentation des N.M.R. nés en France

Nom du groupement HORUS Date et lieu de naissance Temple à Paris en 1983 Centre dans la Drôme Fondateur/initiateur Mailé Castano Profil du groupe Réunirait 300 personnes, enseignants, médecins, scientifiques. Doctrine Dérivé de l'Ordre Hermétique de la Golden Dawn (« L'Aube d'Or ») par le biais du temple « Thot Hermès » de Wellington (Nouvelle-Zélande). Centre International de Parapsychologie et de Recherche Scientifique du Nouvel-Age et « Ecole cachée de la vie »	Nom du groupement INVITATION A LA VIE INTENSE Date et lieu de naissance à Paris le 16 mars 1983 Fondateur/initiateur Yvonne Trubert (née Dolo, le 23 octobre 1932) Profil du groupe Centres ou antennes : DOM et toutes les régions de France, en Europe, Etats-Unis, Canada, Océanie, Afrique, Asie... Env. 7 000 adhérents. Initiation en 2 cycles, pélerinage, colloques... Doctrine Prier-Aimer-Guérir, instaurer une religion nouvelle, un monde nouveau et une médecine nouvelle. Relations avec les religions du pays L'enseignement religieux, d'apparence catholique est un amalgame de christianisme, d'hindouisme, et de théories ésotériques. Fréquentation des églises et pélerinages catholiques mais enseignement réincarnationiste	Nom du groupement LE LOGIS DE DIEU Date et lieu de naissance en Charente-Maritime (La Villedieu) Fondateur/initiateur Diffusion des messages d'Abd Ru Shin Profil du groupe Communauté d'environ 75 personnes, enfants scolarisés dans la communauté. Doctrine Dérivé du mouvement du Graal (1932 en France) Pratiquee et recherche ésotériques, tendances millénaristes	Nom du groupement LONGO MAÏ Date et lieu de naissance à Limans (Alpes-de-Haute-Provence) en 1973 Fondateur/initiateur Roland Perrot, dit Rémi (1930-1993) Aujourd'hui François Bouchardeau Profil du groupe Société coopérative européeenne de Longo Maï (SCP Européenne) : communauté alternative laïque, néo-rurale et autogestionnaire. + 200 adultes et 70 enfants = 10 coopératives Doctrine Marginalité gauchiste, lieu de vie collectif, mise en commun de l'amour et des biens, autarcie, écologie... Autoritarisme du chef-fondateur, vie de couple interdite, exploitation des adeptes, travail dur mais gratuit, carences en nourriture et en sommeil .	Nom du groupement MISSION d'ARES (ou REVELATION " ") Date et lieu de naissance é Arès (33) en 1974 suite à « une révélelion » Fondateur/initiateur Michel Potay (né le 11 juillet 1929 à Suresnes) Ingénieur puis « occultiste professionnel et psychothérapeute ». Puis se dit « Père Michel » Profil du groupe Association « L'oeil s'ouvre » : 4 mars 1987 Pèlerinage, porte à porte, récitation quotidienne du « Pére de l'Univers ». Doctrine « La Révélation d'Arés intégrale » comprend L'Evangile (le 5ème) donné à Arés et Le Livre. Relations avec les religions du pays Opposition aux Eglises latine et grecque, attaque de l'appareil clérical... M.Potay a été ordonné diacre dans l'église Saint-Irénée à Paris (Eglise catholique orthodoxe de France). A quitté cette Eglise et dit avoir été consacré évêque en 1971.

4. Liste (non exhaustive) et brève présentation des N.M.R. nés en France

Nom du groupement
MOUVEMENT RAÉLIEN

Date et lieu de naissance
Suite à la rencontre d'un extraterrestre au cratère du Puy de Lassolas (Puy-de-Dôme) en 1973.
Siège au Bourget en 1977.

Fondateur/initiateur
Claude Vorilhon (né le 30 octobre à Vichy)

Profil du groupe
Stages d'enseignement par la méditation sensuelle à la Bastide (commune du Bourn) env. 1 000 membres en France. Prêtres raéliens, évêques raéliens.

Doctrine
-Raël : la voix des Elohim
-La religion des religions : athée et hédoniste
-La Bible, version science-fiction
-La génocratie au pouvoir, gouvernement mondial dirigé par les génies

Nom du groupement
NOUVELLE ACROPOLE
(né en France quoique d'initiateurs de nationalité étrangère)

Date et lieu de naissance
à Lyon en 1973

Fondateur/initiateur
Laura et Fernand Schwarz (nés en 1951 à Buenos Aires)

Profil du groupe
Treize centres en France.

Doctrine
-Face externe : organisation culturelle et humaniste, conception philosophique. Conférences sur les civilisations anciennes, religions, cycles de formation, stage de numérologie...
-Face interne : école de Mystères ou école théosophique. Séparation à 12 ans en Fraternités masculines et féminines. Hiérarchisé, militariste, structure pyramidale...

Nom du groupement
OMCT
(Ontologie et Mysticisme Ciel et Terre ou Ontologique Méthodique Ciel et Terre ou Ontologie Méthodique Culture et Tradition)

Date et lieu de naissance
en 1968

Fondateur/initiateur
Marguerite Proiseux

Profil du groupe
Cours par correspondance et organisation pour l'étude, la diffusion et l'application des données ontologiques primordiales transuniverselles.

Doctrine
Société initiatique et gnose. Insiste sur la présence parmi nous de « Nos Amis d'Ailleurs », les « Initiateurs Primordiaux »...

Nom du groupement
ORDRE DU TEMPLE SOLAIRE

Date et lieu de naissance
à Genève (Suisse) en 1984

Fondateur/initiateur
Luc Jouret

Profil du groupe
Trois niveaux, Frères du Parvis, Chevaliers de l'Alliance, Frères des Temps Anciens.
Démarche médico-spirituelle

Doctrine
Ordre chevaleresque mystique et initiatique. Reconnaissance et rassemblement d'une élite spirituelle afin de perpétuer la conscience UNE et la Vie dans le temps et l'espace.

Nom du groupement
LE PATRIARCHE
(ADDEPOS)

Date et lieu de naissance
à Toulouse le 2 mai 1974

Fondateur/initiateur
Lucien J. Engelmajer (né le 27 novembre 1920 en Allemagne)

Profil du groupe
Association internationale, plus de 230 « lieux de vie » pour l'aide aux personnes handicapées, toxicomanes...Plus de 5300 pensionnaires en moyenne. Direction internationale : Château de Lamotte (31).

Doctrine
L. Engelmajer : adulé, le « patriarche ».
Arrêt brutal du produit toxique, non-recours à une chimiothérapie de substitution, emploi de thérapeutiques naturelles de soutien, prise en charge 24H/24H.
Mesures contraignantes, enfermement, saisie des papiers ...

ANNEXE 2 *Liste des « SECTES » et N.M.R. implantés en France au cours du XXe siècle (non inclus les « sectes » et N.M.R. nés en France)*

Nom du groupement	*Date et lieu de naissance et d'implantation en France*	*Doctrine*	*Statistiques*
AAO	1976 à Friedrichshof (Autriche) France, 1977	Amour libre dans une vie de communauté totale	
* (1) ADVENTISME	23 mai 1863 à Battle Creek (Michigan) France: fin XIXe	Attente de l'Avènement prochain du Christ	7 100 000 membres 11 200 pasteurs, écoles, hôpitaux...
AICK (Conscience de Krishna)	1966 en Occident France, 1972	Courant spirituel de la dévotion (Bakti Yoga)	8 millions de sympathisants dans 81 pays.
* Les AMIS de l'HOMME	1919 en Suisse. Implantation dans le Lot et Garonne dans les années 60.	Groupe philanthropique millénariste issu des Témoins de Jéhovah	Quelques dizaines de milliers de membres dans le monde
AMMA (Amrita)	Années 1970 en Inde. France (Ste Marie aux Mines), fin des années 80	Diffusion de l'Amour Universel	Réseau de sympathisants
ANANDA MARGA	1951 à Bihar (Inde)	Mouvement néo-hindouiste Yoga tantrique	En Europe, quelques centaines
* ANTOINISME	1888 à Jemmepe sur Meuse	Mélange de spiritisme, de théosophie et de christianisme	Présent dans une quinzaine de pays. France: 32 temples
BAHA'ISME	1844 en Perse	Religion indépendante d'inspiration musulmane	Un millier de membres en France dans 85 centres
BRAHMA KUMARI	1937 à Karachi	Pratique du Raja Yoga, hindouisme de type shivaïte	200 000 raj-yogi dans le monde, 200 en France

(1) Nous avons fait précéder de ce signe (*) les groupements dont le cadre de référence est d'origine chrétienne.

Nom du groupement	*Date et lieu de naissance et d'implantation en France*	*Doctrine*	*Statistiques*
* COMMUNAUTE des CHRETIENS	1922 à Dornach (Suisse) France: 1948	Rénovation religieuse. Bible et Anthroposophie	17 000 membres dans 20 pays. En France, 10 groupes.
* EGLISE UNIVERSELLE DE DIEU (Armstrongisme)	1930 Californie	Eglise millénariste. Schisme des « Eglises de Dieu » issues de l'Adventisme	Moins de 100 000 membres
LA FAMILLE ex-ENFANTS de DIEU	1968 San Francisco France: fin des années 70	Millénaristes, la Bible et les Lettres de 'Mo' (Moïse David, le fondateur)	9 000 fidèles, 200 communautés dans le monde
EST (Forum)	1971 San Francisco	Ambiance Nouvelle Age, « Forums » payants	Implantés dans 140 villes au monde, 30 aux E.U.
Le mouvement du GRAAL	1924 en Bavière	Symbolisme ésotérique et gnostique	11 000 membres en 20 pays. France: mille membres estimés, dans 40 villes
Groupes Bruno GRÖNING	1948, Allemagne France: milieu des années 80	Groupe guérisseur	Communautés en Allemagne, au Luxembourg, en France (est).
Groupes GURDJIEFF	Georges Ivanovitch Gurdjieff (1877-1942)	Ces groupes assurent la diffusion de sa pensée	Centre à Paris
GURU MAHARAJ JI	1950 Inde	Groupe mystique hindou	Quelques centaines de fidèles en France
HUE (IHUERI)	1991 à Paris	Techn. orientales Notions spiritomagiques	20 000 adeptes dans le monde
INSTITUT GNOSTIQ. D'ANTHROPOLOGIE	1952, Mexique	Esotérisme, tantrisme	
MAHIKARI	1960 Japon France, 1972	Religion guérisseuse et millénariste	500 000? adeptes dans le monde. Dojo à Paris, plusieurs centres en France.

Nom du groupement	*Date et lieu de naissance et d'implantation en France*	*Doctrine*	*Statistiques*
SRI MATAJI (Sahaja Yoga)	1970 Inde France, 1981	Syncrétisme (Hindouisme, Christianisme, Bouddhisme et Islam)	France, 300 adeptes engagés, un ashram à Paris
MEDITATION TRANSCENDANTALE	1961 Inde France, 1972	Technique de méditation: 'Nouvel Hindouisme'	3 millions? de méditants dans le monde
METHERNITA	1960 Moosbühl (Suisse) France, 1992	Enseignement d'ésotérisme chrétien	Communautés en Suisse, Italie, EU, France
MOON (AUCM)	1951 Corée du Nord France, 1972	« Les Principes de l'Unification ». Des parentés avec le Christianisme et le Taoïsme	130 pays, 2 millions d'adeptes?
* MORMONS	1830 Lafayette (EU)	Eglise à révélation particulière, millénariste	En France: 2 500 membres
LE MOUVEMENT	1962 Argentine et Chili. France, 1978	« Ensemble, humaniser la terre »	43 pays dans le monde
* NEO-APOSTOLIQUES	1906 Hambourg	Dissidence de l'Eglise Apostolique	7 millions de fidèles, 200 pays. France: 15 000 membres
* La PAROLE PARLEE (Branhamisme)	après 1909 Etats-Unis France, années 80	Visions de W. Branham, perspective eschatologique	Aussi en Suisse, Allemagne
RAM CHANDRA MISSION	Inde France, juin 1986	Groupe hindouiste, enseignement du Sahaj Marg	Inde, Danemark, EU, France (Jura)
SAI BABA	1940 Inde France, années 70	Hindouisme classique et vaste syncrétisme	Nombreux disciples en France et en Europe
SCIENCE CHRETIENNE	1866 Boston (Etats-Unis)	« Christian Science », la matière est irréelle, n'existe que le spirituel	Dans 57 pays
SCIENTOLOGIE	1954 Washington France, années 60	Dianétique, Scientologie, Philosophie.	Hiérarchisée et activiste, 400 000 adeptes?

Nom du groupement	*Date et lieu de naissance et d'implantation en France*	*Doctrine*	*Statistiques*
SOKA GAKKAI	1950 Japon France, 1965	Groupe religieux boudhique	Au moins trois centres en France
SPIRITUALITE VIVANTE (Ecole de l'Essentialisme)	1951	Ecole de redressement volontaire de la nature humaine	2 000 adeptes 300 en France
SRI CHINMOY	après 1931 Bengale France, 1984	Recherche du bien-être, « Peace meditation »	2 000 disciples dans le monde
* TABITHA'S PLACE	1984 Island Pond, Etats-Unis	Communautés vivant selon la Bible (fondamentaliste)	EU, Canada, Brésil, Nouvelle-Zélande, France.
* TEMOINS DE JEHOVAH	1874 Etats-Unis	Mouvement religieux non-conformiste issu du tronc judéo-chrétien	En France, + ou - 130.000 membres
TENRIKYO	1838 Japon	Nouvelle grande religion japonaise non-bouddhiste	3,5 millions de fidèles dans le monde
SOCIETE THEOSOPHIQUE	1874 New York	Syncrétisme ésotéro-occultiste	Centre à Paris
UNITE UNIVERSELLE	1885 Etats-Unis	Unité entre Dieu et les hommes, vaste syncrétisme	300 centres dans le monde, 2 à Paris
URANTIA	Début 20e s. Chicago	Promotion d'une intelligence supérieure de la révélation divine	
VIE UNIVERSELLE	1977 Allemagne France, années 80	Millénarisme, Nouvel-Age	Trois centres en France
La VOIE de la PERFECTION (Nour, Elahi)	Iran, XIXe s. Alsace, années 80	Issu du chi'isme Gnose	Communauté en Alsace de 200/300 membres

AXEL V. CAMPENHAUSEN
Kirchenrechtliches Institut der Evangelischen Kirche in Deutschland, Hannover

NEW AND SMALL RELIGIOUS COMMUNITIES IN GERMANY

1. Over 80% of the German population still belongs to the Protestant or Roman-Catholic Church. There have always been smaller religious communities alongside them. Of those the Evangelical-Methodist Church, the New Apostolic Church, the Seventh Day Adventists and the Jewish religious community have the status of a corporation under public law in all länder (federal states), as have the two large, traditional churches. This status is also enjoyed in several länder by the Old Catholic Church, the Federation of Evangelical-Free Church Congregations (Baptists), the Christian Community, the Russian Orthodox Church abroad and the Greek Orthodox Metropolitanate of Germany. The following enjoy this status in at least one federal state: the Federation of Free Protestant Congregations, the Salvation Army in Germany, the European Continental Moravian Church (Herrnhuter Brethren), the Association of Mennonite Congregations, the independent Evangelical-Lutheran and Reformed Churches (non-EKD members), Christian Science, the Federation of Free Religious Congregations, the German Unitarians, the Church of Jesus Christ of the Latter Day Saints (Mormons), the Federation of Free-Church Pentecostalists, the Johannite Church in Berlin, the French Church of Berlin (Huguenot church), the Evangelical-Episcopalian Congregation in Hamburg, the Danish Seemen's Church in Hamburg, the Hanau Wallonish-Netherlands Congregation, the Russian Orthodox Church (Moscow Patriarch) and the Federation for

Spiritual Freedom (Geistesfreiheit) in Bavaria and the Free Spiritual Community of North Rhine Westphalia.

The only Volkskirchen (people's churches), i.e. religious communities equally established in all strata of the population, are the regionally organised Protestant churches and the Roman Catholic Church.

Numerous new religions have either not applied for the status of a public corporation or have not yet obtained it. Their legal situation is the subject of this paper. It is very difficult to give an exact statistical picture of them because there is no obligation to register a religion and so there is no register of their names.

Many religious communities have the status of a corporation in some states, and in others that of a private law association. Those only organised under private law are e.g. the Jehovah's Witnesses, the Old Buddhists, the Baha'i Association, the Buddhists, the First Church of Christ, the Evangelical-Johannine Church after the Revelation of St. John, the Greek-Catholic Church, the Muslims, the Quakers, and the Serbian Orthodox Church. With a population of about 80 million the number of members of religious communities with private law status can be estimated at 2 to 2.5 million. Muslims (1) are a large group in numerical terms. They do not yet have the status of a public law corporation, however, due to organisational difficulties.

2. The German Constitution speaks in Art. 4 and Art. 140 GG (136, 137, 138, 139, 141 WRV) (2) generally and neutrally of religious communities. It avoids the theologically discriminatory term of sects and it does not speak of new religious communities by comparison with old ones. All religious communities have fundamentally the same rights, the same opportunities and the same duties.

(1) On religious freedom for Islam see *A. v. Campenhausen*, Staatskirchenrecht, 1996[3], p. 88 ff.

(2) The GRUNDGESETZ (Basic Law) refers to religious questions at two points: Art. 4 GG establishes religious freedom; Art. 140 GG transfers into the Basic Law the relevant articles 136, 137, 138, 139, 141 of the Weimar Constitution of 1919 (WRV) with full constitutional validity. They settle the institutional questions of relations between the state and religious communities.

Due to their statistical, religious and church-policy significance the two mainstream churches determine the picture of religion in the general public. In addition there are numerous, mostly small-scale religious communities which have the status of incorporated or non-incorporated associations. Through the growth of Muslim communities and the conspicuousness of so-called youth religions the legal problems of these private law religious communities have multiplied (3).

Legally the private law religious communities enjoy the same direct constitutional rights as the incorporated ones. This constitutional status guarantees all religious communities the same individual, corporate, negative and positive religious freedom (Art. 4 I, II GG), separation from the state (Art. 140 GG with Art. 137 I WRV) and the right to church self-determination (Art. 140 GG with Art. 137 III WRV), i.e. a freedom of religion and church organisation in a religiously and ideologically neutral state. Differences between private law and public law religious communities arise only at the secondary level of legal status under secular law.

Before 1919, when the state still exercised oversight over the church, it also claimed the right to formulate minimum demands regarding the content of religious teaching and to make recognition dependent on the fulfilment of these conditions. That would no longer be possible under the Basic Law. Every religious community has to define itself. The state can only ascertain whether it is a religion or an ideology (Weltanschauung) as defined by the constitution in terms of spiritual content and external appearance. The self-understanding of the community concerned is fundamental here. Other essential factors are the reality of its life, cultural tradition, general understanding and religious knowledge (4). In order to be able to speak of a religious community in the legal sense today all that is needed is an association of at least two persons and a minimum of organisational structures. The occasion and purpose of the association concerned must be to exercise a religion common

(3) *Jurina*, Die Religionsgemeinschaften mit privatrechtlichem Status, HdbStKirchR I[2], p. 689 ff. and *A. v. Campenhausen* (note 1), p. 60 ff., 82 ff., 88 ff., 125 ff.

(4) BverfGE (Constitutional Court decision) 83, 341 (353).

to [illegible] members. A formulated creed on the pattern of the Christian chu[illegible]ches is not necessary. The religious-ideological neutrality of the sta[illegible] rules out taking the Christian religion as the yardstick by wh[illegible]h to assess the other religious communities. The creed does not ne[illegible] to differ from that of other religious communities either, as lon[illegible] as two religious communities are clearly distinguishable in or[illegible]nisational terms. The religion just has to be identifiable. Like all [illegible]sic rights, freedom of religion is not part of a constitutionally un[illegible]fined system of unlimited freedoms. Rather it is a substantively del[illegible]ited strengthening of the legal protection of certain rights and fre[illegible]oms and is basically comprehensible from historical experi-enc[illegible] Finally, it is essential that even a very small religious com-mu[illegible]ty should set itself the task of fully accomplishing tasks and req[illegible]rements following from their respective confession. Herein the[illegible] differ from the religious associations which only perform par[illegible]l duties of the religious community concerned, e.g. in the cha[illegible]table or economic field.

[illegible] distinction is made between religious communities and asso-cia[illegible]ns that devote themselves to an ideology. By this is meant ma[illegible]y such views of the world and of human life in the world that rej[illegible] an other-worldly or extra-terrestrial connection, in particular the[illegible]elief in God, or declare their indifference. The constitution eq[illegible]es religion and ideology in legal terms. They have a common ba[illegible] in that human beings in both groups seek certainty about the me[illegible]ing of human life in the world and join with other people in ord[illegible], alone or in groups, to bear witness to this view that is of exi[illegible]ential importance to them. It is in fact difficult to distinguish bet[illegible]een religion and ideology and in many cases impossible as they are [illegible]o longer so clearly defined. The offered equal treatment of reli[illegible]ous and ideological communities does not necessitate the use of one term for both and seeing their difference as constitutionally irrelevant. Equal status as defined by Art. 140 GG (Art. 137 VII WRV) means that neither of them should be discriminated against through unequal treatment.

Recently there have been recurrent disputes about whether a certain association is a religious community or not. The mere assertion and the self-understanding of belonging to a religious community and also of being a religious community is not enough to justify the granting of the freedom of Art. 4 I and II GG for this association and its members. Rather it must "really be ... a religion and religious community in terms of spiritual content and external appearance" (5). In case of dispute this is examined and decided by state organs, particularly courts. They do not exercise a free power of determination but establish the existence, or not, of the meaning and purpose of the basic right intended and presupposed by the constitution. In many cases the existence of a religion is apparent. Then no detailed examination is required. Difficulties have arisen in particular in connection with the new "youth religions" and scientology.

Here it has become legally relevant that not just any belief is understood to be faith and creed as defined by the constitution — there has to be an ethical or metaphysical idea of a certain consistence. The criteria decisive for differentiation are those of constitutional law, not options at the disposal of the parties interested in the protection of the basic right. Political or economic action cannot be defined by the actors themselves as the practice of religion by reference to a programme or statutes. Economic activity does not become the practice of a religion or ideology due to the fact that the purposes of a religion or ideology are thereby furthered or that the economic activity itself is provided with a religious or ideological meaning. An association whose existence according to its objective appearance is directed towards economic success is not a religious community protected by the freedom of religion (Art. 4 GG). Nor do altruistic motives alone automatically make economic activity into the practice of a religion with protection as a basic right. These legal questions have concerned literature and case law a great deal of late. Courts have rejected the application for registration in the register of associations as a religious community because they could not ascertain that the purpose of the association "was not directed towards a business operation" (§§ 21, 22 BGB). Their grounds for doing so were that an association "that markets immaterial goods in the manner of economic goods and combines the dissemination of

(5) BverfGE 83, 341 (353).

ideas inseparably with the pursuance of financial interests in the form of a business organisation" could be ascribed to trade associations as defined by § 22 BGB. (6)

The classification of a non-Christian religious community under Staatskirchenrecht (state law relating to churches) is difficult because the latter's categories and legal forms were naturally developed on the basis of the Christian West. Such difficulties are thus the expression of divergent systems of coordinates and not merely transitional difficulties. Solutions have to be found that correspond to the self-understanding of the religious community concerned, without therefore suspending the legal order regarding churches of the German constitution. The Basic Law protects this order and does not intend it to cover a multicultural social and constitutional order.

Religious communities under private law also enjoy the full scope of protection by constitutional guarantees. This is what is meant by the formulation that they participate in the "basic constitutional status" of the constitution (7). The enjoyment of religious freedom is not increased or extended through the granting of corporate rights to a religious community. Some länder constitutions and simple laws still speak of "recognised" religious communities. This distinction has been without legal significance since 1919, as have "admitted", "accepted" or "tolerated". There is no state admission, concession or recognition. These terms recall a past age of rank-order in religious and church freedom. Today all religious and ideological communities share the same basic status derived directly from the constitution.

Individually the private law religious and ideological communities enjoy all forms of the basic right of freedom of religion, church freedom, freedom of faith and the right to the free practice of religion. Under the Basic Law they have gained a freedom of action which they did not have under the older Staatskirchenrecht.

(6) OLG Düsseldorf, NJW 1983, 2574. For similar arguments and the same result see VG Munich, GewArch 1984, p. 329. On the business activity of religious communities see *A. v. Campenhausen (Note 1), p. 82 ff.*

(7) *A. Hollerbach, Grundlagen des Staatskirchenrechts*, HstR VI, 1989, § 138, No. 88.

In particular they themselves declare what belongs to the practice of their religion according to their own self-understanding. (8) Only in borderline cases are there problems with new religious communities. These can lead to a denial of recognition as religious practice to an activity which the religious community considers religious according to their own understanding (9). With the older religious communities there are usually no difficulties of this kind. Their charitable activities enjoy the protection of the constitution. Their cultural monuments used for worship are subject to special regulations governing the protection of monuments. They have the right to participate in burials (10). "To the extent that there exists a need for religious services and spiritual care in the army, in hospitals, prisons, or other public institutions, the religious bodies shall be permitted to perform religious acts." (11). The right to conduct religious education without hindrance also includes the right to give religious instruction in state schools (Art. 7 III 2 GG). Only for practical reasons does the organisation of religious instruction depend on there being a minimum number of pupils of the denomination concerned in the school.

There are no particular restrictions on religious freedom in the case of religious communities with private law legal status. Problems of definition do arise with new religious communities, however, particularly the "youth religions" and scientology. They are not due to any lower legal status, but to the general difficulty of recognising such associations as religious communities, and their activities as religious practice.

The guaranteeing of a right of self-determination to churches (Art. 140 GG with Art. 137 III WRV) also applies to private law religious communities. They, too, have the power to make their

(8) BverfGE 24, 236 (247f.)=KirchE 10, 181 (186 f.); see *A. v. Campenhausen, Religionsfreiheit*, HstR VI, § 136, No. 69 ff.= Gesammelte Schriften, Jus Ecclesiasticum 50, 1995, p. 304 ff.; A. *Hollerbach, Grundlagen* (note 7), § 138, No. 95.

(9) As in BAG, decision of 22.3.95, Jz 1995, 951 ff.

(10) Expressly Art. 149 I Bavarian Constitution, according to which local authorities have to see to it that every deceased person can be buried. "The religious communities have to decide about their participation themselves".

(11) Art. 140 GG in connection with Art.141 WRV.

own rules, and are autonomous and independent in their own sphere. So they do not just enjoy an autonomy derived from the state like a registered society. Even if they take on this status they are not just an association like any other. They do not lose the special constitutional protection enjoyed by all religious communities without concern for their legal form (12). Even if a religious community enjoys the status of an association its statutes do not become the statutes of an association as defined by § 25 BGB. They remain subject to the law establishing the autonomy of religious communities. Offices are conferred without state influence (Art. 140 with Art. 137 III 2 WRV). It decides itself on its own membership. There are no special state provisions for withdrawal. The law governing withdrawals from the church only covers withdrawal from public law religious communities. In the case of private law status § 39 BGB has to be taken into account. The time limits are, however, those laid down by the Federal Constitutional Court for leaving the church (13).

3. In the last few years there have been numerous parliamentary inquiries and investigations into whether certain associations are religious communities or covert business enterprises. This question is important because religious communities are subject to different conditions for their participation in legal relations than businesses. In the parliamentary sphere and in court rulings it is important to know to what extent the government can support associations gathering information on criminal or dangerous practices of such religious communities (14).

4. "Religious bodies shall acquire legal capacity according to the general provisions of civil law" (Art. 140 GG with Art. 137 IV WRV). With this provision the Weimar Constitution ended the discrimination against religious communities compared to other

(12) v. MANGOLD/KLEIN/v. CAMPENHAUSEN, *Das Bonner Grundgesetz. Kommentar*, Vol. 14, 1991[3], Art. 140 GG in connection with Art. 137 IV WRV, No. 140.

(13) BverfGE 44, 37 ff.

(14) See particularly *Badura, Der Schutz von Religion und Weltanschauung durch das Grundgesetz. Verfassungsfragen zu Existenz und Tätigkeit der neuen "Jugendreligionen"*, 1989.

associations which had prevailed until 1919. While the Civil Code and other laws postulated freedom of foundation, religious communities were subjected to compulsory state concession in a system of state sovereignty over the church. The historical function of Art. 137 IV WRV was to suspend these discriminatory special regulations. Art. 140 GG (Art. 137 IV WRV) to this extent is consistent in its conclusions following from the separation of state and church laid down in Art. 140 GG (Art. 137 I WRV), and the related abolition of state rights of sovereignty and oversight over the church (15). The purpose of this constitutional provision was fulfilled with the elimination of discrimination against religious associations and their being given equal status with other non-profit associations. Through the acquisition of legal capacity religious communities receive a "secular law mantle" (16) that gives them a substantive legal status under secular law and enables them to participate in general legal relations. Prior to this, a religious community has the status of an association without legal capacity (§ 54 BGB) which is however conceded partial legal capacity in practice. It is thereby not fully excluded from legal relations. Above all it has the legal right guaranteed in the constitution that it can acquire legal capacity after fulfilling the statutory preconditions for registration.

As a rule a religious community organises itself for the state legal sphere as a non-profit association (§ 21 BGB). The acquisition of legal capacity, enabled by Art. 140 (Art. 137 IV WRV) according to "general regulations of the Civil Code" takes place through registration of the association pursuant to §§ 55ff. BGB. Other forms of organisation are then inappropriate (17). A business association or trading company cannot be considered for registration as non-profit associations because, while they can perform

(15) Art. 84 EGBGB had reserved the possibility for state law (Landesrecht) to deviate from the "general regulations" in the acquisition of legal capacity. This was nullified with the Weimar Constitution. For a fundamental historical treatment see *v. Mangoldt/Klein/v. Campenhausen (note 12), Art. 140 GG in connection with Art. 137 IV WRV, No. 136 ff.*

(16) *A. Hollerbach, Grundlagen* (note 7), § 138, No. 125.

(17) *A. v. Campenhausen, Religiöse Wirtschaftsbetriebe als Idealvereine?*, NJW 1990, 887 and NJW 1990, 2670; *Jurina, Religionsgemeinschaften* (note 3), p. 708.

partial activities of a religious community, they do not satisfy the allround practice of religion. That, however, is the precondition for recognition as a religious community as distinct from a religious association. Profit-making activity is not prohibited for religious communities and does not hinder their constitution as non-profit associations even on a considerable scale (18). But it has to be a religious community and not a business enterprise under the guise of religion.

As with the choice of organisational form the self-understanding of the religious community concerned plays a part when it comes to the details of its legal form. Every religious community is to be able to organise itself according to its own ideas of order. The state as controller of the secular legal order regulates the guarantee of legal capacity and thus the rights of others, not least those of the creditors of a religious community. Otherwise, provisions of the law governing associations yield to the divergent rules of the religious community concerned. To that extent they are not a "law valid for all" within the meaning of Art. 140 GG (Art. 137 III WRV) taking priority over the law of the religious community and setting limits on the right to self-determination.

The Federal Constitutional Court has clarified hitherto controversial questions in the Baha'i decision (19). It says that religious communities must, like everyone else, obey the general regulations of the Civil Code. Freedom of religious association stipulates however that "the self-understanding of the religious body is to be given special consideration in interpreting and administering relevant law, here the law governing associations of the Civil Code, to the extent that it is rooted in the sphere of freedom of religion and confession guaranteed as inviolable by Art. 4 I GG and implemented by the practice of religion protected by Art. 4 II GG." That goes beyond the possibilities open to everyone to exhaust the scope for influencing a legal right allowed by dispositive law. "Even in administering compulsory regulations scope for interpretation is to

(18) See *v. Mangoldt/Klein/v. Campenhausen,* (note 12), Art. 140 GG in connection with Art. 137 IV WRV, No. 143.

(19) BverfGE 83, 341 (355 ff.).

be used as required to the benefit of the religious body; this must however not lead to a neglect of imperative considerations of the guarantee of legal relations and the rights of others." It would therefore be incompatible with the freedom of religious association if a religious community were to be completely excluded from general legal relations due to its internal organisational principles or only admitted with unacceptable hindrances.

These principles are used when the statutes of a religious community do not fully correspond to the demands for registration as an association. According to the Federal Constitutional Court the distinction to be made is between such provisions of the statutes which only concern the internal organisation of the religious community and those regulating external and legal affairs in the interest of the guarantee and clarity of legal relations.

In BVerfGE 83, 341 the issue was whether a Baha'i community could be constituted as a registered society although the Spiritual Council, in keeping with the principles of the Baha'i, has the overall responsibility for the concerns of the local community. The local community failed to meet the demands of legal autonomy and the protection of minorities for its members stipulated by § 37 I BGB. The Federal Constitutional Court decided that the law governing associations of the Civil Code had to take account of the particular organisational principles of religious communities. Special arrangements are accordingly to be allowed for the right to membership, dissolution of the association, requirements for amending the statutes and the definition of association duties. According to this decision, the limit is reached when self-determination and self-management of the local community constituted as a registered association is not only somewhat restricted but largely ruled out, so that the association has become "a mere administrative centre or merely special assets of another one." By contrast, the law governing associations permits associations which want to organise themselves as part of a religious community and fit into its hierarchy to provide in their statutes for restrictions to the autonomous powers of dissolution, exclusion or activity "to the extent that they ... serve the safeguarding of their place in the larger religious community in the framework of the existing connection with religious law and limit themselves thereto."

This decision of the Federal Constitutional Court did not just clear up many points of dispute. It is of fundamental interest.

First it demonstrates again, with the aid of a real-life example,

that in Staatskirchenrecht the point at issue is an appropriate approximation between state law and the right to self-determination of the religious communities. It becomes clear here that the decision of the Federal Constitutional Court by no means suspends the fundamental validity of the law governing association when it comes to acquiring the legal capacity of a religious community according to the regulations of the Civil Code. The law governing associations remains the framework for the granting of secular legal capacity pursuant to Art. 140 GG (Art. 137 IV WRV). In the individual case it remains to be seen which requirements yield to the right of self-determination and which delimit it (20). The formal regulations of §§ 55ff. BGB also apply to religious communities when acquiring legal capacity by registration in the register of associations. It is lawful also to require the minimum number of seven (§ 56 BGB) from religious communities and the withdrawal of legal capacity when membership falls to less than three (§ 73 BGB). § 57 BGB calls for the submission of association statutes with possibly dispensable minimum content (§ 58 BGB). Regulations on representation for legal relations are indispensable. There are no objections to requiring notification of the contributory arrangements or the financial basis of the religious community constituted as an association (§ 58 No. 2 BGB), as without a financial basis participation in legal relations is at risk.

In terms of legal policy it can be inferred from the above that the repeated demand for all churches and religious communities to subject themselves to a standardised association law would not solve any problems, because in every case the self-understanding of each religious community would help to decide on the extent to which provisions of general association law could apply in individual cases. It is no accident, but the consequence of the validity of the basic right, that churches and religious communities are corporations under public law sui generis. Likewise they do not lose their special constitutional protection either if they clothe themselves in the mantle of a registered association for secular legal relations.

(20) A. v. Campenhausen (Note 16), NJW 1990, 887; Jurina, *Religionsgemeinschaften* (note 3), p. 711.

State association law is in the terminology of Staatskirchenrecht only "law valid for all" (Art. 140 GG with Art. 137 III WRV) to the extent that it is a matter of normative provisions indispensable to the religiously and ideologically neutral state in the interest of guaranteeing legal relations and the protection of the citizens involved therein.

In the legal order of the Basic Law, with its protection of basic rights, religious communities are as far as possible to be governed by themselves and not by the legislator. That follows from the fundamental decision of the constitution for freedom of religion, separation of church and state, and the guaranteeing of the right to self-determination of religious communities. Freedom means recognition of the plurality and willingness of the legal order to accept this and not, through standardising legal provisions, to create an equality from which the basic rights are precisely intended to provide protection.

5. All religious communities are equal before the law. To the same extent they can receive public support. Only religious communities under public law have the right to raise church taxes from their members with the assistance of the state.

6. Basic rights apply to all people equally, independently of their nationality and their religious choice. The right of conscientious objection to military service and the consideration of conscience in general are the same for both old and new religious communities. There is no difference here.

7. Family law, care for minors, marital law, the consequences of divorce, adoption etc. are state law that takes no account of denominational questions. All enjoy the same freedoms. In the case of divorces it can be important whether the member of a religious community causes intolerable strain in family life through raising religious questions. This is not a problem of new religious communities but applies in general.

8. Religious communities are not associations within the meaning of Art. 9 I GG. However they are prohibited under Art. 9 II GG if their purposes or activity conflict with criminal laws or are

directed against the constitutional order or the concept of international understanding. It is true that Art. 4 and Art. 140 GG are leges speciales in relation to Art. 9 GG. But the latter is only superseded by the more specific law to the extent that this arises from the nature of the religious community. The provisions of Staatskirchenrecht contain no provision on prohibition in keeping with Art. 9 II GG. There is therefore no visible reason "that would exclude the prohibition and dissolution of such religious communities if necessary, if they are directed against the constitutional order" (21). Nor is this opposed by § 2 II No. 3 of the law governing associations, according to which religious and ideological communities are not associations as defined by association law. The federal legislator has in this regard not exhausted the regulatory powers regarding religious communities available to it through Art. 9 II GG. The possibility of prohibition also applies to religious communities which have not acquired legal capacity (22).

9. The present law governing church-state relations gives all religious communities a maximum of freedom and self-determination, regardless of whether they have opted for organisation under private or public law. To this extent there is satisfaction. The reunification of Germany, albeit happy, revealed a scene of devastation its eastern part following religious persecution. This has set off a debate about whether the old Staatskirchenrecht should not be changed since so many people in the eastern länder are no longer members of Christian churches or of any religious community. A commission established by the Bundestag and Bundesrat (lower and upper houses) rejected such proposals. The status quo has once again been given parliamentary affirmation. Yet there are efforts to change the present situation. The aim is not so much to change the legal status of religious communities as to inquire to what extent religious phenomena have to be considered under public law, e.g. in school education, allowing religious symbols in the public sphere etc.

(21) BVerwGE 37, 344 (364); likewise BVerwG, decision of 27.3.92, NJW 1992, 2496 (2498).

(22) *Jurina, Religionsgemeinschaften* (note 3), p. 712.

CHARALAMBOS K. PAPASTATHIS
Faculty of Law, University of Thessaloniki

NEW RELIGIOUS MOVEMENTS (NRM) AND THE LAW IN GREECE

SUMMARY: 1. *Introduction.* — 2. *Freedom of religious conscience.* — 3. *Freedom of worship.* — 4. *Proselytism.* — 5. *Particular issues concerning NRM in Greece.*

1. INTRODUCTION

In Greek legislation, there are no statutes which pertain to new religious movements in particular. These are regulated by the provisions which apply for all creeds.

The terms that are used in Greece to denote NRM, are "σύγχρονες αιρσεις" (*"contemporary heresies"*), "παραθρησκευτικς οργανώσεις" (*"parareligious organizations"*), "θρησκευτικά" ή "ψευδοθρησκευτικά" (*"religious or pseudoreligious movements"*), more infrequently "σέκτες" (*"sects"*). These terms are unsuccessful, since the predominant character of the NRM, at least for the general public, is religious. Nothing, after all, prevents them from becoming very popular religions in the future. These terms — which are utilized mainly under the influence of the prevailing religion as stated in the Constitution — introduce criteria: a) either of doctrinal nature, — like the existence of a heresy or of parareligious character — or b) sociological nature, like the element of incorporation, so there is a confusion with the various religious associations of followers of several religions, even of the official Orthodox Church itself. The use of the aforementioned terms aims

at dehydrating the NRM in Greece — as far as possible — from any feature, which could furnish them with the attribute of religion. In this manner, however, we show an ignorance of historical facts. All religions, up until the time they are fully established, took a certain time period — be it brief or lengthy — to develop since their emergence. I am hopeful that the term "νέες θρησκευτικές κινήσεις" (*new religious movements = NRM*) will be established in Greek terminology, since it is a term that designates objective research on, and sober coexistence with them.

A corollary of the terminology is the specification of what NRM signifies in Greece. No definition has been proposed. For the present, I believe that we may approach their nature and their content only empirically.

It has been already mentioned that in Greece no special legislation has been established regarding the NRM. These move within the constitutional and legislative context that exists for all religions. We will analyze this context of religious freedom and, consequently, we will make reference to more particular issues concerning the NRM.

In the Constitution (hereafter C.), article 13 contains the following fundamental provisions on religious freedom: The freedom of religious conscience is inviolable. All known religions are free and their rite of worship is performed unhindered and under the protection of the law. The practice of rites of worship is not allowed to offend public order or the moral standards. Proselytism is prohibited, and no person may be considered exempt from fulfilling his obligations to the State or refuse to comply with the laws by reason of his religious convictions.

Religious freedom is also interrelated with other provisions of the C., besides those of art. 13. Article 2 § 1, on the value and dignity of a person, is also relevant, and so is art. 5 § 1, on the unhindered development of one's personality. Also, in cases of events that pose threats to the state (in a state of emergency), — during which art. 48 provides for the suspension of force of certain articles — the implementation of article 13 is not suspended. Moreover, article 13 protects all those inhabiting the Greek territory, regardless of their nationality, while other articles concerning

individual rights protect only Greek citizens (art. 4 on equality; art. 2 on the right to assemble; art. 12 on the right of association).

2. Freedom of Religious Conscience

As concerns the enjoyment of the freedom of religious conscience, the C. introduces absolutely no distinction between creeds. It is irrelevant if the religious conscience of each individual is related to a known or unknown religion (C. art. 13 § 2), with NRM or with an offshoot of a religion, even with atheism or irreligion. It suffices that the conscience is mentioned, positively or negatively, in the relation of a person to God. Also, the freedom of religious conscience is absolute. The C. poses no limitations. Not even common legislation imposes restrictive provisions. However, a problem that recurrently arises is how public administration and the courts are to implement the C. and the laws. In this field, there were past decisions which were not always congruous with these provisions.

Let us take a closer look at certain characteristic acts. One of the consequences of freedom of religious conscience is religious equality. This right has primary significance when seeking employment in the public sector. A grave problem came up concerning the occupancy of a teacher's post, although the relevant laws did not contain any stipulations to the contrary.

In all the schools of general education in Greece, the course of religion is taught — always in accordance with the creed of the Eastern Orthodox Church — as compulsory for all grade schoolers who have declared to be Orthodox. In junior high schools and high schools, this course is taught by graduates of the Faculty of Theology of Greek universities; in grade schools, by the teacher of each class. In 1949, the Ministry of National Education and Cults fired a teacher because he had joined the cult of Jehovah's Witnesses, which until this day is considered an NRM by part of the bibliography. The teacher appealed to the Council of State (= the highest administrative court), which rejected his appeal on grounds that the qualification of Christian Orthodox constitutes a necessary element for the fulfillment of a teacher's duties, which include e.g. the

teaching of religion, the students' churchgoing, etc. Following this decision, the administration no longer appointed teachers in primary education if they were not Orthodox. In fact, the impediment was extended to include kindergarten teachers, although the latter do no teach courses. This state of things, with an exception in the case of schools of religious minorities, was in force up to 1988, when it was abolished (L. 1771/1988). Accordingly, the non-Orthodox may now be appointed as teachers (in a school with at least two posts) and religion is taught by their Orthodox colleagues. Moreover, today there are state-appointed Catholic theologians who teach the course of religion in the junior high schools and high schools of certain islands in the Cyclades, where Catholics represent a high percentage of the local population.

The President of the Hellenic Republic, before assuming the exercise of his duties, can take only a Christian oath. C. 33 does not contain a stipulation similar to that of C. 59, concerning the oath of non-Christian members of Parliament. This is an indirect way of promoting the election of only a Christian President, although this provision does not conform to the principle of equality.

A Jehovah's Witness has been convicted to imprisonment by court-martial, because he refused to serve in the military. After his release from prison, he attempted to be appointed as chartered accountant. The administration refused to grant him the relevant license because of his previous conviction. The Council of State (3339/1991) nullified the disapproving act. Also, the Municipality of Peristeri in Attica had refused to provide one of its employees, who was a Jehovah's Witness, with the family allowances provided by law, because he had solemnized his wedding in the ceremonial of the Jehovah's Witnesses, a religion which the Municipality of Peristeri did not consider "known" under the constitutional mandate. Therefore, the said marriage was non-existent. The Council of State nullified this act (2105, 2106/1975). Lastly, the Faculty of Theology of the University of Athens decided on the expulsion of one of its students, because he had asserted to be an atheist. The Council of State voided this act, on grounds that the Faculty of Theology is not confessional; thus, it is also open to non-followers of the prevailing religion (194/1987).

As concerns the military service of those who refuse to serve on the basis of their religious beliefs, L. 731/1977 initially provided for a service that was double the regular service and without bearing arms. But the interested parties refused to do their service altogether, and consequently they were convicted by court martial pursuant to the provisions of the aforementioned law. Recently, Parliament enacted a law which introduced social service for objectors of religious conscience.

3. Freedom of Worship

Whereas in the realm of freedom of religious conscience, the problems which came up in the past concerned, as a rule, Jehovah's Witnesses, — problems which today seem to have formally and substantially been resolved, — where freedom of worship is concerned, the relevant legislation has not improved. The unhindered practice of worship (C. 13 § 2) occurs under certain conditions, determined by the C. itself. What is more, the Council of State (866/1974) has ruled that the common legislator cannot add others to the existing ones. In reality, the relevant laws — and consequently, the administrative and the judicial decisions — operate regardless of the constitutional prerequisites.

As we already saw, the first condition for the freedom of worship on the part of the followers of a religion (NRM included) is that the latter happens to be *known*. Known religion does not signify recognized religion. Besides, there is no administrative agency charged with the acknowledgment of religions. In practice, the characterization of a religion as known is usually accomplished with the approval of its petition for the establishment of a sanctuary (church, synagogue, mosque, etc.) or a house of prayer. Under this procedure, in each particular case the Administration conducts an ex officio inquiry to determine whether or not the conditions of known religion appeal to it, requesting the nullification of an unfavorable act of the Administration.

Furthermore, the practice of worship of the known religion should not offend public order and public morals (C. 13 § 2). The

former includes, in its general scope, the latter. Basically, it is the full spectrum of the fundamental civil, moral, social and economic principles and attitudes, that prevail in Greece during a particular period. This constitutional framework of safeguarding worship is in practice conveyed by provisions in law, that are very often in stark contradiction to it. The erection of sanctuaries and houses of prayer of the various Christian faiths and of the other religions, is regulated by the provisions of art. 1 of Mandatory Law (hereafter M.L.) 1363/1938, as this was amended by other laws and decrees of the same period in the dictatorship of Metaxas (1936-1941). The erection of a church, mosque, synagogue, etc. requires a petition of the interested parties (at least fifty families) which, along with other documents, is submitted to the local metropolitan of the Orthodox Church. After the sanction of the metropolitan ensues the authorization of the Minister of National Education and Cults. For the houses of prayer, the petition — with no required minimum number of interested parties — is submitted directly to the Ministry. Here, the law does not provide for the metropolitan's approval. However, the Council of State has extended his authority to include consent to establish houses of prayer (721/1969). Moreover, it has characterized the license for sanctuaries and houses of prayer as a mere consultatory opinion, which is not binding for the administration (721/1969; 1444/1991; 1465, 1842/1992). At the same time, however, it has ruled that if the minister approves of the establishment of a place of worship, in spite of the contrary opinion of the metropolitan, he is required to make special justifications for such a decision (721/1969). In practice, Orthodox prelates do not grant the requested license to Christian religions and NRM, consequently the administration is hesitant to approve of the establishment. The interested parties have no other recourse of satisfying their constitutional right, but to appeal to the Council of State.

The Council of State, in a line of decisions — the last of which is, as far as I know, 1842/1992 — has accepted that the laws concerning the practice of worship are congruous both with the previous C. and with the current one.

To the preconditions set by the C. on the freedom of worship (known religion, non-offense of the public order and public morals),

the precedent developed by the Council of State has added others (but cf. the decision of the Plenary Session of the Council of State 866/1974, which we referred to above). Among these is the element of need (2264-2265/1964; 995-996/1970). The Council of State reached this conclusion guided by the provision of the Royal Decree of 20.5./2.6.1939, article I § 1a, requiring, for the operation of a non-Orthodox church, "the petition of at least fifty families... residing in a district, which lies at a great distance from an existing church of the same denomination, as long as the fulfillment of their religious duties is hindered by the distance from an existing church". It also adjudicated that the concurrence of all legal requirements — thus also of that of need — should be considered by the Administration even when granting a license for the transference of a house of prayer (200/1974). If the Administration determines that one or more of the preconditions for the operation of a sanctuary or a house of prayer is lacking, then it is required to revoke the granted license (371/1973). Furthermore, the Council of State added to the constitutional requisites for the operation of a sanctuary or house of prayer the non-performance of proselytism on the part of the petitioners (995/1970 and thereafter). But what is proselytism?

4. Proselytism

By proselytism, — in its legal-technical sense — is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion, with the aim of undermining those beliefs either by material assistance of all kinds, or by fraudulent means or by taking advantage of his or her inexperience, trust, need, low intellect or naiveté.

Proselytism was a criminal offense under article 198 of the previous Criminal Law. The relevant statute was deemed inadequate. It was replaced by that of art. 4 of M.L. 1363/1938 (cf. M.L. 1672/1939), where the aforementioned definition is cited.

Under the precedent of the Areios Pagos (the highest civil and criminal court), this statute has maintained its force even after the introduction of the new Criminal Code (1.1.1951). It is immaterial if the used means are expedient or if the person at whom the attempt

is aimed is responsive of proselytism or if the desired result is ultimately achieved. It is likewise immaterial if the persons who are involved with the offense are related (e.g. parents-children, spouses).

Proselytism is punished with a cumulative sentence of incarceration (one month to five years) and imposition of a fine. If the perpetrator is a Greek citizen, police surveillance may also be imposed; if he or she is a foreigner, the penalty is deportation.

The same law, when referring to the means for the practice of proselytism, uses the term "in particular". This led judicial precedent to the view that the enumeration of the manners and means of proselytism is indicative and alternative. Only one of them suffices or the use of other means, not mentioned explicitly in the law, suffices for the offense to take place. It is characteristic that both theory and precedent dealt with the issue of whether or not the distribution or the mailing of printed matter constitutes the offense. Their opinion is that in every single case this depends on the particular circumstances under which the act was committed.

The generality of the wording of the C., as well as the methods and means of proselytism which are indicatively described in the law, have led to the formulation of the opinion that proselytism is distinguished into fair and unfair. The former constitutes the mere exercise of the right of the free declaration of religious convictions. I believe that this distinction is not grounded on legislative reality. However, the limits between the two are extremely elusive. Undoubtedly, the provision of the current C., which prohibits the practice of proselytism for or against a given religion, constitutes progress when compared to the past — of course, provided that the Greek legal order persists in preserving it as an offense. Precisely for this reason, some writers do not include proselytism in the domain of religious freedom, but in that of the protection of religions on the part of the State.

5. Particular Issues Concerning NRM in Greece

The wielding infiltration of various creeds in the countries of Eastern and South-eastern Europe — which took place after the collapse of the communist regime — brought about the immediate

reaction of the Orthodox Church. One of the measures that were taken for the confrontation of the new situation was the convocation of inter-Orthodox conferences. The 5th conference (Naupactos, Greece 1993) drew up a listing of the NRM that are active in Greece. In it are found 129 "heretical and parareligious groups". Among them there are some who are considered offshoots of the prevailing Orthodox religion, such as the "Χριστιακή Οργάνωση Ειρήνης" (*"Christian Peace Organization"*, 1959) or the "Καλά Νέα" (*"Good News"*, 1973). These started out as incorporations of Orthodox followers, but later deviated from the teachings of the Eastern Church.

The legal form which the NRM in Greece usually assume is that of the association (society), or of the company of civil law, that is, of a not-for-profit legal entity of private law. The petition for approval of the articles of incorporation and the recognition of the association is submitted to the First Instance Court of the seat by at least twenty people. The articles determine the seat, the purpose and the administrative organs. Under the Civil Code, art. 105 § 3, an association can be dissolved by court order, following a petition of the supervising authority (= prefecture) if it is decided that it is ultimately pursuing goals which are different from the ones specified in its articles; further, if its purpose or its function turn out to be illegal or immoral or counter to public order. A characteristic case is the "Κέντρο Εφαρμοσμένης Φιλοσοφίας Ελλάδος" (*"Center for Applied Philosophy of Greece"* = *KEPhE*), an annex of Scientology.

With its decision No. 4152/1983, the First Instance Court of Athens recognized KEPhE as an association. The purpose of the association — in section 1 of its articles — was the presentation, teaching and dissemination of the educational and philosophic tenets of Dynetics and Scientology. Since its operation, it was established by public administration that its purposes were irrelevant to those set forth in its articles. For this reason, the Prefect of Attica petitioned the First Instance Court of Athens for its dissolution. Joining this petition, there were interventions by the Church of Greece, the "Πανελλήνια Ενωση Γονέων" (*"Panhellenic Parents' Association"*), and two private individuals, whose children

had been associated with KEPhE and as a consequence, had been corrupted and alienated from their families. The court decided to dissolve KEPhE, because although it was an association (philosophical), it had deviated to speculative activity which is prohibited by legislation. The court avoided to confront the issue of "parareligious organization and heresy", which had been invoked by the Church of Greece in its intervention.

The same stance was adopted in the second NRM case which the courts adjudicated. The company of civil law "Karma Rik Drol Line — Center for Practical Philosophy and Psychology" erected an edifice in Chalkidiki, and in very close proximity to Mount Athos. This edifice was considered a house of prayer for a NRM of Buddhist principles. Those in charge of the company were brought before the courts for violating M.L. 1363/1938, as this was amended by other laws and decrees. Specifically, because they had not petitioned the Ministry of Education and Cults seeking approval for erecting the house of prayer. The court did not accept the defendants'claim that the edifice would be used as a vacation spot. It convicted them to two months imprisonment on a three-year parole and to a 50,000 drs. (= US$ 190) fine. But it gave no ruling on NRM in particular.

The state has until today avoided to enact special NRM legislation. It implements the statutes which concern the legal entity of each particular NRM and, subsequently, those on cults, like the provisions on the foundation of sanctuaries or for the exercise of proselytism. By employing this tactic, the Greek state: a) avoids problems related to religious freedom, since the NRM in Greece do not appear officially as creeds, obviously because of restrictive legislation in their regard, and b) has the discretion of exclusively implementing its own legislation in all sectors of NRM activity — moral persons of private law, since the NRM cannot invoke their own religious law, precisely because they do not stand as creeds.

The state, content with using its criminal law on those NRM which digress, continues to overlook the religious phenomenon of NRM. Those who are active in their operations are the established known religions and the associations of their followers.

JAMES CASEY
Faculty of Law, University College Dublin

NEW RELIGIOUS MOVEMENTS AND THE LAW IN IRELAND

SUMMARY: 1. *Economic and legal advantages.* — 2. *Conscientious objection.* — 3. *Protection of minors' welfare.* — 4. *Criminal law.* — 5. *Personal status matters.*

A number of religious movements have established themselves in Ireland in the 20th century. None appears to have originated in the country.

The movements that have most often come to public attention are the Mormons (Church of Jesus Christ of Latter Day Saints), the Jehovah's Witnesses, Hare Krishna and the Church of Scientology.

There does not appear to be any legal definition of the term 'new religious movements'. Normally their legal status would be that of voluntary associations founded upon contract; (1) the Companies Acts provide machinery under which they could become incorporated (2), but this does not seem to have been availed of.

Though the activities of some new religious movements (notably the Scientologists) have occasionally attracted media attention, these groups have not been the subject of any official inquiry. Their adherents have sometimes come into conflict with the law; in particular Hare Krishna members have been prosecuted for violat-

(1) O'KEEFEE v. CULLEN (1873) IR 7 CL 319: *State (Coloquhoun) v. D'Arcy* [1936] IR 641.

(2) PATRICK USSHER, Company Law in Ireland (London 1986), pp. 7-8.

ing legislation prohibiting the collection of money in the streets without a permit (3).

1. Economic and legal advantages

Irish law confers a number of economic advantages on religious bodies. Any 'church, chapel or other building exclusively dedicated to religious worship 'is exempt from rates (4) But since rating law proceeds upon a narrow interpretation of the term 'charitable', other buildings — even if used for religious purposes — would not qualify for such exemption (5).

Religious bodies may benefit from a range of other tax exemptions. They will not be liable for tax on income arising from land, etc. which they own *and* occupy Even trading profits would, in certain circumstances, be exempt from income tax (6). Religious bodies may also secure exemption from paying stamp duty on conveyances, transfers or leases of land to them (7), while gifts or bequests to them will not be liable for capital acquisitions tax (8).

These advantages, however, depend upon the potential beneficiary qualifying as a 'charity' — a category which includes 'the advancement of religion'.

Exemption from value added tax is governed by paragraph (xxii) of the First Schedule to the Value-Added Tex Act 1972 (9). It provides as follows:

> supply of services and of goods closely related thereto for the benefit of their members by non-profit making organisations whose aims are primarily of a political, trade union, religious, patriotic, philosophical, philanthropic or civic nature where such supply is made without payment other than the payment of any membership subscription.

(3) Street and House to House Collection Act 1962.
(4) Section 63 of the Poor Relief (Ireland) Act 1838.
(5) See further Ronan Keane, *The Law of Local Government in the Republic of Ireland* (Dublin 1982), pp. 289-299.
(6) Income Tax Act 1967, section 334.
(7) Finance Act 1979, section 50.
(8) Capital Acquisitions Tax Act 1976, section 54.
(9) As substituted by section 24 of the Value-Added Tax (Amendment) Act 1978.

While new religious movements would, *prima facie*, appear to qualify for the economic advantages outlined above, there is no Irish case-law on the matter. This despite the provisions of section 45 of the Charities Act 1961:

> (1) In determining whether or not a gift for the purpose of the advancement of religion is a valid charitable gift it shall be conclusively presumed that the purpose includes and will occasion public benefit.
> (2) For the avoidance of the difficulties which arise in giving effect to the intentions of donors of certain gifts for the purpose of the advancement of religion and in order not to frustrate those intentions and notwithstanding that certain gifts for the purpose aforesaid, including gifts for the celebration of Masses, whether in public or in private, are valid charitable gifts, it is hereby enacted that a valid charitable gift for the purpose of the advancement of religion shall have effect and, as respects its having effect, shall be construed in accordance with the laws, canons, ordinances and tenets of the religion concerned.

The difficulties may be illustrated by reference to the case of Scientology. Is this truly a 'religion'and thus entitled to the benefits outlined earlier? In England the Court of Appeal held that Scientology was not a religion: *R* v. *Registrar General, ex parte Segerdal.* (10) But the High Court of Australia reached the opposite conclusion in *Church of the New Faith* v. *Commissioner for Payroll Tax* (Vic.). (11) How the Irish courts would decide is impossible to say. Notwithstanding the fact that the Constitution devotes an entire Article (44) to 'Religion', the courts have never had occasion to essay a definition of the term.

2. Conscientious objection

Since compulsory military service does not exist in Ireland, the question of conscientious objection cannot arise in that context.

(10) [1970] 3 All Er 886.
(11) (1983) 154 Clr 120.

Legislation on family planning and abortion information gives specific recognition to conscientious objection to providing such information (12).

Some religious groups object on grounds of conscience to certain kinds of medical treatment — e.g. Jehovah's Witnesses to blood transfusions. It seems unlikely that Irish law could give full recognition to such objections — at any rate where the consequence of doing so would be the death of another person. In the hierarchy of constitutional rights (13) the right to life would take precedence over the right to freedom of conscience and to the free profession and practice of religion (which is guaranteed by Article 44.2. 1° of the Constitution) (14).

3. Protection of minors' welfare

There is no special legal regime governing the welfare of minors involved in new religious movements. If a minor's parents were opposed to his/her involvement they would seek to have him/her made a ward of court. This would give the High Court jurisdiction over all matters relating to the ward's person and estate, so that if the court considered that involvement in the new religious movement was inimical to the ward's best interests it could order that the connection be severed.

Other situations — e.g. if the parents themselves were members of the new religious movement — would fall under the Child Care Act 1991. Under section 3 of this Act it is a function of each health board to promote the welfare of children (defined as persons under 18) who are not receiving adequate care and protection. For this

(12) Health (Family Planning) Act 1979, section 11: Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995, section 13.

(13) The Supreme Court has several times recognised the existence of such a hierarchy of constitutional rights. See *People (DPP)* v. *Shaw* [1982] 1 IR 1: *Att. Gen.* v. *X.* [1992] 1 IR 1: *Z.* v. *DPP* [1994] 2 IR 476.

(14) In the High Court case of *DPP* v. *Delaney* [1966] 2 ILRM 128 Morris J. was prepared to hold that the right to life would prevail over the right to inviolability of the dwelling.

purpose a health board may apply to the District Court for a care order which, if granted, would give it the like control over the child as if it were his/her parent: section 18(3).

4. Criminal law

It would not appear that any new religious movement activities are specifically defined as criminal.

There is no legal machinery for outlawing a new religious movement. The only suppression legislation which exists — Part III of the Offences against the State Act 1939 — refers to 'unlawful organisations', and defines them in terms unlikely to embrace any religious movement, new or otherwise.

5. Personal status matters

Membership in a new religious movement could conceivably impact on personal status matters. One of the grounds on which a decree of judicial separation may be granted is

> 'that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent' (15).

A spouse's post-marriage adherence to a new religious movement might, in appropriate circumstances, qualify as unreasonable behaviour.

In making decisions as to the custody of children the courts are required to regard the child's welfare as the first and paramount consideration (16). Plainly, therefore, if one parent's involvement in a new religious movement could be said to be prejudicial to the welfare of the children, the courts would feel obliged to give custody to the other parent. The European Convention on Human

(15) Judicial Separation and Family Law Reform Act 1989, section 2(1)(b).

(16) Guardianship of Infants Act 1964, section 3.

Rights has not been incorporated into Irish domestic law, and the decision in *Hoffman* v. *Austria* (17) is not directly binding on the Irish courts; however they would presumably be conscious of its implications.

Membership in a new religious movement could constitute an obstacle to the adoption of children. Section 4 of the Adoption Act 1974 prohibits the making of an adoption order where the applicants, the child and his/her parents are not all of the same religion, unless every person whose consent to the order is required by law knows the religion (if any) of each of the applicants when giving consent.

(17) (1993) 17 EHRR 293

GIANNI LONG
Rome

LES NOUVEAUX MOUVEMENTS RELIGIEUX EN ITALIE

RÉSUMÉ: 1. *Première partie: la situation.* — 1.1. Les Eglises "traditionnelles". — 1.2. Les pentecôtistes. — 1.3. Les Témoins de Jéhovah. — 1.4. Les autres mouvements. — 1.5. — Quelques remarques. — 2. *Deuxième partie: la position constitutionnelle et législative.* — 2.1. Définition. — 2.2. Les formes d'organisation. — 2.3. Les "cultes admis". — 2.4. La "loi fondée sur ententes". — 2.5. Confessions et organisations *non profit.* — 2.6. Perspectives de réforme. — 3. *Troisième partie: les problèmes juridiques liés aux nouveaux mouvements.* — 3.1. Objection de conscience. — 3.2. Protection des individus et des mineurs. — 3.3. Nouveaux mouvements et loi pénale. — 3.4. Mariage et famille.

1. PREMIÈRE PARTIE: LA SITUATION

1.1. *Les Eglises "traditionnelles"*

Au moment de l'unification nationale (moitié du XIX siècle) existaient en Italie des petites minorités religieuses, d'origine très ancienne et survécues à la Réforme, à la Contre-réforme et aux bouleversements des siècles:

— les *juifs* (1), plus ou moins tolérés dans les différents Etats italiens;

(1) Les rapports entre les différents mouvements religieux et l'Etat italien seront considérés dans la deuxième partie de ce rapport. Pour en donner une première orientation, les confessions qui ont actuellement une entente (*intesa*; voir 2.4) avec l'Etat seront soulignées; celles qui sont reconnues (*rectius:* qui ont une entité dont la personnalité juridique est reconnue) par l'Etat, seront marquées en italique. Naturellement, il s'agit d'une

— les *vaudois*, une communauté protestante d'origine médiévale, concentrée dans le Nord-Ouest du pays, qui adhérait à la Réforme dès l'année 1532;

— quelques communautés orientales (*arméniennes*) ou *orthodoxes*.

Après l'unification, en présence d'une politique de liberté religieuse (et d'anticléricalisme envers l'Eglise catholique), plusieurs Eglises protestantes ont ouvert des "missions" en Italie, provenant en général de l'Angleterre ou des Etats Unis: en particulier, les *baptistes* et les *méthodistes*, les Eglises des frères (Brethren) et plus tard les *adventistes*. Une activité semblable était exercée par les vaudois. Les autres Eglises protestantes "nationales" se limitaient à former des communautés pour les ressortissants de leur pays, comme les anglicans et les *luthériens* (la formation de paroisses luthériennes formées par des Italiens est plus récente). Il convient aussi de mentionner un mouvement typiquement italien, les Eglises Libres, formées dans leur grande majorité de combattants pour l'unité nationale (Risorgimento). Elles sont d'une grande importance historique, en tant que véritable "alternative" nationale au catholicisme, mais elles finirent par s'intégrer avec quelques unes des Eglises protestantes "historiques" mentionnées.

1.2. *Les pentecôtistes*

Tous les autres mouvements religieux aujourd'hui actifs en Italie sont apparus après le début du XX siècle. Ils doivent donc être considérés, pour les finalités de ce rapport, comme nouveaux mouvements.

Il s'agit, en premier lieu, des pentecôtistes (2), véritable "mouvement" plus qu'une Eglise, né de différents *Réveils (Awakenings)*, en général dans le monde anglo-saxon, aux alentours du début du

indication générale: par exemple, du mouvement pentecôtiste se sont formées plusieurs entités, qui ont assumé des différentes positions juridiques.

(2) D'un point de vue historique, les pentecôtistes sont considérés comme un mouvement de revival du protestantisme historique. Il ne s'agirait donc pas d'un mouvement "nouveau". Voir INTROVIGNE M., *Le nuove religioni,* Milano 1989, p. 15. Mais il s'agit certainement d'un mouvement actif en Italie dès le XX siècle.

siècle. Quelques années après seulement, ce mouvement parut en Italie, non grâce à des missions organisées — comme pour les Eglises traditionnelles — mais grâce à la prédication d'émigrés italiens qui revenaient dans leur pays après avoir connu la nouvelle foi dans ces lieux d'émigration. Ce détail, uni au refus des lourdes structures ecclésiastiques qui caractérise les pentecôtistes, a créé des communautés très autonomes, liées aux différentes traditions. Mais elles ont prouvé, en peu d'années, leur grande force de prosélytisme. La composition sociale des communautés pentecôtistes était tout aussi particulière: elles étaient formées, en majorité, par les rangs les plus pauvres de la population, surtout des paysans du Sud de l'Italie.

C'est pour son prosélytisme que le mouvement pentecôtiste fut combattu par l'Eglise catholique. Et, sous le régime fasciste, le culte pentecôtiste fut interdit en 1935 par une circulaire ministérielle, en raison de ses pratiques extatiques, dangereuses pour le développement de la race... L'extravagance de l'interdiction d'un culte par une circulaire s'explique par le système législatif de l'époque: chaque acte de culte était interdit, sans la présence d'un ministre de culte muni de l'"approbation" de l'autorité. Et les pentecôtistes n'avaient point de ministres munis d'une telle approbation; donc, leurs cultes étaient en principe interdits, et la circulaire Buffarini - Guidi (du nom du signataire) en confirmait seulement le principe.

Mais plus étrange encore fut la suite de l'histoire des pentecôtistes: pendant l'occupation de l'Italie par les forces armées alliées, ils sont sortis de la clandestinité, et aussi grâce à l'aide de leurs confrères qui étaient aumôniers dans l'armée américaine. Mais les nouveaux gouvernements italiens de l'après-guerre ont confirmé la circulaire Buffarini-Guidi et l'interdiction du culte pentecôtiste est restée en vigueur jusqu'à l'année 1955 (3).

Cette véritable persécution eut pour résultat de contraindre les pentecôtistes italiens, en dépit de leur ecclésiologie, à s'organiser en une "association" nationale — les *Assemblées de Dieu en Italie*

(3) L'interdiction d'actes de culte sans la présence d'un ministre de culte muni de l'approbation a été déclaré contraire à la Constitution — pour toutes les confessions — par la Cour Constitutionnelle quelques années plus tard (arrêt n° 59 du 1958).

(ADI), créées en 1947 selon le modèle de l'organisation américaine du même nom — qui rassemble la plupart des communautés italiennes. La personnalité juridique des ADI comme institut de culte fut reconnue par l'Etat en 1959 et en 1986 cette organisation a signé une entente avec l'Etat: elle est donc maintenant une des "confessions" qui ont un rapport bilatéral avec l'Etat.

C'est compréhensible, si l'on regarde l'histoire des pentecôtistes italiens, que la formation des ADI n'ait pas trouvé d'accord général. Il existe plusieurs communautés pentecôtistes qui ne sont pas membres des ADI: elles restent quelque fois isolées, selon la tradition; ou bien font partie d'une autre organisation, au niveau local ou national. Trois organisations pentecôtistes, autres que les ADI, ont la personnalité juridique en tant qu'organisations de culte:

— Movimento evangelico internazionale "Fiumi di potenza" (reconnu en 1971);

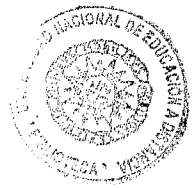
— Congregazione cristiana evangelica italiana (reconnue en 1976);

— Chiesa cristiana evangelica missionaria pentecostale (reconnue en 1988):

1.3. *Les Témoins de Jéhovah*

Les *Témoins de Jéhovah* sont originaires d'un mouvement ("Etudiants de la Bible") créé aux Etats Unis dans les Eglises adventistes. Ce mouvement prévoyait la fin du monde pour l'année 1914. Mais, pendant l'entre-deux-guerres, ce mouvement a évolué vers une organisation autonome, séparée des adventistes, et caractérisée, entre autre, par le millénarisme et le pacifisme radical. Pendant ces années, la diffusion en Italie d'une semblable religion ne pouvait qu'être clandestine. Les rapports de police durant la deuxième guerre mondiale parlent d'Etudiants de la Bible comme d'une dérivation du mouvement pentecôtiste: c'est — sur le plan théorique — une faute historique, mais il est vraisemblable qu'un mélange parmi des groupes clandestins et persécutés se soit en effet vérifié.

Après la guerre, les Témoins de Jéhovah ont formé leur organisation nationale: la *Congregazione cristiana dei testimoni di Geova*. Mais leur opposition à plusieurs aspects de la vie collective — du service militaire à la transfusion de sang — fut la cause, ou l'une des causes, des nombreux délais dans leurs relations avec l'Etat: quinze ans ont été nécessaires pour reconnaître la *Congregazione* en tant que corps juridique étranger (de 1951 à 1976); dix ans de plus pour reconnaître la personnalité juridique en tant qu'organisation de culte, ce qui s'est conclu par une décision du Conseil d'Etat de grande importance (1986); encore onze ans pour entamer les négociations avec l'Etat pour une entente (printemps 1997).



L'objection de conscience des Témoins de Jéhovah au service militaire et à la transfusion de sang sera examinée aux paragraphes 3.1 et 3.2. On peut ici souligner l'importance d'une éventuelle entente avec cette confession: comme pour les pentecôtistes, elle serait la conclusion de plusieurs années de difficultés pour ses membres, mais aussi pour l'Etat. On doute cependant que l'entente soit facile, sans apporter des modifications essentielles au niveau des lois et dans l'attitude de la confession (modifications, qui heureusement semblent en train de se développer).

Il faut aussi rappeler que, dès la centralisation du mouvement des Etudiants de la Bible, il y eut des formations qui ne s'identifiaient point dans les Témoins de Jéhovah, tout en ayant la même origine. Deux Eglises de cette catégorie ont la personnalité juridique en tant qu'institutions de culte. Il s'agit de:

— *Chiesa cristiana millenarista* (personnalité juridique reconnue en 1979), dont l'origine est "presque italienne": cette Eglise s'est créée aux Etats Unis parmi les émigrés italiens et elle est aujourd'hui active surtout en Italie;

— *Chiesa del Regno di Dio* (personnalité juridique reconnue en 1988), a une origine suisse.

1.4. *Les autres mouvements*

Les pentecôtistes et les Témoins de Jéhovah sont considérés comme les deux mouvements religieux qui, après l'Eglise catholique, comptent le plus de membres *italiens*. Mais au cours des

dernières années, la deuxième religion *en Italie* est devenue certainement l'Islam. La différence s'explique par le fait que l'Islam est surtout la religion de l'immigration, régulière ou clandestine: c'est pour l'Italie une expérience récente. Aussi l'Islam doit donc être considéré comme un "nouveau mouvement" pour l'Italie (4).

Il est très difficile de chiffrer l'importance des différents cultes: le dernier recensement qui a cherché de le faire concernant cette matière remonte à l'année 1931. Plus récemment, des questions sur les choix religieux de chacun n'ont plus été posées (et la nouvelle loi sur la protection des données, en conformité avec les orientements internationaux, considère les données sur la religion comme "sensibles"). On estime environ 300 000 Témoins de Jéhovah, à peine inférieur est le nombre de pentecôtistes (la plupart sont des membres des ADI), un million de musulmans (dont quelques milliers sont citoyens italiens). On peut y ajouter environ 30 000 juifs, moins de 100 000 protestants des Eglises traditionnelles (vaudois, baptistes, luthériens, adventistes etc.) et quelques dizaines de milliers pour les autres "nouveaux mouvements".

Ici, le problème n'est pas seulement le nombre des membres, mais il est aussi difficile de mettre en évidence les mouvements effectivement actifs en Italie. Selon une parution récente "le ministère de l'Intérieur, qui a compétence traditionnelle sur les affaires des cultes, ne possède pas une vision complète des confessions religieuses en Italie... Ceci peut sembler paradoxal mais les informations plus vastes et à jour... sont recueillies et analysées par des centres de documentation liés à l'Eglise catholique. Le problème est que la nature de ces centres porte à concentrer l'attention sur certains groupes religieux (ceux qui suscitent le plus de soucis pastoraux dans l'Eglise catholique) et à en laisser d'autres dans l'ombre" (5).

Selon cet infaillible indicateur de la force de prosélytisme des nouveaux mouvements, qui est l'attention de l'Eglise catholique,

(4) Une organisation islamique, le CENTRO ISLAMICO CULTURALE D'ITALIA a la personnalité juridique en tant qu'organisation de culte à partir de 1974.

(5) FERRARI-VARNIER (éd.), *Le minoranze religiose in Italia,* Cinisello Balsamo, 1997, p. 6.

elle était concentrée au XIX siècle sur les Eglises protestantes traditionnelles (vaudois, baptistes, méthodistes); à la moitié du XX siècle, sur les pentecôtistes; aujourd'hui, le danger provient des Témoins de Jéhovah et de Scientology. On a déjà décrit le premier mouvement. Scientology est en Italie depuis plus de vingt ans (au début connue sous le nom de Dianetics) et elle fait l'objet de plusieurs poursuites judiciaires: c'est le seul mouvement dont la légitimité et même la nature religieuse sont en cause. Nous en parlerons au paragraphe 3.3 de ce rapport. Il nous suffit de préciser ici que les Italiens concernés par les activités de Scientology sont plus de 30 000, selon l'organisation, et un peu moins selon le ministère de l'Intérieur; tandis que les pentecôtistes et les Témoins de Jéhovah sont nombreux parmi les classes populaires, Scientology — ainsi que les mouvements d'origine orientale — se propage plus parmi la bourgeoisie.

Scientology n'a jamais obtenu de reconnaissance administrative d'aucune forme par l'Etat italien. Mais, au contraire de ce qu'il se passait avant la Constitution (et avant les interventions de la Cour constitutionnelle), ça ne comporte pas l'automatique illégitimité du mouvement et de ses activités.

La personnalité juridique en tant qu'institut de culte a été récemment reconnue à deux organisations d'origine différente de celles jusqu' ici mentionnées (6): l'*Unione buddista italiana* (bouddhistes) en 1991, et l'*Ente patrimoniale della Chiesa di Gesù Cristo dei Santi degli ultimi giorni* (mormons) en 1993. De même, en 1997 l'Union bouddhiste a été admise à entamer les négociations avec l'Etat pour une entente. C'est une nouveauté de grande importance: ce sont des mouvements tout à fait récents pour l'Italie et certainement non-traditionnels. L'éventuelle entente avec les bouddhistes serait la première avec une religion hors de la tradition judaïque — chrétienne; et aussi avec une religion dépourvue de plusieurs caractéristiques considérées essentielles pour une "religion": des ministres de culte au culte même et aussi à la "divinité", au moins dans le sens le plus traditionnel.

(6) Une autre religion non-traditionnelle avait obtenu la même position juridique en 1966: les Baha'ís (*Assemblea spirituale nazionale dei baha'i d'Italia*).

Ces décisions administratives et politiques sont, en tout cas, un témoignage de l'importance de ces deux mouvements en Italie. En dehors des certitudes fournies par les délibérés administratifs, des dizaines de petits mouvements religieux sont actifs en Italie. Dans le tableau suivant sont répertoriés les nouveaux mouvements connus en Italie et qui ne sont pas décrits ailleurs dans le texte de ce rapport.

Mouvements Religieux connus en Italie (7)

Christian Science	Società teosofica
Società antroposofica	Chiesa dell'Unificazione (Sun Myung Moon)
Famiglia d'amore (Bambini di Dio)	Silva Mind Control
Vita Universale	New Age
Sri Aurobindo	Sathya Sai Baba
Hare Krishna (ISKCON)	Babaji (Paramahansa Yogananda)
World Plan Executive Council	Bhagwan Rajneesh
Ananda Marga	3HO (Sikh Darma)
Nichiren Shoshu — Soka Gakkai	Oomoto
Sufi	Damanhur
Mouvements "extraterrestres"	Cultes "sataniques"

1.5. *Quelques remarques*

Il faut donc constater qu'aucun nouveau mouvement religieux d'importance est né en Italie dans la période considérée (au cours du dernier siècle) (8). Il y a eu, naturellement, des divisions de mouvements "naissants" et on exposa la pluralité d'entités pentecôtistes ou dérivées des Etudiants de la Bible. Mais ce ne sont pas des mouvements absolument nouveaux et d'origine italienne.

(7) De Ferrari-Varnier (éd.), *Le minoranze religiose in Italia,* cité, p. 169 ss. On ne mentionne pas dans le tableau les mouvements illustrés dans le texte.

(8) En général, les pays catholiques sont moins sensibles aux nouveaux mouvements religieux. Voir Iban I. C., *Nuovi movimenti religiosi: problemi giuridici* (Ferrari S., éd, *Diritti dell'uomo e libertà dei gruppi religiosi,* cit., p. 85).

L'Eglise catholique a connu de graves crises, surtout au moment de l'unification nationale, qui a été réalisée contre l'Eglise et le pouvoir des papes. Mais aussi plus récemment des particuliers et des communautés catholiques ont refusé pour différentes raisons l'autorité disciplinaire de l'Eglise, en s'organisant de façon autonome. Ceci peut s'expliquer par des contrastes sur les prises de positions "politiques" de l'Eglise (par exemple: "à gauche" certains catholiques soutiennent les lois sur le divorce ou l'avortement; "à droite" d'autres catholiques refusent tout contact avec d'autres religions); ou par de simples questions locales, comme le refus de l'évêque de reconnaître des miracles... Mais ces contrastes (qui en général ne sont pas d'ordre théologique, mais plutôt d'ordre disciplinaire) n'ont jamais contribué à la formation d'une Eglise ou d'un mouvement religieux vraiment alternatif à l'Eglise catholique (9).

De même, parmi les Eglises protestantes italiennes, on peut difficilement parler de "dissémination". On ne constate pas, au moins pendant ce siècle, de schismes ou la naissance de nouveaux mouvements "du côté" d'une autre Eglise. Au contraire, depuis l'après-guerre un ralliement est en train de se former parmi les Eglises "historiques": ce ralliement a commencé par l'unification des deux différentes branches *méthodistes* et *baptistes* (pour les uns et les autres, il y a avait une branche d'origine anglaise et une d'origine américaine); après le deuxième Congrès évangélique italien en 1965, a été formée la Fédération des Eglises évangéliques italiennes, par les deux Eglises susmentionnées, les vaudois, les luthériens, l'Armée du Salut et autres petites formations, aussi d'origine pentecôtiste; pendant les années '70, vaudois et méthodistes se sont "intégrés" (un seul synode et un seul corps pastoral, mais dénominations séparées). Une évolution similaire se développe avec les baptistes.

Au contraire, on peut constater que, sans être une dérivation de

(9) La seule exception, avec les Eglises libres, déjà mentionnées, est la communauté fondée par Davide Lazzeretti (tué en 1878 en Toscane pendant une manifestation religieuse) et encore en activité sous le nom de "Chiesa giurisdavidica".

l'Eglise vaudoise, plusieurs mouvements ont développé leur premier centre (ou un des premiers centres) dans les Vallées vaudoises du Piémont, la seule petite partie de l'Italie à majorité non-catholique: il s'agit des baptistes, des adventistes, de l'Armée du Salut, des pentecôtistes, des Témoins de Jéhovah, et récemment des bouddhistes. Peut-on en conclure une prédisposition de la population de ces lieux aux nouveautés religieuses? Les vaudois ont offert volontièrement leur l'hospitalité (et souvent des pasteurs et des administrateurs) aux Eglises les plus proches. Mais aussi les autres mouvements religieux ont vraisemblablement préféré commencer leur activité dans cette partie d'Italie où le catholicisme était le moins fort (et les bureaux administratifs de l'Etat étaient peut-être plus enclins à comprendre de nouvelles organisations).

2. Deuxième partie: la position constitutionnelle et législative

2.1. *Définition*

La définition "nuovi movimenti religiosi" est, en italien, une simple traduction des termes utilisés dans d'autres pays. Elle est maintenant acceptée dans la langue courante, et préférée à certains mots comme "sectes", dont la connotation est négative. Mais elle "est fort loin de l'exactitude et de la précision" (10) et surtout, quoique acceptable pour une description historique ou sociologique, n'est aucunement reconnue par le droit italien. La Constitution prévoit:

— l'Eglise catholique (art. 7);

— les (autres) "confessions religieuses" (art. 8);

— les associations ou institutions qui ont finalité "de religion ou de culte" (art. 20).

On peut y ajouter les "cultes admis dans l'Etat" prévus par une loi de 1929, encore partiellement en vigueur. Donc, dans le droit italien, aucune définition de "mouvement" n'existe. Et la qualité de "nouveau" n'est d'aucune importance juridique: une "confession"

(10) Ferrari S., *Introduzione (Diritti dell'uomo e libertà dei gruppi religiosi*, Padova 1989, p.4).

ou association religieuse nouvelle a les mêmes droits qu'une plus ancienne. La théorie que seulement une formation religieuse instaurée depuis longtemps dans la tradition italienne pouvait être considéré une "confession" a été abandonnée, car la Constitution ne prévoit une telle limitation (11). On va constater que l'administration de l'Etat et la magistrature prennent parfois en considération l'enracinement d'une confession, surtout pour estimer son importance. Mais on a déjà vu que des confessions "nouvelles" — apparues au XX siècle — ont une "entente" avec l'Etat, tandis que ces confessions plus anciennes non.

Face à ces contradictions, plusieurs efforts afin de "traduire" ces termes dans le langage juridique italien ont été accomplis. Mais en général, les définitions proposées font perdre la caractéristique de "nouveauté" (sans relief pour la loi italienne, mais composante essentielle de la définition acceptée sur le plan international).

Ainsi on a proposé de parler, au lieu de "nouveaux mouvements religieux", de *cultes*, selon la traditionnelle définition de la législation italienne (12). Mais cette définition exacte peut aussi comprendre les Eglises traditionnelles; et, si en italien le mot *culti* n'a aucune connotation négative, l'équivalent comporte, au moins en anglais, les mêmes problèmes que le mot "sectes".

On a encore proposé de substituer la définition "nouveaux mouvements religieux" par "minorités religieuses" (13), une expression bien connue dans le domaine du droit international. Mais en Italie, on a pu rabattre que — tout en considérant que les articles de la Constitution dédiés à l'Eglise catholique et aux autres confessions sont différents (articles 7 et 8) — les règles sont considérablement les mêmes; et que donc "la situation italienne ne peut pas être décrite comme une opposition d'une confession majoritaire et de plusieurs minorités religieuses" (14).

(11) Finocchiaro F., *Art. 8 (Commentario alla Costituzione a cura di G. Branca. Principi fondamentali,* Bologna-Roma 1975, p. 387).

(12) Margiotta Broglio F., *Riflessioni critiche* (Parlato-Varnier, éd., *Normativa ed organizzazione delle minoranze confessionali in Italia,* Torino 1992, p. 279).

(13) Ferrari S., *Introduzione,* cit., p. 6. Voir *ibidem,* p. 3, pour des précisions sur le mot *culte*.

(14) Pizzorusso A., *Libertà religiosa e confessioni di minoranza,* QDPE, 1997, p. 53.

La définition "nouveaux mouvements religieux" et sa traduction italienne sont désormais d'usage courant. Faute d'une traduction exacte dans le langage juridique italien, il faut considérer quelle forme légale les nouveaux mouvements religieux peuvent prendre selon la législation italienne.

2.2. *Les formes d'organisation*

Il faut, en premier lieu, préciser qu'un mouvement religieux n'a aucune nécessité de se doter d'une organisation. L'art. 19 de la Constitution prévoit le droit de professer sa foi en forme individuelle ou associée et d'en pratiquer le culte en privé ou en public. C'est un droit individuel, mais qui prévoit aussi la profession de foi collective et des rites communautaires. Aucune obligation, comme la nécessité d'avoir un ministre de culte "approuvé", n'est plus en vigueur. Selon la jurisprudence (voir 2.4) et aussi la pratique administrative récente, il n'y a pas besoin d'une organisation permanente pour prier, prêcher, pratiquer des rites (pourvu qu'ils ne soient pas contraires aux bons moeurs, précise l'art. 20 de la Constitution). Des groupes qui, selon leur doctrine, ne disposent d'aucune organisation sont connus, et parfaitement légitimes.

Se doter d'une forme juridique est donc un choix du mouvement religieux lui-même: par exemple, à l'intérieur du mouvement pentecôtiste italien, ce choix a provoqué des querelles et des scissions. Mais il s'agit d'un choix nécessaire pour acheter un lieu de culte, recevoir des donations et des successions. La forme la plus simple prévue par la loi est l'*association non reconnue* (art. 36-38 du Code civil): la Constitution n'exige aucune formalité et, comme la définition le comporte, il n'y aucune reconnaissance par l'Etat. Mais les prérogatives de ces associations sont faibles: surtout, elles ne peuvent pas accepter de donations ou de successions. La plupart des groupes religieux cherche donc à acquérir la personnalité juridique.

2.3. *Les "cultes admis"*

La loi du 24 juin 1929, n° 1159 sur les "cultes admis dans l'Etat" est encore en vigueur pour tous, sauf pour les confessions qui ont

une entente avec l'Etat (et naturellement l'Eglise catholique). Elle prévoit (art. 2) qu' "aux instituts de cultes autres que la religion de l'Etat peut être reconnue la personnalité morale" (15). Cette disposition mérite quelques explications. L'interprétation constante — raisonnable, mais à vrai dire contraire au texte de la loi — fut que la personnalité peut être reconnue seulement à une institution pour chaque culte. Avant la loi de 1929 il n'y avait aucune différence parmi les corps morals de culte et les autres, et donc il y avait des cultes avec plusieurs institutions dotées de personnalité juridique. Pareillement, les ententes signées après 1984 offrent la possibilité d'obtenir la personnalité juridique pour des institutions ultérieures de chaque confession. Donc, certaines confessions ont une pluralité de sujets avec personnalité juridique (pour taire naturellement l'Eglise catholique), tandis que les autres n'en ont qu'une (ou aucune).

Deuxième remarque: la possibilité pour un mouvement religieux d'obtenir la personnalité juridique en tant que corps moral "normal" (association ou fondation) est seulement théorique. En premier lieu, aux cultes doit être appliquée la disposition citée ci-dessus; en outre, la procédure est semblable, tandis que les prérogatives des personnes juridiques de culte sont supérieures et donc la reconnaissance d'après la loi de 1929 est fort préférable;

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(15) Les instituts reconnus d'après cette disposition sont 17, la plupart déjà cités dans la première partie de ce rapport: Chiesa ortodossa russa in Roma (1929); Comunità armena dei fedeli di rito armeno georgiano (1956); Ente patrimoniale dell'Unione cristiana evangelica battista d'Italia (1961); Chiesa evangelica luterana in Italia (1961); Chiesa ortodossa russa a San Remo (1966); Fondazione dell'Assemblea spirituale nazionale dei Baha'í d'Italia (1966); Movimento evangelico internazionale Fiumi di Potenza (1971); Centro islamico culturale d'Italia (1974); Congregazione cristiana evangelica italiana (1976); Chiesa di Cristo di Milano (1977); Ente patrimoniale dell'Unione italiana delle Chiese cristiane avventiste del 7° giorno (1979); Chiesa cristiana millenarista (1979); Assemblee di Dio in Italia (1981); Congregazione cristiana dei testimoni di Geova (1986); Chiesa del regno di Dio (1988); Chiesa cristiana evangelica missionaria pentecostale (1988); Unione buddista italiana (1991); Ente patrimoniale della Chiesa di Gesù Cristo dei santi degli ultimi giorni (1993). Voir Botta R., *Codice di diritto ecclesiastico,* Torino 1997, p. 607, note 2. Il faut aussi rappeler que d'autres organisations religieuses ont obtenu la personnalité juridique dès avant le 1929 ou aussi dès avant l'unité nationale.

enfin, une association ou fondation n'a aucune possibilité d'arriver à une entente, couronnement naturel de toute la procédure.

A ce propos, il convient de dire qu'en théorie la reconnaissance de la personnalité juridique n'est pas une condition pour entamer la négociation avec l'Etat. Mais il est bien compréhensible que la première suggestion aux confessions qui réclament une entente soit de se faire reconnaitre d'abord la personnalité juridique d'après la loi en vigueur.

Une autre possibilité d'obtenir la capacité juridique est prévue pour les confessions d'origine étrangère; celles-ci, comme nous l'avons vu, constituent la presque totalité des nouveaux mouvements. L'art. 16 des dispositions préliminaires du Code civil est valable pour toute personne juridique étrangère: l'étranger — et aussi les personnes juridiques étrangères — est admis aux mêmes droits civils du citoyen, s'il y a réciprocité. De façon analogue, mais sans ambiguités pour ce qui concerne la réciprocité et la formelle intégration des personnes juridiques de "finalités religieuses", les confessions d'origine américaine sont garanties par le traité d'amitié avec les Etats Unis (ratifié par l'Italie en 1949). Cette disposition a eu une grande importance pour protéger la liberté des ces confessions pendant les années '50, la condition des minorités étant difficile. Plus tard, une étrange modification s'est produite: les deux dispositions citées — et surtout le traité avec les Etats Unis — ont été interprétées équivalentes à la loi de 1929. L'administration de l'Etat attestait la qualité de personne juridique sous régime de réciprocité — après une procédure analogue à celle prévue pour les "cultes admis" — et reconnaissait à ces personnes juridiques les mêmes prérogatives (en premier lieu fiscales). C'était une pratique étrange, justifiée peut-être par (et qui en même temps donnait justification à) la grande prudence dans la reconnaissance de nouveaux "cultes admis". Entre 1984 et 1988, plusieurs décisions du Conseil d'Etat et du ministère des Finances ont changé cette situation: les personnes juridiques étrangères ont personnalité juridique en Italie, sous condition de réciprocité, mais elles ne sont pas considérées "instituts de culte". La reconnaissance est presque automatique, sans les longues et difficiles procédures prévues pour

les cultes: mais elles n'ont pas les bénéfices, surtout fiscaux, des personnes juridiques de culte (16).

La procédure pour la reconnaissance de la personnalité juridique d'après la loi du 1929 prévoit plusieurs phases, dont les plus importantes sont la recherche par le ministère de l'Intérieur — qui concerne les statuts et leur compatibilité avec l'organisation juridique italienne, les reconnaissances italiennes et étrangères, le nombre de communautés et de membres, la consistance financière, etc. — et l'avis du Conseil d'Etat. La reconnaissance est enfin affirmée par un décret du Président de la République (17).

La jurisprudence du Conseil d'Etat fut modifiée au cours ces dernières années. L'avis le plus significatif date de 1986 et concerne les Témoins de Jéhovah (18). Après une interruption de la procédure, afin de rassembler des informations ultérieures sur la position de cette confession en matière de service militaire obligatoire et de droit — devoir de vote, le Conseil a affirmé que les responsabilités pénales des individus n'impliquent pas l'illégitimité de l'association, qui ne semble pas avoir comme finalité celle de commettre des crimes ou d'inciter à les commettre. Au contraire, la légitimité de l'association n'exclut point la responsabilité pénale personnelle pour les crimes commis par des membres de l'association. La condition pour la reconnaissance, objet de l'avis du Conseil d'Etat, n'est pas la compatibilité de la doctrine ou de l'idéologie de la confession avec la législation italienne, mais seulement celui du statut — c'est à dire de l'organisation de la confession — avec l'organisation générale de l'Etat.

Les principes pour la reconnaissance — et donc la liste des renseignements à acquérir par le ministère l'informé — sont mis encore en évidence par un avis du 1992 (19): légitimité des finalités;

(16) Pour plus d'informations et pour la liste des personnes juridiques étrangères reconnues en Italie en régime de réciprocité (trop longue pour la reproduire ici) nous renvoyons à Long G., *Le confessioni religiose "diverse dalla cattolica"*, Bologna 1991, p. 262 et note 12.

(17) Cette procédure pourrait être modifiée et simplifiée, d'après la récente loi n° 127 de 1997 (voir en particulier l'art. 17, c. 26).

(18) Cons. Stato, Sez. I, Parere 30 juillet 1986, n. 1390, QDPE, 1986, p. 509.

(19) Cons. Stato, Sez. I, Parere 7 octobre 1992, n. 2330, QDPE, 1993, p. 942. D'autres informations concernant cet avis seront cités au paragraphe 3.4.

nombre de membres; importance du patrimoine; compatibilité de l'acte constitutif et du statut avec l'organisation juridique italienne et la législation sur les personnes juridiques. A vrai dire, le Conseil d'Etat ne se limite parfois pas aux principes cités ci-dessus. Un avis du 1994, suspendant la décision sur la reconnaissance de l'*International Church of Foursquare Gospel*, un mouvement pentecôtiste d'origine brésilienne, fut critiqué pour avoir soutenu l'impossibilité de poursuivre les finalités statutaires (20). Cet épisode illustre aussi un problème fondamental de la procédure: la reconnaissance n'a pas été refusée, mais l'avis a été suspendu. Cette pratique est courante: la plupart des demandes n'arrive même pas jusqu'au Conseil d'Etat. Aucune demande n'est rejetée, ce qui permettrait un recours à la justice administrative (21); donc, il n'y a pas de véritable jurisprudence sur la reconnaissance des confessions, hors des avis du Conseil d'Etat.

2.4. *La "loi fondée sur ententes"*

L'art. 8 de la Constitution établit l'"égale liberté" de toutes les confessions religieuses. Les confessions "autres que la catholique" ont le droit de s'organiser selon leurs statuts et "leur rapports avec l'Etat sont réglés par une loi, fondée sur ententes avec les représentances respectives".

Cette disposition fut appliquée pour la première fois en 1984, quelques jours seulement après la signature du Concordat revu avec l'Eglise catholique. Dès lors, six lois fondées sur ententes ont été approuvées (et quelques unes ensuite modifiées), notamment, avec:

— la *Tavola valdese,* représentante des Eglises vaudoises et méthodistes (entente et loi 1984),

— l'*Unione italiana delle Chiese avventiste del 7° giorno* (entente 1986, loi 1988);

— les *Assemblee di Dio in Italia* (entente 1986, loi 1988);

(20) Cons. Stato, Sez. I, Parere 29 août 1994, n. 2393, QDPE, 1995, p. 998. Pour les critiques, formulées pendant un séminaire du CESEN (Milan, 23 juin 1995), voir la note de MANTINEO A., QDPE, 1995, p. 1029.

(21) FERRARI S. - VARNIER G. B., *Introduzione (Le minoranze religiose in Italia,* cit., p. 10).

— l'*Unione delle Comunità ebraiche italiane* (entente 1987, loi 1989);

— l'*Unione cristiana evangelica battista d'Italia* (entente 1993, loi 1995);

— la *Chiesa evangelica luterana in Italia* (entente 1993, loi 1995).

Comme nous avons déjà signalé, des négociations ont cours avec les Témoins de Jéhovah et avec l'Union bouddhiste.

L'entente, c'est à dire le rapport bilatéral avec l'Etat, représente le plus haut degré de "consolidation" d'une confession et donc elle ne semble pas du domaine des nouveaux mouvements religieux. Cependant, il convient de remarquer une fois de plus l'importance des ententes — ou négociations — avec certaines confessions de récente apparition en Italie et qui furent pour le moins entravées pendant longtemps.

L'"âge des ententes" a néanmoins eu des conséquences négatives pour les confessions sans entente. Simultanément au nouveau Concordat et aux ententes, beaucoup de lois "générales" ont impliqué des avantages pour les confessions religieuses: détaxes, financements, facilités administratives. Les raisons en sont nombreuses; il suffit d'en citer une ici: certains avantages réservés à l'Eglise de l'Etat ont été généralisés dans le nouveau contexte. Mais une préoccupation nouvelle fut d'éviter que trop de sujets puissent avoir accès à de telles facilités. Aussi la déjà mentionnée "dégradation" des personnes juridiques étrangères — quoique fondée sur des bonnes raisons — est un témoignage de cette préoccupation. Pendant un certain temps, la solution de la législation, surtout régionale, fut de réserver les avantages à l'Eglise catholique et aux confessions "dont les rapports avec l'Etat sont réglés par loi fondée sur une entente".

Cette formule a été déclaré contraire à la Constitution par un arrêt de grande importance de la Cour constitutionnelle (22). La motivation est fondée sur deux principes: la laïcité de l'Etat (ce mot n'est pas utilisé par la Constitution, mais la Cour a affirmé le

(22) Corte costituzionale, 19-27 avril 1993, n° 195, QDPE, 1993, p. 693. Le recours était des Témoins de Jéhovah contre une loi de la région Abruzzo concernant le financement des bâtiments pour le culte.

principe dans plusieurs décisions, surtout en matière d'enseignement de la religion) et l'égalité. Cette égalité doit être considérée — plus qu'en rapport aux confessions — comme droit de tous les membres des diverses religions d'obtenir de l'Etat les facilités prévues par une loi générale. Il en est de même pour les membres d'une confession "sans entente", mais aussi pour les membres d'une religion qui ne dispose d'aucune organisation. Exclure une confession d'une disposition générale à cause de sa position juridique est donc contraire à la Constitution. La Cour précise que ce n'est pas suffisant, pour obtenir des privilèges, que le demandeur déclare d'être une confession religieuse. *Nulla quaestio* s'il s'agit d'une confession avec entente. Faute d'entente, la nature de confession pourra résulter aussi par de précédentes reconnaissances publiques, par le statut qui en exprime avec clarté les caractères, ou en tout cas par la considération commune".

Cette décision a certainement changé le cours de la législation qui semblait orienté vers une fermeture du nombre des confessions privilégiées par les pouvoirs publics. Elle a, d'autre part, décentralisé les rapports des groupes religieux avec l'administration. La décision d'entamer des négociations avec une confession est un acte politique du gouvernement national. L'arrêt de la Cour prévoit que, au lieu de vérifier seulement l'existence d'une entente, l'admission aux avantages soit subordonnée à la présence *in loco* de la confession. Donc, le rôle de l'autorité locale est notable, d'autant plus si l'on considère l'évolution de l'Italie vers le fédéralisme.

Pour les minorités religieuses, en particulier pour les nouveaux mouvements, cela signifie avoir plus de possibilités d'obtenir une forme de reconnaissance. Et l'affirmation de la Cour, citée ci-dessus, semble impliquer qu'une "précédente reconnaissance publique" puisse aussi provenir d'une administration publique autre que l'Etat.

2.5. *Confessions et organisations non-profit*

Au moment de la rédaction de ce rapport, l'Italie n'a pas encore de législation organique sur les organisations *non-profit*. La loi budgétaire 1997 (votée en décembre 1996) a délégué au gouvernement la réalisation d'une nouvelle loi. La loi n'est pas encore en vigueur, et le texte définitif — qui doit paraître le 30 novembre 1997 — n'est pas connu.

Nombreux sont les débats, et le gouvernement est en train de consulter toutes les organisations intéressées, y comprises les confessions. Selon les informations disponibles, l'un des points en doute est justement la position des organisations religieuses. Il y a eu à ce propos des changements entre les différents projets qui ont été rendus publics. La loi est fondée sur l'individuation de deux catégories:

— les organisations non lucratives (*non commerciali; non profit*). Les organisations religieuses en font certainement partie. A l'intérieur de cette catégorie, il y a la nouvelle catégorie:

— les Organisations Non Lucratives d'Utilité Sociale (ONLUS). Les ONLUS vont avoir plus d'avantages que les simples organisations non lucratives; et en effet la définition "ONLUS" est plus analytique que "*non-profit*", car l'absence de finalité lucrative doit être unie à l'exercice de certaines activités sociales, qui seront formellement indiquées par la loi. On peut déjà dire que la finalité de religion ne sera pas comprise parmi ces activités (d'après le texte de la loi budgétaire), mais le problème est si elle sera de quelque façon que ce soit comparable à ces dernières.

En attendant cette nouvelle loi, on peut souligner ici que les avantages des confessions religieuses sont motivées, entre autre, par leur nature non lucrative. En effet, les confessions mêmes sont, pour la législation italienne, les premières organisations *non-profit*, si l'on considère que, dans le protocole du novembre 1984 avec l'Eglise catholique (voir l'article 16 de la loi 20 mai 1985, n° 222) et dans toutes les ententes suivantes avec d'autres confessions il est précisé que la finalité de religion et de culte est autre que la finalité lucrative (23).

D'autre part, cette précision signifie aussi que, dans la législa-

(23) Feliciani G., *Organizzazioni "non profit" ed enti confessionali,* QDPE, 1997, p. 14. La législation sur les "cultes admis" (Décret royal 28 février 1939, n. 289) comparait le but de culte aux finalités d'instruction et de bienfaisance. *Ante litteram*, c'étaient des finalités *non-profit.* Cette disposition est encore en vigueur.

tion bilatérale avec les confessions, pas toutes les activités d'une confessions et de ses organisations sont considérées avoir finalité de culte ou, en tout cas, *non-profit.* Donc, une confession ou une organisation religieuse peut aussi déployer des activités lucratives et être soumise à la législation fiscale prévue pour ces dernières activités.

On ne peut pas encore dire si la nouvelle loi concernant les organisations *non-profit* va être plus ou moins favorable pour les nouveaux mouvements religieux. Les organisations religieuses "reconnues" seront considerées *non-profit*; tandis que la nature des autres pourra être témoignée d'après l'arrêt n° 195 de 1993 de la Cour constitutionnelle (voir 2.4). Mais seulement la pratique dira si le classement en tant qu'organisation *non-profit* sera une alternative réelle à la longue procédure de reconnaissance. Ou si, au contraire, la reconnaissance en tant que personne juridique de culte sera une condition préalable pour avoir les avantages des organisations *non-profit.*

2.6. *Perspectives de réforme*

Les nouveaux mouvements religieux ("sectes" pour leurs ennemis) n'ont pas suscité en Italie, au moins au niveau des institutions, l'attention un peu frénétique qui caractérisa d'autres pays. Ce désintéressement contraste singulièrement avec l'importance annexée à la question par l'Eglise catholique, surtout suite au rapport de 1986, qui poussait les Etats à intervenir contre les sectes (24), position qui s'est modifiée par la suite.

En Italie, il n'y a donc pas d'enquêtes parlementaires, de projets de loi sur les sectes ou d'animés débats à analyser. La seule exception fut concernant un "recensement des sectes" annoncé à la presse par le ministre de l'Intérieur Coronas le 29 décembre 1995. Le ministre parlait de "366 dénominations, groupes ou mouvements déjà recensés" (25). Les résultats de ce recensement n'ont jamais été rendus publics. Tout porte à croire que ce recensement eut les mêmes problèmes que certaines enquêtes parlementaires d'autres pays. En effet, c'est chose difficile de discerner un groupe "nouveau" d'une organisation qui, tout en maintenant son propre nom, fait partie d'une confession déjà connue, "reconnue" et qui a peut-être signé une entente avec l'Etat! Un semblable recensement — mais défini modestement "liste" — a été publié, il y a quelques années (26): la liste est formée par 172 "confessions": les Eglises traditionnelles (sauf la catholique), des nouveaux mouvements, mais aussi des associations interconfessionnelles et des dizaines de communautés locales pentecôtistes ou orthodoxes. Une liste semblable est de grande utilité, car il s'agit de sujets indépendants du point de vue juridique (la plupart sans personnalité juridique). Mais il est fort contestable de considérer 172 confessions différentes, ou pire 172 "religions" différentes. On peut supposer que le recensement des 366 groupes connut des problèmes de même nature.

Quelques mois après l'annonce du recensement, le 3 mai 1996, le ministère de l'Intérieur envoya à la Présidence du conseil des ministres un avant-projet de loi sur les confessions et associations religieuses (27). Il prévoyait l'obligation pour toutes les confessions et associations religieuses — sauf les organisations de l'Eglise catholique et des confessions qui ont une entente ou qui ont obtenu la reconnaissance juridique par l'Etat — de communiquer au ministère de l'Intérieur: dénomination et siège; noms des responsables et des membres des organes de direction; éventuel statut ou informations sur les principes et les pratiques religieuses.

On a souligné que l'avant-projet de loi semble s'être inspiré de la Résolution du Parlement européen du 22 mai 1984, mais ne considère point d'autres actes des organisations internationales qui recommandent la liberté religieuse et la tolérance (28). Mais pire

(24) Voir Tedeschi M., *I nuovi movimenti religiosi in Italia. Problemi giuridici* (Ferrari S., éd, *Diritti dell'uomo e libertà dei gruppi religiosi,* cit., p. 248) et la bibliographie citée *ibidem.*

(25) Accattoli L., *Stato e confessioni religiose: 1995, cronaca di un anno*, QDPE, 1995, p. 338. Voir *ibidem* les réactions favorable de certaines organisations catholiques.

(26) *Elenco delle confessioni religiose note in Italia,* QDPE, 1987, p. 83.

(27) QDPE, 1996, p. 533.

(28) Casuscelli G., *Libertà religiosa e confessioni di minoranza. Tre indicazioni operative*, p. 79.

encore, il grince avec l'art. 20 de la Constitution, qui interdit "des spéciales limitations législatives et des spéciales charges fiscales" pour la Constitution, la capacité et l'activité d'une association ou fondation à cause de son caractère ecclésiastique et de sa finalité de religion ou de culte.

L'avant-projet, transmis à la Présidence exactement au moment du changement de législature et de gouvernement, donna au nouveau Président du conseil des ministres Prodi l'occasion de se montrer conciliant avec les minorités religieuses, très préoccupées par cette initiative. Il opposa à l'avant projet une fin de non recevoir, et le projet n'a jamais été examiné par le conseil des ministres.

Il fut plus difficile pour le gouvernement de prendre une décision concernant un autre projet de loi, sur la liberté religieuse. Il s'agit d'une ancienne initiative: déjà en 1990 le conseil des ministres avait approuvé un projet analogue, qui n'avait jamais été présenté au Parlement. Cet ancien projet avait provoqué le soulevement des differentes confessions — avec ou sans entente — car l'"âge des ententes" semblait révolu par l'adoption d'une loi générale, destinée à régler les confessions sans entente (et aussi à se démettre de quelque obligation prévue par les ententes).

Ensuite, il y a eu des gouvernements qui ont à nouveau étudié le projet de loi concernant la liberté religieuse, d'autres qui ont préféré le chemin des ententes (surtout le gouvernement Amato, qui en 1993 signa deux nouvelles ententes). Le choix du gouvernement Prodi (juin 1997) fut balancé: présenter le projet de loi — modifié — au Parlement (29) et en même temps ouvrir les négociations pour deux ententes "difficiles" avec les Témoins de Jéhovah et avec les bouddhistes.

Le projet de loi ne concerne pas seulement les nouveaux mouvements religieux, mais il cherche à aborder certains problèmes de ces mouvements. Souvent le projet veut réaliser dans la loi des choix déjà confirmés dans la pratique ou la jurisprudence. Ainsi (art. 4) le projet fixe à 14 ans l'âge pour les choix autonomes des mineurs en matière de religion et prescrit que les parents ont le

(29) Camera dei deputati, XIII legislatura, disegno di legge n° 3947, presentato il 3 luglio 1997, *Norme sulla libertà religiosa e abrogazione della legislazione sui culti ammessi.*

droit de former leurs enfants en accord avec leur foi ou croyance, mais dans le respect de la personnalité et sans mettre en danger la santé des mineurs. L'art. 6 affirme le droit d'adhérer à une confession et d'en sortir, sans subir discriminations ou ennuis.

Le problème de la reconnaissance est abordé par la prévision de la "personnalité juridique de la confession" (ou de son corps représentatif). La procédure est semblable à celle en vigueur pour les "cultes admis"; mais les droits reconnus aux confessions avec personnalité juridique sont à peu près les mêmes des confessions qui ont une entente: assistance spirituelle, célébration de mariages reconnus par l'Etat, accès aux écoles publiques, sans y avoir un enseignement spécifique; détaxation des dons (mais la participation à la division d'une partie de l'entrée de l'impôt sur les revenus est réservée à l'Eglise catholique et aux confessions avec entente). Enfin, le projet indique la procédure pour nouvelles ententes et donne une explication importante: la loi ne va pas modifier les ententes existantes, ni préjudicier les ententes futures.

Le but du projet est évident: sans restreindre la possibilité d'ententes, en généraliser l'acquis pour éviter la pression des groupes religieux afin d'obtenir une entente spécifique. D'autre part, la nouvelle loi va abroger une législation sur les cultes admis qui, bien qu'inoffensive d'après les arrêts de la Cour constitutionnelle, reste peu favorable aux minorités.

En ce qui concerne les nouveaux mouvements, le projet va introduire des limites à leur "excès", mais ne semble pas faciliter le chemin pour obtenir la reconnaissance. Au contraire, les nouveaux mouvements religieux peuvent espérer obtenir des avantages de la décentralisation en cours.

3. Troisième partie: problèmes juridiques relatifs aux nouveaux mouvements

3.1. *Objection de conscience*

L'objection de conscience a connu en Italie (et ailleurs) plusieurs transformations: *une* objection (au service militaire) est devenue un "droit" général, avec une pluralité de formes. Et de

problème typique des minorités religieuses, surtout des nouveaux mouvements, elle est devenue un problème plus général, ainsi qu'au moins une forme d'objection de conscience reconnue par la loi est, au contraire, typiquement catholique, c'est à dire liée à l'Eglise majoritaire.

Des cas d'objection de conscience au service militaire se sont vérifié pendant la première guerre mondiale. Les pionniers étaient des adventistes, avec des objecteurs plus "politiques" (anarchistes, socialistes humanitaires). Mais c'est seulement grâce à l'expansion des Témoins de Jéhovah qu'on a pu enregistrer une importante quantité d'objecteurs. Le refus du service militaire a causé plusieurs condamnations des membres de cette confession; ils ont toujours formé la majorité des prisonniers pour cette raison (avec quelques catholiques, radicaux et autres). En 1972, une nouvelle loi sur l'objection de conscience a permis un service civil (qui était à l'époque plus long que le service militaire; maintenant il a la même durée) pour les conscrits contraires à l'usage des armes pour des raisons "religieuses ou philosophiques ou morales".

Cette loi voulait résoudre le problème de l'objection. Cela a été possible pour les autres objecteurs: la loi — et surtout les modifications plus favorables des années récentes — ont augmenté fortement le nombre d'objecteurs. Mais pour les Témoins de Jéhovah, la situation ne s'est pas améliorée, car les Témoins de Jéhovah refusent tout aussi bien le service civil (30): remplacer le service militaire par le service civil — pour eux — serait comme accepter l'obligation du service militaire... Sans apporter de jugement à cette motivation, on peut constater que la loi sur l'objection de conscience voulait — selon les déclarations des parlementaires qui l'avaient proposée — justement résoudre le problème des Témoins de Jéhovah. Et ce malentendu est éclairé par la difficulté de compréhension parmi cette confession et la culture politique, aussi

(30) Au contraire, l'entente avec les Eglises adventistes prévoit que les adventistes soient assignés automatiquement au service civil, seuls qu'ils déclarent cette qualification (les autres candidats à l'objection doivent expliquer les raisons de leur contrariété à l'usage des armes).

bien disposée vers la deuxième confession italienne en tant que nombre de membres.

L'objection de conscience pour les pratiques médicales (en particulier transfusions de sang) est aussi liée aux Témoins de Jéhovah. Cette question est plutôt considérée du point de vue de la protection des mineurs et nous en parlerons dans le paragraphe 3.2. Il faut constater ici que, comme pour le service militaire, le problème s'est accru: il n'est plus aujourd'hui seulement le fait de motivations religieuses, mais aussi une opposition aux vaccinations obligatoires pour des raisons "scientifiques". Beaucoup de propositions de loi au Parlement soutiennent la possibilité d'éviter des vaccinations par une déclaration des parents, en les remplaçant par des pratiques plus naturelles. Est-il question d'objection de conscience ou simplement d'opposition à une (retenue) mauvaise loi? Certainement, la solution proposée est caractéristique de l'objection, courante pour résoudre tant de problèmes sociaux.

Une autre raison d'objection de conscience est prévue par la loi, concernant l'interruption volontaire de grossesse (loi 22 mai 1978, n° 194, art. 9): le personnel sanitaire est en droit de ne pas participer aux avortements. Comme déjà souligné, cette forme d'objection est typiquement catholique et a été soutenue directement par l'Eglise: un autre témoignage de la diffusion du "droit d'objection" (31).

3.2. *Protection des individus et des mineurs*

La législation italienne connaissait jusqu'en 1981 un crime particulier, dénommé "plagio". Ce crime, qui était toujours qualifié de "fort rare" prévoyait l'assujettissement total d'une personne, du point de vue moral ou psychologique (enlèvement, séquestration, esclavage étaient, et restent, des crimes à part). Il fut abrogé en 1981, après une intervention de la Cour constitutionnelle. Paradoxalement, la nécessité de cette disposition fut soutenue surtout après son abrogation, en tant que protection de la personnalité

(31) Bertolino R., *L'obiezione di coscienza moderna. Per una fondazione costituzionale del diritto di obiezione*, Torino 1994. L'objection de conscience à la vivisection animale est de même reconnue en Italie par la loi du 12 octobre 1993, n° 413.

individuelle à l'intérieur des groupes sociaux et en tant que limite aux excès des nouveaux mouvements religieux (32). Mais il s'agit d'opinions isolées: en général, tout en soulignant les problèmes apportés par quelque "nouveau culte", on estime que la législation suffit (33). En effet, l'expérience du "plagio", bien qu'antérieure à la diffusion des nouveaux mouvements, est significative. Les très rares applications de ce crime ont toujours suscité des polémiques, sans porter à aucun jugement significatif: s'il n'y a pas de violence ou d'évidents abus, comment discerner "l'assujettissement" d'une conversion ou bien d'une toquade (le "plagio" était parfois invoqué pour des liaisons sentimentales ou sexuelles...).

Comme exemple de l'application des lois existantes pour la protection des "membres repentis" de nouveaux mouvements — surtout pour les crimes d'escroquerie et d'extorsion — on peut mentionner les procès faits contre Scientology. On verra au paragraphe suivant que le problème majeur est la nature de l'association, mais plusieurs jugements ont établi l'illégalité des méthodes utilisées. Certes, la protection des individus n'est pas toujours satisfaisante; et la formation des associations nationales pour l'entraide des "émigrés" (anciens membres) des Témoins de Jéhovah et récemment de Scientology témoigne ces difficultés.

Un problème en particulier concerne la protection des mineurs et l'objection de conscience des Témoins de Jéhovah à certaines pratiques sanitaires (transfusions de sang). Depuis longtemps, la jurisprudence s'est orientée vers l'émission d'ordonnances pour soumettre le mineur à la transfusion contre l'avis de ses parents. En règle générale, l'ordonnance était acceptée par ces derniers afin de résoudre — selon une publication officielle des Témoins de Jéhovah — "le conflit entre différentes loyautés, se soumettant en présence d'un ordre formel de *César*" (34). Un cas de non — acceptation fut à l'origine de l'"affaire Oneda", qui éclata en 1980. Une enfant, devant se soumettre à la transfusion pour ordre du

(32) Coppi F., *Plagio (Enciclopedia del diritto,* XXXIII, Milano 1983, p. 932).

(33) Voir, par exemple, la "table ronde" *Trasformazioni del sacro, secolarizzazione, nuovi movimenti religiosi*, QDPE, 1987, p. 9.

(34) Associazione europea dei testimoni di Geova per la tutela della libertà religiosa, *Intolleranza religiosa alle soglie del Duemila,* Roma 1990, p. 130.

Tribunal des mineurs, était morte, sans la transfusion. Le Tribunal de Cagliari jugea ses parents coupables de meurtre volontaire sans circonstances atténuantes (14 ans de prison). La Cour d'appel confirma la décision, mais en déclarant des circonstances atténuantes pour "raisons morales" (10 ans). La Cour de cassation annula le jugement et une nouvelle Cour d'appel a finalement décidé d'en écarter l'homicide volontaire (3 ans et 8 mois). Pendant les 7 ans de durée de l'affaire, l'opinion fut divisée en deux prises de position différentes: la protection de la vie des mineurs, mise en danger par les choix des parents, et la tolérance, remise en question par la dureté du premier jugement.

Comme pour l'objection de conscience au service militaire, le problème des Témoins de Jéhovah est toujours présent concernant la transfusion. Mais il est maintenant moins significatif, car les progrès de la médecine (et le danger du SIDA) ont fait diminuer la quantité des transfusions (35).

3.3. *Nouveaux mouvements et loi pénale*

La seule organisation "religieuse" en Italie dont la légitimité même soit remise en cause — à part pour les "cultes sataniques" absolument marginaux — concerne Scientologie (ou Scientology; voir 1.4). Le problème, encore posé, est le même dans plusieurs pays, car l'organisation de Scientology est internationale. En Italie, les premières enquêtes judiciaires remontent au milieu des années '80: en décembre 1986 les instituts Dianetics et Narconon (le nom de Scientology n'avait pas encore été utilisé) furent fermés par la magistrature de Milan, qui dans une ordonnance de 1988 les assimilait, plus qu'à des organisations religieuses, à des sociétés secrètes (36). Cette hypothèse n'a plus été avancée. Au contraire,

(35) Sur l'évolution de la jurisprudence: Hübler Petroncelli F., *Libertà religiosa e diritto alla salute (Scritti Gismondi,* II/1, Milano 1991, p. 165; Dogliotti M., *Potestà dei genitori, vaccinazioni obbligatorie, procedimento ex art. 333 c.c.,* Il diritto di famiglia, 1993, 2, p. 578; Giovetti G., *Le opzioni di coscienza degli incapaci naturali (a proposito del rifiuto delle trasfusioni di sangue)*, QDPE, 1996, p. 893.

(36) Trib. pen. Milano, ord. 3 octobre 1988, QDPE, 1989, I, p. 344. Voir *ibidem* Trib. pen. Bolzano, 23 janvier 1989, n° 41, mentionné ensuite dans le texte.

pendant les années suivantes, plusieurs décisions de la magistrature criminelle ou des commissions tributaires reconnaissaient la nature "religieuse" de Scientology et des ses centres Dianetics ou Narconon. En même temps, ces décisions condamnaient souvent des membres de Scientology pour des crimes "individuels", tel que l'escroquerie ou l'extorsion (par exemple, le Tribunal de Bolzano en 1989; son arrêt a été confirmé par la Cour d'appel de Trento en 1990 (37) en ce qui concerne la nature religieuse, et modifié pour les responsabilités individuelles). La ligne de conduite était donc semblable à ce qu'on a vu pour le Conseil d'Etat à propos des Témoins de Jéhovah: les membres d'une organisation religieuse peuvent commettre des crimes, mais cela n'influence point la nature religieuse de l'association.

Cette jurisprudence semblait se confirmer, sans avoir été cependant jamais soumise à la Cour de cassation. Mais le débat fut ouvert à nouveau par des autres décisions de la magistrature de Milan (où se trouve le siège central de Scientology en Italie). En 1991, le Tribunal de Milan rendait un arrêt sur la procédure ouverte en 1986 — et d'autres qui suivirent — conforme à la jurisprudence indiquée: Scientology et ses centres ne sont pas une association criminelle; il y a eu des membres de Scientology qui ont commis des crimes (escroquerie), sans aucune responsabilité des présidents et vice-présidents de Scientology et des centres. Mais le parquet et le ministère des Finances — pour les aspects fiscaux — faisaient appel et la Cour d'appel en 1993 renversa le jugement. Selon la Cour, la nature religieuse de Scientology n'est d'aucune importance: les idées de Hubbard (le fondateur) sont protégées par la loi, mais la véritable finalité de Scientology en Italie est de gagner de l'argent. Les premiers centres de Dianetics étaient légitimes. Mais — à partir de 1981 au moins — la finalité de l'organisation fut changée, de telle façon qu'il s'agit à présent d'une association criminelle; donc, les cadres de Scientology et de ses centres sont tous coupables du crime d'association criminelle, tandis que les responsabilités concernant les crimes spécifiques (escroquerie et, différemment que l'arrêt du Tribunal, aussi extorsion) sont individuelles.

(37) App. pen. Trento, 6 avril 1990, I, n° 95, QDPE, 1990, I, p. 796.

Cette fois, ce fut Scientology à interjeter appel. La Cour de cassation en 1995 (38) a annulé plusieurs parties de l'arrêt de la Cour d'appel, avec de remarquables considérations, valables aussi hors de l'"affaire Scientology". En premier lieu, la nature religieuse de Scientology a beaucoup d'importance: la protection des confessions religieuses et de la liberté de religion est, selon la Constitution italienne, supérieure par rapport à la protection de la liberté de pensée. Donc, le juge ne peut pas s'abstenir, il doit se prononcer sur la nature de confession religieuse d'une organisation; aucune précision n'est indiquée dans les lois, mais l'arrêt n° 195/1993 de la Cour constitutionnelle (voir le paragraphe 2.4 de ce rapport) fournit des éléments, que la Cour d'appel de Milan n'a pas relevé. L'éventuelle nature religieuse de Scientology pourrait exclure les violations fiscales, mais aussi l'association criminelle, car une confession ne peut devenir une association criminelle "sauf si tous les membres de l'Eglise, d'accord, aient changé leur statut et créé une nouvelle entité, différente de celle d'origine". Au contraire, il serait bien possible — selon la Cour de cassation — que quelques membres d'une confession forment entre eux une association criminelle, sans modifier la qualité de la confession entière.

Deuxième remarque de la Cour de cassation: la responsabilité automatique des cadres pour des crimes commis par leurs dépendants est exclue aussi pour les administrations ou même pour les organisations terroristes: les cadres de Scientology ne peuvent donc être jugés sans preuves de responsabilité dans des affaires spécifiques. D'autres censures concernent le crime d'extorsion.

Après la cassation (partielle) de son premier arrêt, la Cour d'appel de Milan s'est prononcée par un nouvel arrêt (39). La première décision est confirmée dans sa substance. La Cour, selon l'indication de la Cassation, examine la nature religieuse de Scientology: cette organisation n'a aucune entente avec l'Etat, ni a été reconnue par aucun corps administratif. Il faut pour cela considérer des éléments ultérieurs, c'est à dire la considération sociale: or, selon l'opinion commune, une religion doit avoir l'idée du salut de

(38) Cass. pen., Sez. II, 22 mai 1995, n° 5838, QDPE, 1995, p. 911.
(39) Déposé le 14 fevrier 1997 et encore inédit.

l'âme et du lien avec un Etre transcendant (40), lien que la religion décrit et interprète. Ces caractères manquent dans les statuts de Scientology, qui, d'autre part, s'était présenté en Italie sous le nom de Dianetics comme science psychologique; seulement plus tard — en particulier en 1985 — le terme d'Eglise de Scientology fut adopté. Il s'agit évidemment d'une ruse, déjà adoptée ailleurs, pour obtenir les avantages réservés aux Eglises. Mais les activités de Scientology ne sont pas des rites religieux; ce sont plutôt des pratiques pseudo — médicales, destinées seulement à obtenir de l'argent (et à ne pas le restituer aux "clients" non satisfaits). Tout cela fait partie certainement d'une association criminelle. La Cour affirme ne pas pouvoir indiquer le promoteur de l'association criminelle (évidemment le réseau international de Scientology) mais que certainement c'est "l'organisation même de Scientology, par toutes ses émanations à intégrer une association à finalités criminelles" et que donc "ceux qui ont opéré à l'intérieur de l'organisation pour en atteindre les finalités véritables" ont formé l'association, ce qui est prévu par le Code pénal italien comme crime autonome.

D'abord, ce nouvel arrêt ne semble pas répondre aux censures de la Cour de cassation en ce qui concerne le crime d'association criminelle, contesté à tous les cadres (mais potentiellement à tous les membres actifs) de l'organisation. Quant à la nature religieuse, la Cour d'appel s'est justifiée d'une longue motivation: certainement Scientology n'a pas d'entente et n'est pas "reconnue" par l'Etat. Mais les autres éléments considérés pour définir une "religion" sont à débattre: le lien avec l'Etre transcendant est considéré décisif par une opinion influente. Mais l'Etat italien va définir une entente avec les bouddhistes (il les considère déjà comme "culte"), qui — de ce point de vue — sont aussi éloignés que Scientology des religions européennes traditionnelles.

En tout cas, l'affaire Scientology va être définie encore une fois

(40) L'arrêt fait référence, sans la citer, à une influente position de la doctrine juridique. Concernant l'affirmation qu'une religion, du point de vue historique, est une doctrine fondée sur l'existence d'un Etre transcendant, voir FINOCCHIARO F., *Art. 8*, cit., p. 389. Mais il faut souligner que cette affirmation était dans le contexte, où l'Auteur critiquait les positions les plus restrictives qui parlaient de religions consolidées en Italie.

par la Cour de cassation, qui pourra ainsi donner des précieuses indications sur la nécessité du rapport avec un Etre transcendant pour qualifier une organisation de "religieuse" (41).

3.4. *Mariage et famille*

Le droit de la famille a eu récemment (dès 1970, introduction du divorce) plusieurs modifications. Il n'y a donc pas, pour cette branche de droit, le problème de mettre à jour l'interprétation de lois émanées dans un contexte et une époque différents (comme pour le Code pénal, 1930, ou la loi sur les cultes admis, 1929). Dans le domaine du droit de la famille, les nouveaux mouvements religieux n'ont pas présenté de problèmes importants. Au moins pendant ces dernieres années, la jurisprudence est suffisamment constante dans une interprétation "active" des principes constitutionnels sur l'égalité des cultes. On peut mentionner trois ordre de décisions, en remarquant que dans la presque totalité des arrêts la confession dont on parle est celle des Témoins de Jéhovah:

— le changement de foi religieuse par l'un des époux et sa participation aux rites du nouveau culte est un droit constitutionnel, et ne peut pas être considéré comme une cause coupable de séparation, pourvu qu'elle soit compatible avec les obligations du mariage (42). Cette affirmation est très générale, et peut donner des difficultés dans les cas concrets; mais elle est claire sur le point qu'il n'y a pas de cultes "inférieurs";

— de même, le changement de confession de la mère, à laquelle après la séparation a été confié l'enfant, n'est pas une raison suffisante pour changer cette décision (43);

— le libre choix manifesté par un mineur de participer aux rites ou à l'activité d'une confession, prévaut sur la volonté du père

(41) Après la rédaction de ce rapport, le 22 octobre 1997, la Cour de cassation a déposé son nouvel arrêt, qui a en effet cassé l'arrêt de la Cour d'appel de Milan, entre autre, pour la définition trop restrictive de "confessione religiosa".

(42) Cass. civ. Sez. I, 6 décembre 1989, n. 5397, QDPE, 1990, I, p. 633; Cass. civ., Sez. I, 9 août 1988, n° 4892, QDPE, 1989, I, p. 479.

(43) Trib. minorenni Perugia, decr. 4 juin 1991, QDPE, 1991-92, I, p. 431.

ou de la mère auquel il est confié, membre d'une autre confession (44).

Si ces positions peuvent être considérées acquises, un fantôme apparait, concernant le droit italien de la famille: la polygamie. Le glissement vers la polygamie est dénoncé par qui craint trop d'ouverture vers les nouveaux cultes: une entente avec l'Islam pourrait emporter l'acceptation de ses usages...

A vrai dire, ce problème n'est pas encore apparu avec l'Islam; au contraire, il s'est présenté quand l'Etat a reconnu la personnalité juridique de "Ente patrimoniale della Chiesa di Gesù Cristo dei santi degli ultimi giorni". Selon la ligne de conduite déjà exposée, le Conseil d'Etat a remarqué: "il y a une opinion répandue, selon laquelle la polygamie serait l'un des principes de la doctrine des Mormons. Le Conseil ne peut que confirmer que ce 'principe' ne figure ni dans l'acte constitutif, ni dans le statut. D'éventuels cas qui pourraient se vérifier seraient réglés par la législation étatique en vigueur" (45).

BIBLIOGRAPHIE

INTROVIGNE M., *Le nuove religioni,* Milano 1989.

INTROVIGNE M., *I nuovi culti,* Milano 1990.

LONG G G., *Le confessioni religiose "diverse dalla cattolica,* Bologna 1991.

BOUCHARD G., *Chiese e movimenti evangelici del nostro tempo,* Torino 1992.

PARLATO V.-VARNIER G.B. (éd.), *Normativa e organizzazione delle minoranze confessionali in Italia,* Torino 1992.

FILORAMO G., *Nuovi movimenti religiosi: l'influsso del misticismo orientale (Storia dell'Italia religiosa,* III, Bari 1995).

PARLATO V.-VARNIER G.B. (éd.), *Principio pattizio e realtà religiose minoritarie,* Torino 1995.

PACE E., *Le sette,* Bologna 1997.

FERRARI S.-VARNIER G.B. (éd.), *Le minoranze religiose in Italia,* Cinisello Balsamo 1997.

Revue *Religioni e sette,* GRIS Bologna.

(44) GIARDINA F., *Potestà dei genitori,* Rivista di diritto civile, 1993, II, p. 485, avec indication de jurisprudence.

(45) Cons. Stato, Sez. I, par. 7 octobre 1992, n° 2330, QDPE, 1993, p. 942.

MATHIAS SCHILTZ, ALEXIS PAULY
Luxembourg

LES NOUVEAUX MOUVEMENTS RELIGIEUX AU GRAND-DUCHE DE LUXEMBOURG

RÉSUMÉ: *En guise d'introduction* — 1. *Le paysage religieux au Luxembourg* — a) Les dénominations traditionnelles — b) Les N.M.R. — 2. *Définition juridique des Nouveaux Mouvements Religieux par les lois, les juridictions et la doctrine* — 3. *Des commissions spéciales instituées par le gouvernement ou le Parlement?* — 4. *Quelles structures pour les Nouveaux Mouvements Religieux?* — 5. *Le Financement public des N.M.R.* — 6. *L'objection de conscience* — 7. *La protection des personnes à l'intérieur des N.M.R., la protection des mineurs* — 8. *Les N.M.R. et le droit pénal* — 9. *L'appartenance à un N.M.R. et la situation des personnes particulièrement dans le cadre du droit de la famille* — 10. *Projets relatifs aux activités des N.M.R.*

EN GUISE D'INTRODUCTION

Il est peut-être banal de rappeler que le Luxembourg n'a que 400 000 habitants. Cela limite sérieusement le cadre de notre étude.

Même si les enquêtes statistiques sur l'appartenance religieuse sont interdites par le biais de la législation sur la protection des données informatiques, on peut néanmoins admettre que les adhérents aux Nouveaux Mouvements Religieux (ci-après N.M.R.) sont minoritaires, voire ultraminoritaires, à l'exception des Témoins de Jéhovah surtout présents dans le milieu de l'immigration portugaise.

Le terme N.M.R. appartient à la terminologie sociologique et non juridique.

Il est très difficile d'avoir accès à une jurisprudence rarissime sur la question. La base des données informatiques du Parquet

général ne saisit les jugements et arrêts que depuis une dizaine d'années.

Il est également difficile de dénicher au Mémorial (Journal Officiel, Recueil des Sociétés et Associations) des N.M.R. qui peuvent se targuer d'un but qui ne saute pas directement aux yeux parmi les milliers de sociétés commerciales et d'associations.

La vie des N.M.R. est assez fluctuante, il suffit qu'une personne ou une famille arrive ou parte, et on assiste soit à un changement soit dans certains cas à une disparition du groupe.

Le Luxembourg, havre fiscal, est sûrement un refuge pour certains N.M.R., mais le secret des assurances et des banques permet seulement de faire quelques supputations.

Sans doute certains adhérents gardent une double appartenance (religion traditionnelle et N.M.R.). On a pu parler ainsi du supermarché des religions ou mieux du religieux.

Il est très délicat de décrire la situation, parce que les preuves sont difficiles à établir. Les auteurs de ce rapport se sont souvent astreints à une autolimitation, car ils risqueraient autrement des poursuites pour diffamation ou calomnie devant les juridictions répressives. On ne peut pas écrire sur le mode, "on nous a dit, il semble que, certains ont vu". A ce propos, nous sommes très surpris par l'enquête parlementaire de la Chambre des Représentants de Belgique qui fait état, sans aucun commentaire critique, d'affirmations péremptoires concernant la situation au Grand-Duché (1).

Nous avons voulu également protéger la vie privée de certaines personnes qui dans le contexte assez étroit de notre pays risqueraient d'être reconnues et touchées même par le bais d'une description in abstracto.

Parfois il est difficile de distinguer entre un comportement spécifique d'une personne ou d'un groupe et la constitution d'un N.M.R.

Il est délicat aussi d'analyser certaines attitudes ou certains

(1) Chambre des Représentants de Belgique, Session ordinaire 1996-97, 28 avril 1997, Enquête parlementaire visant à élaborer une politique en vue de lutter contre les pratiques illégales des sectes et le danger qu'elles représentent pour la société et pour les personnes, particulièrement les mineurs d'âge. Rapport fait au nom de la Commission d'enquête par MM. Duquesne et Willems (Partie I), pp. 141 s. et 285 s.

comportements à l'intérieur de dénominations religieuses comme le catholicisme ou les groupes issus de la Réforme. Où se termine un fondamentalisme bon teint et où commence un sectarisme dangereux?

Jusqu'à un passé pas trop éloigné le nom secte pour d'aucuns s'appliquait au Luxembourg à toute croyance ou pratique en dehors de la religion catholique majoritaire.

Il y a lieu cependant de souligner avec force le bon climat actuel d'oecuménisme entre les religions chrétiennes traditionnelles et les rapports respectueux et cordiaux avec le judaïsme. Aussi faut-il clairement distinguer les cultes minoritaires étudiés à notre colloque de Salonique et les N.M.R.

Certains problèmes qu'on attribue aux N.M.R. sont liés à l'art de guérir et dans ce contexte il n'est pas aisé de distinguer les problèmes inhérents aux N.M.R. de ceux relevant de pratiques plus ou moins fantaisistes de l'art de guérir.

Mutatis mutandis on peut avoir la même hésitation à l'égard de certaines questions financières. Et il est encore plus difficile de gérer ce dernier problème, car le secret bancaire est une chose "sacrée" au Luxembourg.

1. Le paysage religieux au Luxembourg

a) *Les dénominations traditionnelles*

Le Luxembourg est un pays à très forte tradition catholique.

Le culte protestant s'y est implanté seulement après 1815, par le biais d'une garnison prussienne installée dans la forteresse de Luxembourg suite aux stipulations du Congrès de Vienne. Par la suite l'Eglise protestante s'est trouvée valorisée par l'appartenance du Roi-Grand-Duc, puis du Grand-Duc à ce culte jusqu'en 1912.

Le culte juif est reconnu au Luxembourg depuis l'époque napoléonienne.

A la suite de la Révolution russe une communauté orthodoxe russe, en rupture avec le Patriarcat de Moscou, s'est établie au Luxembourg. Depuis la fin de la Seconde Guerre Mondiale, des orthodoxes grecs se sont installés au Luxembourg. Leur communauté a grandi par l'arrivée de fonctionnaires européens de natio-

nalité grecque depuis l'entrée de la Grèce dans la Communauté européenne.

L'implantation de nombreuses institutions européennes à Luxembourg est également à l'origine d'une communauté anglicane et de plusieurs communautés appartenant à différentes Eglises de la Réforme.

La communauté juive, qui s'était développée assez fortement depuis le début du XIXe siècle, compte aujourd'hui, malgré les pertes dues à la Shoah, une centaine de familles.

Les statistiques disponibles ne renseignent pas sur l'appartenance religieuse, dès lors que la loi interdit toute question relative à la religion dans les recensements de la population. Nous devons donc, à ce propos, nous contenter d'estimations. Selon une enquête par échantillon de l'institut démoscopique « Ilres » réalisée en octobre 1996, la répartition de la population selon l'appartenance religieuse serait la suivante:

catholiques	88%
protestants et apparentés	1%
autres religions	1%
sans religion	9%
pas de réponse	1%

b) *Les N.M.R.*

Pour les mêmes raisons, il est impossible de fournir des données chiffrées sur la présence des N.M.R. au Luxembourg. Leur multitude et leur variété sont cependant impressionnantes comme il ressort de la liste ci-après qui ne prétend cependant pas être exhaustive:

Parmi les N.R.M. « chrétiens » ou de souche chrétienne nous avons relevé les dénominations suivantes:

— Mennonites (2):
  Eglise évangélique libre (Scheidgen)
  Fräi Evangelesch Kiirch (Dudelange)
— Eglise Adventiste du Septième Jour (3) (Rollingen - Mersch)

(2) Cette dénomination a une très longue histoire.
(3) Même remarque qu'à la note précédente.

— Asemblea de Deus, Igreja Evangelica Portuguesa (Luxembourg - Hollerich)
— Assemblée de Dieu d'Esch-sur-Alzette
— Assemblée de Dieu de Luxembourg (Eglise Evangélique de la Rencontre, Centre Chrétien Evangélique) (Luxembourg-Bonnevoie)
— Luxembourg International Christian Centre (Luxembourg-Bonnevoie et Limpertsberg)
— Effata, Lëtzebuerger Fräi Chrëschtegemeng (Ettelbruck)
— The Christian Community Church Luxembourg (Eglise Evangélique Libre de Luxembourg) (Luxembourg)
— Comunidad Cristiana Espanola (affiliée à Christian Community Church)
— Congrégation chrétienne au Luxembourg (Dalheim)
— Eglise Evangélique Chrischona (Bertrange)
— M.B.I.C. Europe, Friddhaff (Diekirch)
— O Mana, Igreja Crista (Foetz)
— Eglise Universelle du Règne de Dieu (Igreja Universal do Reino de Deus, Communauté Chrétienne du Saint Esprit) (Ettelbruck)
— Vereinigung der apostolischen Gemeinden im Grossherzogtum Luxemburg, (Düdelingen)
— Eglise de Jésus-Christ des Saints des Derniers Jours (Mormons) (Luxembourg)
— Eglise néo-apostolique au Grand-Duché de Luxembourg (env. 1200 membres)
— Témoins de Jéhovah (de loin le groupe le plus important; 1839 proclamateurs en 1995).

Parmi les N.M.R. d'autres origines il faut mentionner en premier lieu les Baha'is, implantés dans les années d'après-guerre, dont le nombre est assez considérable. Mais d'autres groupes, moins importants en nombre, sont forts actifs:

— Les Compagnons de la Rosée (Ordre Martiniste S.I.)
— Glaube und Hoffnung (Melickshaff) (groupe spiritiste d'origine luxembourgeoise)
— Verenegungskiirch (Unification Church International, Moon)

— Fiat Lux
— Méditation Transcendantale
— Sri Chinmoy
— Mahikari
— Scientology.

Il existe en outre plusieurs personnes ou groupes de la mouvance du Nouvel Age. Un certain nombre de personnes pratiquent le Reiki, méthode de guérison par la force vitale universelle, d'origine japonaise et d'inspiration religieuse.

A signaler aussi l'existence de plusieurs groupes satanistes, dont un formé par des adultes, les autres (3 ou 4 au moins) étant des groupes de jeunes.

Des groupes implantés à l'étranger ont quelquefois des activités au Luxembourg. C'est le cas assez régulièrement pour les deux premiers.

— Parole Eternelle, Centre Chrétien (Bruxelles)
— Universelles Leben (Würzburg, par le groupe établi à Trèves)
— Bruno Gröning Freundeskreis (probablement par le groupe de Trèves)
— Paul Esch, pasteur guérisseur
— La Porte Ouverte, Centre d'enseignement Biblique (Bruxelles)
— Raëliens (Dombasle, Meurthe-et-Moselle)
— Unity of Man (Sant Kirpal Singh).

2. Définition juridique des Nouveaux Mouvements Religieux par les lois, les juridictions et la doctrine

La Constitution luxembourgeoise datant de 1848 telle qu'elle a été modifiée par la suite ne touche pas spécifiquement la question des nouveaux mouvements religieux. Il n'existe pas non plus de législation spécifique au sujet de cette question. Nous avions signalé à titre d'exception dans le numéro 0 de la Newsletter, European Consortium for Church-State Research, November 1993 au point 9, "L'article 7, deuxième alinéa de la loi du 10 août 1992 relative à la

protection de la jeunesse se lit ainsi: « En cas de danger grave et immédiat pour la vie ou la santé du mineur, un médecin peut, en cas de refus d'accord des personnes qui ont la garde de l'enfant, prendre toutes mesures d'ordre médical que la situation requiert d'après les règles de l'art médical »" (4) . Cette disposition peut viser notamment les adeptes d'un mouvement religieux qui refuse la transfusion sanguine (5) .

La doctrine récente sur ce point est inexistante. D'ailleurs la doctrine juridique est assez restreinte, il n'existe que trois ou quatre revues juridiques dont la parution est épisodique (la Pasicrisie luxembourgeoise, le Bulletin du Cercle François Laurent, la Feuille de liaison de la Conférence Saint-Yves, le Bulletin des droits de l'Homme et quelques publications exceptionnelles à l'usage pratique des fonctionnaires ou des juristes de banque).

Comme nous l'avons signalé à différentes reprises, au Consortium européen, la jurisprudence est souvent liée à des cas d'espèce qu'il ne faudrait nullement généraliser. Par ailleurs une définition d'un N.M.R. semble difficile, car il n'existe même pas de définition claire et précise de ce qu'est un culte.

Cependant la Constitution protège tous les cultes, reconnus ou non, même si dans la terminologie archaïque du XIXe siècle, c'est l'aspect extérieur de l'exercice qui est particulièrement touché. Le Luxembourg a ratifié la Convention européenne de sauvegarde des droits de l'Homme ainsi que les pactes des Nations Unies de 1966. Les ajouts apportés par le nouvel article 6a du Traité d'Amsterdam ainsi que la déclaration en annexe ne semblent guère opérationnels dans un avenir proche. Le cadre communautaire se prête mal à ce type de questions au stade actuel, le Conseil de l'Europe est peut-être l'enceinte adéquate pour aborder ces questions qui dépassent le cadre de l'Europe des 15. Par ailleurs, le Conseil de l'Europe est le gardien, par excellence, des droits de l'homme.

Certaines dénominations religieuses sont reconnues par le législateur et bénéficient de subventions financières. A ce titre, elles

(4) Mémorial A, n° 70, 25 septembre 1992, 2196.
(5) European Consortium for Church-State Research, Newsletter, November 1993, A. Pauly, *Eglise et Etat au Grand-Duché de Luxembourg en 1992*, page 46.

jouissent d'avantages particuliers par rapport à d'autres dénominations.

3. Des commissions spéciales instituées par le gouvernement ou le Parlement?

La réponse est négative, il est peut-être intéressant de préciser le pourquoi.

L'administration des cultes est réduite. Le secrétaire général du gouvernement s'occupe entre beaucoup d'autres questions des cultes, il est assisté d'un fonctionnaire du cadre moyen pendant une partie de la semaine...

La Chambre des Députés n'a pas créé de commission spéciale au sujet des N.M.R. D'ailleurs, une commission spéciale risquerait à la limite de gêner l'action du Ministère public. Le pouvoir législatif et le pouvoir judiciaire ne peuvent pas utilement se pencher sur la même question, il y aurait nécessairement des conflits de compétence. A la suite d'un certain nombre de questions parlementaires depuis 1990, le gouvernement a bien avoué que le Parquet suivait de près ces questions et a même concédé qu'il existait un, voire deux rapports du Parquet général en la matière à l'intention du ministre de la Justice et du Premier ministre. Pourquoi ces rapports n'ont-ils pas été publiés? Il est clair qu'en matière de police judiciaire, voire même en matière de police administrative, la pratique de la publicité n'est guère habituelle, comme on le voit par exemple dans les discussions autour de Schengen, du troisième pilier de Maastricht, du traité d'Amsterdam...

Il y a des raisons d'efficacité, on n'informe pas des criminels qu'on est en train de surveiller. On invoque la protection des données informatiques qui interdirait de ficher les gens selon leur religion. Soyons clair néanmoins. La loi interdit dans le cadre du S.I.S. (Système Informatique Schengen) et du S.I.E. (Système Informatique Européen) d'inscrire l'appartenance religieuse. Interpol de son côté, en l'absence de toute création par le droit international public, se fonde seulement sur sa pratique et sur sa

déontologie qui, au moins dans le passé, ne brillait guère par son exemplarité et sa transparence.

Par ailleurs, la protection de la vie privée n'est pas garantie de la même façon dans les différents pays de l'Europe des Quinze. Le Luxembourg au confluent de plusieurs traditions n'a guère trouvé sa voie dans ce domaine. Concédons qu'il est plus difficile dans un Etat au milieu de plusieurs voisins puissants de marquer son originalité. Les pressions internationales peuvent être fortes. Cependant ce souci de protection des droits de l'homme cache un problème majeur. Une activité, sous le biais d'une activité religieuse, peut bien cacher des infractions plus ou moins graves. Souvent un acte a, dans ce cas, une double nature. Les auteurs appartiennent peut-être à un N.M.R., les faits incriminés relèvent du droit pénal (exercice illégal de l'art de guérir, infractions fiscales ou financières, association de malfaiteurs ...). Gageons, sans avoir une preuve absolue, que des entorses à la législation sur la protection des données informatiques ou de la protection de la vie privée ne soient pas totalement exclues en pareil cas. A titre d'exemple l'Eglise de Scientologie n'est pas considérée de la même façon selon les Etats (religion, commerce ou association de malfaiteurs?).

Quant aux questions écrites des députés au gouvernement, plusieurs remarques s'imposent.

1. Les députés interrogent tour à tour selon la question ou selon une logique difficile à déceler soit le ministre ayant dans ses attributions les cultes, soit le Premier ministre ex officio, soit le ministre de la Justice, soit encore le ministre de l'Education nationale ou le ministre des Travaux publics...

2. A de très rares exceptions, les questions parlementaires sont critiques à l'égard des N.M.R. et reprochent assez souvent au gouvernement son laxisme. Ce sont surtout les députés socialistes et verts qui viennent à la charge.

3. Les cas invoqués sont souvent des cas d'espèce ne dépassant pas un intérêt particulier très limité. Néanmoins deux préoccupations majeures surgissent. La protection de la Santé publique au Luxembourg et la protection de la réputation du Luxembourg à l'étranger.

A titre d'exemple on peut citer la question de M. Jean Huss (vert) concernant l'Association luxembourgeoise pour la promo-

tion de la science de l'intelligence créatrice et la négation du gouvernement de quelque subvention à cet égard (6).

La question 77 (du 8.11.91) de M. Henri Grethen libéral concerne les comptes bancaires de la secte "Eglise de Scientologie". La réponse du Premier ministre Jacques Santer en date du 18 novembre 1991 mérite l'attention: "Le gouvernement n'a pas l'habitude de prendre position à l'égard d'informations alléguées dans la presse étrangère et concernant des tiers, encore faudrait-il établir que ces allégations correspondent à la vérité? Le secret bancaire en tout cas interdit au gouvernement en dehors de toute activité délictuelle ou criminelle, de faire des investigations à ce sujet". A la question subsidiaire "Ne serait-il pas indiqué de recommander aux banques de la place de renoncer à entrer en relation avec de telles sectes, évitant ainsi de leur offrir une couverture et une honorabilité?", le Premier ministre ajoute: "... je partage le souci de l'honorable député et, en raison de l'absence de toute base légale habilitant le gouvernement à entreprendre une action dans le sens suggéré, je n'ai pas manqué de saisir l'Association des Banques et Banquiers de la demande en question" (7).

La question 244 assez mal formulée en date du 7 février 1992 concernant les sectes au Luxembourg et l'Eglise de la Scientologie amène une réponse en forme de question de la part du Premier ministre en date du 16 mars 1992 précisant cependant in fine: "... L'Eglise de Scientologie ... ne semble pas avoir des activités au Luxembourg" (8). En réponse à la question 429 du 5 mai 1992 sur la même question, le Premier ministre nie la présence au Luxembourg, mais affirme que "la France a présenté une demande d'entraide judiciaire au Luxembourg concernant un compte bancaire ayant été ouvert dans notre pays" (9).

A la question 306 du 9 avril 1993 de M. John Schummer, libéral, concernant la vente de substances médicamenteuses douteuses, le

(6) Compte rendu 1984-1985, p. 2246.
(7) Compte rendu des débats 1991-1992, p. 191.
(8) Compte rendu 1991-1992, p. 355.
(9) Compte rendu 1991-1992, p. 378.

ministre de la Santé répond en date du 23 avril 1993: "... il semblerait donc que les pratiques signalées par l'honorable parlementaire soient préjudiciables au portefeuille du consommateur plutôt qu'à sa santé" (10) .

En réponse à la question 418 du député socialiste, Monsieur di Bartolomeo, le Premier ministre insiste laconiquement "... 2) Les sociétés énumérées dans la question parlementaire sont en règle du point de vue du droit des sociétés. 3) ... Le Service de Police judiciaire a été chargé d'une enquête à propos de la Section dite « les trois Saints Coeurs »" (11).

4. Quelles structures pour les Nouveaux Mouvements Religieux?

Les N.M.R. peuvent d'abord, comme beaucoup d'autres groupes, agir comme des associations de fait. La loi n'oblige pas les N.M.R. de prendre une structure juridique spécifique. Beaucoup de groupes culturels, sportifs et autres n'ont pas de structure juridique propre. Les banques notamment n'exigent pas nécessairement une structure juridique établie pour ouvrir un compte, parfois les communes mêmes accordent des subventions à des associations de fait pour un objet déterminé (par ex. les anciens d'une école communale qui se retrouvent pour fêter un jubilé).

Les syndicats ouvriers en général n'ont pas de structure juridique (12).

Jusqu'à aujourd'hui le Conseil d'Etat refuse aux groupements non constitués d'agir en justice comme personne morale (13). Les N.M.R. peuvent utiliser le cadre des associations sans but lucratif (ASBL), sans autorisation préalable, et des établissements d'utilité publique. Les établissements d'utilité publique reçoivent en général

(10) Compte rendu n° 11/92-93, p. 382.
(11) Pour les affaires ultérieures à 1994 nous renvoyons à notre chronique annuelle dans l'European Journal for Church and State.
(12) Cf. R. Schintgen, *Droit du travail*, Luxembourg, Service Information et Presse du Gouvernement, 1996, page 272-274.
(13) Des exceptions sont prévues par des lois spéciales.

les autorisations nécessaires, le ministère de la Justice exerçant plutôt un contrôle des formalités (capital requis, publications, objet social ou culturel...) sans étudier le fond du problème (14).

5. Le Financement public des N.M.R.

Rien ne s'oppose ni droit ni en fait à ce que les N.M.R. soient subventionnés par les autorités publiques et jouissent des avantages juridiques et financiers des dénominations religieuses ou des associations sans but lucratif.

Rien n'empêche le législateur d'étendre à un autre culte ou à un N.M.R. le bénéfice des avantages des dénominations religieuses traditionnelles. D'ailleurs, en 1982 le législateur a étendu ce bénéfice à une communauté protestante réformée.

Les N.M.R. bénéficient du statut fiscal, parfois favorable, des associations sans but lucratif ou des fondations s'ils ont opté pour ces formes juridiques.

De facto l'Etat ou une commune ont la possibilité de subventionner un N.M.R. d'une façon ou d'une autre. La législation sur les finances est assez souple et sa pratique assez généreuse pour permettre des acrobaties qui, en l'absence d'une véritable Cour des Comptes, ne peuvent guère être censurées.

Il faut signaler que les ministres du culte ou les permanents des N.M.R. ne peuvent bénéficier du statut actuellement très favorable des cultes catholique, protestants ou juif. Les ministres des cultes d'une religion traditionnelle, sans être fonctionnaire stricto sensu, sont assimilés aux fonctionnaires quant au régime des traitements et des pensions.

6. L'objection de conscience

Comme le service militaire obligatoire a été abrogé il y a trente ans, la question a perdu de sa pertinence pour les membres des

(14) Cf. A. Pauly, *Eglises et Etat au Luxembourg*, Thèse Strasbourg, 1987-1988, Tome II, p. 138-185. On y trouve les statuts de N.M.R. de différentes sensibilités et la publication dans le Journal Officiel.

N.M.R. L'article 20 de la Constitution se lit d'ailleurs ainsi: "Nul ne peut être contraint de concourir d'une manière quelconque aux actes et aux cérémonies d'un culte ni d'en observer les jours de repos".

La question est plus délicate lorsqu'il s'agit de défendre un membre d'un N.M.R. contre lui-même, par exemple lorsqu'il refuse des soins. Les médecins ne sont pas totalement désarmés, surtout lorsqu'il s'agit d'enfants mineurs ou d'incapables majeurs. Ainsi l'article 7, deuxième alinéa de la loi du 10 août 1992 relative à la protection de la jeunesse se lit ainsi: "En cas de danger grave et immédiat pour la vie ou la santé du mineur, un médecin peut, en cas de refus des personnes qui ont la garde de l'enfant, prendre toutes mesures d'ordre médical que la situation requiert d'après les règles de l'art médical". Cette disposition peut viser notamment les adeptes d'un mouvement religieux qui refuse la transfusion sanguine (15). Pour les adultes la question est plus délicate même si le Code de déontologie stipule qu'"un médecin qui se trouve en présence d'un malade ou d'un blessé, ou qui est informé qu'un malade ou un blessé est en péril, doit lui porter assistance ou s'assurer qu'il reçoit les soins nécessaires" (article 4).

En principe le médecin informe le Parquet a priori si l'urgence n'est pas absolue, sinon a posteriori, et alors le Ministère public peut enclencher les mesures nécessaires (par ex. mise sous tutelle). Il reste néanmoins un flou juridique et surtout des difficultés pratiques qui peuvent donner lieu à des difficultés majeures dans l'ordonnancement des soins et éventuellement à un contentieux. En l'absence de jurisprudence connue on peut néanmoins supposer que le médecin, en cas de poursuite pénale par un patient, peut compter sur la compréhension du Parquet et éventuellement de la juridiction répressive.

Plus grave est peut-être le fait que l'enfant ou le patient-adulte, est menacé d'exclusion de son groupe religieux, voire de sa famille naturelle.

(15) Mémorial A, n°. 70, 25 septembre 1992, page 2196.

7. La protection des personnes a l'interieur des N.M.R., la protection des mineurs

Il n'y a pas de législation spéciale à ce sujet. En cas d'infractions, c'est le droit général qui s'applique (droit pénal, droit des personnes et de la famille).

Les mineurs jouissent d'une protection particulière, les médecins, les éducateurs peuvent être déliés du secret professionnel. Sur cette problématique nous renvoyons sur la discussion du projet de loi 2557 relatif à la protection de la jeunesse (16).

8. Les N.M.R. et le droit pénal

Il n'y a pas d'incrimination spéciale destinée aux N.M.R. Les articles destinés à protéger les ministres des cultes, et notamment leur costume, pourraient selon l'appréciation des juges s'appliquer soit en faveur, soit en défaveur des N.M.R. Les peines aggravantes infligées aux ministres des cultes et aux éducateurs dans les crimes ou délits envers les mineurs pourraient bien s'appliquer aux responsables des N.M.R.

Une distinction importante s'impose: les infractions commises par un ou plusieurs membres d'un N.M.R. et les infractions commises par un N.M.R. en général. Aucune infraction de ce dernier type nous est connue, mais on pourrait imaginer notamment des infractions fiscales. Le Ministère public peut, en théorie, exiger la dissolution de toute association ou société à la suite d'un procès public contradictoire, mais il y a lieu de signaler qu'on tombe dans le cadre des procédures de droit commun.

La plupart des cas connus tourne autour de l'exercice illégal de la médecine. La solution, le plus souvent à l'amiable, se fait au niveau du Conseil de l'Ordre des Médecins. Le ministre de la Santé

(16) Projet de loi relatif à la délégation et à la déchéance parentale et à la tutelle aux prestations sociales, 1ère lecture, Compte rendu de la Chambre des Députés, Mercredi 14 Mars 1984, 46e séance, notamment col. 2494.

peut refuser le droit d'exercer l'art de guérir ou retirer son autorisation.

Un recours est toujours possible devant les juridictions administratives.

Nous renvoyons à notre article pour le colloque de Tilbourg en ce qui concerne la discussion sur l'opportunité ou non de légiférer en bioéthique ainsi que sur la question des normes juridiques (17). (Décision individuelle par ex. d'un médecin, décision des organes ordinaux et professionnels, lois nationales ou normes internationales). Le problème est d'abord une question d'opportunité, mais elle devient difficilement technique lorsqu'il s'agit de la hiérarchie des normes. Par ailleurs, certaines normes appartiennent à la catégorie du "soft law" en droit international public.

Le cas de l'ange "Albert" occupe de temps en temps la presse et la dame D a été condamnée à une peine d'amende par la Cour d'appel de Luxembourg le 22 avril 1985 (18). Une guérisseuse invoque des liens particuliers avec cet ange. On peut remarquer dans la motivation que les juges d'appel ont retenu seulement l'exercice illégal de l'art de guérir sans entrer dans des considérations sur les sectes, la liberté religieuse... Il appartient au législateur à l'avenir d'être vigilant à chaque fois qu'il prendra des initiatives en matière pénale, familiale, sanitaire, administrative, voire commerciale. Il doit se demander notamment si les actes législatifs pourraient nuire à la liberté religieuse en général, aux N.M.R. en particulier, mais également si des modifications peuvent faciliter des abus de la part de N.M.R.

En attendant, le plus important nous semble une attention particulière du Parquet général et des Parquets d'arrondissements pour veiller à ce que les obligations juridiques des associations de droit et de fait soient observées et éventuellement d'engager des poursuites contre des personnes agissant contre l'Ordre Public.

Le Ministère public est chroniquement surchargé. Il est donc

(17) Code de déontologie des professions de médecin et de médecin dentiste.

(18) Cf. A. Pauly, *Eglises et Etat au Luxembourg*, Thèse Strasbourg, 1987-1988 Tome II, pp. 208-211.

très hypothétique que les problèmes concernant les N.M.R. soient une priorité pour cette autorité.

Comme il n'y a pas de contrôle a priori pour constituer une société commerciale (société anonyme, société à responsabilité limitée, etc.) ainsi qu'une association sans but lucratif, il est extrêmement difficile de juger à la seule lecture des statuts publiés au Mémorial (Journal Officiel) et de voir l'objet exact de l'entité juridique.

Le ministre de la Justice avec son administration restreinte n'applique peut-être pas toujours l'attention nécessaire pour accorder le statut de fondation ou d'établissement d'utilité publique.

La nouvelle juridiction administrative fonctionnant depuis le 1er janvier 1997 et la création d'une Cour constitutionnelle depuis novembre 1997 permettraient peut-être de clarifier certains points litigieux à l'avenir. Il faut néanmoins tempérer l'enthousiasme, car devant les juridictions judiciaires et administratives se posera toujours la délicate question de l'intérêt à agir, condition préalable de toute action juridictionnelle. Par ailleurs, la Cour constitutionnelle ne pourra être saisie qu'à titre de renvoi préjudiciel à l'instar de l'article 177 du traité C.E.

9. L'appartenance à un N.M.R. et la situation des personnes particulièrement dans le cadre du droit de la famille

Comme à la question 7, il nous faut répondre que le droit commun s'applique (19).

Le juge comme les services sociaux gardent dans ce domaine un large pouvoir d'appréciation, même si on peut imaginer en réponse des procédures longues et diverses (Référé civil, appel, cassation, juge des enfants, juge des tutelles).

Aucun cas particulier nous est connu à ce jour par le biais de la doctrine publiée. Mutatis mutandis on peut supposer que le juge applique les mêmes règles pour la garde des enfants et pour leur éducation religieuse que dans une procédure de divorce ordinaire.

(19) Cf. A. Pauly, *Eglise et Etat au Grand-Duché de Luxembourg en 1995*, Revue européenne des relations Eglises-Etat, 1996, Vol. 3, p. 73.

10. Projets relatifs aux activités des N.M.R.

On ne connaît pas de projets officiels et globaux au sujet d'une législation spécifique concernant les N.M.R.

Certains députés, surtout verts ou socialistes, suggèrent au gouvernement de prendre des mesures spécifiques dans l'intérêt de la protection des mineurs ou d'autres personnes plus exposées; d'autres insistent qu'il faut protéger la réputation du pays face à l'étranger.

Le Luxembourg est considéré comme un havre fiscal, on veut éviter qu'il devienne un refuge pour les N.M.R.

Face à l'avalanche des questions écrites des députés, le gouvernement déclare, soit par le biais du ministre des Cultes, soit par celui de la Justice que la Constitution protège le libre exercice de toutes les religions et il affirme que les lois actuelles seraient suffisantes pour endiguer les fraudes ou infractions.

Les deux auteurs de ce rapport se rallient volontiers à l'attitude du gouvernement, car les effets "pervers" ou "à rebours" d'une législation spécifique ne sont pas aisément prévisibles, pour le moment au moins (20).

(20) Les auteurs du présent rapport tiennent à remercier MM. Jean Mathias Godart et Paul Goerens de leur précieux apport.

TOBIAS WITTEVEEN, SOPHIE VAN BIJSTERVELD
University of Tilburg

NEW RELIGIOUS MOVEMENTS AND THE LAW IN THE NETHERLANDS

SUMMARY: 1. *New Religious Movements.* — 1.1. Marginal quantitative significance. — 1.2. Manifestation of a broad social trend. — 1.3. The policy problem. — 2. *Government policy on New Religious Movements.* — 3. *The legal framework.* — 3.1. New Religious Movements and structures of organization. — 3.2. Financial and social framework available to NRMs. — 3.3. Conscientious objection. — 4. *New Religious Movements and public health.* — 4.1. Public health in general. — 4.2. Protection of minors. — 5. *New Religious Movements and family law.* — 6. *New Religious Movements and the criminal law.* — 7. *New Religious Movements in an environment of religious freedom.*

1. NEW RELIGIOUS MOVEMENTS

1.1. *Marginal quantitative significance*

Over the centuries, people have pursued lasting spiritual happiness. This quest has three general manifestations: metaphysical ("super-human"), social ("inter-human") and mystical-introspective ("intro-human"). These have led to a religious diversity to a degree that varied depending on time and place. Today, spiritual multiformity is increasing virtually everywhere. The major religious movements that have influenced our thoughts and beliefs for centuries have lost some of their importance. Moreover, the individual need for new inspiration and standards and for divergent forms of self-expression is growing. A recent report by the Dutch Social and Cultural Planning Board [Sociaal en Cultureel Planbureau (SCP)] aptly illustrates the situation in the Netherlands. The

SCP, which analyses social trends for the government, has noted a progressive decline in the membership of the established churches (membership of the Roman Catholic Church has decreased from 30% to 19% of the Dutch population over the past three decades; membership of Protestant churches has dropped from 31% to 15%, while adherents of Islam and Hinduism, the other two major religious movements, account for less than 4% of the population). Individuals without any religious affiliation are now the largest group. This change does not necessarily signify a declining interest in religion and ideology. Fully 80% of the population is interested in religious matters, albeit often outside a traditional religious setting. Nevertheless, new or alternative religions or ideologies have not attracted massive support. Although approximately 2,000 organizations represent an alternative religion or ideology, their total membership comprises probably only a few tens of thousands of individuals, less than 1% of the population. In addition, 16% of all Dutch people questioned reported that they were searching for an alternative or para-cultural spiritual meaning (1).

1.2. *Manifestation of a broad social trend*

The rise of a broad variety of New Religious Movements (NRMs) (2) reflects a social trend that covers many areas. The phenomenon is related more to individualization and a renewed social interest in today's standards and values. NRMs are but one of many such expressions. Although marginal in quantitative respects, they are rooted in a far broader process of social change. Just as governments and politicians have come to accept this process of change, they perceive the rise of NRMs as one of its manifestations.

This acceptance does not necessarily mean that governments must take a passive view of the emergence and operation of

(1) J.W. Becker, J. de Hart, J. Mens, *Secularisatie en alternatieve zingeving* (SCP), 's-Gravenhage 1997. It must be noted that figures of church membership tend to vary according to the methods of investigation and criteria applied.

(2) In the following, the terms "new religious movements" and "sects" will be used alternately, without the aim of making a factual or emotional distinction.

NRMs. History abounds with forceful government actions against NRMs. The horrifying fates of the sixteenth-century radical sect of the Anabaptists in Amsterdam and Münster and of the Hussites from Tabor in the Czech Republic are well known. The militant religious movements pursued dramatic reform of the social order and were regarded as a serious threat by the authorities. Analysing these and other cases shows that repressive government action against NRMs has occurred chiefly in the following three situations:

1. if NRMs are considered a threat to the state and the social order because of their views and conduct;
2. if NRMs consistently or frequently violate the legal order, or
3. if NRMs seek to reform the religious order of the established church, which is intertwined or identified with the state.

The third situation no longer occurs in today's secular society. As a consequence, the first situation has also become far less common. Nevertheless, situations are conceivable, such as the actions against the Aum Shinrikyo sect in Japan, involving intervention against a sect considered dangerous to the state. Usually, however, current government action against an NRM is motivated by the second situation involving ongoing serious violations of the legal order. Modern political views on the welfare state have led to a new major category of government repression, namely preventive action against NRMs viewed as dangerous or potentially dangerous to citizens. Generally, the political debate about NRMs focuses on the feasibility and desirability of preventive measures.

1.3. *The policy problem*

New religious movements are a hornet's nest, especially for officials and politicians. The heart of the matter appears to be the possible development of a preventive policy against sects. Experiences in many countries show that government officials and politi-

cians struggle with some of this problem's most recalcitrant elements, namely:

a. undisputed assessment of imminent offences that justify preventive government policy;

b. classification and delineation of the heterogeneous category of organizations to be subjected to this preventive policy;

c. development of a policy compatible with the guidelines of all modern states based on the constitutional principle of freedom of religion and the political principle of the separation of church and state.

The policy element is the most important. Once the two obstacles to identification and assessment of offences and legal categorization have been overcome, feasible policy options remain an issue. The central policy issue could be formulated as follows: can a government, after establishing that some sects are harming the interests of citizens under the present circumstances, take general measures to reduce this likelihood without compromising the religious freedom to which all citizens are entitled? The following sections describe the Dutch approach.

2. Government Policy on New Religious Movements

Politicians considering government policy on NRMs are unable to ignore the stigma surrounding NRMs. Their actions are motivated by the supposed danger. Intervention, however, requires identifying the danger's nature and seriousness. It took the Dutch parliamentary committee on NRMs over three years to analyse the threat of NRMs (3). The report, released in 1984, was described by the media as a "study in disillusionment". NRMs were not depicted according to their image in public opinion as sinister organizations driven by a hunger for power and composed largely of children recruited as unresisting victims. Nevertheless, danger was the study's underlying principle: the collective suicide of the

(3) T.A.M. Witteveen, *Overheid en Nieuwe Religieuze Bewegingen*, 's-Gravenhage 1984 (*Kamerstukken* II, 1983-1984, 16 635, nr. 4) [Parliamentary Papers].

People's Temple sect in the jungle in Guyana and The Netherlands' serious concern about active movements, such as Scientology, the Moonies, Hare Krishna and Bhagwan. The commission expressed serious criticism and did not avoid confrontation. The commission also established an objective and sound empirical basis for the recommended policy. Its broad spectrum of orientation included discussions with the anti-sect movement, with leaders, members and former members of the NRMs investigated and with scholars, deprogrammers and families of the NRM members. The commission collected all available information about the early history of the NRMs, their national and international organizational structure and the views, activities and operations of the NRMs concerned, and analysed virtually all relevant international literature on NRMs. It visited the establishments of the movements investigated, contacted Hindu leaders regarding their opinions of movements such as Hare Krishna and Transcendental Meditation, commissioned the Board of Health to survey psychiatric institutions on the number of illnesses arising from NRM membership and the like.

The information clearly portrays the main NRMs in the Netherlands during the early 1980s. The overall picture was diverse but not disconcerting: the research did not corroborate the presumed danger. To the politicians involved, the findings certainly came as a surprise.

The Dutch government has devoted little attention to NRMs since the parliamentary report on NRMs was published. The investigating committee's conclusions met with general support and have since formed the basis for government policy. Although the negative public opinion of NRMs persists, the pressure on politicians to tighten policy is minimal. Media reports focus on the tragedies in California and in the Alps, sporadic incidents in certain religious communities (which are promptly designated as NRMs) and the commotion in several countries about the Scientology Church.

Current policy on NRMs may be summarized from three perspectives, namely the legal position, public health aspects and protection of minors.

3. The Legal Framework

3.1. *New Religious Movements and structures of organization*

In order to explain the legal position of NRMs it must be pointed out that the system of church and state relationships in the Netherlands is qualified as one of separation of church and state (4). This principle is neither mentioned nor defined in the Constitution or in any other legislation. As a principle, however, it is considered to be implied in the Constitution, notably in Articles 6 (freedom of religion or belief), 1 (equal treatment and non-discrimination) and 23 (education).

NRMs are usually associations or foundations governed by private law. No legal (legislative) definition exists of a "church", let alone of a "new religious movement" or "sect". An organization may be qualified as a church if it meets several jurisprudential criteria. According to a Supreme Court ruling of 1946, an organization which (1) establishes a collaborative relationship (2) between people with common religious beliefs, (3) who practise these views and (4) who wish to constitute a church, is, in legal terms, a church (5). In a more recent ruling, the Supreme Court accepted as minimal criteria that there be a "structured organization" and that "religion" is involved (6). In the end, it is the court that decides in a concrete case whether an organization is a church.

The Civil Code states that churches as well as independent units of churches and structures in which they are united are legal entities *sui generis*, to be governed by their own statutes in so far as these do not conflict with the law (7). Unlike the situation for other legal entities such as associations and foundations, no specific

(4) For an impression of the Dutch system of church and state relationships, see S.C. van Bijsterveld, *State and Church in the Netherlands*, in G. Robbers (ed.), *State and Church in the Countries of the European Union*, Baden-Baden 1996.

(5) HR 23 July 1946, NJ 1947, 1. This ruling raised a discussion among legal scholars as to whether this description could actually be seen as a "definition".

(6) HR 31 October 1986, NJ 1987, 173.

(7) Article 2:2 Burgerlijk Wetboek [Civil Code]. The addition mentioned in the following sentence is contained in the second section of this Article.

regulations for a church as a legal entity have been enacted. The Legislature does not require registration of churches. No prior supervision exists. Ordinary legal persons may be dissolved if their purpose or activities violate the law or common decency; churches are a different matter (8). Besides this formal aspect, church status in the Netherlands has less material significance than it has in many other countries of the European Union (9). Churches, — and this is not different for NRMs — pay taxes on economic transactions, receive no public funding and are required to observe general legislation. Schools may be established by NRMs but they must have a minimum enrolment and meet general quality standards to obtain public funding. All staff employed by NRMs are protected by labour legislation unless they voluntarily waive full enforcement of their rights.

3.2. *Financial and social framework available to NRMs*

In the Netherlands, no general financial support of a church through public authorities takes place. In general, this would be regarded as conflicting with the principle of separation of church and state. This does not mean that no financial relations exist at all, although these — modest — ways of support hardly have any significance for NRMs.

This may be the case in the field of ancient monument care. Church monuments, as historic buildings, are mentioned as part of the government's responsibility for the nation's cultural and historical heritage. It is obvious that only churches with historic (church) buildings benefit from this.

An area of direct support is that of pastoral care in institutions such as the armed forces and penal institutions. This support is regarded as a fulfilment of government responsibility in ensuring the free exercise of religion in special circumstances. Specialized ministeries also exist in institutions such as hospitals and homes for

(8) At least, in the case of a church, the matter of dissolution remains undecided.

(9) See G. Robbers (ed.), *State and Church in the European Union*, Baden-Baden 1996.

the elderly. The financing structures of these institutions is complex. Pastoral care is financed using general funds. As NRMs lack the numerical basis in society, the question of support does not occur.

Subsidies are granted by public authorities for a wide range of social activities, ranging from small local initiatives to activities of vital public interest such as health care. Although the possibility remains, these activities are usually not carried out by churches themselves. Moreoften they will be carried out by associations or foundations which may be based on a religion or belief, in which case they will to a greater or lesser extent be affiliated with a certain church. Exclusion of organizations by public authorities on the grounds of their denominational background is not allowed (10). The denominational background, however, may give rise to objective differences in the work performed, which may be taken into account on that basis. Again, although they would not be excluded in principle, NRMs, as a rule, lack the societal standing and organisational structures to take part in these activities. The same is true for participation in other areas of culture and society, such as the mass media and education.

In an indirect way, financial benefits are awarded through tax deductions, which are granted for donations to, amongst others, religious causes. These constructions may have relevance for NRMs.

3.3. *Conscientious objection*

Freedom of conscience is not specifically guaranteed by the Constitution. The Legislature, however, has taken conscientious objections into account in various — well-defined — areas of the law. The most distinct example is that of conscientious objection to military service. The right to conscientious objection against this obligation is based on the 1922 Constitution and further regulated by and according to Act of Parliament. In its initial form, the right was aimed at religious objections. This has been extended to

(10) ARRvS 18 December 1986, AB 1987, 260.

non-religious conscientious objection. As military conscription in fact no longer exists, the practical significance of this provision has diminished.

Traditional areas in which conscientious objection plays a role in the Netherlands concern (methods of) taking a legal oath and obligatory insurances. In both areas, the Legislature has provided for exceptions. As the Supreme Court made clear in one particular insurance case, it is not willing to extend the right of conscientious objection beyond the scope of the Legislature's intent (11).

In 1994, an Act of Parliament came into force concerning conscientious objection in labour relations. The aim of the Act is to forbid dismissal on grounds of conscientious objection. To give substance to this provision, a code of conduct has been formulated, which prescribes how to act in cases of (foreseeable) conscientious objection (12).

The General Equal Treatment Act (enacted in 1994) which forbids (direct as well as indirect) unequal treatment on grounds of religion, belief, political persuasion, race, gender, nationality, sexual orientedness or civil status is relevant to both the public and the private sector (13). Denominational institutions, by way of exception, are allowed to set loyalty criteria which relate to religion and belief.

Prior to the coming into force of this Act, the Court approved the dismissal of the head of a (Catholic) school who had become a member of the Bhagwan community and who wore an orange gown in school (14). In another case, the Central Appeals Court (which deals with social security matters) had to decide whether a state of unemployment was involuntary, a necessary precondition for receiving unemployment benefits. The case concerned an assistant in

(11) HR 13 April 1960, NJ 1960, 436.

(12) See Article 7A:1639s Civil Code [Burgerlijk Wetboek], section 2; and *Gewetensbezwaren in dienstbetrekking*, advies van de Sociaal Economische Raad, 's-Gravenhage 1990; *Nota over gewetensbezwaren in arbeidsrelaties; een leidraad voor ondernemingen*, Stichting van de Arbeid, 's-Gravenhage 1990.

(13) Churches themselves, their independent units and non-religious philosophical organizations, as well as the spiritual office are exempt from the presciptions of the Bill. Denominational institutions are not.

(14) Ktr. Amsterdam 11 February 1983, AB 1983, 277.

a bookshop, who had become a member of the Bhagwan community and who also wore an orange gown to work, as a result of which he was eventually fired. In deciding the matter, the Court considered:

— how serious and well-considered are the beliefs/objections?

— what could the person involved reasonably expect with regard to his position on the labour-market as a result?

— what did the person involved do to prevent as much as possible the consequences of his beliefs/actions? (15)

In cases involving religious conscience, Articles 9 ECHR and 18 CCPR are often invoked just as they are in cases involving (individual exercise of) religious freedom. The Supreme Court tends to be extremely cautious in deciding these cases, both by restrictively interpreting the guaranteed rights and by broadly interpreting the restrictive clauses. In cases pleaded before an administrative court, a more substantial significance was attached to these treaty provisions by the court (16).

4. New Religious Movements and Public Health

4.1. *Public health in general*

Research has shown (17) that NRMs rarely recruit members by force or brainwash them. Membership of an NRM is generally a deliberate choice. There is no evidence to indicate that NRMs cause serious psychological problems among their members. While such problems are common among former members, they are (a) rarely serious, (b) not specific and (c) often attributable either to trouble prior to their membership or to adjustment to the disappearance of the sense of group security and the demands inherent

(15) Cf. J.H. Stellinga, in the annotation to CRvB 23 April 1983, AB 1983, 430.

(16) See Vz.ARRvS 1 May 1981, AB 1982, 28; ARRvS 20 December 1981, AB 1983, 243.

(17) T.A.M. Witteveen, *Overheid en Nieuwe Religieuze Bewegingen*, 's-Gravenhage 1984 (*Kamerstukken* II, 1983-1984, 16 635, nr. 4) [Parliamentary Papers].

in their return to their previous environment. Based on these observations, the Netherlands has little need for precautions, such as registration of NRMs, regulation of recruitment or information campaigns. Special care and treatment facilities for former NRM members are not considered necessary. Actions intended to force members to leave their NRM (deprogramming) are unwarranted and are not to be tolerated. Overall, the government does not believe that the public health urgently requires measures to protect citizens from the supposed danger of NRMs. The same holds true for the specific activities of NRMs concerning alternative healing methods.

4.2. *Protection of minors*

Contrary to frequent assumptions, very few minors belong to NRMs. Most are children of NRM members. Any serious threat to their well-being or development justify intervention on the basis of general child protection laws. Special additional rules for children in NRMs are not considered necessary. If older children wish to join an NRM, they are usually required by the NRM to obtain parental consent as a precaution. Moreover, in our country and in many others, the view prevails that children gradually acquire the right to self-determination as they grow up — including the right to choose a religion different from that of their parents. The research findings show little need for protective measures regarding NRMs that would counteract the social trend toward strengthening the position of children.

5. New Religious Movements and Family Law (18)

A minor who joins an NRM chooses a philosophy of life and thus exercises his right to freedom of religion. This choice may bring him into conflict with his parents. Generally speaking, paren-

(18) See for this topic, T.A.M. Witteveen, *o. c.*, pp. 266-274 and further references mentioned on p. 274.

tal authority is not likely to undo a child's decision. It is generally accepted that the minor can develop himself according to his own insights, in line with the degree of his personal maturity. Only if a minor can not be regarded mature enough to make the decision to join an NRM or in case of undue influence on the side of the NRM, the decision to join an NRM can be succesfully challenged in court. It seems, for that matter, that NRMs tend to prevent parental legal action (19) by explicitly ascertaining parental approval as a precondition for admitting a minor into the NRM or for the performance of juridical acts.

Some minors grow up in NRMs because their parents are members of the NRM. Article 1:245 Civil Code obliges parents to care for and raise their children, but does not prescribe how. There can be reason for concern for the mental and physical well-being of minors if they grow up in NRMs with views and patterns of behaviour which strongly differ from those of mainstream society. The protection of the minor, then lies in the fact that also an NRM is bound by the law. This means, for example, that the minor must be enabled to enroll in education prescribed by law. In extreme situations, child protection measures can be taken, following the legal provisions (supervisionary measures, temporal or definitive relief of parental authority). In these instances, the well-being and development must be seriously threatened.

A situation in which recourse has been taken to child protection measures is that of refusal by parents on religious grounds to allow their child necessary medical treatment (for instance, blood transfusion). Finally, minors growing up in an NRM of which their parents are members, according to the degree of their personal development, have the freedom to leave the NRM and choose another life style and religion.

It happens that parents who strongly disapprove of their child's membership of a NRM try to forcefully withdraw their child from the movement in the interest of the child as they perceive it and

(19) For instance, on the grounds of wilfully withdrawing a minor from the authority legally placed over him (Art. 279, 280 Criminal Code [Wetboek van Strafrecht]) or on the grounds of incapacity to perform legal acts (Art.1:234 Civil Code [Burgerlijk Wetboek]).

try to change the child's view under pressure (deprogramming). This is regarded as conflicting with the right to self-determination of the minor and as an unacceptable form of conduct. Such a line of conduct may be liable to criminal prosecution in so far as the conduct can be qualified as abduction or unauthorised deprivation of someone's freedom. Recently, members of a Dutch family have been prosecuted on these grounds for their efforts to withdraw their child from an NRM.

6. New Religious Movements and the Criminal Law

No specific activities by NRMs or religious organizations or churches in general exist which are defined as criminal under Dutch law. Every person or organization merely falls within the general sphere of ordinary criminal law. Nevertheless, a few provisions in the Criminal Code relate to religion. These are provisions designed to protect religion.

The Criminal Code contains various provisions on blasphemy and expressions hurtful to religious feelings. It penalizes as a major offence various specified forms of public blasphemy (Article 147). Dissemination or possessing blasphemous materials for that purpose is a major offence, too (Article 147a). Convictions are, however, highly unlikely. Public blasphemy in a slightly different form is also penalized as a minor offence (Article 429bis).

Public oral expressions or expressions in writing which are offensive to people on grounds of their religion, belief or race, or which incite hatred against or discrimination of people (Articles 137c-e) constitute a major offence. Convictions on the basis of these Articles do take place.

Civil law suits take place in case of expressions hurtful to (among other things) religious feelings, as well. This area of law is dominated by case law. Courts, in general, attempt to balance the interests of those concerned, taking into account the fundamental principles involved. They usually reach satisfactory conclusions. It must be noted that in civil law suits, expressions may be acknowleged as wrongful vis-à-vis another even if there is be no criminal

conviction. A newspaper advertisement, "Profet or Profiteer" — *NRC-Handelsblad* inevitable for those who seek nuances" which was part of a series of advertisements in which likewise constrasting perspectives were presented, was not regarded wrongful vis-à-vis the Bhagwan community (20).

7. New Religious Movements in an Environment of Religious Freedom

The following general observations should elucidate the Dutch policy. NRMs exist all over the world. Many major international NRMs have branches in the Netherlands. The Dutch population takes the same view as people in other countries: scepticism frequently coincides with concern. Politicians are receptive to such signals. As in the Federal Republic of Germany and elsewhere, serious parliamentary actions have resulted in the Netherlands. Politicians involved in these efforts, however, do not merely interpret public opinion *verbatim*. They need to unearth the social reality behind the polarized conceptualization and to make their administrative decisions as protectors of the constitutional right to religious freedom. The Dutch parliamentary report on NRMs is dedicated to this objective.

The Dutch policy is not characteristically hospitable toward NRMs. It emphasizes that NRMs are not immune to legislation and have the same social obligations as everybody else. Nevertheless, legislation should avoid stigmatizing NRMs. Their scope to manoeuvre relates to freedom of religious expression. They may make improper use of this religious freedom by establishing a restrictive regime or by using religious principles to justify pursuit of far less worthy goals. Fortunately, adequate legal instruments are available to take action against repression. A more extensive answer to the central policy question formulated at the end of Section 1.3, involving the development of a specific preventive policy, would be

(20) Pr.Rb. Amsterdam 20 September 1984, KG 1984, 287.

counter-productive; would achieve a general impact surpassing the objective of discouraging individuals to turn to NRMs; and would therefore be unlikely to restrain this select group.

This policy is not to be construed as administrative indifference. Caution is advisable in the resulting environment of tolerance. By their very nature, NRMs inevitably entail a risk of tragedy, as has materialized in some countries. Surely, risks are easier to recognize in an open and tolerant environment than in one of constraint and condemnation.

MÁRIO F. LAGES (1)
Facultadade de Ciências Humanas, Catholic University, Lisbon

MINORITY RELIGIOUS GROUPS IN PORTUGAL

SUMMARY: 1. *General social conditions of religious affiliation* — 2. *Statistics on Catholic affiliation* — 3. *Statistics on irreligiousness* — 4. *The development of the MRG in Portugal* — 5. *The relative importance of the MRG* — 6. *Conclusion*

The main purpose of this paper is to study, in a sociological perspective, the relative importance and impact on society of the Minority Religious Groups (MRG) existing in Portugal at the end of the twentieth century. In this statement I link my purpose and theoretical paradigm. In fact, my interests concern all religious associations, movements, groups and communities that exist in Portugal in a subordinate condition, in terms of their social and religious integration with Portuguese culture. In other words, I intend to study all the religious groups that do not belong to the Catholic Church. Their common characteristic is that they are not dominant. This makes them share some important traits, not only in sociological but also in psychological terms.

My aim is not entirely identical with what is signified by the expression New Religious Movements (NRM). I think that this expression does not put the subject of the religious groups of non-Catholic Portuguese into a correct perspective. In fact, the expression NRM stresses only the newness of the religious move-

(1) I am grateful to Conselheiro José DE SOUSA E BRITO and to Prof. Peter STILWELL for their comments on this paper.

ment involved, without saying or implying if its position is dominant or subordinate in the whole set of social religious groups. On the contrary, their minority status is related to some ways of positioning themselves in opposition to the main religion, either in doctrinal or practical aspects. Besides, many of their proselytist traits derive from it.

Even if this minority status is not equal for all the religious movements we are going to study, this theoretical stand prevents us from leaving outside the analysis of some of the groups that were established in Portugal a long time ago. I intend to put them together, not because they are alike, but because they have traits that imply common sociological functions.

This is not the only reason for my theoretical stand. The expression NRM can be applied to some Catholic movements, like the Neo-Catechumens, as well as to some groups from other confessions, which makes the question misleading. In fact, the Neo-Catechumens are not an NRM in the way, for instance, the Children of God are. A big difference separates them: one belongs to a dominant church that has a long hand; the other is a minority group controlled by no one. And this fact is important, or, perhaps better, determinant, of the ways they understand themselves and react to other groups, with implications for matters of practice, doctrine and the symbolic order. Because of that, I stress the importance of dominance as a basic sociological criterion for understanding some of the traits of these groups.

One could say that by defining my object as the non-Catholic religious movements I am taking Catholicism as a paradigm of religiosity. It is not so. I simply take Catholicism as the main reference for all the religious groups that operate in Portugal. The present debate on the Law of Religious Freedom and the privileges of the Catholic Church deals indirectly with what I mean: it is because the Catholic Church exists with certain privileges and conditions that we can understand the religious phenomena of the non-dominant movements and groups.

For me it is quite clear that we cannot take the NRM for the MRG, and that the expression MRG is theoretically more correct: it constructs its object according to the ways these religious groups

operate in society. Its core is the difference between power and subordination. On the contrary, a group or movement being new or old is not a sociological criterion of differentiation.

As everyone will accept, some of the most significant concepts for understanding relations between persons, groups and communities are those of power and domination. Because of that, my general contention is that religious movements gain particular social characteristics when they grow under social conditions that make them cultural outcasts, fighting for recognition. This is the reason why I put together all the groups and associations that, for one reason or another, have a minority condition in the Portuguese society.

This goal will be put forward by presenting, first of all, some statistics on religious affiliation (Catholics and Minority Groups) and making commentaries on their meaning. Later on, I will comment on the timing of implantation of MRG and the conditions of these events. The sources for this are mainly official: firstly the censuses, and secondly, a list of the legalised religious groups, held by the Ministry of Justice, with the identification and date of legalisation of each one. To supplement this, I will use some data from the *Prontuário Evangélico*.

The nature of these sources implies that my comments cannot go beyond the institutional aspects conveyed by them. It is clear that, on this basis, I cannot treat sufficiently many functional and structural aspects of the MRG that are important for understanding their impact on Portuguese society. As everybody can see, we are very far from the exploration of the historical roots and theological differences of these groups. No ethical definition, no worldviews or beliefs, no psychological traits will came from this study of the MRG. Of course I am aware of the limitations of this approach as far as the understanding of these movements is concerned. I understand also that this treatment of my subject is rather risky as it gives an imperfect idea of their impact on the lives of many people. Nevertheless, this is a necessary step for understanding the MRG in Portugal and I will stick to it in this paper because it has not been done before.

1. General social conditions of religious affiliation

It is impossible to understand the meaning of religious affiliation in Portugal outside the context of the Catholic Church and its grip on the attitudes, orientations and practices of the Portuguese population. Catholicism, as everyone knows, has been dominant in Portugal for centuries. In many rural populations in the North and the Centre, almost nobody dared to be a Non-Catholic. The social control of the community was so strong that religious practice was taken as constitutive of the community life and as a way of identifying with its ideals.

This led to a religion that was a mixture of practices relating to the Divinity and of social interactions and cultural appropriation of the community ethos. Social solidarity was rooted in rites and relationships that were defined by religious ideas, symbols, meanings and behaviour. Religious festivities were the only break from hard work the whole year round. Together with baptisms, marriages and funerals, they were the main occasions for community banquets, so important for the strengthening of social bonds. Because of that, cultural marginality was mainly based on forms of impiety that were more a question of practice than of belief.

By defining the essential aspects of the Portuguese culture, Catholicism dominated the symbolic forms and traits of its identity. What sometimes seemed to be a subordination of Catholicism to politics, during Salazar's regime, must be understood as a way of stressing the matrix of this common Portuguese culture that happened to be the core of the Estado Novo' s regime.

Religious dissent attained only the urbanised ideological vanguards and those that followed their leadership. We know that the literati, mainly during the XX century, drifted farther and farther from the ancient tradition, not only in religious, but also in general cultural terms. The question of the "estrangeirados" is a recurrent theme in Portuguese culture. It is for us difficult to cope with what comes from the outside: either we are fascinated by it or we reject it entirely. If we read the writings of these literati and the avant-garde, we don't see, of course, the ideological domination of the Catholic Church. Many of them stress the need to distance oneself

from those traditional roots that maimed the true potential of the country. But this is mainly an urban phenomenon.

People living in the country were under the strong influence of the clergy and of the religious organisations of the Catholic Church. In general, they did not rebel against the cultural norms that happened to be also religious. In fact, for a long time, the religious institutions were pervasive of all social relations. They were also the only visible instances of escape from daily work. The political system did not constitute an equivalent counterpart, because it was considered mean and repressive. The rural population had a natural fear of contacts with the State and the police. It avoided them as far as it could. Even the local councils, where they could participate politically, had little impact on the ordinary life of the country people. They seemed alienated from them.

On the other hand, the educational system had little impact on changing general orientations and attitudes. Only the rich, the national bourgeoisie and the landlords, could see their children escape the general condition of illiteracy. Both the political and the educational systems were very fragile during the first half of the century. The learned people were a class by themselves. On the other hand, the caciquism of the first Republic allowed little room for real democratic experiences. All this left the family and the Church as the only mediators between the individual, the community and the State, concentrically reinforcing their mutual norms and codes.

So as to make clear the meaning and foundation of these statements it would be necessary to document them with a good amount of facts that cannot be put here in a sufficient and proper way. But I will synthetically stress a major point: only in the third quarter of this century can the concept of modernity be applied to our society as a whole. Before that, we had only some light hints of it. Some groups were well aware of what was going on in the world. But the population in general did not feel and follow the cultural, social and economic changes of the modern countries. Portuguese society was a controlled and blocked society. Things were solved autocratically. People looked at the State as a sort of benefactor

and provider. All things that could not be earned had to be given by the State.

From the beginning of the century to the sixties it seemed that everything was frozen in time. The traditional ways of seeing nature, cosmos and divinity were essentially the same as in the previous centuries. The country was mainly rural, and the villages were isolated in economic, social and cultural terms. The population was excluded from modern life. So, it is quite understandable that the official ideology borrowed its main force from religion by conforming to the traditional ways of looking at the world. The slow emergence of the MRG is related to this blocked and stalled society.

2. Statistics on Catholic affiliation

These general statements can not be easily proved. But they may be illustrated by some facts that are related to our main question. The data that can be used for this purpose come mainly from official statistics on the religion professed by the Portuguese. I will extend my analysis for the period of 1950-1991, based on census data, and on the results of two national surveys made by the Survey Study Centre of the Catholic University (CESOP), in 1994 and 1997, that I supervised. These sources have information that responds in some detail to our main questions of the emergence of the non-Catholic religious groups.

One of the questions asked in all the censuses, from 1950 to 1991, was related to religious affiliation. If we accept that people answered these questions truly, we have precise data on the religion professed by the Portuguese. It is fortunate that this data covers the last forty years, during which most of the significant changes related to the religious affiliation have occurred.

In order to carry out this analysis, I will use the official statistics concerning the years 1950, 1960, 1981 and 1991 (2). Whenever

(2) I will not consider the 1970 census because there is no published information on its religion data.

possible, I will study this data by district (3). For the period after the last census I will comment only on the data coming from CESOP.

So I will begin with data from the censuses. They give us good information, even if not always of the same type. In 1950 we can only make a distinction between Catholics and Non-Catholics. A similar situation exists for 1960, although the census questionnaire gathered more precise information about religion professed by the respondents (4). But we know little about the latter (5). The published information is aggregated in three simple categories: Catholic, Other Religion and Without Religion (6). In 1981 and 1991, we have data on some broad categories that can easily be used in our study: Catholics, Orthodox, Protestants, Other Christians, Jews, Moslems, Other non-Christians, Without Religion, and Non-respondents (7).

As we can see, the information about Catholic affiliation exists in all these censuses. So, I begin my comment by making comparisons on the percentages of Catholics all over the country and in its districts. Besides, I present information about two other statistical categories, Non-Respondents and Irreligious.

In the country as a whole, the 1950 percentage of Catholics was as high as 95.9%. Ten years later it had increased to 97.8%. This cannot be easily explained. What is the real meaning of this improbable increase in a country where the Catholic orientation was already monolithic?

One simple way of tackling this issue is to say that the difference between the two statistics is not meaningful. Its increase would not refer to a real fact but to a random error arising from the way

(3) The district is an ancient administrative division that has been superseded by the modern regions. Because these are not yet stabilised (the discussion on their limits and number goes on), I use the ancient administrative division.

(4) In fact, in the Instructions for filling up the questionnaire (INE, *10º Recenseamento geral da população, Instruções para a sua realização no Continente e Ilhas Adjecentes*, Lisboa, 1960), it was specified that the respondent should write down his religion, for instance, Catholic, Orthodox, Lutheran, etc.

(5) Cf. INE, *op. cit.*, 1960, p. 67.

(6) We have no information on religion in the publications of the 1970 census.

(7) 1991 census data on religion has not been published. I use a data-base that was prepared by INE for the Centre for Social and Pastoral Studies of the Catholic University.

the census was collected. Another explanation, taking the differences as objective, would say that this is a phenomenon of rampant conformism that imposed stronger uniformity on the religious attitudes of the country. We could also have doubts about the quality of the data (8). I think that the correct answer is perhaps between these hypotheses. Of course we can have census errors that could be greater in one year than in the other.

But we can also say that, all things being equal, the census questions were answered according to a common understanding of the dominant meaning of religious affiliation. In this sense, the increase of religious identification to the Catholic faith could mean that Catholicism was taking a stronger grip on the country's culture. In fact, religious meanings are cultural phenomena that cannot be separated from other forms of common symbols, thoughts, feelings and orientations.

We cannot have any certainty as to the precision of these percentages. Their increase is not entirely irrational. In fact, Portuguese society had for a long period been insulated from the main sources of differentiation. Salazar's saying, "proudly alone", whilst meant in military and political terms, was the expression of a movement of narcisism that had an expression in the emergence of the old cultural background. Catholic religion appeared as a means of expressing cohesion in a situation where Portugal was excluded from the community of civilised countries. In a time when deviation from the main church was considered as a deviation from a proper Portuguese identity, to be irreligious, to belong to a sect or to be anti-Portuguese meant almost one and the same thing.

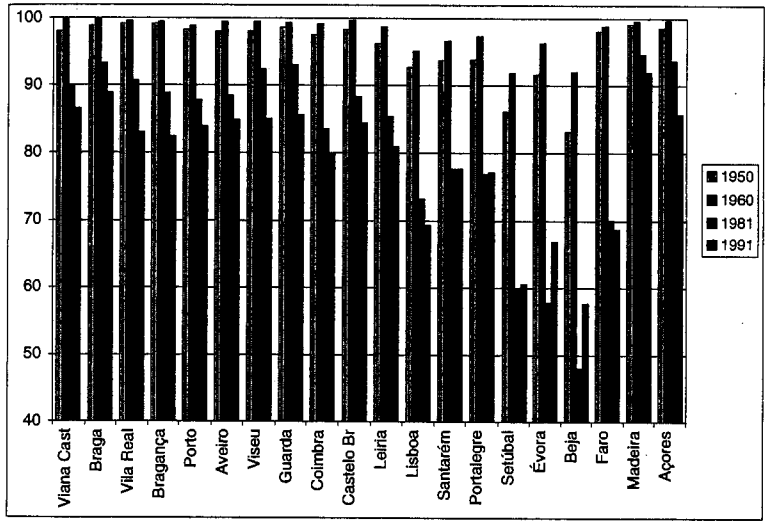
This picture of uniform religious orientation changed completely over the 21 years between 1960 and 1981. At this later date, the percentage of Catholics was only 81.1%; in 1991, it had dropped to 77.9%. Our aforesaid surveys give some hints of a changing picture: the percentage of Catholics seems to have stabilised around 83.5% (83.2% in 1994 and 83.7% in 1997). The coincidence of the

(8) Luís de França, *Comportamento religioso da população portuguesa*, Lisboa, Moraes/I. E. D., 1980, p. 16, says in relation to the 1960 census data that "they had no relation to the reality". I am not so critical on the subject.

numbers in these surveys is curious because it comes from two entirely different random samples. If we take them as precise as the census data, we can say that the number of Catholics is increasing.

From the districts' data represented in Fig. 1, we can gather a correct notion of the force and weakness of affiliation to Catholicism in the districts. First of all, the percentages of Catholics, everywhere in the country, are lower in 1981-91 than before. In the second place, the levels and evolution of the percentages during these forty years make clear a division of the Continent in two: north of the line that passes through Leiria to Castelo Branco, and below this line. Azores and Madeira are similar to the northern region. Madeira is, in 1991, the most Catholic region of Portugal.

Fig. 1. *Portugal: 1950-91. Percentages of Catholics.*



The division of Portugal in two is visible in other matters too and seems to be rooted in historical factors that cannot be completely retraced here. In broad terms we can say that the source of

these differences comes from a differential land division and from work relations that are dependent on the existence of small or large properties. Besides, the south is the part of the country that was longer under Moslem rule.

Anyhow, our data shows with adamant clarity that the north is much more Catholic than the south. But there are other notable differences. I will refer only to the major ones. The greatest is that the districts of Setúbal, Evora and Beja must be singled out, not only because they have the lowest percentage of Catholics, but also because these percentages dropped heavily between 1960 and 1981. In fact, in Beja, in 1981, the Catholics represented only half of the Catholic population that existed in the sixties (92.0% in 1960 and 47.8% in 1981).

A similar phenomenon is visible in Evora and Setúbal. The percentages dropped 38.5 and 31.9 percentage points, respectively. On the other hand, in these districts, the percentages registered a small increase between 1981 and 1991. The increase is greater where the percentages had dropped more after 1960: Beja rises by 10 percentage points, Evora by 9, and Setúbal by less than one.

This evolution of the Alentejo districts, on the whole, does not seem determined by the population's disenchantment with the Catholic faith. The decrease was too abrupt for that. The explanation is not simple, but I am inclined to think that we can take into account the ideological control that was imposed on the Alentejo after the 25th of April Revolution by the Left, mainly the Communist Party. In fact, the Agrarian Reform, made under the auspices of this party, controlled not only the means of production and work allocation of the "Unidades Cooperativas de Produção", but also the ideological fidelity to dialectic materialism. People that used to be dependent on the good will of the landlords could not begin to express freely their opinion, if contrary to the dominant ideology. The increase of Catholics in 1991 may be only apparent, perhaps an inverse reflex of the Communist Party's strong ideological control during the eighties. After 1980, people began to accept the stigma of not belonging to the Left.

3. Statistics on irreligiousness

This data can be completed by inquiry into the number of Non-Respondents to the censuses' question about religion and into the number of Irreligious people. Neither has the same interest for our study as those commented on previously, but they can throw some light on our phenomena.

Let us look at the percentages of Non-respondents. The reason why an important part of the population did not answer these questions, in 1981 and 1991, is not clear. We can suppose that three kinds of people did so. The first are those who do not want to assume an irreligious attitude but do not identify themselves with any religion. The second is made up of those who are ashamed or afraid of mentioning their religious group, because their milieu had another dominant religious or ideological orientation. The third is made up of those who do not care or want to express their religious affiliations (9). It is, of course, impossible to know which of these groups contributed most to the data collected by the census (10).

We can only guess that in this number people are included who belong to a MRG and do not want to reveal their affiliation to a non-dominant religion. This seems the most obvious explanation for these facts. It is not probable that Catholics would be Non-respondents. In a situation of dominance they are not usually shy of their affiliation. Only in very particular surroundings this could happen: little communities where another group is dominant. But I do not know of any.

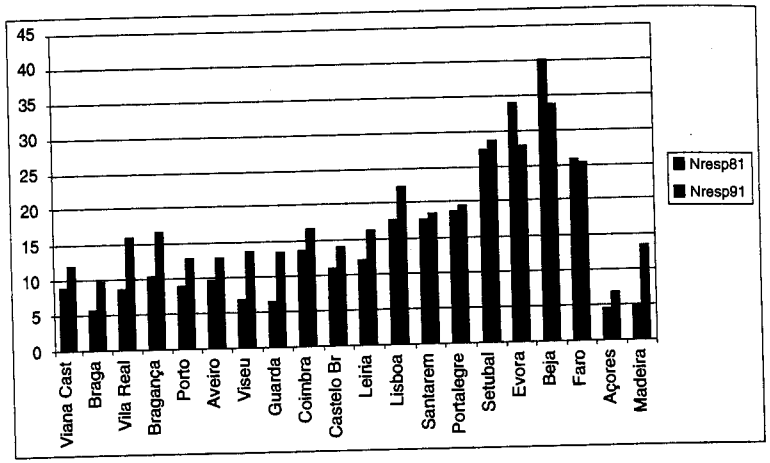
On the whole, the number of non-respondents has increased 32.6% between the censuses of 1981 and 1991, the absolute numbers being 1114615 in 1981 and 1477757 in 1991. These numbers represent 14.2% and 17.6%, respectively, of the population who are more than 12 years of age. These percentages are relatively high, certainly greater than what is generally acceptable in pools, when

(9) I can mention also, as a possible explanation for some of the 1991 data, the bad quality of its census, which, as it is well known, had many problems in data collection.

(10) No similar data exist for 1950 and 1960.

questions are related to matters of general knowledge (11). The fact that the census questionnaire is nominal may have some influence on these facts. Because of that it may represent an intended attitude. But we cannot stretch its meaning much beyond that.

FIG. 2. *Portugal 1981-1991. Percentages of non-respondents*



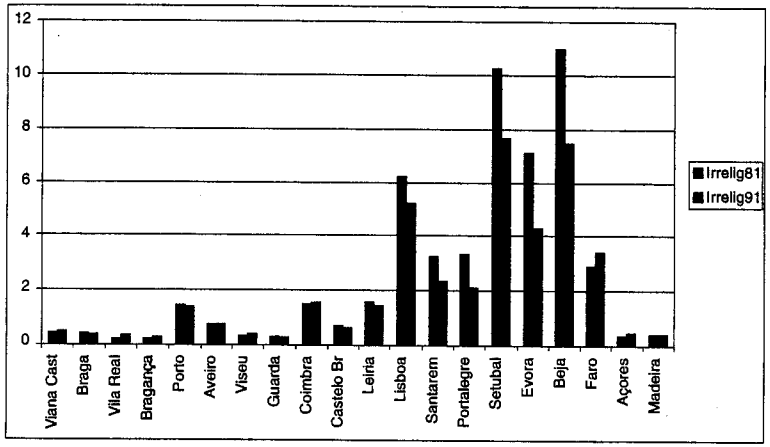
My first observation on this data is that the districts with the largest percentages of Non-respondents are found in the south (Alentejo and Algarve). There, the Non-respondents' percentage is between 25% and 40%. On the other hand, in all the districts of this region, except Evora and Beja, the percentages in 1991 are greater than in 1981. This exception seems to be meaningful. The high amount of people that did not answer the question in Beja and Evora means that the 1981 data were probably determined by the ideological control that prevailed in these districts in the previous decade.

(11) In the aforementioned surveys of 1994 and 1997 the number of non-respondents was 11.2% and 3.9%, respectively.

One last observation on this data refers to the increase of the percentages of non-respondents in some districts of the interior-north: Vila Real, Bragança, Viseu and Guarda, where we have the highest variations in the eighties. I have no obvious explanation for this, but I am inclined to think that the differences in non-conformism are levelling up. This means that the factors of regional differentiation are beginning to melt and that religious behaviour is becoming more alike all over the north.

The other statistics we have in the same figure relate to the irreligiousness of the population. Irreligiousness and Non-responses are connected. In fact, in the north, irreligiousness is small. Its increase between 1981 and 1991 is also small. The overall percentage for Portugal was 3.2% in 1981 and 2.7% in 1991. But this difference is not meaningful.

FIG. 3. *Portugal: 1981-91. Percentages of irreligiousness*



As was expected, in the north, irreligiousness is noticeable only in the districts of Porto, Coimbra and Leiria. The percentage is not great, under 2%. In the south, Lisbon has not the higher irreligiousness, contrary to what could perhaps be expected. In fact Beja takes

the lead. On the other hand, both in 1981 and in 1991, Setúbal has higher percentages than Lisbon. The Evora district is above Lisbon in 1981 and below in 1991.

It is also worth noticing that, almost everywhere, the percentage of irreligious is greater in 1981 than in 1991. The only remarkable exception is Faro, a province where the changes that occurred recently are big enough to alter its broad systems of orientation. Among other factors, we can take tourism as an important one. The number of people, from all over the world, that come every year to its resorts can not be neglected as influencing changes in attitudes and behaviour. Many small villages that were almost medieval in the sixties became international resorts in the nineties.

In the remaining districts of the south, the decrease in the percentage of the irreligious is sometimes important: in Beja, for instance, it drops from 11.0%, in 1981, to 7.5%, in 1991; in Setúbal, from 10.3% to 7.7%, and Evora, from 7.2% to 4.4%.

The most important information we can collect from this data is the correlation between irreligiousness and the tendency not to assert clearly one's religious affiliation (12). They show that the association between the two phenomena supports the statement that the factors influencing Non-responses are similar all over the districts. It is necessary to identify these factors and distinguish their relative importance. But I must say that I cannot do it efficiently here.

4. The development of the MRG in Portugal

These statistics are the background for understanding the recent evolution of the MRG, as far as their behaviour and configuration can be understood by census data. As I mentioned before, we only have precise information for 1981 and 1991 on some broad categories of religious affiliation: Orthodox, Protestant, Other Christian, Jew, Moslem and Other Non-Christians. Let us look at the data.

(12) In 1981, the r = 0.907 and in 1991 r = 0.908, that explain 82.4% and 82.5%, respectively, of all the variation in the districts.

First of all, I present some absolute numbers of people belonging to these categories of MRG. These numbers are important: feelings of belonging to a minority are a strong element of the specific identification of its members. The composition of these MRG has to be very small in a country where the population amounts to only 10 million people. This observation has not only a factual meaning, but also (and mainly) a theoretical and epistemological one.

Table 1, together with Fig. 4, show that all the religious groups besides Catholics are minority groups not only in relative but also absolute terms. For some, like the Moslems and the Jews, their affiliation depends mainly on ethnicity. Conversions are not the ordinary mean of affiliation. The data shows that Jews are decreasing (by 35.9%), while Moslems more than doubled their numbers.

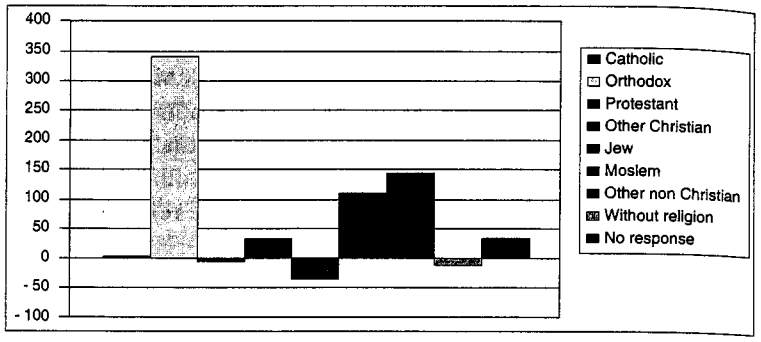
Table 1. *Portugal: 1981-1991. Population of 12 year olds, according to their religion*

Religious affiliation	*1981*	*1991*	*Difference*	*Percent variation*
Catholic	6352705	6527600	174895	2,8
Orthodox	2564	11322	8758	341,6
Protestant	39122	36974	-2148	-5,5
Other Christian	59985	79554	19569	32,6
Jewish	5493	3523	-1970	-35,9
Moslem	4335	9159	4824	111,3
Other non-Christian	3899	9476	5577	143,0
Without religion	253786	225582	-28204	-11,1
Non-respondents	1114615	1477757	363142	32,6
Total	7836504	8380947	544443	6,9

Source: INE, *Recenseamento da População* de 1981 e de 1991

There are other facts worth noticing in this table. The first refers to the growth of the Orthodox Church between 1981 and 1991, which is extraordinarily high (341.6%). But this number is misleading. In absolute terms the increase does not make Orthodoxy a big religious group. It reaches only a little more than 10 thousand. Nevertheless the boost was important.

FIG. 4. *Portugal. Percent variation between 1981 and 1991*



According to these statistics, Protestantism did not do very well during the decade: its percentages are decreasing rapidly. But this downward movement is compensated by the category of Other Christians. Christianity, in general, has a good advantage over the other faiths. In fact, taking all Christians together (Catholics excepted), during the decade, their increase amounts to 201074 people (3.1%). By themselves, Catholics increased only 2.8%. The Non-Christians, in 1991, were only 8431 more than in 1981. This means a 61.6% increase. But this is not to be taken at face value as the numbers involved are irrelevant. What seems meaningful is the increase of the Irreligious and Non-respondents. Together, they increase 24.5%, corresponding to 334938 more people in 1991 than in 1981.

In some way, all these phenomena are in accordance to what was expected. In a situation of religious differentiation, the small groups tend to increase rapidly. The older ones can hope only to keep their numbers. Generally they loose importance and momentum. It seems that this was what happened: Protestantism, which had been, for a long time, a minority group lost its position as the main contestant to Catholicity. Other Christian groups like the IURD and the Maná Church appeared, taking the lead through strong and aggressive proselytism.

This general analysis can be continued taking into account the relative amount of people belonging to the various MRG by

district. The most relevant information we can gather from 1981 census is that the southern districts have different religious attitudes from those in the north. This is, of course, in accordance with data already commented on.

The most important phenomenon shown in Fig. 5, concerns the importance and increase of the category Other Christians in the districts of Lisbon, Setúbal and Porto, whose cities are the country's biggest urban centres. This same Fig. 5 shows also that the only categories that exceed 0.3% of all the population 12 years of age or more are Protestants and Other Christians. The highest percentages for these categories, with roughly similar numbers, are found in the districts of the south and in the northern districts nearer the sea (Aveiro, Coimbra and Leiria). In broad terms, the percentage of Protestants and Other Christians is roughly similar in the following districts: Aveiro, Coimbra, Santarém, Portalegre, Evora, Beja and Faro, Azores and Madeira. These districts have an intermediary position between the northern districts with low percentages (Viana do Castelo, Braga, Vila Real and Guarda), and those in the south. In summary, we can say that MRG have a tendency to concentrate near the bigger cities, either in the south or by the sea.

Fig. 6 shows the 1991 percentages of MRG by districts, according to the census. When we compare this data with those of ten years earlier, we find some significant differences. The first relates to the general increase of the numbers of those who are affiliated to one of the religions under observation. The second is that Protestantism does not follow the increase in the category of Other Christians. This is confirmed by other sources, according to which IURD and Maná showed the greatest advance during this period.

The statistics show also that this increase in the Other Christians is mainly visible in districts with bigger cities (Setúbal, Porto and Lisboa), together with Faro. The trend detected in 1981 became clearer and stronger during the eighties.

Another interesting aspect of our subject relates to the differential affiliation according to the socio-economic status of the respondents. We have no data for all the districts. It is possible, however, to treat this subject in some of the districts where there is a stronger

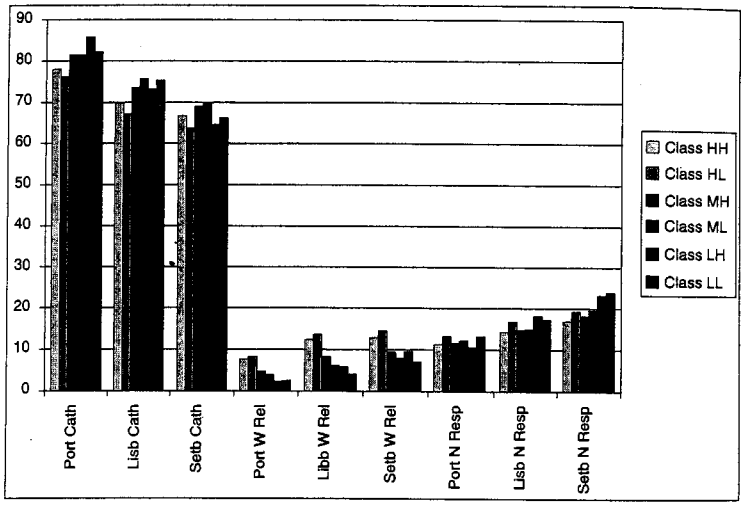
FIG. 5. *Portugal: 1981. Minority Religious Groups*

FIG. 6. *Portugal: 1991. Minority Religious Groups*

development of MRG — Lisbon and Setúbal — and compare these statistics with those of the country as a whole. As there is similar information on Loures, a commune on the outskirts of Lisbon, we can analyse more specifically a mixed population of city commuters who live side by side with a rural population in rapid transition.

Let us look at the information collected in Fig. 7, where we have percentages for three categories of people: Catholics, persons without religion and non-respondents. This Figure shows data for Lisbon and Setúbal in comparison with Portugal as a whole (13). It is clear in these statistics that the lower classes seem to adhere more easily to the Catholic faith than the higher classes. This is true not only for Portugal but also for Lisbon. In Setúbal, on the contrary, there are no visible differences.

FIG. 7. *Portugal, Lisbon and Setúbal: 1991. Percentages of Catholics, Without Religion and Non-Respondendents, according to class*



(13) It is worth noticing that the general percentage of working people is higher than that of the whole population. I have no explanation for the fact. The opposite was more predictable because retired people tend to return to beliefs that were dominant in their childhood and youth.

On the other hand, it is perfectly clear that irreligiousness is something that affects mainly the higher classes. The statistics show also that, if the difference between the two highest classes (14) is significant, the HL class tends to have a bigger percentage of non-believers than the HH class. This could be expected, too. In this respect, Setúbal and Lisbon are perfectly similar in their behaviour. But the difference between these and the Middle and Lower classes is more noticeable in Lisbon than in Setúbal and Portugal as a whole. It is interesting to note that in Lisbon the percentage of non-believers drops gradually with the class.

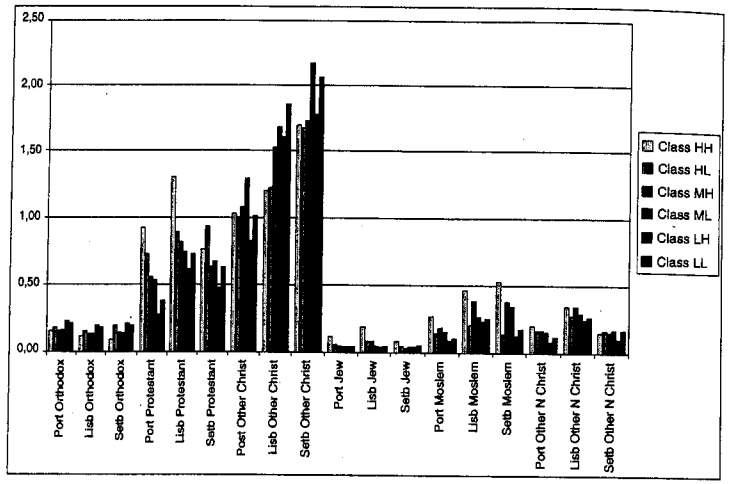
Fig. 7 shows also that the number of non-respondents tends to be inversely correlated with the class: the higher the class, the lower the percentage of non-respondents. I do not think that this is a question of an actual refusal of any religion by the lower classes. It seems that this comes from the aforementioned incapacity by some of the people with little education to fill in the census questionnaire. But this does not apply to all data. In fact, the differences between the HH and the HL must have other sources that can be related to different attitudes that do not come from their education, as for both groups it is generally higher. It seems that people from the HL class are more conceited and critical in expressing this sort of information. They keep to themselves the expression of their beliefs. On the contrary, HH classes are more conformant to a society's culture because they are its most legitimate representatives.

Another question concerns the MRG and their distribution according to socio-economic classes. This issue is presented in Fig. 8. There, we have information on all the categories mentioned above, in three regions: Portugal as a whole, Lisbon Metropolis, and the district of Setúbal. In this representation I put together all similar statistics. Some of the information collected concerns, as we have seen, very small groups, and their differences are unremark-

(14) I aggregate the original data according to the following nomenclature: HH: high-high class; HL: high-low class; MH: middle-high class; ML middle-low class; LH: low-high class; LL: low-low class.

able. It is therefore incorrect to overstate their importance. But we can say that Orthodoxy appeals more to the lower than to the higher groups. Jews, on the contrary, seem to have a good percentage of people from the HH class, either in Portugal as a whole, or in Lisbon.

FIG. 8. *Portugal, Lisbon and Setúbal: 1991. MRG affiliation, by class*



It is interesting to note also that the percentage of HH Jews is greater in Lisbon than in Setúbal. It is also clear that Moslems have a good percentage of highly placed people, more in economic than social terms. But all these statements relate to numbers so small that is would be inappropriate to draw conclusions from them.

The same cannot be said about the remaining groups, Protestants and Other Christians, who seem to have completely different social compositions. In fact, there are many more Protestants in the high classes than in the lower classes. These differences are more important in Portugal, as a whole, and in Lisbon, than in Setúbal.

On the other hand, as far as the Other Christians are concerned we have a mixed situation. In Portugal we do not notice great differences in the affiliation to these minority groups according to their class. The exception is the ML and the LH class, the first exceeding all the others and the latter being less represented. What is really clear is the differential composition of Other Christians in Lisbon. Affiliation is inversely proportional to the class: the higher the class the lower the percentage. The same fact can be seen in Setúbal, even if not with the same clarity. This differential affiliation in Lisbon and Setúbal is understandable because there are greater social differences in these regions.

5. THE RELATIVE IMPORTANCE OF THE MRG

The information I will use here comes from the registries of the Ministry of Justice, complemented by those of the Civil Governors. Both these sources keep a list of the religious groups and associations operating in the territory under their authority. Unfortunately the Civil Governors' lists are not complete. Besides, they are frequently less detailed. But we can rely on the Ministry of Justice's records. This data refers to the churches, associations, movements and groups that were registered in accordance with the law, from 1974 until the middle of 1997. It covers, therefore, all the period when the big changes in religious affiliation occurred. I will use also, secondarily, information from the *Prontuário Evangélico* (15).

The original data I am commenting on consists of three main items: the name of the association or group, the place where the association or movement was created, and the date of registration. Simple as it is, this information is important for our purpose. We can gather from it an essential aspect of the development of MRG, their institutionalisation. This is a limited perspective as far as the sociological understanding of the human and social vitality of these

(15) *Prontuário Evangélico* 1995, Caneças 1995.

groups is concerned. But it supplements our previous commentary on affiliation.

Although I regret to leave outside my study the treatment of some more meaningful aspects like those related to the sociability of the religious groups, their membership, the rites they practice, etc., this institutional approach seems important for my argument. It gives an idea of the development of the different groups and religious families. But this can, correctly interpreted, lead to an indirect approach to what is more meaningful.

The number of entries in the aforesaid Ministry of Justice' s list amount to 414 non-Catholic institutions with legal collective personality. They include not only the churches but also the missions and the associations related to a MRG.

My first statistic takes them all together as a single category, so as to show the increase in institutionalisation. Table 2 intends to show the increase they experienced in the period under study.

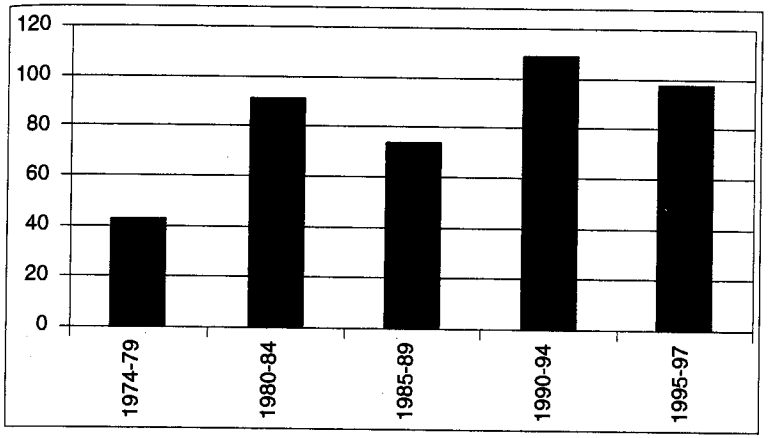
TABLE 2. *Portugal: 1974-1997. Number of MRG, according to their religion*

Year	*Number*	*Percent*	*Year*	*Number*	*Percent*
1974	3	0,72	1986	11	2,66
1975	3	0,72	1987	11	2,66
1976	4	0,97	1988	17	4,11
1977	6	1,45	1989	21	5,07
1978	15	3,62	1990	31	7,49
1979	12	2,90	1991	28	6,76
1980	11	2,66	1992	22	5,31
1981	14	3,38	1993	17	4,11
1982	29	7,00	1994	11	2,66
1983	18	4,35	1995	65	15,70
1984	19	4,59	1996	24	5,80
1985	14	3,38	1997	8	1,93

Source: List of the Ministry of Justice (manuscript)

This data shows clearly that the main increase of registered religious groups occurred in the nineties. Fig. 9 aggregates this data in five year groups so as to make its reading easier.

FIG. 9. *Portugal 1974-97. Numbert of MRG registered*



In 1990-94, we have the highest numbers of registrations. If we take for granted that the present numbers will keep the same trend for the rest of the century, we can predict a big increase of MRG at the end of the present decade. This means that the actual differentiation that is visible in Portuguese society, in terms of division of labour, ethical orientation, ideology and cultural perspectives as a whole, has not finished yet. On the contrary, it looks like going deeper and deeper. So I would not be surprised if the number of non-Catholics increased drastically in the next census. The religious revival of some Christian groups is having a strong impact on cultural symbols and norms.

The aforementioned list organised by the Ministry of Justice can be taken as a rough indicator of the vitality of the groups under study, although it is seldom used for this purpose because it can be misleading. The fact that a religious group was institutionalised does not reveal its activities and attainments. But it is a sign of its

growth. But we must use them cautiously. More structured groups or churches tend to institutionalise themselves earlier than those who begin their life as spontaneous dissident groups. If we take this data as the only source of analysis, we will lose some of the most common changes in the realm of religious feelings, adherence and beliefs.

Besides that, this list is incomplete in terms of the groups and movements that actually exist or existed before in Portugal. I can mention some in this record, the *Elan Vital* and the *Children of God*, for instance. Another group, the *Riverside International Church*, arrived so recently in Portugal that it has had no time yet to be legalised. Its activities began on June 14 with a rally of 60 American youths in Largo Camões. Their leaders presented their message also in a boat on the Tagus River on September 7. The group presents itself as an evangelical and charismatic movement that "came to stay" in the words of one of its leaders. Many of these cults, sects and movements, come and go, almost unknown, leaving no permanent trace, easy in encounters, happy with novelty and spontaneous activities.

Let us begin this commentary with some notes on the world religions and their followers in Portugal. First of all, I will refer to the Orthodox Church with its two branches: the Orthodox Church of Portugal and the Apostolic Catholic Orthodox Church. Contrary to what is traditional in Orthodoxy, which expands only to diaspora countries, the *Orthodox Church of Portugal* began its activities in Portugal in 1978, trying to convert people from other religions, mainly Catholic. In 1996, the *Orthodox Church of Portugal* had 5 dioceses, 55 parishes, 58 permanent missions and 5 monasteries with 58 women and 18 men. It counted 86 presbyters and 16 deacons. It claims to have from 35 to 40 thousand people in its ranks. What is certain is that, every other Sunday, about 30 people attend its services in the Calhariz de Benfica church.

The other branch, the Apostolic Catholic Orthodox Church, was founded in Lisbon, in 1990. This is a strange organisation, rejected by the former, because it represents an attempt to join Catholicism with Orthodoxy, both in doctrinal and liturgical terms. In fact, the Catholic Apostolic Orthodox Church is a deviation from

Catholicity and Orthodoxy in many ways. Its only Sanctuary in Lisbon, near the Catholic Cathedral, groups some 20 people in Sunday services.

This brief description seems to justify my initial statement on the advantage of stating our subject as the MRG. In fact, these churches have contrary ways of relating to Catholicism. The Orthodox Church of Portugal, in the writings of its late Metropolitan, rejects all discussion on ecumenism because this could mean losing its identity and impact. The most visible foundation of this Church is Ladeira do Pinheiro, which represents an objective challenge to the Catholic Church. In fact this Church rejected the message of a visionary woman who lived there. By backing her, the Orthodox Church showed its opposition to the dominant Church (16). On the contrary, the Catholic Apostolic Orthodox Church insists on convergence with the Catholic ritual, thus making a masquerade of both liturgies.

Two other Middle-East religions are represented in Portugal: Judaism and Islam. The *Jewish Community* is a very ancient one in the country, with branches in some regions of Portugal, some villages in Douro, Covilhã, Belmonte, etc. The Lisbon Community was legalised in 1986, long after the 1974 Revolution that led to the formal possibility of free registration of all religious institutions.

If we take our data-base as a sign of vitality of a community, Islam is much more active than Judaism. This is in accordance with the results of the census data commented on above. In fact, besides the institution of four religious *Moslem Communities* in Lisbon and its metropolitan area (Lisbon, 1985; Brandoa, 1987; Laranjeiro, 1990; and Palmela, 1995), we have many other organisations and associations of Moslem inspiration. There has been a *Shiite Com-*

(16) Cf. Mário F. Lages, "Igreja Ortodoxa de Portugal", *Dicionário da História de Portugal Suplemento*, forthcoming. I refer also that near the traditional churches there is one *Old Catholic Apostolic Church*, erected in Ermesinde, in 1996, a branch of the group that rejected the infallibility of the Pope. Our data base refers also to a *Holy Spirit Fraternity*, in Angra do Heroísmo (Azores), registered in 1996. It seems that this is a "Catholic" organisation that was not submitted by the Bishop of Angra do Heroísmo. Because of that it is included in the list. This is in some sort correct, as it represents a confrontation with the Catholic hierarchy that cannot control entirely the Holy Spirit cult.

munity just opposite Lisbon (Cacilhas) since 1995. In the same year, a Pakistani Community was legalised in Lisbon. The *Aga Kahn Association* has formal activities in Lisbon since 1984; the *Ahmadia Association of Islam*, since 1987. All this seems to portray a nice institutional framework for a community that is visible in many sectors of activity, mainly commercial. Many of the Moslem groups have their origins in the former Portuguese colonies. An institutional sign of this is the creation, in Lisbon, of an *Association of the Moslems of Guiné*, in 1987.

The *Baha'is* have been in Lisbon since 1975 and in the Algarve (Portimão) since 1995.

If we consider now the churches which originated in the Reformation, we must first of all notice the importance of the *Assemblies of God*. From 1978 to 1997 the Assemblies have been legalised by the State in 54 places. Their most important year of institutionalisation was 1995, when they added 8 more places to their previous numbers. It is interesting to note that the effort of implantation began in 1978 and 1979 in communes around Lisbon: V. Franca de Xira, Amadora, Cascais, Almeirim and Loures. In the following years the movement spread all over the country, mainly in the Lisbon and Tagus Valley region. This seems to be the preferred zone of implantation. About 50% of the total registered communities are located there. But in some districts of the interior none have been registered yet. This does not mean, however that there are no congregations there. We know that this is not the case, as we can see in the *Prontuário* (17).

(17) From the *Prontuário Evangélico 1995,* Caneças 1995, pp. 179-181, we can collect the following complementary numbers. The *Missionary Assemblies of God* has congregations in 4 localities, in the communes of Amarante, Marco and Cinfães. The *Universal Assembly of God* had three congregations (Lisbon, Mafra and Oeiras). The *National Communions of the Assemblies of God* has 43 congregations mainly in the districts of Lisbon (20) and Setúbal (18). The *Convention of the Assemblies of God* had the following congregations, by district: Lisbon, 72; Porto, 20; Aveiro, 24; Beja, 9; Braga, 7; Bragança, 10; Castelo Branco, 16; Coimbra, 37; Evora, 20; Faro, 35; Guarda, 11; Leiria, 23; Portalegre, 11; Santarém, 46; Setúbal, 21; Viana do Castelo, 7; Vila Real, 14; Viseu, 11; Azores, 9; and Madeira, 2. According to the list of the Ministry of Justice, the *General Council of the Assemblies of God* was set up in 1989 and located in Fanhões-Loures; the *National Communion of the Assemblies of God*, was founded in Olivais Sul, in 1991. Besides that, the *Amadora Assembly of God* has 12 congregations in the district of Lisbon, 2 in Evora, 4 in Faro and 2 in Vila Real. The *Convention of the Independent Baptist Churches*, was legalised in 1991, having its seat in Maia. The *Convention of the Assemblies of God*, was legalised in Caldas da Rainha, 1992, and in Portimão, 1993.

The *Baptist Churches* have a parallel story. Their development was centred in Lisbon. Of the first 15 cases of legalisation that occurred between 1977 and 1985, only one was made outside Lisbon, in the Azores. If we look at the complete list, we find it reveals the Church's preference for rapid changing milieus: Moscavide, Benfica, Parede, Oeiras, Queluz, Tires, Agualva, Cascais and Lisbon, Venteira-Amadora, Ramada-Loures (18).

Among the more successful Protestant denominations is the *Christian Congregation in Portugal,* with congregations all over the country, except in the Azores. Almost half of them are in the district of Porto (19). The *Gypsy Church* has 21 congregations mainly in the district of Faro (13) and Setúbal (4) (20). The *Brothers* have congregations almost in all districts, mainly Aveiro, Coimbra, Lisbon and Porto (21).

Other churches with a good number of Congregations are the *Nazarene Church* with 20 congregations, mainly in Lisbon (8) (22), the *Evangelical Presbyterian Church of Portugal,* with 37 congregations (23), the *Wesleyan Methodist Church* with 22 congregations (24), the *Evangelic Methodist Church,* with 19 congre-

(18) According to the Prontuário Evangélico 1995, pp. 191-194, the Baptist Association for World Evangelism, seated in Loures, has 9 congregations, the Association of the Portuguese Baptist Churches, 18, the Portuguese Baptist Convention, 80, the Convention of the Independent Baptist Churches, 3, the Baptist Church of Carreiros with Other Baptist Churches, 26. According to the MJ's list, the Portuguese Baptist Convention was legalised, in 1987, in Lisbon, the Association of the Portuguese Baptist Churches, in 1991, in Morelena-Pero Pinheiro, and the Baptist Association of the North, in 1991, in Cedofeita-Porto.

(19) The total number of congregations is 100. Porto alone has 47. Cf. *Prontuário Evangélico 1995,* pp. 197-199.

(20) Cf. *Prontuário Evangélico 1995,* p. 199. The MJ's list refers to a *Christian Congregation of Portugal*, created in Porto, in 1974.

(21) The total number of congregations is 113: 30 in Aveiro, 29 in Coimbra, 18 in Lisbon and 16 in Porto. Cf. *Prontuário Evangélico* 1995, pp. 205-207.

(22) Cf. *Prontuário Evangélico* 1995, p. 215.

(23) Cf. *Prontuário Evangélico* 1995, p. 217.

(24) Cf. *Prontuário Evangélico* 1995, pp. 213-214.

gations (25) and the *Catholic Apostolic Evangelical Lusitanian Church,* with 17 congregations, mainly in Lisbon (7) and Porto (6). There are much smaller churches, like the *Lutheran Evangelical Church* which has only three congregations in Lisbon, Porto and Angra do Heroísmo in the Ministry of Justice' s list. Many of them are part of others. I register them in a note, just for the record (26).

(25) Cf. *Prontuário Evangélico* 1995, p. 213.

(26) I put here, in no particular order, the names not commented on in the text that are mentioned in the Ministry of Justice's list. *Adventist Church*, Lisbon, 1974; Lisbon, 1975; Algés, 1976; Lisbon, 1978. *Anglican Church of St. Paul*, Estoril, 1984. *Apostolic Church of Christ 'Zion Mount'*, S. António do Tojal, 1990. *Apostolic Church (AEP)*, Lisbon, 1978; Sintra, 1979: Mem Martins, 1981. *Assembly of Christ,* Lisbon, 1988. *Assembly of God Pentecostal Philadelphia Church*, Charneca do Lumiar, 1990. *Assembly of the Pentecostal Firstborns,* Coruche, 1995. *Biblical Action (AEP)*, Faro, 1979. *Biblical Church of the Lord Jesus*, Porto, 1996. *Bethel Church*, Ponte de Sôr, 1997. *Biblical Union*, S. Martinho, 1979. *Catholic Christian Church 'New Jerusalem'*, Benfica, 1993. *'Christ Lives' Church,* Porto, 1995; Vendas Novas (Setúbal), 1995. *Christian Church of Lisbon*, Loures, 1997. *Christian Church 'Mount Moria'*, Moita, 1995. *Charismatic Christian Church,* Murgueira (Mafra), 1988. *Christ Scientist Church,* Lisbon, 1984. *Christian Church,* Mafra, 1990; Lisbon, 1991; Margaride (Felgueiras), 1991; Marrazes (Leiria), 1991; Pinhal de Grades (Arrentela), 1991; Oliveira do Douro, 1992; Sé (...), 1993; Porto, 1994; Mafamude (Gaia), 1994; Lisbon, 1995; Almada, 1995. *Christian Biblical Church,* Oliveira de Azeméis, 1996. *Christian Church 'Live Water',* Olival dos Sobreiros (Coimbra), 1990. *Christian Community,* Oeiras, 1991, *Christian Community of the Fractured Bread,* Sintra, 1992. *Christian and Evangelical Community,* Massamá, 1992. *Christian Congregation,* Massamá, 1988. *Christian Evangelical Church,* Estoril, 1982; Estarreja, 1986; Torres Vedras, 1986. *Church of Christ,* Porto, 1980; Cascais, 1982. *Church of the Charismatic Christians,* Alapraia (Estoril), 1996. *Church of God and Prophecy in the Portuguese Republic,* Baixa da Banheira, 1988. *Church of God (AEP),* Lisbon, 1978, Barreiro, 1978. *Church of the Complete Gospel of God,* Carnaxide, 1989; Canidelo (Gaia) 1996. *Evangelical Alliance — TEAM, (AEP),* Lisbon, 1978. *Evangelical Christian Church,* Caldas da Rainha, 1986; Peniche, 1986; Ribeira de Fráguas (Albergaria a Velha), 1990; Santarém, 1992. *Evangelical Church,* Lisbon, 1992. *Evangelical International Church,* Loulé, 1991. *Evangelical Church of the Christian Pentecostal Movement*, Lisbon, 1986. *Evangelical Independent Church*, Coimbra, 1991. *Evangelical Missionary Church*, Argozelo (Vimioso), 1995. *Evangelical Movement 'Christ is the Answer'*, Alpiarça, 1989. *Evangelical Pentecostal Church of World Missionary Movement,* Lisbon, 1983. *Evangelical Pentecostal Church*, Faro, 1991; Bucelas (Loures), 1994; Cascais. 1997. *Good News Church*, Ermesinde, 1993. *International Christian Community (AEP),* Caparide (Cascais), 1994. *Legion of Good Will*, Porto, 1989. *Legion of the Little Souls of the Heart of Jesus,* Algueirão, 1983. *Living God Church,* Oliveira de Azeméis, 1982. *Logos Christian Community,* S. Domingos de Benfica, 1990. *Mennonite Brothers of Portugal*, Póvoa de S. Adrião, 1989. *Methodist Wesleyan Church (AEP)*, Aveiro, 1979. *Pentecostal Church,* Lisbon, 1980; Lisbon, 1981; Porto, 1981; Leiria, 1986. *Pentecostal Evangelical Church,* Lisbon, 1980. *Pentecostal Christian Church,* Azagões (Oliveira de Azeméis), 1996. *Pentecostal United Church*, Linda-a-Velha, 1984. *Pentecostal Mission Christian Assembly,* Mafamude (Gaia), 1997. *Presbyterian Christian Church*, Lisbon, 1977; Barreiro, 1990; Telheiras, 1992; Carnaxide, 1994. *Presbyterian Evangelical Church,* Lisbon, 1990. *Salvation Army (AEP)*, Lisbon, 1974; *United Apostolic Church,* Castanheira de Pera, 1982, *Uniate Church*, Alverca, 1995. *Worldwide Church of God*, Washington, 1994.

Most are associated in the *Portuguese Evangelical Alliance* (AEP). Only three belong to the international evangelical movement: the *Evangelical Prebyterian Church of Portugal*, the *Evangelical Methodist Church* and the *Catholic Apostolic Evangelical Lusitanian Church,* associated in the *Portuguese Council of Christian Churches* (COPIC).

Leaving the protestant denominations aside, we find the *Jehovah's Witnesses* as one of the most successful MRG. They are known for the aggressiveness and dedication to the diffusion of their message, not always easily accepted, as when Rutherford came to Portugal and explained in a public conference its doctrine on the end of the world. The audience would not let him finish. The Portuguese society was not prepared, at the time, for such a doctrine. It seems that today many accept it (27).

One of the more successful recent religious movements in Portugal is the *Maná Church.* Its development in recent years has been spectacular. Created by a Portuguese citizen who lived for a long time in Africa, it was formally created in Lisbon in 1986. This movement did not formalise its existence in other places. In 1995 we have a long list of legalised groups: 13 in the Greater Lisbon, and 19 all over the country. Three other organisations belong to this group: a Biblical School, a Businessmen's Association and a School of Music. All these organisations were created, in 1995, in Lisbon (28).

(27) Cf. Mário F. Lages, "Testemunhas de Jeová", *Dicionário da História de Portugal Suplemento,* forthcoming. This is the list of the places and dates of legalisation of the *Jehovah's Witnesses*, according to the MJ's list: Setúbal, 1980; Cascais, 1980: Leiria, 1981; Espinho, 1982: Amadora, 1982; S. Comba Dão, 1982: S. Cruz das Flores, 1982; Mangualde, 1982; Carregal do Sal, 1983; Ribeira Grande, 1983; Gavião, 1983, Cadafaz (Góis), 1983; S. Pedro do Sul, 1983, Serpa, 1983; Ventosa (Alenquer), 1984; Paço d'Arcos, 1984, Porto Alto, 1984; Lourinhã, 1984; Viseu, 1985; Portalegre, 1987; Almada, 1988; Caldas da Rainha, 1988; Cova da Piedade, 1989; Tortosendo, 1989; Porto, 1990; Coimbra, 1990; Ílhavo, 1990, Funchal, 1990; Angra do Heroísmo, 1990, Esmoriz (Ovar), 1990; Tavira, 1991, Sacavém, 1991; S João da Madeira, 1991; Tomar, 1993; Ramalde (Porto), 1996; Alcanena (Santarém), 1996.

(28) In the *Prontuário Evangélico 1995,* p. 211, we have only 22 congregations.

Another big religious success, in terms of popular adherence to its cult, is the IURD, or the *Universal Church of the Kingdom of God*. This church has its origin in Brazil. It is very similar in its practices and messages to the Maná Church. But the development of the IURD has been turbulent and full of conflict. Its policy of buying buildings licensed for other purposes and using them for worship led to some of the most publicised 'religious wars' we have seen in the country. The tentative purchase of the Coliseu do Porto, the main theatre in town, nearly originated a popular uprising, backed by the local authorities. It is, in fact, interesting to note that these conflicts occurred in Porto and not in Lisbon, where similar events had taken place. In fact IURD celebrates its cults in Lisbon in two big cinemas that it purchased without any popular reaction.

Lately this group has kept a low profile. The revelation in a TV channel of a video showing their lack of respect for some of the religious symbols of Catholicism, as well as the teaching of its founder on ways of taking money from people was a big blow to its religious credibility. Lately, the media has given less attention to the IURD, and its religious services are well attended, at least in Lisbon. Its development in the country does not show in the list I am commenting, where the IURD has only three entries. This seems to be meaningful.

The *Mormons* are among the relatively less important groups. They were legalised in 1976, being then quite well known for microfilming most of the data concerning Portuguese of past generations.

The *Moon Church* is registered since 1989 as *Association for the Unification of World Christianity* (Oeiras). It tried to influence at the time a very small party (Social Solidarity Party), without success.

There are many although small groups that claim some relation to oriental philosophies and religions. Among them we have some with a slight expansion, like the *Sekai Kyusei Kyo*, or *World Messianic Church*, which legalised 5 organisations, two in Porto and Coimbra, and three in Lisbon.

The other groups of oriental influence are the following: the *Oghien Kunzang Chiling* (Porto, 1980), the *Hare Krishna* (Cascais, 1981), the *Sukio Mahikari Association* (Porto, 1987), the *Ananda Marga Pracaraka Samga* (Vila Franca de Xira, 1990) and the *Shiva Temple* (Flamenga-Loures, 1990).

To the number of very small and esoteric groups, I can add three movements: the *Christian Cultural Association Gnostic Universal Movement* (sic) (Anjos-Lisbon, 1991), the *Order of the Dove (Association for the Study, Research and Development of Holy Spirit Cult),* (Flagueira-Amadora, 1993) and the *Lectorim Rosicrucianum* (Lisbon, 1996).

Some of the MRG operating in Portugal, as in many countries, have an African origin, like the *Kimbangism* (the *Kinbangist Church,* legalised in Lisbon, but with its seat in Kinshasa, 1983) and the *Tocoism* (*Our Lord Jesus Christ Church in the Tocoist World*), created in Chelas, in 1993. From the same African worldview, passing through the Brazilian cultural cauldron, is the *Candomblé,* under the name of *Afro-Brazilian Centre of Religious Studies* (founded in Monte da Caparica, just outside Lisbon, in 1989), and *Umbanda* (*Terreiro Umbanda Ogum Megê*, in Benfica, in 1990). These groups seem to follow an important Brazilian colony that lives in Portugal, mainly in the capital. But the followers of their cults and practices are Portuguese also. Other small groups come directly from the USA. Among them, is the *Scientology Church* (Lisbon, 1988) which has, for the moment, kept a relatively low profile.

Not taking into account Lisbon, where most of the groups were created (29), and other district capitals, the most pluralistic areas in Portugal seem to be Loures and Carnaxide, in the immediate outskirts of Lisbon (30). According to the Ministry of Justice data, 13 MRG have their seat in the commune of Loures, and at least 9 in Carnaxide (31). Loures is a region of mixed economy, with many

(29) Lisbon is mentioned 65 times; Porto, 24.

(30) For instance, Coimbra has 7 different denominations; Viseu, 4; Angra do Heroísmo, 3.

(31) These are the lists derived from our sources, but not controlled by any field work. In Loures: *Assembly of God,* 1979; *Baptist Association,* 1981; *General Council of the Assemblies of God,* 1989; *Biblical Institute Hope Mountain,* 1989; *Baptist Church,* 1992; *International Christian Embassy of Jerusalem,* 1992; *Evangelical Church,* 1994; *Editora Ceifa,*

commuters and some agricultural workers. Carnaxide is a place of recent urban development, its people coming from different nations and places. In social milieus of this kind it is easy to create new sources of difference. Proselytism is easier there too: rootless people with little integration in their communities; middle and lower classes fighting for a place in the sun, need to be integrated in communities where they can find a home to live in (32).

6. Conclusion

My treatment of the MRG stressed the variety of the religious cults, movements, sects, confessions, denominations and churches to which many Portuguese are affiliated, accepting their teachings, trying to follow their ethics, adhering to their symbolic order. It was clear from this analysis that the proliferation of this religious world is a rather recent phenomenon. Nevertheless the usual category of NRM does not apply to it in a comprehensive way. Some traditional churches have begun their activities in Portugal recently but they are too old to be described by this name.

The expression MRG implies that these groups have some common sociological characteristics. When applied to a specific country, it says that its minority groups can not be completely understood sociologically by its relations to the dominant religious culture of the country. Such a paradigm allows a better understanding of the attitudes and behaviour of those who belong to a specific religious group. Not being the only possible paradigm, it seems adequate to understand what I tried to analyse.

Christian Organisation, 1987; *Shiva Temple*, 1990; *Maná Church*, 1995 (one in Loures and another in S. António do Tojal); *Christian Church*, 1997. As far as Carnaxide is concerned, we have: *Evangelical Christian Centre*, 1981; *Presbyterian Christian Church*, 1977; *Evangelical Association*, 1981; *Evangelical Baptist Church*, 1986; *Association Salão das Assembleias*, 1989; *Church of the Complete Gospel of God*, 1989; *Christian Portuguese*, 1992; *Maná Church*, 1995; *Evangelical Church*, 1996.

(32) This is not, of course, a complete picture of the subject. We could have a better portrait of the Protestant movements because we have more precise information on them. But no similar data are available for the other MRG.

The analysis showed also that the development of the religious groups in Portugal had deep grounds for appearing when they did. From a closed, controlled or blocked society of the forties and fifties, Portugal was suddenly confronted with a changing world. Its strong political control was replaced by a sort of 'laissez faire' that invaded all sorts of activities and beliefs. The cultural differentiation exploded like fireworks in a popular festival.

The impact of this differentiation is so deep that only today are we beginning to evaluate it. I cannot, of course, develop the issue here. I can only summarise some of its factors, in simple formulas: emigration to other European countries, the colonial wars, the 25th of April Revolution, the democratisation of the school system, and the rapid transition of some groups to a post-modern society.

I can add finally that, in a study of the changes that occurred in Portugal in the second half of this century, a description of the development of the MRG would be an important chapter. It would be also a major part of a theory on cultural differentiation.

JOSÉ A. TELES PEREIRA
Lisbon

NEW RELIGIOUS MOVEMENTS IN PORTUGAL: LEGAL ASPECTS

1. Portugal is essentially a Catholic country as is shown by the staggering figures that emerged from the 1991 census: 79,9% of the population over 12 years old stated they were Apostolic Roman Catholic; less than 2% said they belonged to a Christian religion other than Catholic (Protestant, Orthodox etc.); less than 1% said they belonged to a non-Christian religion (Judaism; Islam; Hinduism etc.); less than 3% said they had no religion (1).

The overwhelming importance of the Catholic Church has deep historical roots and large periods of its history cannot be distinguished from the very history of Portugal as an independent country — a true nation endowed with a State for over 800, almost uninterrupted, years amidst the diversity of the Iberian peninsula. Such a situation is based on an initial matrix of co-existence of the three "abrahamic" cultures (Christian, Muslim and Judaic) and on the triumph (let us call it thus) of the Christian matrix over the other two — a triumph achieved through an almost invariably violent process of hegemony in relation to the other two cultures.

It is in this sense that the historian, José Hermano Saraiva, speaks about the process of obtaining independence and organising the Portuguese State in terms of "cultural genocide" and "the triumph of the (Christian) group whose technical and literary

(1) See José de Sousa e Brito, *La Situation Juridique des Eglises et des Communautés Religieuses Minoritaires au Portugal*, in Le Statut Légal des Minorités Religieuses dans les Pays de L'Union Européenne, Thessaloniki/Milano 1994, p. 235.

culture that was more backward" as the influence underlying what is called "the Portuguese essence: religious intolerance, ideological chauvinism, a tendency to identify the nation with a single creed" (2). It is within this atmosphere of intolerance that phenomena of latency of other religious matrices arise and persist through the centuries to this day. This is shown by the Crypto-Judaic phenomenon (an important and fascinating aspect of Portuguese culture), which has been theoretically described by Maimonides in his "Epistle on Apostasy" as "the moral right to profess intimately one belief whilst appearing to profess another" (3).

It is the persistence of this status quo that explains the imperviousness shown by Portugal to the Reform Movement. As a result, "Portuguese Protestantism" as the Portuguese Protestant theologian, Dimas de Almeida, writes is essentially "Protestantism without reform" (4) brought to Portugal by foreigners and established here with difficulty in a climate of suspicion, not to say actual hostility, of the public ruling bodies.

To illustrate this point, it must be stressed that the oldest Protestant church in Portugal is the Igreja dos Irmãos (Church of the Brothers) which was founded in 1827 by Richard Holden (5). Nowadays, the traditionally established Protestant Churches are essentially divided into two organisations: the Portuguese Evangelical Alliance (Aliança Evangélica Portuguesa - AEP) and the Portuguese Council of Christian Churches (Conselho Português das Igrejas Cristãs - COPIC). According to the most reliable figures, the

(2) História Concisa de Portugal, 15th edition, Mem Martins, 1992, p. 81.

(3) *Op. cit.* and *loc. cit.* in previous note.

(4) *O Mundo Protestante* in the weekly newspaper 'O Independente' supplement 'Vida', August 1995.

(5) The Presbyterian Church (Reformed) was established 150 years ago in the Madeira island by the Scottish minister, Rober KALLEY; the Lusitanian Church (Anglican) was founded in 1878 and appointed its first bishop, D. António FERREIRA FIANDOR, in 1958; the Methodist Evangelical Church was founded in 1871 by the Reverend Robert Hawley MORETON from England; the Baptist Churches appeared in the north in 1889 spreading to the south of the country around 1922; the Pentecostal Churches and Assemblies of God were established in 1913 by the preacher Plácido DA COSTA from Brazil; the Church of the 7th Day Adventists began its activities in 1904 headed by a group of missionaries among which the American Rentsso was important.

Portuguese Protestant population is between 150,000 and 200,000 people out of a total population of almost 10 million (6).

A numerically significant group within the 2% professing non-Catholic Christian religions are the Jehovah's Witnesses established in Portugal since 1925, originally under the name 'Students of the Bible', and who have since then regularly published their newspaper "The Watch Tower" as well as various other publications (7).

Subject to mistrust and even open hostility on the part of the political rulers prior to the institutionalising of the democratic regime in April 1974, all these non-Catholic Christian groups saw their activities surrounded by an extensive range of obstacles to religious freedom. One such obstacle was the fact that they were frequently targeted for harassment by the political police (particularly in the period prior to the enactment of the 1971 Law of Religious Freedom, Law n° 4/71, of August 21st, when there was a slight loosening up on the part of the authoritarian regime). Paradigmatic is the case of the Jehovah's Witnesses, who were frequently sent to prison for being conscientious objectors to compulsory military service (at that time — the 60s/70s — the Portuguese were engaged in wars in Africa) or for merely propagating their faith (8).

The Muslim matrix of Portuguese culture, which had been practically destroyed over the centuries, came to influence Portuguese culture through the Portuguese territories in Africa where there were very large sections of the population under the influence of Islam (for example, in Guinea Bissau) or immigrant populations professing the Islamic faith (as in the case of Mozambique which had a large number of Ismailis of Indian origin). Following decolo-

(6) *Op. cit.* in note 1.

(7) Jehovah's Witnesses had tried to register as a religious association since 1952 but only achieved this aim on December 18th, 1974, after the Revolution of April 25th, following the enactment of the so-called Freedom of Association Law (Decree Law n° 594/74, of November 7th).

(8) In June 1966 49 Jehovah's Witnesses were arrested and tried at the Lisbon Criminal Plenary Court (a court specialised in the repression of political crimes) following a meeting near Lisbon. The trial ended with them being sentenced for unauthorised public assembly to emprisonment between 4 days and 5 and a half months.

nisation and the subsequent influx of people returning from the former colonies to Portugal, a large group of Muslims settled in the country, particularly in Lisbon and the surrounding areas. They formed an "Islamic Community" and in the 1980s opened the first mosque since the defeat of the Moors and the assimilation of the Moorish population in the Middle Ages.

The Jewish community, although small (9), offers some curious peculiarities connected to the above mentioned Crypto-Judaism phenomenon (10). The Israelite Community of Lisbon was established in Lisbon in 1813 primarily by Sephardic Jews from North Africa (some of whom later emigrated to the Azores) and they founded the first synagogue since the Inquisition the persecutions. The community was made up of important people in the Lisbon society of the time (doctors, university professors, merchants etc.) and it was endowed with several important institutions: a cemetery, a school, a welfare association, outlets selling *Kosher* products and Rabbis. On May 1st, 1904, the first purpose-built synagogue (*Shaaré Tikvá* — The Gates of Hope) opened in Rua Alexandre Herculano in Lisbon and it is still the largest Portuguese synagogue (11) today and they have published, albeit somewhat irregularly, since 1929 the "Revista de Estudos Hebraicos" (Review of Hebrew Studies).

The ranks of the Lisbon Jewish Community swelled — although somewhat temporarily — during the Second World War with the influx of countless Jews fleeing from the Holocaust, many of whom had been saved by the Portuguese Consul in Bordeaux, Aristides de Sousa Mendes.

Concurrently, resisting the lapsing of centuries and slightly aside from the official Jewish community, the phenomenon of latency persisted in extremely isolated rural communities in Trás-os-Montes and

(9) Note that those responsible for the Hebraic Communities in Lisbon, Oporto and Belmonte estimate the number of Jews to be less than a thousand whereas in the 1991 Census, 3519 people declared (under statistic confidentiality) they were Jews (*op. cit.* and *loc. cit.* in note 1).

(10) See David Augusto Camelo, *O Resgate dos Marranos Portugueses*, Belmonte 1996, pp. 17.

(11) *Op. cit.* and *loc. cit.* in note 10; see Moses Bensabat Amzalak, *A Sinagoga Portuguesa "Shaaré Tikvá"*, Lisbon 1954.

Beira Interior in which ancestral Judaic rites were secretly performed. This phenomenon was the subject of anthropological study (12) and was given particular attention following its discovery around 1915 by the Polish Jew, Samuel Schwarz, who later wrote an account of it in his book "Os Cristãos Novos em Portugal no século XX" (New Christians in Portugal in the 20th Century) which was published in Lisbon in 1925. The light cast on this fascinating group led to the appearance of a movement for a return to orthodox Judaism headed by some of these Crypto-Jews ("Marranos"). This movement was actively led by the most important figure in 20th century Portuguese Judaism — Captain Artur Carlos de Barros Basto, the "Guide of the Marranos", founder of "Deliverance" (a movement to help New Christians from the north and the centre of the country return to Judaism(13)) and active supporter of the building of the "Kadoorie Mekor Haim" Synagogue which opened in the city of Oporto in 1938.

As opposed to the community in Lisbon which had a stable population taken from a certain limited number of families and only grew as a result of the immigration of foreign Jews, Captain Barros Basto' s movement was characterised by its proselytism in relation to Portuguese Crypto-Jews. This led to an attitude of open hostility on the part of the ruling bodies who were in office following the establishment of the dictatorship in 1926 and also to the political persecution of Captain Barros Basto.

This resurgence of Judaism nevertheless received a strong impetus after democracy was established in 1974 with the move for a return to orthodox Judaism by the Belmonte community in the centre of Portugal (14). An important event was the opening, that year, of a purpose-built synagogue ("Beth Ziom": Children of Ziom), that replaced the provisional premises used until then.

Although only described in very sketchy terms, these then are the main religious movements, attributed time-wise to this century,

(12) Francisco Manuel Alves (Abbot of Baçal), *Memórias Arquiológico-Históricas do Distrito de Bragança*, vol. V (The Jews), Bragança 1925.

(13) See *op. cit.* in note 10, p. 59.

(14) See Maria Antonieta Garcia, *Os Judeus de Belmonte. Os Caminhos da Memória*, no date.

which can be considered as being established in Portugal. Something in their history provides model approach to which, from a non-legal point-of-view, we could now call "New Religious Movements" (NRM). Indeed, the various Protestant movements could be considered as such at the time when they were established in Portugal; the same could clearly be said of the Jehovah's Witnesses; finally, the special case of the return by the "Marranos" to the practice of orthodox Judaism in its early stage provides an important approach model to the phenomenon of NRM from the point of view of their relationship to political power. Bearing in mind that we are referring basically to an historical experience lived primarily under a totalitarian regime and not within a democratic State, it is easy to understand that hostility begins (or, in other words, tolerance ends) when faced with certain phenomena in which converge novelty (the difficulty of fitting into a known scheme) and a tendency to grow among the national population (proselytism).

Although running the risk of superficiality when faced with an extremely complex reality, we cannot avoid observing that tolerance is greater to the holder of a faith divergent from that of the majority that remains statically attached to it (or reproduces it in a pre-set context). Such tolerance is, however, lesser with those who tend dynamically to put their faith into perspective, by proselytising and competing in the "religious ideas market" (especially outside a known framework, equivalent in this case to one of the so-called "traditional religions").

In terms of the general legal status of the religious movements traditionally established this century in Portugal (15), everything falls into the framework drawn up by the 1976 Constitution (Article 41) i.e. a system with Church-State separation and guaranteeing in broad terms freedom of conscience, religion and worship on both an individual and a collective level. Note that the Portuguese legal system raises the protection of religious freedom to the level of criminal law protection, defining as crimes several types of behav-

(15) See on this subject *op. cit.* in note 1 and J.A. TELES PEREIRA, *La Liberté Religieuse et les Rapports entre les Eglises et l'Etat au Portugal dans les Années 90*, in Revue Européenne des Relations Eglises-Etat, 1995, vol. 2, pp. 95.

iours that infringe this fundamental right, both on an individual and n a collective level (see Articles 251 and 252 of the Criminal Code) (16).

There is however one factor which because of its significance deserves special mention: the existence of a Concordat relating to the Catholic Church, signed by the Portuguese State and the Holy See in 1940. From this statute follow many of the aspects of the relationship between the State and the majority religion and it is by reference to it (and to the legislative practices stemming from it concerning the Catholic Church) that the minority place their demands of equality.

A Law of Religious Freedom (Law n° 4/71, of 21st August) inherited from the last few years of the authoritarian regime still exists. However, as a result of the 1976 Constitution it has become to a large extent a document void of content. At this moment the preliminary work on a new Law of Religious Freedom is under way (with a bill already drawn up and published). The guidelines for that bill, based on the text of the Ministry of Justice's order establishing the committee for reviewing the law, can be summed up in two basic concepts: the intangibility in form and substance of the Concordat and the abolition by effect of the equality principle of the material differences in regimes between different religions and their respective members as far as individual and collective religious rights are concerned.

2. No legal definition of NRM exists in Portuguese law and the concept of a "sect" (a term frequently used in the media to refer to some NRM) in particular has no legal expression amongst us.

The Portuguese State is neutral in religious matters. In 1976 following the establishment of the democratic regime, the State exercised its constituent power and decided to withdraw from this domain, giving up all intentions of regulating religion. A study already quoted (17) states: "On this subject, taking as an example previous constitutional experiences ('republican secularism') from

(16) See J.A. TELES PEREIRA, *Religião (Crimes contra os sentimentos religiosos)*, in Sub Judice n° 11, January 1996, pp. 184.

(17) See J.A. TELES PEREIRA, *op. cit.* in note 15.

the 1911 Constitution which are closest in time, and considering the Catholic religion to be "the religion of the Portuguese nation" or the "traditional religion of the Portuguese nation" (under the authoritarian regime of the 1933 Constitution), it can be said that the constitutional framework instituted in 1976 moved the religious question away from State description and definition to the sole area of fundamental rights".

The legal framework through which a "legal definition" of NRM can be reached is the same through which any religious movement is defined and which we have already commented in a previous study presented to the *Consortium* (18): apart from the Catholic Church, which is expressly recognised by the Portuguese State in Article 1 of the 1940 Concordat ("The Portuguese Republic recognises the Catholic Church as a legal person..."), such recognition being restated in 1975 when amendments to the Concordat extended the possibility of divorce to Catholic marriages ("The Holy See and the Portuguese Government, affirming their will to maintain the current Concordat regime..."), all other religions may obtain legal personality in the same conditions as any other association under the statute on freedom of association enacted after the Revolution of April 25th (Decree Law n° 594/74, of November 7th) and which is supplemented by clauses in the Civil Code (amended in 1977 by Decree Law n° 496/77, of November 5th) relating to legal persons (Article 157ff. of the Civil Code).

In practical terms this means that a religious association (an association which is incorporated by invoking the pursuit of religious purposes) acquires legal personality through a deed signed in the presence of a Public Notary (Article 158 (1) of the Civil Code) in which are specified "those properties or services provided by the members (...) the name, purpose and registered head office (...) how it operates" (Article 167 (1) of the Civil Code). Failure to be incorporated as an association can only arise from the fact that its articles of incorporation state purposes contrary to the law, public order and/or "are morally offensive" (Article 280 applicable *ex vi* Article 158-A, both of the Civil Code). The Ministry of Justice is

(18) *Op. cit.* note 1, p. 243.

responsible for registering religious associations (Decree Law n° 216/72, of June 27th).

This system — due to a large extent to the withdrawal of the Portuguese State from the religious phenomenon and its characteristics — enables the incorporation in generous terms of religious associations. In fact, it was under this legal framework that some of the groups that recently appeared in Portugal have been incorporated as religious associations. These groups could be considered NRM (in the media they were almost invariably referred to as "sects"). This was *inter alia* the case of the so-called Universal Church of the Kingdom of God (Igreja Universal do Reino de Deus — IURD) and of the Maná Church (Igreja Maná).

In what concerns the courts, when they have been called on to deal with religious issues for different reasons, there has been no concern with legal theorising or the definition of these bodies of a religious nature. In several rulings of the Supreme Administrative Court — on the matter of claims against decisions of local authorities whereby the use as places of worship by religious cults of premises licensed for entertainment was forbidden — IURD is considered to be purely and simply "a religious association", with its activity linked, based on the constitutional guarantee of freedom of worship opposing the administrative regulations on the use and purpose of certain public premises. This means that the courts have generally dealt with cases involving an NRM on terms similar to those of any other traditionally established religious movement, assuming that the former's activities are within the right to freedom of religion and worship.

A legal theory approach to religious phenomena are scarce in Portugal. In particular, outside traditional legal disciplines, there is no body of doctrine sufficiently well established that could be considered as "Ecclesiastical Law" (19). Thus there is no definition by worshippers of the rights of NRM.

Some more recent works, particularly those of Dr. Jónatas Eduardo Mendes Machado, written from a perspective clearly

(19) Jónatas Eduardo Mendes Machado *Pré-compreensões Acta Disciplina do Fenómeno Religioso* in Bulletin of the Law Faculty, vol. Lxviii, Coimbra 1992, pp. 163.

within the area of Constitutional Law, criticise the search for a legal definition of NRM, blaming it for the risk of creating "pre-conceptions about religious matters", mere theories of "attitudes towards religious manifestations which are determined to a large extent by a specific conceptualisation, religious or not, of the world and life as embodied in historical experience, by the light of which such manifestations appear, on the whole or partly, as pathological phenomena to be neutralised or eliminated, if such is the case, as soon as possible." (20).

3. The activities of some religious movements recently established in Portugal have deserved growing interest from public opinion and most of the media.

We have in mind particularly the case of the Universal Church of the Kingdom of God (IURD)(21) which for quite a long time ran a daily television programme (paid as advertising) on a private television channel, showing worship meetings as well as allegedly miraculous cures which occurred during those meetings (22). The IURD also became involved in a public and legal controversy with some local authorities over the acquisition of premises licensed for public entertainment and used by it as places of worship (23).

Still on the subject of the IURD, and if a news report published in the weekly "O Independente" of 10/5/96 is correct, the Regional

(20) *Op. cit.* in previous note, p. 170.

(21) This is a religious movement which started in Brazil. It has its roots in Protestantism but includes a variety of elements alien to Christian culture (for instance traditional Afro-Brazilian cults). It is typified by an extremely aggressive message, organising public worship meetings (generally in cinemas and theatres it has bought) where the most noticeable feature is the promoting of "miracles" (the curing of people, etc.) through the practice of "magic". This aspect as well as others led the umbrella organisation of the Evangelical movement not to accept it as a member.

(22) This situation led to amendments to the "Advertising Code" through Decree Law 6/95, of January 17th, expressly forbidding advertising which "might have as its aim ideas of a trade unionist, political or religious nature" (Article 7 (2) (b), thereby putting an end to IURD's religious advertising.

(23) Some local authorities, invoking administrative regulations, prevented IURD from using certain cinemas and theatres it had bought as places of worship — this situation gave rise to a series of court cases, still pending, in the Administrative Courts. (In relation to this, see Gomes CANOTILHO/Jónatas MACHADO, *Bens culturais, propriedade privada e liberdade religiosa*, Public Prosecutor's Office Magazine, nº 64 October/December 1995, pp. 11.).

Social Security Centre for Lisbon and the Tagus Basin has commissioned to a researcher of the Faculty of Social and Human Sciences of the Universidade Nova de Lisboa a study of the typical features of this movement. This was to have grounds for an administrative decision on the nature of IURD as a religious association (for purposes of Social Security affiliation).

According to that news report, IURD could not be considered as a "church" because it lacked "doctrinal basis" and "institutional support", and its "hierarchy" did not follow "any plan", because it merely followed the "choices of the leader". In addition to this, the study stressed the lack of any "universalist and dialogue inclination" on the part of IURD, one of the features of a sect: self-absolutisation which leads to an operation as "secret society" with a "dual social personality". Allegedly there were "depersonalisation" practices, a sort of "brain-washing" of its followers through "recourse to guilt and fear as a means of submission". According to the abovementioned study, one of the typical features of the IURD cult — collective "exorcisms" which drive "demons" away from the bodies of followers — applies "the technique known in medicine as "altered states of consciousness" which induces the "internal production of endomorphines, thus bringing about a feeling of well-being".

Another aspect the study focuses on (still according to the press) is the economic aspect expressed in compulsory "miracle buying" and a perverted use of "tithe collection" which yields about "PTE 200 million a month" to IURD and support its aggressive policy of buying up real estate and radio stations.

IURD has to some extent stressed on this aspect in the Administrative Courts when it has had to describe its activities. Since the existence of irreparable damage arises from failure of ruling a stay of execution of the local authorities' administrative acts which shuts down some of its places of worship for lack of a specific license for such use, IURD states that such closures create "the risk that its members, not being able to use its services, decide to seek out such services from other religious congregations which can offer the support and protection they lack", "which could result in the total loss of its "clients" which would be extremely difficult, if not impossible, to recover in the future". This represents a

"damage of moral nature and in terms of its assets, since it means not only the reduction (if not the disappearance) of its believers but also the decrease (if not the end) of the contributions from members which are the only financial support for IURD. (Quotations from the Judgement of the Supreme Administrative Court of 28/9/95, given in case n° 38492).

Apart from the report referred to above (quoted taking as accurate the information published in the press), no other public measures (either by the Government or Parliament) were taken in order to analyse the activity of any NRM.

4. A New Religious Movement (in fact any religious movement) obtains legal recognition as such through the simple procedure described above.

It is worth pointing out in relation to this that the bill for the new Law of Religious Freedom (already presented and currently under discussion) provides for the acquisition of "legal personality for religious associations" through registration "in the Registry of Religious Associations" held by the Ministry of Justice. This registration depends on an application "containing an informative document with details of the incorporation, institution or establishment in Portugal of the organisation corresponding to the religious association" under discussion, "and other documents which allow the registration of its name (which should enable it to be distinguished from any other), its head office in Portugal, its religious purposes, the properties or services which make up or will make up its assets, the rules governing its formation, composition, responsibility, functions of its governing bodies as well as the methods of choosing its representatives and their powers". This registration also depends on "proof of its existence in Portugal, and mention should be made of the general doctrinal principles, a general description of the religious rites and practices of the religion, its organised social presence and its duration in Portugal".

Still according to the text of the bill, note that the Ministry of Justice (advised by a Committee for Religious Freedom) may only refuse a registration on the grounds of "lack or untruthfulness" of the necessary requirements or on the grounds of "violation of the constitutional limits of religious freedom".

5. The economic aspects, namely taxation of NRM show no particular features as to the relationship between the majority religion, the Catholic Church, and any other religious movements (24).

There is a clear difference in the treatment given to the Catholic Church and to other religions. This arises from Article VIII of the Concordat. The state has granted tax exemption to all the Catholic Church's activities and also to its ministers (even for activities not directly linked to their priestly functions), which is unparalleled for other religions or movements.

Such differentiated treatment in what concerns VAT in violation of community law (and such taxation cannot be considered as being expressly or implicitly any provision of the Concordat) goes as far as providing, under Decree Law n° 20/90, of January 13th, for the reimbursement to the Catholic Church and its various associations of the VAT paid on purchase and importation of objects for the religious cult, on goods and services relating to the construction, maintenance and conservation of buildings intended to the cult, to the housing and training of the Church's ministers, to the apostolate and charity activities.

Any religious movement other than the Catholic Church, through its recognition as a legal person, can claim exemption from the Local Tax "on those churches or buildings used solely for worship or for holding non-profit making events directly related to it" (Article 50 (1) (*c*) of the Statute of Fiscal Benefits, approved by Decree Law n° 215/89, of July 1st).

As far as Corporation Tax (IRC) is concerned, religious movements, with the exception of the Catholic Church, may benefit from exemption under Article 9 of the Corporation Tax Code only if they are public utility legal persons and charities (which is outside the scope of religious nature).

It should be emphasised that in this domain the situation of NRM is essentially identical to that of the other religions other than the Catholic Church.

6. Article 41 (6) of the Constitution of the Portuguese

(24) See *op. cit.* in note 15 pp. 106 — 7 on the subject.

Republic guarantees "the right to conscientious objection as provided by law". This was recently subject to review by the Constitutional Court in Judgement n° 681/95, in the case of Jehovah's Witnesses who, when requesting recognition as military service objectors, refused to comply with the legal requirement (set out in Article 18 (3) (*d*) of Law n° 7/92, of May 12th) making an express declaration of availability for civic service at a later date in lieu of military service, subject to such status not being recognised.

The solution that prevailed in the Court held such a requirement to be in conformity with the constitutional text, classifying it as a "configuration" of the fundamental right contained in Article 41 (6) and not as a "restriction" to it. Holding that the provision in question was unconstitutional, one dissenting opinion stresses the nature of the right to conscientious objection as an expression of a general right to tolerance.

7. Protection of the individual within a religious organisation, irrespective of its nature, is not governed by any specific regulations.

There is a whole set of laws on the protection of privacy, namely in terms of data protection and information technology, which in certain circumstances can have some connection with the activity of a movement which claims to be of a religious nature (25).

Apart from this, there is protection under criminal law. Although not specifically directed at religion, it still contains nonetheless types of crimes against personal freedom (Articles 153ff of the Criminal Code) and personal privacy (Articles 190ff of the Criminal Code) which can to a certain extent guarantee the protection of the individual within any organisation, obviously including religious organisations.

However, note the enormous difficulty in organising (regulating) any kind of protection of the individual with respect to activities which the individual himself agrees to, even though they might

(25) We are thinking of a recent article published in the supplement to the Expresso weekly magazine of 18/10/97 on the Portuguese Church of Scientology (which has acquired the status of a religious association in Portugal) which alleges that the organisation keeps files containing personal (even intimate) information about all its followers.

violate his rights. Even in what concerns criminal law protection, "consent of the person vested with a legal interest" precludes the existence of an offence, according to Article 31 (1) (d) of the Criminal Code.

In the case of minors, there are public protection duties which can even go as far as overruling parental power "when either parent deliberately does not comply with his/her duties towards their children, with serious consequences for the latter, or when out of inexperience, illness, absence or other reason he/she is unable to fulfil those duties" (Article 1915 of the Civil Code).

Besides this, "when the safety, health, moral upbringing or education of a minor is in danger and there is no question of overruling parental power, the courts may at the request of the Public Prosecutor's Office", of any relative of the minor or of the person to whose care he has been entrusted "decide that appropriate measures be taken to entrust him to a third party or to an educational or welfare establishment" (Article 1918 of the Civil Code).

In this respect, it may be added that the bill for Law of Religious Freedom states that it includes: the right to have, not to have and to cease to have any religion; the right to freely choose one's own religious belief; to change beliefs and abandon the previous ones as well as, in negative terms, the interdiction that anyone be coerced into entering, remaining in or leaving any religious association, church or religious community.

As to the minors, the same bill gives parents the right to bring up their children in accordance with their own religious beliefs, but respecting the moral and physical integrity of their children and without prejudice to their health. It further says that minors have the right to make their own choices regarding freedom of conscience, religion and worship as from the age of 16.

8. Portuguese criminal law, as already mentioned, treats the subject of religion (in fact the whole of the religious phenomenon) by making it an offence any action against religious freedom. So, outrage for religious beliefs and the hindrance and disturbance of outrage to acts of worship are punishable (Articles 251 and 252 of the Criminal Code).

On a different approach, criminal law contains a provision which defines as a crime of "criminal association" the promotion or creation of any group, organisation or association whose main purpose or activity is directed towards criminal activities (Article 299 of the Criminal Code). Thus the way is open for criminal purposes (or defined as such in criminal law) disguised as the pursuit of religious aims to be subject to penal sanctions. Those would obviously be extreme situations totally outside the guarantee of religious freedom.

Outside his framework, there is no — nor would it be possible within a democratic state such as the one defined by the Constitution of the Portuguese Republic — *a priori* prohibition of any religious movement which does not propose illegal ends or use illegal means. In this matter, the Civil Code gives the Public Prosecutor's Office the possibility of asking for a judicial decision to nullify the act of incorporation of any religious association having an objective that can be defined as being contrary to public order or morally offensive.

9. Membership of a religious movement — and the same applies to a NRM — implies no legal specificity as to the personal status of the individual in Portuguese law, where the principle of equality rules. Concretely, this derives from the principle that "No-one may be privileged, benefited, prejudiced, deprived of any right or exempt from any duty for reasons of ancestry, sex, race, language, place of origin, religion, political or ideological convictions, education, economic situation or social status" (Article 13 (2) of the Constitution).

Specificity in terms of personal status is lost only through the differentiation which exists for marriage in respect of members of the Catholic Church. In fact, Portuguese law recognises the force and validity of Catholic marriage (Article 1587 of the Civil Code) which is automatically transferred to the civil register.

No parallel situation exists in respect of any other religion but the bill for the Law of Religious Freedom provides, in certain conditions, for the recognition of civil validity of marriages celebrated in a religious ceremony before a minister of the faith of a registered church or religious community.

AGUSTÍN MOTILLA
Faculty of Law, University of Alcalá

NEW RELIGIOUS MOVEMENTS IN SPAIN

SUMMARY: 1. *The sociological situation of the NRM.* — 2. *The delimitation of the NRM phenomenon and its legal significance.* — 3. *The parlamentary Commission for the study of religious sects.* — 4. *Legal recognition.* — 5. *Access to legal benefits.* — 6. *Manifestation of conscientious objection; legal treatment and case law.* — 7. *Protection measures for those belonging to the NRM.* — 8. *Criminal acts and activities of the NRM* — 8.1. Unlawful acts by members of the NRM. — 8.2. Possible illegalization of the NRM. — 9. *Membership of a NRM as modifiying cause in personal relationships.*

1. THE SOCIOLOGICAL SITUATION OF THE NRM

The first point to clarify when dealing with this subject is what is meant by the category NRM in order to be able to define the groups belonging to this area and operating in Spain, and lay out the sociological data regarding them. We cannot associate these with the term religious minorities as in a strict sense and in comparison with the numbers of Roman Catholics, all other confessions are minorities. The fact is that less than one percent of the Spanish population declares itself to be follower of a different religion. Neither does the name "new" help to identify the phenomena as with exception of the Jewish, Muslim and Protestant communities, all the others have been founded and set up in Spain in the twentieth century and in particular in the sixties and seventies.

I will therefore use the criteria of the social polemic which has arisen from the beliefs or activities of certain groups when refering

to the NRM in the following paragraph, although this should not be taken as a limitation to a greater precision, but more as an endeavour to clarify.

The largest confessional group in Spain at present, excluding of course the Roman Catholic church, is that of the Jehova's Witnessses. Following their arrival in Spanish territory in the ninteen twenties, their expansion particularly among the middle and lower class ranges of society, and more especially in working class districts, has brought their numbers today to nearly one hundred thousand. Certain aspects of their doctrine, such as their religious fundamentalism, proselytistic methods and in particular conscientious objection not only in the question of blood transfusions but also in any act of civil colaboration ordered by law, such as military service or participation in election or jury service, have caused certain social polemic regarding the belief and activities of this particular confession. Regarding their legal status in Spain, although they are registered in the Register of Religious Entities and compared with other communities they enjoy a certain established "acceptance", both conditions being fundamental requirements of the Law of Religious Freedom for agreements with the State, the Government agreed not to open the way to negotiations which would lead to the stipulation of a Treaty, alleging that the doctrine of the Witnesses in questions of blood transfusion and civil collaboration are contrary to national public interests.

Other groups whose activities have caused public concern, more perhaps for differences in practices and beliefs with those normally found in our cultural society, than for any criminal activity, hardly reach a few hundred in numbers and may be even fewer. This has been the case with the attempt to sell the means to salvation by the Scientologists; the asceticism of oriental basis of the Hare Krishnas or even the mass weddings or wealth of the spiritual leader of the Unified Church of the Reverend Moon. The headlines in the Press have been more the result of fame acquired outside our national frontiers. One exception has been the minority group — it's members were fewer than fifty — created by Spaniards and established in Barcelona and Valencia under the name of "Centro Esotérico de Investigaciones" (CEIS). The leaders of the

group, who, as it was demonstrated, rapidly controlled their followers, were found guilty of inciting prostitution by using the initiates for economic gain and for the impersonation of public office.

2. Delimitation of the NRM Phenomenon and its legal significance

The real denomination of this phenomenon is open to controversy. The scientifically accepted origens of the word "sect" which stems from religious sociology of the end of the ninteenth century, is today subject to a more popular and contemptuous implication which makes it unsuitable for incorporating the group of movements which are on the whole, accepted as legal. The use of other ideologically neutral terms such as that of new religious movements, are in this sense preferable. In whatever case, the terminologic problem affects the purely doctrinal area, as Spanish legislation, together with that of the European Union, has discarded the emanation of special repressive legislation against the legal activities of religious movements. Logically, this would mean the definition of a regulated phenomenon, adopting a concept with legal importance for religious groups which would lead to submission to regulation. In 1988, a "Commission for the study of sects in Spain and their repercussions" was set up in Parliament. The dictum and proposals were later ratified on 2nd March 1989. In spite of considering the existent law for the repression of certain movements sufficient, and while discarding the creation of any special legislation which would limit the religious freedom of the individual, the concept of "destructive sect" is employed. However, in order to stress the coherence of the category with the positions mentioned, and considering the principals of Rule of Law, it is necessary to establish a previous declararion of illegality which excludes the propriety of usage of the term "a priori".

It is more specifically in the area of jurisprudence where certain reflections of interest regarding the legal importance of the qualification "sect" have been made.

A common factor in many sentences, has been the use of the popular term of religious sect to qualify a number of movements

either for the individual members or for the movement itself, when refering to their basis. Nevertheless, the meaning given to the term, as well as the effect that it produces differs from one group to another. In some cases, the court generalizes when applying to the group in question, the usual accusations levelled at it from different sectors, but is not necessarily suggesting a legal infringement. Doubt as to the religious characteristic is qualified as "pseudo-religious sect", stressing the absolute totalitarian submission to a charismatic leader, the desire for wealth prevalent among the leaders which becomes the be all end all, and the attraction and retention of the converts using techniques designed to weaken the individual's will power.

Other resolutions refer to the denomination of sects when passing immediately to speak of legal irrelevance. One example is the sentence passed by the Audiencia Provincial of Barcelona Section 3ª on 24th June 1993, absolving members of a group related to the Children of God. The qualification of the Attorney General and of the private prosecutor was that of destructive sect, followed by a reflection on the term; "Before embarking on a legal approach it would be useful to determine the limits of the term in its modern and sociologically accepted form as opposed to the legal, applying the semantics of modern dictionary encyclopedias and not that of a mere "a priori" concept. The conclusion is that the word "sect" is derived from the latin verb "to follow" and is defined as "a group of followers of a doctrine, frequently used with a pejorative or contemptuous implication", or for "a splinter minority religious community". It concludes with an affirmation of a clear religious content outside the competence of a non-confessional state. Accordingly the Court declares that debates about sects in the Press are of no consequence for the functions of the Judge.

None, mention the category of "new religious movements", prefering always the more socially accepted term of "sects".

3. The Parliamentary Commission for the Study of Religious Sects

In March 1988, as we have already mentioned, a Commission

for the study and repercussions of the sects in Spain was set up in Parliament. The conclusions were presented on 1st February 1989 in the form of a report and recomendations and approved on 2nd March of the same year.

The report consists of three parts: method and development of work; sythesis of the situation and repercusion of the sects in Spain and an evaluation of the suitability of the legal framework in relation to the sects. The third paragraph is the most interesting from the legal point of view. Four aspects refering to the legal treatment of the sects have been given preference: the general regulation of religous freedom; the regulation for processes of inhabilitation and guardianship, specially in cases where adults have been subject to restriction of freedom; the protection and guardianship of minors and the specification and penalties of supposed behaviour contrary to the freedom security and legitimate interests of people and property. The global evaluation of the Commission is the sufficiency of the Spanish legal framework. It rejects the idea of a special anti-sect legislation as this would involve the constitution of a legal concept for sects which could modify fundamental rights of the citizens as established in the Constitution. From this Constitutional point of view the rights to freedom of belief and religion are confirmed and can in no way be arbitrarily limited for reasons of affiliation of the individual to a sect. To this effect, it is the courts of Law, the only entity able to adopt measures against specific transgressions and if opportune proceed to the illegalization of the group.

In the resolutions, the mechanisms of the Commissions' conclusions are condensed. A first group of measures is to urge the Government to control the legality on the basis of the statutes of those religious or cultural organizations that apply for Public Registration.

Another group of measures is that dedicated to the disclosure of information regarding the supposed illegal activities of the sects, directed towards specific institutions such as that of the Police or the society in general but more particularly, youth.

The Commission has given special attention to those juveniles whose parents are followers of a sect and who may live in the same

community to which their parents belong. The content of the proposed measures is directed mainly towards the corresponding public ministry so that the most usual problems may be resolved, these being the general well being, an adequate registration, hygiene, schooling and illegal expatriation.

Finally, the resolution mentions the question of social help for those people, who having had contact with a sect, require such assistance. To this end, a study of support programmes set up by the Public Health and Social Welfare services are recommended for those who, prior to the opportune legal decision, may require a process of personal recuperation and social rehabilitation.

4. Legal Recognition.

It is evident that those NRM who carry out legal non-lucrative activities within the society, constitute associations protected by the Right of association recognized in Article n° 22 of the Constitution. In this scope, the NRM obtain a legal personality, that is to say, the capacity to act in legal dealings being a center attributable of rights and obligations, once it's constitution has been reflected by public notary. The inscription in the Register of Associations is only in effect for publicity, but this does not hide the fact that the act itself authorizes the execution of the legal personality.

The verification of criminal means or ends and the eventual declaration of illegality of the association is the exclusive reserve of the Law Court. Without doubt, this regime opens an easy door for legal trade within the NRM.

The NRM can, by affirming their nature and religious objectives, obtain the specific category of recognised religious confession as acknowledged in the article n° 16 of the Constitution as subjects of an eventual cooperation with the public authorities. Spanish law demands in first instance this requirement "sine qua non" for the cooperation and access to certain guarantees and legal benefits, the inscription in a Register dependant on the Ministry of Justice, the Register of Religious Entities. The Law 7/1980 of 5th July of Freedom of Religion also grants constitutive effects of legal personality and other guarantees, such as the safeguarding of the autonomy of the associations registered. The General Bureau for Religious Affairs, the board in charge of admissions and rejections, has followed a restrictive application and interpretation of the legal conditions, concretly in questions of religious nature and internal organization, regarding the NRM, and which is characterized by the following aspects; the verification of the data submitted, the exigence of conditions not explicitly mentioned in the Law — e.g. a minimum number of followers, a certain period of establishment in Spain, the verification of the legality of their ends etc. — and the interpretation in a positive sense of the beliefs in the legal requirements of Christian basis. It demands, for example, a doctrine of its own which distinguishes it from others and the existence of clergymen or ministers with duties in the cult etc. We could say, generally speaking, that the practise of the Bureau is to restrict access to the Registry of the NRM to those who for their recent foundation find difficulty in demonstrating their establishment, a minimum congregation or a solid different dogma from those already in existence.

5. Access to legal benefits

Following the schueme previosly mentioned, we can distinguish two routes towards the eventual access to certain benefits and economic or legal advantages for the NRM.

As *Common Law Associations*, and depending on additional objectives which are put into effect either for their own sake or through subordinate organizations, the NRM can have access to the benefits which Spanish law recognizes for certain non profit making associations in the areas of scholarization charity or social action, sport, etc. For this they should apply to the specific Registries established in the corresponding Ministry, Welfare, Health, Education etc. or in the council for the Autonomous Communities to whom these areas have been transfered. Once the governing body has recognized the non profit nature of the entity and its social objectives, they can proceed to the application of fiscal benefits or direct aid that in each case is contemplated by the tax legislation or

social action. With reference to the latter, the direct subsidies for social programmes are cut off whenever there has been adverse propaganda as has been the case with certain NRMs.

With reference to the second channel towards financial aid, even where a specific religious nature is acknowledged by inscription in the Register for Religious Entities, it can prove even more difficult if possible, to obtain legal benefits as a Religion. The article n° 7.2 of the Law of Freedom of Religion makes the obtention of the fiscal benefits which are at the disposition of non profit making and benefic organisations, available only if this is included in the agreement with the State. Twelve years after taking effect, only those three historicly present confessions in Spain, Evangelical, Jewish and Muslim have stipulated an agreement with the State. It is not forseen in the near or distant future that any of the NRM with shallow historical roots and open to public suspicion, obtain any tax advantages from this source.

However, it is possible that a minority entity coming under the name of NRM may obtain economic advantages such as tax exemption or the fiscal benefits contemplated by the agreements, through association with one of the afore mentioned groups, the Evangelical Federation, Jewish or Muslim. The decision depends exclusively on the Federation in question. Such incorporation, has the automatic effect of extending the agreement to the confession in question. In this way, groups considered NRM in Spain, such as the Salvation Army or The Seventh Day Adventists, enjoy the agreements together with the Evangelists as a result of being integrated in the Federation of Evangelical Entities in Spain.

6. Manifestation of Conscientious Objection; Legal and Jurisprudential Treatment

In Spain, the confession which has distinguished itself most regarding numbers of believers and loyalty to those convictions expressed which transgress beyond the judgements laid down by the courts, are the Jehova's Witnesses. The conviction of the Witnesses which has caused greatest impact due to the seriousness

of the values in conflict, is the refusal to accept blood transfusions. In the case of consenting adults, the High Court in its Sentence of 10th June 1997, affirmed that the decision not to accept another's blood, even when this implies death, must be accepted, except in the case of incurring danger to a third party. However, in contradiction to this, the same court, in a judgement of 22nd December 1983, aquitted a judge of transgression of religious freedom, who, when faced with the refusal of an adult to receive a transfusion, isssued a writ for its realization. His decision was based on the greater value placed on a person's life.

However, in the case of minors who are Jehova Winesses, the parents must permit the transfusion. If they do not and the child dies, the parents will be held criminally responsable and will be tried for homicide. The right to freedom of religion, according to the sentence of the High Court of 11th July 1997, is limited by individual rights. In the case under examination, because it dealt with a juvenile, the life and health of the indivual was a greater right than the freedom of religion of the parents. Nevertheless, the Court applies the consideration of mitigating circumstance of "heat of passion". The life and health of the minor also justifies the obligation of the judge, in the case of parental refusal, and dependant on the urgency of a transfusion, to authorize the hospital to proceed. The High Court, in a judgement of 26th September 1978, rejected criminal proceedings against a duty magistrate who authorized a transfusion, argumenting that the right of parental authority does not extend to a minor when in danger of death.

The prohibition to take part in civil acts of an obligatory nature causes the Witnesses to abstain from the few acts considered imperative and mandatory for civil participation; obligatory military service, intervention in electoral and jury service. In the first case, conscientious objection, admitted in the Constitution and ratified by Law on 24th December 1984, once acknowledged by the National Council for Conscientious Objection, presuposes the substitution of a social service also of an obligatory nature. In the case of refusal to carry out such a service, a fact which is quite frequent among Witnesses, this is considered offence typified in the article n° 527 of the Penal Code. All other conscientous objections not

being subject to legal regulation, have to be handled according to the case, by the law courts. In the case of refusal to appear as President or Member of a polling station, the High Court has confirmed the sentence for criminal act specified in the Election Law which states that religious belief does not excuse the individual from the important obligation of complying with duties considered necessary for the correct functioning of the democratic institutions.

7. Measures for the Protection of Persons Integrated in the NRMs

In Spain, the social polemic arroused by the appearance of NRM has attracted the attention of the lawyers. For the social and democratic state as defined in our Constitution, the defence of the rights of the individual within the groups to which they belong, is of prime importance.

In dealing with the area of protection of the person, our Constitution, logically, is driven to defend the least protected individuals or layers of society, those most open to abuse or manipulation towards whom the function of guardianship or intervention of the authorities must be intensified. For this reason we feel justified in giving our special attention to the under age group understanding that this is the area requiring maximum state protection par exellence, and later we will proceed to deal with the adults.

With reference to the minors, the first problem which presents itself is the case of those who subscribe voluntarily to a NRM against the opinion of the parents. A conflictual situation arises between the minor's right to freedom of religion and the subjection to the guardianship of the parents or tutor. In the Spanish Civil Code, the right and duty of the parents to attend and determine the education, including moral and religious, of children while under age, is clearly established. But, together with this faculty, it allows the children to intervene in questions of their concern as may be that of religion. In cases where a direct discrepancy exists in the convictions or criteria in questions of moral or religious education between the parents and the children, in my opinion, the application of 1ª of the article 162 of

the Code would be necessary. Accordingly, the parents or guardians cannot act as legal representatives of unemancipated children in "acts relating to the rights of the personality or others which, in accordance with the law and the person's maturity can be realized by themselves". It is without doubt that the declaration or not of religious belief forms part of the intimacy of the individual and as such constitutes a very personal right protected by the Constitution and the exercise of which, no law can prohibit. In the case of conflict, it will be the judge who will decide whether to respect the decision of the minor or of the guardian.

In the case of children under age whose parents are members of an NRM, the vigilence and inspection on the part of the authority regarding their physical and moral development must be intensified. This is one of the points in which the Parliamentary Commission urges the authorities to "control and demand the execution of the obligation of registry, hygiene and legal scholarization of the minors living in communities closed off from the general society".

When does the law permit a corrective intervention by the authorities?

The article nº 172 defines the "*situation of defencelessness (abandon)*" as that which "is produced as a result of the unfulfiment or inadequate exercise of the obligations of protection established by law for minors when these are without the necessary moral or material assistance". In the case of such a situation being produced, the Authority dealing with the protection of minors automatically receives, as set out in the article nº 172 of the Civil Code, the guardianship of the minor who will then be lodged in a suitable reception centre. Following this, the tutelage must be ratified by the law courts, who may remove the right of guardianship either partially or totally from the parents and will decide on the cautionary measures to be taken for the minor's protection.

In Spain a situation of "defencelessness" occured in 1990 with respect to groups associated to the "Children of God". The County Court, in a sentence of 21st May 1992 revoked the designation of legal tutelage to the authority and ordered the return of the children to their families, considering that neither physical, nor psychological harm had been produced.

On reaching majority at eighteen, the son or daughter can decide on religious and moral questions and whatever others related to the formative process of his or her conscience. Of course, the exercise of freedom of religion within the confession is limited among other reasons for the very rights and fundamental liberties of the other members. In the moment that there is evidence of physical or psychological pressure or coercion, either to form part of the movement or to impede the exit from the same, the authority has to act in the protection of the individual and his fundamental rights with all the powers at its disposal. That is to say, proceeding to punishment of the criminal conduct of those responsible for the religious group and offering all the support measures in the form of health services for the recuperation of the person and his or her social rehabilitation.

What defense can exist when a proselyte in a religious movement is living in a situation of restricted fundamental rights but is not conscious of the fact and respects voluntarily the conditions of membership of the group? Faced with this, we must assume the autonomy of human acts. The constitution of limiting tutelage over the ability of the individual to act on his own accord can only be used in extreme cases and always under the supervision of the judge. To this effect, under Spanish law, the designation of a tutor to a person of adult age must be preceeded by a "declaration of incapacity", an expedient only possible through judicial sentence. It would be extremely difficult, I think, and only possible in very exceptional cases, for a judge to declare the adept "incapable" in accordance with the article n° 200 of the Civil Code which specifically stipulates that the causes for "discapacity" must be "persistent illnesses or deficiencies of physical or psychological nature which impede the person's control over himself".

8. Criminal Acts and Activities of the NRM

8.1. *Activities constituting offence by members of the NRM*

The final report of the "Commission for the study of the repercussions of sects in Spain", by the government contains a list of

classic offences which are often attributed to the action of the denominated "destructive sects"; illegal proselytism, coercion, threat, offenses against the freedom and security of the person, swindle, fraud, currency evasion and occupational irregularities. All these are contemplated in the Penal Code articles n° 522, 169 ss., 248 ss., 305 ss., and 311 ss. The list of offences is purely an example. However, it is an indication of a conclusion at the same time included in the parliamentary report: the sufficiency of the Penal Law in force to repress the presumed actions of the NRM which attack essential properties or values of either a personal or social nature.

If we wish to refer exclusively to those offences directly related to the religious aspect, that is those which violate the freedom or voluntary form of assignment or permanence in a movement, this being the imputation most generally made in connection with the NRM, or the use of violence and retention in the capture of adepts.

The penal forms which in a direct way, protect the freedom of conscience, are contained in paragraphs 1 and 2 of the art. n° 522. Two different types of offences are specified: the prevention of a member of a religious confession to practice or attend acts of worship, or on the contrary oblige the assistance at the same or to carry out acts which reveal the religious belief or change that which the individual possesses. The second paragraph, penalising illicit proselytism, is that most usually applicable to the practises imputed to the NRM. The Code takes into account the problem represented by the conduct of illicit proselytism in the collective scope of the offense in art. 515, 3°. This defines the illicit association as" that which, even when having a legal end, uses violent methods or alteration and control of the personality to obtain them..."

Proceedings started against NRM in Spain have been few, and only two have finished with sentences for different offences. That opened against the Church of Scientology has been dismissed in as much as the principal accusations and in particular, that of continued swindle. Groups related to the Children of God were accused of creating illegal centres of education, bodily harm, swindle and illegal association, but were absolved on all points by the sentence given by the County Court in Barcelona on 29 th June 1993. Only

two groups of a religious nature, Raschimura and CEIS, have been convicted. The first received sentence for a minor offence, that of falsification of public document. With reference to the group CEIS, the sentence of 7 th March 1990, and later confirmed by the High Court, convicted the leaders of various offences of impersonation of public officer and cooperation and protection of prostitution, the means used for the obtention of income.

8.2. *The possible illegalization of the NRM*

Without doubt, the illegalization of a criminal association is the most radical way to fight against offences committed by the groups. Article 22.2 of the Constitution states that "associations which pursue ends and use methods established as being unlawful, are illegal". The development of the Constitutional precept, art. n° 515, defines the cases in which an association may be considered illegal. Relating to the NRM, we must draw attention to paragraph 3. "3° ...even those whose objectives are legal, make use of violent methods or alteration or control of the personality for obtention of the same". The declaration of "illegal" carries with it penalties for the founders, directors, presidents, active members and other co-laborators, together with the legal resolution of dissolution. Until now, no NRM has been subject to declaration of illegality.

9. Membership of an NRM as Cause of Modification of Personal Relationship

It seems evident that as a priciple of a lay state, the progressive secularization of the right of family leads to the unimportance of the religious values in legal criteria over the state of matrimony or family. In consequence, the judge is obliged to avoid any religious preference influencing his resolution or use the basis of the beliefs of the individual considered as such. Obviously, this does not exclude that such beliefs can affect, and should be seen to do so, the obedience to conjugal or parent-child duties.

Once more, the approach in treatment of the problem under

Spanish Law requires the consideration of the courts of law where cases of NRM have been dealt with.

The criteria of the law courts swings between regarding religious afiliation itself, a cause able to modify marital status or conjugal rights and duties; and on the other extreme, denies any direct relevance and conceeds legal importance only in those cases in which there is proof of incidence in legal causes which affect matrimony and inherent duties of the same.

In the first area, we can situate the following resolutions.

In the area of Matrimonial law the sentence of the Magistrates Court in Guadalajara on 13 th October 1982 considered the case of an ex-adept of the religious movement Hare Krishna, who applied for the annulment of his marriage alleging lack of consent (art. 73.1 Civil Code) and coercion and extreme fear (art. 73.5 same code). The judge granted annulment considering the first motive, lack of consent. It has been demonstrated that the active participation of the plaintiff in what he qualified as a pseudo-religious sect, where the religious experience is conceived together with a strictly aesthetic life, is favourable to a reduction of the individual will and powers of rational reasoning. Regarding the marriage in question, it was made clear in the decree that the guru or leader had been responsible for the election of the future spouse.

The membership of a new religious movement is taken into consideration as a relevant fact justifying the ruling in a Decree of the Magistrates' court n° 23 in Madrid on 13th October 1992. In this case, the judge decided on cautionary measures regarding the son in a matrimonial separation, in which the mother was a member of the Church of Scientology. The writ granted provisionally the custody to the father, justifying the decision on account of the mother's membership of the Church of Scientology, a group qualified as "sect organization subject to criminal investigation... accused of manipulative behaviour, attitudes which while suspected but not demonstrated, are sufficient to arouse concern for the healthy balance of the child, whose personality could be seriously affected..."

More recently, the Sentence passed by the County court in Valencia on 7th January 1997, in a similar case as that previously

commented on, has restricted the visits of a father to his two sons, in an attempt to avoid the adoption by the children of the ideas and practices of the religious group to which the father belongs, the Gnostic Universal Christian Movement.

At the other end of the scale, that is the irrelevance "per se" of association with a NRM always assuming that there is no proof of incidence in legal suppositions determined by law in the qualification or modification of matrimonial or child — parent relationships, we can find the already cited case of the Audiencia Provincial of Barcelona of 21st May 1992, which revoked the partial custody by the Authority, of children of parents pertaining to a group associated with the "Children of God", and subsequently confirmed by the Constitutional Court.

DAVID MCCLEAN
Faculty of Law, University of Sheffield

NEW RELIGIOUS MOVEMENTS AND THE LAW IN THE UNITED KINGDOM

There is little or nothing by way of United Kingdom legislation dealing expressly with sects or new religious movements. The nearest thing to an exception is the Prohibition of Female Circumcision Act 1985, directed against a practice which is more a matter of customary practice in the home countries of some of Britain's immigrant peoples than of religion (1). The law (2) does, however, contain many provisions relevant to the legal issues to which the practices of new religious movements give rise.

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(1) It is practised widely in those parts of Africa stretching from Mauritania to Nigeria and across to Egypt, Somalia and Kenya. See K. LEE, *Female Genital Mutilation: medical aspects and the rights of children* (1994), 2 Int. Jo. of Childrens' Rights 35; C. HAMILTON, *Family, Law and Religion* (Sweet and Maxwell, 1995), pp. 147-149.

(2) The legal rules examined in the text are those in force in England, which are also followed in Northern Ireland. Scottish legal rules, though expressed in different terminology, usually secure the same results.

1. Of Sects, Cults and New Religious Movements

In Britain as elsewhere there are considerable numbers of small religious groups within the Christian tradition, the great majority of which were established in the course of this century. There are numerous independent churches, often in the form of 'house-churches', now more commonly called 'community churches', taking a conservative evangelical position and tending to have an autocratic and exclusively male leadership; there are splinter groups from the 'mainstream' denominations, the most recent being the three or four groupings, each numbering hundreds rather than thousands, produced or strengthened by the Church of England's decision to ordain women to the priesthood; and at the catholic end of the theological spectrum there are the tiny groups headed by *episcopi vagantes* many of whom trace their succession to the activities of one Englishman, Bishop Mathew (3). There is also a number of so-called 'Black-majority' churches, to which many of African or Caribbean extraction belong, such as English branches of the Shiloh United Church of Christ and a group of British-based churches in a Council of African and Afro-Caribbean Churches. All these groups are well within the bounds of Christian orthodoxy. It is virtually impossible to get accurate estimates of the size of these groups, or indeed of the movements mentioned in later sections of this paper.

1.1. *The problem of definition*

They are mentioned because of the well-known difficulty of defining 'sects' or 'cults' or 'new religious movements'. A distinguished British scholar, Bryan Wilson, has described a sect as a

(3) Arnold Harris Mathew (1853-1919) deceived the Old Catholic Archbishop of Utrecht, by false claims of a large following in England, into consecrating him in 1908 as Archbishop in Great Britain. On realising the truth, the Old Catholic Church promptly repudiated him in 1910. Mathew succeeded in establishing a small denomination, which survives and is known variously as the Old Roman Catholic Church or the English Catholic Church, but also gave episcopal consecration to some dozens of men whose following was in some cases almost nil. Ironically, his succession was re-exported to the Netherlands and the *Oud-Episcopaal Katholieke Kerk* consists of a single parish in Breda.

distinctive, persisting and separately organised group of believers (4) who reject the established religious authorities but who claim to adhere to the authentic elements of faith (5). This definition includes major groups which offer a special exegesis of Scripture, such as Christadelphians, Seventh-Day Adventists and Jehovah's Witnesses, or rely on additional teachings which augment traditional Christianity, such as Christian Science and the Mormons (6). Wilson identifies distinct categories of conversionist, revolutionist, introversionist, manipulationist, thaumaturgical, reformist and Utopian sects (7).

'Cult' has been said to denote a group, usually religious or pseudo-religious in nature, that exhibits the following characteristics: it deviates sharply from and strongly rejects the prevailing culture; it is dominated by a highly charismatic leader who often proclaims him — or herself to be divine or to have special access to the divinity; it exacts total commitment from its followers including the commitment of time and money; it is rooted in a comprehensive ideology, touching every facet of the adherents' life; and, finally, it is aggressive in its efforts to recruit new members, sometimes resorting to manipulative techniques of persuasion, as opposed to conversion, of potential 'adherents' (8).

'Cult' is widely seen as a 'boo-word', one which implies disapproval. Another English scholar, James Beckford, speaks of a popular sense of the word to refer to groups considered 'small, insignificant, inward-looking, unorthodox, weird, and possibly

(4) Reference must be made to the extraordinarily ingenious, but hopeless, argument of an Australian who believed he had the persona on earth of Melchizedek, so that he was himself 'a religious body' and so entitled to relief from local taxes: *Blackman v Sydney City Council* (unreported, NSW Land and Compensation Court, 21 July 1994).

(5) A. Richardson and J. Bowden (eds), *A New Dictionary of Christian Theology*, SCM Press 1983, the entry on 'sects', p. 532. The same work has a separate entry on 'cults'; see below.

(6) i.e., The Church of Jesus Christ of Latter-Day Saints.

(7) See B. Wilson, 'An Analysis of Sect Development' in his own edited volume, *Patterns of Sectarianism*, Heinemann 1967.

(8) L. R. Rambo in A. Richardson and J. Bowden (eds), *A New Dictionary of Christian Theology*, SCM Press 1983, the entry on 'cults', p. 137.

threatening' (9). He has devoted much attention to the related phenomenon of 'anti-cultism', of groups which monitor and seek to 'expose' known cults, and was prominent amongst those who preferred the neutral term 'New Religious Movement' in English writings as a term free from doctrinal, historical, cultural and social judgments of abnormality (10).

Eileen Barber's study of *New Religious Movements* (11) was at pains to emphasise that such movements cannot be 'lumped together'; they are remarkably diverse. It was not easy, as some supposed, to distinguish 'benign' and 'destructive' movements. Although most New Religious Movements have charismatic, and sometimes unpredictable, leaders ('New religions are rarely initiated by a commitee' (12)), that is not universally true, and leadership can become routinised or more negotiable as the movement matures, perhaps into a respectable enough denomination. An example is the Salvation Army, established in the East End of London by William Booth in 1865, the subject of fierce criticism and calumny in its early years, but now a recognised denomination the centenary of which was celebrated in Westminster Abbey (13).

2. Sects as described in the Case-Law

If one had no other source of information, judgments given by judges in England and especially in some other common law countries would have given a clear impression of the baleful nature of the interior life of some sects, indeed of those most likely to present legal concerns.

(9) *Cult Controversies: the societal response to New Religious Movements*, Tavistock 1985, p. 13.

(10) See J. A. Beckford and M. Levasseur, 'New religious movements in Western Europe' in Beckford (ed.), *New Religious Movements and Social Change*, Sage/UNESCO 1986, at p. 29.

(11) HMSO, 1989.

(12) Ibid., p. 13.

(13) See R. Robertson, 'The Salvation Army: the Persistence of Sectarianism' in B. Wilson (ed), *Patterns of Sectarianism*, p. 49 et seq, taking the different view that the Army had become an 'established sect'.

For example the Centrepoint Community Growth Trust under the spiritual leadership of Herbert Potter, a 'messenger of God', had rules under which all members were required to surrender all their worldly property to the trust on becoming members, and had no right to recover it were they to leave. Resident members were provided with food, clothing, accommodation and $ 1 a week pocket money. All children were clothed, housed and fed by the trust. The trust operated therapy activities, for which it charged, and in its residential community the members ran a pottery and manufactured hats (14).

The courts of Singapore heard, and rejected, a defamation action brought by the House of Israel. This was a Christian sect whose leader was believed to have powers of healing and the ability to read the minds of his followers. Its recruitment methods involved the breaking of families. Its practices included prayer sessions at 3 a.m. daily, mutual confession sessions, and the wearing of clothes of the same colour, a colour chosen by the leader after prayer. Before speaking to any outsider members needed the leader's consent (15).

One extremely manipulative sect in Victoria, Australia, accused of the physical ill-treatment of children inducted as members, had a practice of misleading the children as to their ages and family status. Many were led to believe they were the children of the leaders of the sect, in some cases grouped as triplets, when in fact they were of different ages and wholly unrelated (16).

3. The Current English Experience

Some impression of the more active sects in England can be gleaned from figures of enquiries received by a body known as INFORM (Information Network Focus on Religious Movements),

(14) *Centrepoint Community Growth Trust v Commissioner of Inland Revenue* [1985] 1 NZLR 673 (New Zealand High Court).

(15) *Aaron v Cheong Yip Seng* [1996] 1 SLR 623 (Singapore CA).

(16) *Hamilton-Byrne v General Television Corporation* (unreported; Supreme Court of Victoria, 26 April 1990).

founded with some Home Office financial support in 1988 by Professor Eileen Barber, and based in premises rented from the London School of Economics, the leading social science institution within the University of London. The subjects of the greatest number of enquiries over the three-year period 1992-94 are set out in the Table (17), excluding some (such as the Solar Temple) where the enquiries were essentially media enquiries prompted by events occurring outside Britain.

TABLE *Enquiries to INFORM 1992, 1993 AND 1994*

London Church of Christ	296
Church of Scientology	169
School of Economic Science	90
The Family	90
Unification Church	82
New Age movement	74
Jesus Army *or* Jesus Fellowship	64
Jehovah's Witnesses	58
Satanism	31
Sahaj Yoga	24
Transcendental Meditation	19
Word of Life	16
Paganism	14
Emin	12
Gnostics	12

The movements listed in the Table are very diverse in nature, and it may be helpful to give some information about them, especially those peculiar to Britain (18).

(17) These figures are derived from those published in a report by J. A. BECKFORD for the Institute for Japanese Culture, Kokugakuin University, kindly made available to me by INFORM. That body has a more academic' approach than other groups such as FAIR (Family Action Information and Rescue) and the Dei Gloria Trust, more campaigning organisations (see J. A. BECKFORD, *Cult Controversies: the societal response to New Religious Movements*, pp. 224-230).

(18) See generally E. BARKER, *New Religious Movements: A Practical Introduction* (HMSO, 1989).

The London Church of Christ, which now has an off-shoot in Birmingham and possibly in other cities, dates from 1982 and was founded by members of the Boston Church of Christ within the Crossroads Movement led by Kip McKean. It practises 'discipling', requiring submission of decision-making on many personal matters to the leader or discipler, and re-baptism. It has been especially active in students' unions, using the technique of 'friendship evangelism', is accused of aggressive and intrusive proselytising (19), and has been banned by several such unions from their premises. A common complaint is that student converts suffer both in their studies and financially, as large 'love-offerings' are expected.

The Church of Scientology is of course very well-known. Its presence in England is fairly limited. It has an Advanced Organisation at Saint Hill Manor in Sussex, and outposts operating under a variety of names in, for example, Bournemouth (the Dianetics and Scientology Mission), Manchester (the Hubbard Dianetics Foundation), and Edinburgh (the Hubbard Academy of Personal Independence). It was the subject of outspoken judicial criticism in the English case of *Re B and G (Minors) (Custody)* (20) where the trial judge described it as immoral and socially obnoxious, as indulging in infamous practices to adherents who did not comply unquestioningly with its doctrines, and as dangerous because it sought to brain-wash children and young people and withdraw them from ordinary thought, living and relationships with others; they became its captives and tools.

The School of Economic Science is familiar to readers of advertisements on the London Underground. It offers lecture courses in 'Philosophy' and 'Economic Science'. It is essentially a 'self-growth' group.

The Family, also known as Children of God, was imported from California. One of its slogans is 'Be a Sex Revolutionist for Jesus!' and it received much unsavoury publicity over alleged child sex

(19) A technique once used was 'tubing', witnessing to fellow-passengers on the London Underground ('the Tube').

(20) [1985] FLR 493 (CA), and see the first-instance judgment of Latey J at [1985] FLR 134.

abuse in an English case in 1995. It is also said to use sexual intercourse as an evangelistic technique.

The Unification Church received much adverse publicity in England after the *Daily Mail* newspaper accused it of 'brain-washing' and of breaking up families. It sued for libel but, after what was then the longest-ever libel action in English legal history, the jury found for the newspaper, and recommended that it be stripped of its charitable status (21).

New Age thought has acquired quite a following in England, but it is little expressed in institutional form. A vague mixture of ecological, 'green' concerns, not unrelated to some forms of creation theology, alternative medicine, feminism, and talk of the Age of Aquarius which appeals to the popular interest in astrology, it is not usually seen as sharing the qualities of the more authoritarian and abusive sects.

More visible is the *Jesus Army* which has a fleet of double-decker buses painted in a red, yellow, green and black livery, banners akin to those once fashionable in the trade union movement, and slogans such as 'Love Power and Sacrifice' and 'We Fight for YOU'. It is one part of a movement which began in a small Baptist congregation in Northamptonshire in 1969. The congregation first set up a community with a common purse, but later became more aggressive in its activities. The Army with its uniforms and street demonstrations in many of the larger cities of England seems to target young working-class people who might equally be members of the more militant left-wing political groups.

Jehovah's Witnesses are well established in Britain with perhaps some 100,000 members. It is presumably their missionary activity and some aspects of their teaching, notably on blood transfusions, which produce the number of enquiries recorded in the Table (22).

Although they are very different, *Satanism*, *Paganism* and *Gnosticism* can be considered together. They share an interest in

(21) See below (text to note 28) for the outcome.

(22) There remain countries, such as Singapore, in which bodies of Jehovah's Witnesses have been dissolved by Government order and possession of their publications made an offence. See *Chan Hiang Leng v Public Prosecutor* [1995] 1 SLR 687 (where the Court of Appeal refused to hear a challenge to the relevant orders).

the 'occult', may belong to loosely organised networks rather than organised entities, and may meet in the open air or in private houses. Satanism is distinct, with its Black Mass, and there was much attention some years ago given to allegations of satanic rituals involving children (including a notorious case in Scotland where a large group of children was removed from their parents on the basis of allegations which were never proven). For the rest, 'Wicca' and other neo-pagan or 'gnostic' movements have mass-type ceremonies, which may have a strong sexual element, and include 'witches' covens', druidic groups, and worshippers of the Earth Goddess. They do not proselytise and operate furtively.

Sahaj Yoga is one of a number of movements of Indian origin. Its Divine Mother came from Calcutta and its rituals have a Hindu flavour, with puja and shared meals. It teaches 'vibration therapy' which can cure cancers. It has a few hundred followers in England and a centre near Cambridge.

Transcendental Meditation as taught by Maharishi Mahesh Yogi runs courses in England and has twice had numbers of candidates in Parliamentary General Elections, most recently in May 1997. Its candidates, calling themselves the Natural Law Party, advocated the solution to England's problems in meditation and vedic leaping (a type of cross-legged jumping).

Word of Life appears to be of Swedish origin and is a relatively new arrival on the English scene.

Emin is one of the more bizarre of sects. Its name derives from the 'Eminent Way' which an encyclopaedia salesman, Raymond Armin, discovered under an oak tree on Hampstead Heath in London. It is highly secretive but appears to be growing rapidly. It has a theme tune, Ravel's Bolero, encourages members to adopt new names such as Wonderful, and follows an obscure 'esoteric philosophy'. Its founder now lives in Florida.

As will be seen, most of the case-law in the United Kingdom concerns relatively well-established groups such as the Jehovah's Witnesses and the Exclusive (or Plymouth) Brethren, neither of which can be regarded as particularly 'new'. No legal distinction can be drawn between movements on the basis of their date of foundation.

4. Official Reactions to New Religious Movements

There has been a mixed response from the British Government to the phenomenon of New Religious Movements (23). In the late 1960s there was much public concern about the activities of the Church of Scientology, and a critical official report was prepared and published (24). For a period from about 1968 to 1980, there was a ban on foreign Scientologists entering Britain, a ban justified on public health grounds. It was abandoned when the concern about Scientology had largely died down, but that concern was revived by the strong judicial criticism of the movement already referred to (25).

Another official enquiry, conducted by Hugh Francis QC, a senior lawyer specialising in charity law, examined the Exclusive Brethren; the report found the organisation to be contrary to public policy, but it appears not to have been published. The outcome was a decision by the Charity Commissioners to remove some of the Exclusive Brethren's trusts from the General Register of Charities. This was successfully challenged in the courts (26), the Attorney-General deciding in his discretion not to oppose the application by using the material gathered in the Francis report (27).

After the libel action concerning the Unification Church (28), there was considerable pressure in Parliament and the media for action to be taken to deprive that body of charitable status, but the Charity Commissioners found no reasons for taking such action. In 1984, the Attorney-General began proceedings in

(23) For full information, see J. A. Beckford, *Cult Controversies: the societal response to New Religious Movements*, p. 218 et seq.

(24) Sir John Foster, *Enquiry into the Practice and Effects of Scientology* (HMSO, 1971). There were similar official reports at about the same time in Victoria (1965) and South Africa (1972).

(25) See text to n° 20, above.

(26) *Holmes v Attorney-General* (unreported, High Court, Chancery Division, 11 February 1981).

(27) Walton J. described them as 'an ultra-puritan sect', and commented that all such sects 'from the point of view of the dispassionate observer ... suffer from the Pharisaical position of being blown-up with their own pride, and believing that they and only they have the key to all revealed truth'.

(28) See text to note 21, above.

the High Court to overrule the Commissioners' judgment, but in early 1988 discontinued the action, explaining to Parliament that he had insufficient material on which to base a successful case (29).

The report on the practices of New Religious Movements prepared for the European Parliament in 1983-4 (30) on the prompting of a British member, Mr Cottrell, met with a mixed response in Britain. It was criticised by the British Council of Churches which secured a Government assurance that no legislation to implement the Parliament's resolution would be introduced. A private member of the House of Commons did introduce a Bill dealing with access to children and others who had joined sects, but it made no progress (31).

5.1. *The Legal Status of New Religious Movements*

Apart from the special case of the Church of England, religious groups are formed under one or other of the forms of association used generally in English law. They may be incorporated, almost always as a company limited by guarantee (and with permission not to use the word 'Limited' in its title) or, exceptionally, by private Act of Parliament. Property will be held, either by the corporate body or by trustees appointed under the founding deed of the church, on trusts to advance the beliefs and work of the church. These trusts will be drafted so as to attract charitable status.

Charitable status has a number of advantages in terms of exemption from some forms of taxation and the ease with which money may be collected from others; a charitable trust is also exempt from some of the limitations otherwise applicable to the trust device in English law. Although the law relating to charities is now largely codified in the Charities Act 1993, the definition of charity is still to be found in the case-law, notably *Commissioners of*

(29) For contemporary editorial comment in a legal journal, see 138 NLJ (12 February 1988), p. 87.

(30) European Parliament Working Documents 1984-85, Doc. 1-47/84.

(31) See C. Hamilton, *Family, Law and Religion* (Sweet and Maxwell, 1995), pp. 30-34.

Income Tax v Pemsel (32) where it was held to include trusts for the relief of poverty, the advancement of education, the advancement of religion and other purposes beneficial to the community.

5.1. *Are the purposes of New Religious Movements charitable?*

A number of the public controversies about New Religious Movements recorded earlier in this paper had as their legal basis the question whether a particular movement was charitable: that is whether it was 'for the advancement of religion'. If a trust is prima facie for religious purposes, there is a presumption that it is charitable for 'the law presumes that it is better for a man to have a religion — a set of beliefs which take him outside his own petty cares and lead him to think of others — rather than have no religion at all' (33). But the presumption can be rebutted if it is shown that the trusts are not for the benefit of the public, so gifts to contemplative orders have been regarded as not charitable (34). In a slightly different context, the temple of the Mormons in England, which is only open to Mormons 'in good standing' especially recommended for the purpose, was held not to be a place of *public* religious worship for rating (local tax) purposes (35); but the church would undoubtedly be held to exist for the advancement of religion.

5.2. *Religions: variety and definition*

Another fundamental principle is that the court 'makes no distinction between one sort of religion and 'another' (36); although

(32) [1891] AC 531.

(33) *Holmes v Attorney-General, supra*, per WALTON J.

(34) *Cocks v Manners* (1871) LR 12 Eq 574.

(35) *Church of Jesus Christ of Latter-Day Saints v Henning (Valuation Officer)* [1963] 2 All ER 733 (HL). The same result was reached in a case concerning the Exclusive Brethren: *Broxtowe Borough Council v Birch* [1983] 1 All ER 641. Cf *Stradling v Higgins* [1932] 1 Ch 143 (Salvation Army halls passed the 'public' test).

(36) *Thornton v Howe* (1862) 31 Beav 14, at 19. This case concerned the trust established to propagate the writings of one Joanna Southcott (1750-1814), 'a foolish ignorant woman', who left a great deal of written material and also a sealed box which is only to be opened in the presence of 24 Anglican bishops. It is understood that the trustees still faithfully approach each newly-appointed bishop inviting him to co-operate in this act; all decline.

this Court may consider the opinions sought to be propagated foolish or even devoid of foundation, it would not on that account, declare it void or take it out of' the charitable category (37). It is otherwise if the sect is 'subversive of morality'; but the hurdle is a high one and the courts have been notably reluctant to disqualify sects on such grounds (38).

All this still leaves room for some uncertainty about the scope of 'religion'. It was relevant in the Exclusive Brethren case (39) that the Brethren had an identifiable set of beliefs (based on an interpretation of the Bible), and rituals in the form of Eucharists albeit conducted with no set liturgy. In an earlier case involving the Church of Scientology, which wished to register a building as a place of worship, the Court of Appeal held that this involved the assembly of persons to worship God or to do reverence to a supreme being or deity; instruction in a secular philosophy was not sufficient (40). A humanist body, the South Place Ethical Society, was held for similar reasons not to be entitled to charitable status; it did not exist for the advancement of religion (41). On the right side of the line was the Centrepoint Community Trust, referred to above (42), the spiritual activities of which accorded with the concept of religion, i.e. 'belief in a supernatural being, thing or principle and the acceptance of canons of conduct in order to give effect to that belief'.

(37) *Thornton v Howe* (1862) 31 Beav 14. See also *Re Watson (decd), Hobbs v Smith* [1973] 3 All ER 678 (a trust to continue the work of publishing fundamentalist tracts written by a retired builder).

(38) So in *Holmes v Attorney General, supra*, there was no evidence offered to suggest that the Exclusive Brethren deserved disqualification, despite the fact to which Walton J. referred that 'as a mere man of the world' he knew that serious allegations had been made against that group. Some of these allegations surfaced in the New Zealand case of *Christchurch Press Co Ltd v McGaveston* [1986] 1 NZLR 610 (NZ CA), where the Brethren were blamed for the suicide of a former adherent whom they had expelled and ostracised.

(39) *Holmes v Attorney General, supra.*

(40) *R v Registrar-General, ex parte Segerdal* [1970] 2 QB 697. Lord Denning recognised that Buddhism might be an exception; it was undoubtedly a religion, but whether or not its beliefs involved a Supreme Being was unclear; on that point see also *Barralet v Attorney-General* [1980] 3 All ER 918.

(41) *Barralet v Attorney-General* [1980] 3 All ER 918.

(42) Text to n° 14.

One group about which there has been a difference of opinion is the Rastafarians, which originated in Jamaica as part of the Black Power movement. Some of its members believe in the divinity of the late Emperor Haile Selassie of Ethiopia (43) but the movement as a whole seems to have no fixed creed. In 1982 the Commission for Racial Justice of the Catholic Church in England and Wales recommended that Rastafarianism should be treated as a valid religion. In 1990, a Rastafarian who refused to cut his dreadlocks' in order to obtain employment as a van driver sought redress under the Race Relations Act 1976, claiming that he belonged to an identifiable 'racial group'. He succeeded at first instance, but failed in the Employment Appeal Tribunal and later in the Court of Appeal. Strictly the case is authority only for the proposition that Rastafarians are not a racial group, but the Appeal Tribunal described them as a religious sect. A similar set of facts, involving a person denied admission to the legal profession because he had his hair in dreadlocks, was taken to the Supreme Court of Zimbabwe; Rastafarianism was held to come within the constitutional protection of freedom of religion, one of the three judges expressing doubts about its religious character and relying rather on its being a philosophical or cultural belief and entitled to protection on that basis.

6. *Religious Advertising*

Under section 9(1)(a) of the Broadcasting Act 1990, the Independent Television Commission has the duty of drawing up a Code governing standards and practice in advertising within television services. Appendix 5 of the Code deals with religious advertising, and one element within it, reminiscent of some of the tests used in other contexts, is that no advertising is acceptable from bodies 'whose rites or other forms of collective observance are not normally directly accessible to the general public'. The Church of Scientology was ruled by the Commission in 1994 to be such a body, and an advertisement for one of L. Ron Hubbard's books was prohibited. The Church, which is notably litigious, sought judicial review, and tendered evidence by Dr Wilson, a leading academic student of Scientology, that it was a religion and that its rites were directly accessible to the public. In April 1996, the Commission, having considered that evidence, reversed its previous decision (44).

(43) The Ethiopian Orthodox Church, which of course holds no such belief, has a considerable following in the Caribbean.

7. Conscientious Objection by Members

The whole area of conscientious objection to military service is irrelevant in the United Kingdom (45), and in other contexts the issue has arisen relatively seldom. So far as New Religious Movements are concerned a member of the Plymouth Brethren claimed to be excused from jury service, believing this to be prohibited by Scripture. The Divisional Court of the Queen's Bench Division of the High Court held that religious belief of this sort was not 'good reason' for being excused under section 9 (2) of the Juries Act 1974 (46); but it could be relevant indirectly, if the officer responsible for assembling the jury decided that the religious beliefs of the potential juror were likely to prevent him from carrying out his duties properly (47).

8. Physically Dangerous Activities: Criminal Law

The activities of New Religious Movements are sometimes perceived to be physically dangerous; a well-known example is that of snake-handling, a practice which has been prohibited by special

(44) The court action proceeded on the question of costs. The Church of Scientology sought but was refused its legal costs, a matter in the discretion of the court: *R v Independent Television Commission, ex parte Church of Scientology* (unreported, High Court, 22 May 1996).

(45) See F. Lyall, 'Conscience and the Law: UK National Report' in the Consortium's *Conscientious Objection in the EC Countries*, Giuffrè, 1992, p. 165 et seq.

(46) The official report of a Departmental Committee on Jury Service in 1965 (Cmnd 2627, para 153) had recommended this position.

(47) *R v Crown Court at Guildford, ex parte Siderfin* [1990] 2 QB 683.

legislation in some states of the United States. The general position in English law is that consent is no defence to a criminal charge when actual bodily harm is caused. The House of Lords had to review this area of law in *R v Brown* in 1993 (48). This case involved a group, with no religious element, of sado-masochists who engaged in the torture of manacled victims, with violence to their sexual organs; the victims were degraded and humiliated, sometimes beaten and sometimes branded. Although the acts were committed in private, and the victims consented and suffered no lasting physical harm, the House held, by a majority of 3 to 2, that there was no defence to a charge of occasioning actual bodily harm.

8.1. *'Religious mortification'*

The issue does not seem to have arisen in a religious context in England, but the recent Hong Kong case of *R v Yuen Chong (49)* raised the question of 'religious mortification', which took the form of the beating of the victim with a rattan cane as he knelt before an altar in a Taoist temple. Taoists teach 'supernatural martial arts' and it was argued that the consent of the victim was relevant as the facts fell outside the principles in *Brown*. The Hong Kong Court of Appeal rejected this argument: there was no special category, the passing reference to religious mortification in *Brown* not being the subject of any special rule, nor of any suggestion that society would tolerate physical injury in these circumstances.

8.2. *Harm to children*

A belief in healing by faith or prayer is a not uncommon feature of New Religious Movements. This can lead to a refusal to accept, or allow children or others to receive, medical treatment (50). For rather different reasons, Jehovah's Witnesses refuse blood transfu-

(48) [1994] 1 AC 212. Compare *R v Wilson* [1997] QB 47, CA, where the defence of consent was held available when a husband had branded initials on his wife' s buttocks; this was treated as comparable to tattooing.

(49) [1996] 3 HKC 205, CA.

(50) Or, exceptionally, to a requirement that it be discontinued: see *R v Tutton* (1989) 48 CCC 3d 129 (Supreme Court of Canada) where a family which believed in faith healing

sions. As a result children, or adults in the care of others, may die or suffer permanent damage. Physical harm to children is also dealt with under the ordinary provisions of the criminal law.

Section 1 of the Children and Young Persons Act 1933 is the current legislation governing the offence of wilfully neglecting a child in a manner likely to cause it unnecessary suffering or injury to health. Three nineteenth-century cases, all decided under differently-drafted legislation, involved a sect known as the Peculiar People. The acquittal of the parents in the first of those cases (51) led to Parliamentary intervention and a strengthening of the legislation. In the second case (52) parents were convicted despite the fact that they did not believe medical intervention was necessary. The remains some doubt as to what exactly the third case, *R v Senior* (53) actually decided. It seems likely that the accused did in fact realise that the child was in great danger, but the decision was later treated as having made the offence one of strict liability. In *R v Sheppard* (54) the House of Lords held by a bare majority that the offence under the 1933 Act was one in which it was necessary to prove that the defendant was aware that the child's health would be at risk unless proper care was provided; in appropriate cases, ignorance, stupidity or personal inadequacy would amount to a defence. The facts of that case did not involve religious beliefs, but the test laid down by the House of Lords would seem applicable in such cases. If the accused knew the child was in danger, but refused to get medical help for religious reasons, he will be guilty. It may be otherwise if, as a result of his religious views, he believes that the child cannot be in danger; but as one commentator rightly observes, 'Whether a jury would accept that a parent genuinely believed that faith alone would cure the child, when the child was demonstrably seriously ill and suffering, is questionable' (55).

nonetheless agreed to their diabetic son receiving insulin. The mother then had a vision that the child was healed and further insulin was withheld and the child died.

(51) *R v Wagstaffe* (1868) 10 Cox CC 530.

(52) *R v Downes* (1887) 1 QBD 25.

(53) [1899] 1 QB 283.

(54) [1981] AC 394.

(55) C. HAMILTON, *Family, Law and Religion* (Sweet and Maxwell, 1995), p. 154.

9. Civil Remedies in Cases of Refusal of Medical Treatment

Criminal sanctions may have to be invoked after the event; but what is to be done when medical treatment is urgently needed and could yet save the patient?

9.1. *Adults*

The general rule in England is that an adult and conscious patient will not be given medical or surgical treatment against his will. This was re-asserted by the Court of Appeal in a case involving Jehovah's Witnesses in 1992, *Re T (adult: refusal of medical treatment* (56). This involved a woman who had been seriously injured in a road accident when 34 weeks pregnant. In hospital she told the staff that she had been a member of the Witnesses (57) and still believed that blood transfusions were wrong and did not wish to receive one. She gave written instructions to that effect after a private discussion with her mother. Later, after a Caesarian section had been performed, her condition deteriorated, and (because of the effect of drugs) she was not fully alert and rational. At an emergency late-night court hearing of an application by T's father and boyfriend, the court ordered that it would not be unlawful for a blood transfusion to be given, and this was done. The issue was however taken both to a full hearing two days later and to the Court of Appeal after another 14 days; the original order was upheld. The court recognised that the principle that no treatment could be given without consent presented problems only in the 'comparatively rare situations in which an adult patient declines to consent to treatment which in the clinical judgment of those attending him is necessary if irreparable damage is not to be done to his health, or, in some

(56) [1993] Fam 95, CA. A Canadian court awarded $ 20,000 to a patient given a blood transfusion against her will: *Malette v Shulman* (1990) 72 OR (2d) 417. Staughton LJ in *Re T (adult: refusal of medical treatment)* expressed doubts whether any English court would award such a sum, but recognised that the liability existed.

(57) In fact the religious question had been an important feature of a dispute as to her custody when a child: custody was awarded to the mother a fervent follower of the Witnesses on condition that T was not brought up in that faith, a condition 'only partially met'.

cases, if his life is to be saved' (58). The Court of Appeal emphasised that the right to refuse medical treatment existed even if the reasons were irrational, unknown, or even non-existent. But the doctors treating the patient were free to override a refusal in grave cases where the patient did not have full capacity to take a decision in the circumstances which had developed. This would include cases of reduced capacity (59), and also those in which the patient's capacity to decide had been overborne by pressure from others, such as a parent or religious adviser (60).

9.2. *Children*

So far as children are concerned, discussions between the Government's Department of Health and the medical defence unions have produced agreement that where parents are opposed to treatment, the doctor can rely on his professional judgment, preferably taking a second opinion from a colleague, and overrule the parent's objections where the child's life is in danger (61). Alternatively the court may authorise treatment, the child being made a 'ward of court' (62) which enables the court to give whatever directions are necessary in the interests of the child; or a 'specific issue order' may be obtained under the statutory jurisdiction created by section 8 of the Children Act 1989 (63).

(58) *Re T*, per Lord Donaldson MR.

(59) Compare *Re C (adult: refusal of medical treatment)* [1994] 1 WLR 290, where the refusal of a schizophrenic patient to undergo the amputation of a gangrenous leg was, on the facts, upheld and the doctors failed to obtain a declaration that his capacity was insufficient.

(60) See further below, text to note 76 in the context of 'undue influence' .

(61) See Ministry of Health Circular F/P9/1B, *Refusal of Parental Consent to Blood Transfusion.*

(62) *Re O (A Minor) (Medical Treatment)* [1993] 2 FLR 149. For the weight to be given to the views of the child, see *Re E (A Minor) (Wardship: Medical Treatment)* [1993] 1 FLR 386 (views of Jehovah's Witness aged 15 years 9 months given weight, but ultimately overruled).

(63) See two cases both involving leukaemia patients: *Re R* [1993] 2 FLR 757 (local authority obtained specific issues order under 1989 Act) and *Re S (A Minor) (Medical Treatment)* [1993] 1 FLR 377 (inherent jurisdiction invoked). In each case the application was successful.

10. Child Custody Disputes and New Religious Movements

English law has ceased to use the language of 'custody' but the courts do, of course, have to wrestle with issues concerning the future of children. Their decisions are most commonly given in the form of residence orders, contact orders (64), specific issue orders and prohibited steps orders, all made under the Children Act 1989.

In a recent decision, *Re K (A Minor) (65)* the Court of Appeal had to consider the relevance of membership of a particular religious movement, Jehovah's Witnesses. The father was a committed member of that movement, but the mother was entirely opposed to it; the child had been baptised in the Roman Catholic Church. There had been a number of court hearings in the case, and no fewer than four court welfare officers and a consultant child and adolescent psychiatrist had prepared reports; all expressed concern about the effect on the child of the religious conflict between the parents, and criticised the father for seeking to indoctrinate the child. A lower court had made an order that the father should not take the child to the Kingdom Hall of the Jehovah's Witnesses or seek to encourage her to follow their beliefs. This was upheld by the Court of Appeal in emphatic language. In an extempore judgment, Butler-Sloss LJ came close to breaching the rule under which the courts will not distinguish between rival religions when she said that 'where one of the parents adopts a strongly held religious belief (particularly in a religion such as, but not exclusively, the Jehovah Witnesses(*sic*)) it is important that the courts should hesitate before allowing a child to be subject to the overt indoctrination which is an essential part, as I understand it, of the Jehovah Witnesses faith'.

In an earlier case (66), the Court of Appeal upheld a decision to grant sole custody of a child to the father rather than a joint custody order; the reason was that the mother was opposed as a member of the Jehovah's Witnesses to blood transfusions and it was imperative that the father should be in a position to authorise

(64) i.e. orders dealing with access to the child.
(65) (Unreported, 28 March 1996).
(66) *Jane v Jane* (1983) 4 FLR 712, CA.

any necessary medical treatment without the delay of an application to court to resolve a dispute between parents with joint custody rights. On the other hand, the Court of Appeal set aside a condition in an adoption order that the adoptive parents, who were Jehovah's Witnesses, would allow the child to receive any necessary blood transfusions (67). However the court was aware that under the arrangements already noted (68), parents would be unable to prevent a blood transfusion were one essential.

More generally, where medical treatment has not been an issue, the English courts have not infrequently found that it is in the best interest of a child to live with a parent who does not belong to a movement which has practices which are unusual, oppressive, or likely to limit the lifestyle and breadth of experience of a growing child (69). In one case (70), the court even preferred to give custody to grand-parents, the mother being wholly subservient to the step-father who belonged to an evangelical sect called the Fellowship of the Kings which believed in the right of a husband to autocratic control over his household. The court was satisfied that the child's emotional needs would not be met were he to remain in the household.

In one unusual case, members of the Exclusive Brethren themselves applied for a residence order in respect of the child of a member who had been 'withdrawn', that is expelled from and ostracised by, the Brethren. The court instead made an order in favour of the father, a decision affirmed by the Court of Appeal (71).

(67) *Re S (A Minor) (Blood Transfusion: Adoption Order Condition)* [1994] 2 FLR 416, CA.
(68) See text to note 61, above.
(69) See *Re C (No. 2), The Times*, 1 August 1964 (Exclusive Brethren); *Hewison v Hewison* [1977] Fam Law 207, CA (Exclusive Brethren); *Robertson v Robertson* (unreported, 25 July 1980, CA) (Jehovah's Witnesses); *Re B and G (Minors) (Custody)* [1985] FLR 493, CA (Scientology). See generally C. Hamilton, *Family, Law and Religion* (Sweet and Maxwell, 1995), chapter 5. In *Re S (Minors) (Access: Religious Upbringing)* [1992] 2 FLR 313, CA, the court was faced with an exceptionally zealous Roman Catholic father, one element in the earlier decision to give custody to the mother.
(70) *Kasikmae v Kasikmae* (unreported, 20 December 1985).
(71) *Re R (A Minor) (Residence: Religion)* [1993] 2 FLR 163, CA.

11. Undue Pressure on Members

It is a common feature of new religious movements that the leader of the group exercises very great power over the decisions of the other members. This can affect many aspects of the member's personal life, including decisions as to financial matters such as the terms of a will and decisions as to medical treatment. Both have been the subject of consideration by the English courts.

The leading case in this area has a pronounced religious dimension, though the religious movement concerned, a Sisterhood within the Church of England, was only 'new' insofar as it was associated with acute controversies over 'Anglo-Catholic' ritual and devotional practices in some sections of that church. A Miss Skinner established, with the vicar of a parish in the East End of London a sisterhood known as the Community of St Mary at the Cross. It clearly did admirable work in an area where poverty and disease were prevalent (72). Miss Allcard, a wealthy woman, became, as the trial judge put it, 'infatuated' with the work of the Community, became a postulant within it and gave all her money to the Community of which Miss Skinner was Superior. Miss Allcard later regretted her decision and sought to recover some of the money.

The resulting litigation (73) is of considerable importance in English legal history, as one of the cases which illustrated the effect of enabling the same courts to deal both with the strict rules of the common law, under which the gift made was clearly valid, and with the flexible principles of 'equity' formerly administered in the separate Court of Chancery, including in this context the doctrine of 'undue influence'. In *Allcard v Skinner*, Lindley LJ spoke as follows of this principle:

> The undue influence which Courts of Equity endeavour to defeat is

(72) It was allowed to distribute the food intended for the banquet at King Edward VII's coronation when that had to be postponed because of the illness of the King. For this and other fascinating details, see M. L. Nash, 'Undue influence in contract' (1988) 85 Law Soc Gazette, n° 1, p. 29.

(73) *Allcard v Skinner* (1887) 36 ChD 145, CA.

> the undue influence of one person over another; not the influence of enthusiasm on the enthusiast who is carried away with it, unless indeed such enthusiasm is itself the result of external undue influence. But the influence of one mind over another is very subtle, and of all influences religious influence is the most dangerous and the most powerful, and to counteract it the Courts of Equity have gone very far. They have not shrunk from setting aside gifts made to persons in a position to exercise undue influence over the donors, although there has been no proof of the actual exercise of such influence; and the Courts have done this on the avowed ground of the necessity of going this length in order to protect persons from the exercise of such influence under circumstances which render proof of it impossible (74).

In fact, Miss Allcard's action failed. She had undoubtedly been in the power of the leaders of the Community, and the equitable principle of undue influence was available to her. But another equitable principle (known as 'laches') penalises delay in the assertion of a claim, especially where others have relied on the inactivity, and on the facts the delay on Miss Allcard's part in seeking recovery of her money was fatal to her case.

The principles developed in *Allcard v Skinner* were successfully relied upon in 1893 in one of the earliest cases involving the Plymouth Brethren (75). A successful claim was made by the heirs of a man who had given £ 140,000 (a quite enormous sum at the time) to the Brethren before committing suicide; he acted under the influence of the defendant who regulated his food and medicine as well as being a trusted adviser on financial matters.

This line of cases was treated as relevant by the Court of Appeal in the medical treatment case of *Re T (adult: refusal of medical treatment)* (76). It was held that the capacity of the patient to make a decision binding on the doctors might be affected by the sort of undue influence reflected in the financial cases just described. As the Master of the Rolls put it, the real question in the medical treatment cases is 'does the patient really mean what he

(74) Ibid., at p. 183.

(75) *Morley v Loughnan* [1893] 1 Ch 736. A more recent undue influence case involved the Roman Catholic organisation Opus Dei; it failed on procedural grounds: *Roche v Sherrington* [1982] 1 WLR 599.

(76) [1993] Fam 95, CA.

says or is he merely saying it for a quiet life, to satisfy someone else or because the advice and persuasion to which he has been subjected is such that he can no longer think and decide for himself?' A close relationship between patient and 'persuader', especially where religious considerations are also involved, would be especially relevant. On the facts of *Re T*, the Court of Appeal, differing from the trial judge, found sufficient evidence of undue influence by the patient's mother to vitiate the patient's assertions of an objection to blood transfusions.

12. Conclusion

As stated at the beginning of this paper, there is very little English law directly concerned with New Religious Movements, and the issue seems not to be a live one in terms of law reform. But the characterictic flexibility of the common law tradition, evidenced in such diverse fields as the wardship jurisdiction over children and the equitable doctrine of undue influence, gives a judge considerable discretion to take note of the particular lifestyle of a sect or religious movement (old or new, Christian or not) in reaching a judgment on the case before the court.

JEAN DUFFAR
Faculté de Droit de Paris Saint Maur

LES NOUVEAUX MOUVEMENTS RELIGIEUX ET LE DROIT INTERNATIONAL

Résumé: *Introduction.* — 1. *Les nouveaux mouvements religieux sont assimilés à n'importe quel groupement de personnes.* — 1.1. Le droit à la liberté de réunion et de manifestation pacifique. — A. Etendue de la garantie. — B. Restrictions Licites. — 1.2. Le droit à la liberté d'association. — A. La création. — B. La Disparition. — 2. *Les nouveaux mouvements religieux ne sont que rarement ou exceptionnellement assimilés à des religions traditionnelles.* — 2.1. Une assimilation rare dans l'application des instruments universels. — 2.2. Une assimilation exceptionnelle dans l'application des instruments de droit européen. — A. Les Communautés européennes. — B. Le Conseil de l'Europe. — 3. *La protection des personnes dans les nouveaux mouvements religieux.* — 3.1. Le contrôle des Etats. — 3.2. Le respect de la Non-discrimination. — A. Les membres des « nouveaux mouvements ». — B. Les membres des nouveaux mouvements religieux. — 4. *Conclusion.*

Introduction

Le droit international ne contient guère de dispositions particulières qui s'appliqueraient en particulier aux nouveaux mouvements religieux. En revanche, les instruments internationaux de protection des droits de l'homme garantissent les droits des groupes qui s'exercent à plusieurs: Droit à la liberté de réunion pacifique, Droit à la liberté de manifestation qui en constitue une composante, Droit à la liberté d'association. Or, un mouvement religieux est d'abord un groupement qui s'exprime éventuellement par une action collective et postule un certain degré d'organisation. Dans ce premier développement sera envisagé, non le caractère religieux du mouvement, mais seulement l'expression collective dont il est le

signe: Les nouveaux mouvements religieux sont assimilés à n'importe quel groupement de personnes (1.).

Cependant, les mouvements religieux revendiquent d'être plus qu'une simple catégorie de groupements. D'abord, ils prétendent véhiculer *« un message »* nouveau qui au surplus présenterait un particularisme religieux. Pourront-ils ainsi se prévaloir des dispositions des instruments internationaux qui garantissent le droit de toute personne à la liberté de pensée de conscience et de religion? (1) Les nouveaux mouvements religieux ne sont que rarement ou exceptionnellement assimilés à des religions traditionnèlles (2.).

Enfin, les instruments internationaux protègent les droits de l'homme même serait-il membre d'un mouvement religieux. Dès la reconnaissance juridique des groupes, il a fallu contenir les pouvoirs de ceux-ci à l'égard de leurs adhérents. Ceux-ci *« appartiennent »* à un parti politique, à un syndicat, à un nouveau mouvement religieux et l'emprise de ce verbe ne marque-t-il pas qu'il faut protéger les personnes contre l'éventuelle oppression que certains nouveaux mouvements religieux pourraient exercer sur leurs *« fidèles »*? La protection des personnes dans les nouveaux mouvements religieux (3.).

1. Les Nouveaux Mouvements Religieux sont assimilés à n'importe quel groupement de personnes:

Un groupement est un ensemble de personnes qui ont des attitudes ou des comportements communs ayant un objectif commun qui conditionne la cohésion de ses membres (2). Pour satisfaire aux critères de cette définition, le mouvement religieux, comme tout autre groupe, doit pouvoir réunir des membres au cours de rassemblements c'est-à-dire exercer le droit à la liberté de réunion et de manifestation pacifique (1.1.). Il doit être aussi juridiquement en mesure de créer des institutions durables à vocation même permanente c'est-à-dire exercer le droit à la liberté d'association (1.2.).

(1) Art. 18-1 du Pacte international relatif aux droits civils et politiques (P.I.D.C.P.) et art. 9 de la Convention européenne des droits de l'Homme (C.E.D.H.).

(2) V. Groupe, Dictionnaire Larousse.

1.1. *Le droit à la liberté de réunion et de manifestation pacifique*

Ce droit est garanti par les divers instruments internationaux (A.) même s'il est assorti de limites (B.).

A. Etendue de la garantie

Les nouveaux mouvements religieux implantés dans de nombreux pays ont une ambition universelle. L'article 20 de la Déclaration universelle des droits de l'Homme du 10 décembre 1948 (D.U.D.H.) et l'article 21 du P.I.D.C.P. du 16 décembre 1966, qui sont des instruments universels de protection des droits de l'Homme, reconnaissent le droit de réunion pacifique. Ce droit est également reconnu dans des textes régionaux de même inspiration: l'article 15 de la Convention Américaine relative aux droits de l'Homme du 22 novembre 1969 et l'article 21 de la Charte africaine des droits de l'Homme et des Peuples du 26 juin 1981.

L'article 11 § 1 de la C.E.D.H. du 4 novembre 1950 dispose:

« Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association ». Une *« réunion pacifique »* peut être un attroupement de personnes debout ou assises ou une marche collective mais à condition qu'un but commun soit partagé (3). Il n'est pas rare de voir dans certaines villes d'Europe des démonstrations de nouveaux mouvements religieux qui se déroulent sur la voie publique ou encore de lire dans les journaux ou sur les murs des invitations à se rendre à des réunions. La liberté de réunion qui est un droit de tous sans considération confessionnelle postule la libre disposition d'un local pour accueillir les participants. Mais il peut être légalement nécessaire d'obtenir une autorisation administrative pour ouvrir et desservir une maison de prière. La Cour européenne des droits de l'Homme, (la COUR), estime qu'un régime d'autorisation préalable pour l'établissement d'un lieu de culte n'est acceptable que si le pouvoir du ministre est limité au contrôle des seules conditions formelles, mais il ne doit pas être utilisé en vue de restreindre les activités de certaines confessions. *« Le droit à la liberté de religion, tel que l'entend, la Conven-*

(3) Décision de la Commission européenne des droits de l'Homme (D) D. 15225/89 LF c/ Autriche, 30 novembre 1992; D. 8440/78 Christians Against Racism 16 juillet 1980, Décisions et Rapports (DR) 21/162.

tion, exclut toute appréciation de la part de l'Etat sur la légitimité des croyances religieuses ou sur les modalités d'expression de celles-ci » (n° 47).

A l'unanimité, la Commission, puis la Cour ont conclu que la condamnation des requérants, tous Témoins de Jéhovah, pour avoir créé et desservi une maison de prière sans autorisation s'analyse comme une ingérence dans l'exercice de leur droit à la liberté de manifester leur religion par le culte (4).

Le détournement de pouvoir censuré par la Cour dans l'arrêt *Manoussakis* visait en fait à empêcher toute réunion des Témoins de Jéhovah alors que le droit de réunion pacifique est fondamental dans une société démocratique à l'instar du droit à la liberté d'expression (5) et constitue, selon la Commission un élément essentiel de la vie politique et sociale d'un pays (6). Il en résulte que, comme toute personne, l'adepte d'un nouveau mouvement religieux peut organiser une réunion pacifique (7) et les « *fidèles* » peuvent y participer. La Cour a déclaré que cette liberté de participation revêt une telle importance qu'elle ne peut subir une quelconque limitation dans la mesure où l'intéressé ne commet lui-même à cette occasion aucun acte répréhensible (8).

Aussi, la réunion de personnes doit-elle être éventuellement protégée même contre ceux qui la désapprouvent et tentent d'en paralyser le déroulement. Les Etats jouissent cependant d'un large pouvoir d'appréciation: en vertu de l'article 11 § 1 de la C.E.D.H. (9) ils n'assument qu'une obligation de moyens et non de

(4) Cour, Manoussakis c/ Grece, 26 septembre 1996. V. aussi le Rapport de la Commission européenne des droits de l'Homme ® n° 29238/94 Pentidis, Katharios et Stagopoulos c/ Grece, 27 février 1996. L'article 9 § 1 de la C.E.D.H. dispose: « *Toute personne a droit à la liberté de pensée, de conscience et de religion ou de conviction ainsi que la liberté de manifester sa religion ou sa conviction individuellement ou collectivement en public ou en privé par le culte, l'enseignement, les pratiques et l'accomplissement des rites* ».

(5) Cour, *Handyside*, 7 décembre 1976.

(6) R, Affaire grecque, 207-208.

(7) D 25522/94, 6 avril 1995, DR 81 B/152; D 8440/78, 16 juillet 1980, DR 21/138.

(8) Cour, Ezelin, 26 avril 1991, n° 53 V J. Duffar, *Les Libertés Collectives*, Montchrestien, 1996, p. 17-23.

(9) *Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, y compris le droit de fonder avec d'autres des syndicats pour la défense de ses intérêts* ».

résultat (10). La réunion convoquée par un mouvement religieux peut susciter aussi des contre-manifestations mais la Commission n'exclut pas que la critique ou l'agitation fomentée notamment contre un groupement religieux atteignent un niveau tel qu'ils puissent mettre en danger la liberté de religion auquel cas le fait pour les pouvoirs publics de tolérer pareil comportement pourrait engager la responsabilité de l'Etat (11).

B. Restrictions Licites

Les instruments internationaux prévoient à certaines conditions la possibilité d'apporter des limitations au droit de réunion pacifique. L'article 11 § 2 de la C.E.D.H. en est un exemple: l'exercice du droit à la liberté de réunion ne peut faire l'objet d'autres restrictions que celles définies par le texte de l'article: celles-ci doivent être prévues par une loi d'un Etat membre et nécessaires dans une société démocratique à la réalisation de certains buts. L'article 11 § 2 les énumère: la sécurité nationale, la sûreté publique, la défense de l'ordre et la prévention du crime, la protection de la santé ou de la morale ou la protection des droits et libertés d'autrui.

Les lois internes soumettent parfois à autorisation préalable les réunions qui se déroulent en plein air, sur la voie publique. Lors de l'examen de la demande d'autorisation les autorités peuvent prendre en considération la finalité de la réunion, la qualité des organisateurs, la nature du groupement religieux qui souhaite se réunir. Le pouvoir d'appréciation n'est pas, selon la Commission, contraire à l'article 11 s'il est exercé selon des critères de clarté et de prévisibilité qui protègent de l'arbitraire administratif (12). L'article 1 du Décret Loi français du 23 octobre 1935 soumet à

(10) Cour, *Plattform Ärzte für das Leben*, 21 juin 1988, n°s 32-34.

(11) D 8282/78, Church of Scientology et 128 de ses fidèles, 14 juillet 1980, DR 21/114; D 8160/78, X c. R.U. 12 mars 1981 DR 22/27; Cour, Campbell et Cosans, 25 février 1982, n° 37.

(12) R, Affaire Grecque, 5 novembre 1969, 1ère partie, 393. La Commission a déclaré recevable une requête de Témoins de Jéhovah se plaignant d'ingérences des autorités publiques dans leur droit à la liberté de réunion D 28626/95 c/ Bulgarie, 3 juillet 1997. La Commission a considéré que n'était pas contraire à l'article 9 une décision des services de l'urbanisme mettant en demeure la *Société Internationale pour la conscience de Krishna* de

l'obligation d'une déclaration préalable toutes les manifestations sur la voie publique sauf les « sorties conformes aux usages locaux ». L'expression désigne principalement les processions religieuses traditionnelles. Les éventuels cortèges ou démonstrations des nouveaux mouvements religieux ne pourraient bénéficier de la même dispense; il leur manque l'ancienneté.

Quel que soit le régime de droit interne, la manifestation sur la voie publique d'un nouveau mouvement religieux peut être non autorisée ou interdite. Les motifs des décisions, comme pour tout autre groupement, devraient correspondre aux buts énumérés à l'article 11 § 2 (cf. supra): interdiction par exemple sur le fondement de la défense de l'ordre et de la prévention du crime (13) ou encore — les circonstances de fait pourraient faire penser à certains nouveaux mouvements religieux — la Commission a considéré qu'une manifestation dont les organisateurs se proposaient d'utiliser des instruments de musique et de percussion s'annonçait bruyante et n'était donc pas *« pacifique »* (14). L'ensemble de ces restrictions potentielles ne doit pas toutefois aboutir à une suppression de la liberté d'expression pour les nouveaux mouvements religieux même si les idées qu'ils diffusent heurtent, choquent ou inquiètent l'Etat ou une fraction quelconque de la population. Ainsi le veulent le pluralisme, la tolérance et l'esprit d'ouverture sans lesquels il n'est pas de société démocratique (15).

Les exigences de la Société Démocratique trouvent cependant leurs limites dans l'article 17 de la C.E.D.H. qui énonce en substance qu'un groupement ne pourra trouver dans la C.E.D.H. un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits ou libertés reconnus dans la C.E.D.H. Tout groupe, serait-il un nouveau mouvement religieux, qui s'emploierait au renversement des régimes politiques véritablement démocratiques et notamment pluralistes s'exposerait à être interdit comme le furent certains partis politiques totalitaires (16).

restreindre les activités religieuses publiques qui attiraient une foule considérable dans ses locaux D 20490/92 ISKCON c/ R.U., 8 mars 1994, DR 76 B/90.

(13) D 8440/78, 16 juillet 1980, DR 21/138; D 13079:87, 6 mars 1989, DR 60/270. D 1960/92, 19 janvier 1995, DR 80 A/52.

(14) D 13812/88, 3 décembre 1990.

(15) Cour, HANDYSIDE, 7 décembre 1976, n° 49.

1.2. *Le droit à la liberté d'association*

Par delà les rassemblements éphémères que constituent des réunions ou des manifestations sur la voie publique, les groupements et partant les nouveaux mouvements religieux peuvent souhaiter un statut juridique. L'article 11 de la C.E.D.H., comme l'article 22 § 1 du P.I.D.C.P. (17) reconnaît à toute personne le droit à la liberté d'association. Celle-ci: *suppose un groupement volontaire en vue de la réalisation d'un objet commun* (18). En quels termes peuvent se présenter juridiquement la création (A.) et la disparition (B.) des nouveaux mouvements religieux.

A. La création

Le droit des Etats contractants à la C.E.D.H. marque des différences: Selon la loi française du 1er juillet 1901 relative au contrat d'association, une association non déclarée ne jouit pas de la capacité juridique, mais son existence est légale. En revanche, l'article 18, al. 2 de la Constitution italienne de 1948 interdit les associations secrètes (19). Après la discussion du rapport de sir John HUNT sur les sectes et les nouveaux mouvements religieux, l'Assemblée parlementaire du Conseil de l'Europe recommanda au Comité des Ministres d'inviter les Etats membres du Conseil de l'Europe à adopter notamment une législation *« accordant la personnalité juridique aux sectes et aux nouveaux mouvements religieux dûment enregistrés, ainsi qu'à tous les groupements issus de la secte*

(16) D 12194/46 KUHNEN c/ RFA, 12 mai 1988, DR 56/205; D 25992/94 National Demokratische Partei, 29 novembre 1995, DR 84 B/149.

(17) *Toute personne a le droit de s'associer librement avec d'autres, y compris le droit de constituer des syndicats et d'y adhérer pour la protection de ses intérêts ».*

(18) R n° 7601/76 et 7808/77, YOUNG, JAMES et WEBSTER c/ R.U., 14 décembre 1979, n° 167.

(19) *« Sono proibite le associazioni segrete »...* V. F. MARGIOTTA BROGLIO, *La Costituzione per tutti*, Biblioteca aperta Sansoni, 1996, p. 46-49.

mère (20). Dans sa réponse du 21 février 1994 (DOC 7030) *le Comité des Ministres considère que les Etats ne sauraient être invités à prendre des mesures fondées sur un jugement de valeur relatif à des cultes ou à des croyances* ». Il ne semble pas opportun d'inviter les gouvernements à *exiger de toutes les sectes et de tous les nouveaux mouvements religieux d'obtenir la personnalité juridique, étant entendu que les membres de tels sectes et mouvements devraient se conformer à la législation du pays dans lequel ils résident* ». La Commission avait été saisie d'une requête présentée par l'Associazione spirituale per l'unificazione del mondo Christiano (MOON) qui se plaignait qu'en refusant d'accorder à l'association la personnalité juridique les autorités italiennes avaient porté une atteinte injustifiée à la liberté de religion (21). Plus récemment, la Commission a été saisie d'une requête dirigée contre le refus d'enregistrement dans le département du BAS-RHIN, d'une association d'aide aux mères-porteuses. La Commission a noté qu'une association non inscrite peut néanmoins se constituer librement, exercer certaines activités et posséder un patrimoine par l'intermédiaire de ses membres mais — la solution est importante pour les nouveaux mouvements religieux — elle n'a pas décidé si l'article 11 de la C.E.D.H. garantit aux associations le droit à l'acquisition de la personnalité juridique (22). Plus récemment la Commission a déclaré recevable la requête d'une Association de Témoins de Jéhovah qui avait été enregistrée le 17 juillet 1991 et avait acquis la personnalité juridique. A la suite d'une réforme législative elle dût solliciter en 1994 un nouvel enregistrement mais celui-ci lui fut refusé. Depuis toutes les activités « *religieuses* » de l'association et de ses membres sont illicites (23).

(20) Conseil de l'Europe, Assemblée parlementaire, 29 novembre 1991, Doc 6535; Recommandation 1178 (1992) relative aux sectes et aux nouveaux mouvements religieux.

(21) D 11574/85, 5 janvier 1987: irrecevable non épuisement des voies de recours internes.

(22) D 14223/88, Lavisse c/ France, 5 juin 1991, DR 70/218. Dans des circonstances similaires, la Commission note que l'association requérante, bien que l'inscription au registre du commerce lui ait été refusée, n'a pas démontré qu'elle ne peut exercer ses fonctions en tant qu'association D 18874/91, X c/ Suisse, 12 janvier 1994, DR 768/49, V. J. Duffar, *Les Libertés Collectives*, Montchrestien, 1996, p. 56.

(23) D 28626/95 c/ Bulgarie, 3 juillet 1997.

B. La Disparition

Les nouveaux mouvements religieux peuvent faire l'objet des mêmes limitations que les autres catégories d'associations (cf. supra 1.1. B.). Au nombre de celles-ci figure la dissolution ou l'interdiction qui doit poursuivre un des buts légitimes énumérés par l'article 11 § 2 de la C.E.D.H. Ces mesures de suppression doivent être « *nécessaires dans une société démocratique* », les Etats bénéficient d'une certaine marge d'appréciation dans ce domaine (24). A titre d'exemple une première association (MOON) la société pour l'unification de la chrétienté est dissoute; le requérant fonde alors une seconde association, la société pour la promotion de l'Eglise de l'union à son tour dissoute car selon la Cour constitutionnelle autrichienne, elle poursuit les activités illégales de la première association. La Commission estime justifié au regard de l'article 11 § 2 de la C.E.D.H., puisque nécessaire dans une société démocratique à la défense de l'ordre, d'interdire une association parce qu'elle continue illégalement les activités d'une association dissoute (25).

En résumé, les nouveaux mouvements religieux jouissent, comme toute autre catégorie de groupement, des mêmes droits à la liberté de réunion et d'association assortis des mêmes limites. Ce constat d'assimilation ne peut être étendu au delà: les nouveaux mouvements religieux ne sont qu'exceptionnellement assimilés à des religions traditionnelles.

2. Les Nouveaux Mouvements Religieux ne sont que rarement ou exceptionnellement assimilés à des religions traditionnelles

Les textes internationaux témoignent d'un certain flottement du vocabulaire, ils utilisent, semble-t-il, indifféremment les expressions sectes, nouveaux mouvement religieux, communautés religieuses, confessions minoritaires, etc. Les dictionnaires ne mention-

(24) D 23892/94, A.C.R.E.P. c/ Portugal, 16 octobre 1995, DR 83A/64.

(25) D 8652/79, X c/ Autriche, 15 octobre 1981, DR 26/95.

nent que le mot « sectes ». Il en existerait deux espèces. La première correspond à des groupes constitués à l'écart d'une Eglise pour soutenir des opinions théologiques particulières. En français, le terme a été appliqué aux protestants dès 1525 dans l'expression *« secte luthérienne »*. La seconde espèce est constituée par des organisations fermées exerçant une influence psychologique forte sur leurs adeptes se réclamant d'une pensée religieuse ou mystique mais étrangères aux grandes religions constituées (26). Cette distance variable entre les nouveaux mouvements religieux et les religions traditionnelles explique, au moins partiellement, la différence de traitement dont ils font l'objet. Leur assimilation aux religions traditionnelles est rare dans l'application des instruments universels (2.1.) et exceptionnelle dans l'application des instruments de droit européen (2.2.).

2.1. *Une assimilation rare dans l'application des instruments universels*

L'article 18 du P.I.D.C.P. adopté le 16 décembre 1966 garantit la liberté de pensée, de conscience et de religion à toute personne. Dans l'observation générale adoptée à sa 1247ème séance le 20 juillet 1993, le Comité des droits de l'Homme a déclaré: *« l'article 18 n'est pas limité, dans son application, aux* religions traditionnelles *ou aux religions ou croyances comportant des caractéristiques ou des pratiques* institutionnelles analogues à celles des religions traditionnelles. *Le Comité est donc préoccupé par toute tendance à faire preuve de discrimination à l'encontre d'une religion ou d'une* conviction quelconque *pour quelque raison que ce soit, notamment parce qu'elle est* nouvellement établie *ou qu'elle représente des* minorités religieuses *susceptibles d'être en butte à l'hostilité d'une communauté religieuse dominante »* (27). C'est une conception très ouverte aux nouveaux mouvements religieux. Par ailleurs, le Comité dans la même observation générale estime que le droit à l'objection de

(26) V. Secte, LE ROBERT, Dictionnaire historique.

(27) L'article 40 § 4 du P.I.D.C.P. énonce que le Comité des droits de l'Homme adresse aux Etats parties (...) toutes observations générales qu'il jugerait appropriées.

conscience qui n'est pas explicitement mentionné dans le Pacte *peut être déduit de l'article 18 dans la mesure où l'obligation d'employer la force au prix de vies humaines peut être gravement en conflit avec la* liberté de conscience *et le droit de manifester sa religion ou ses convictions »*. Cette interprétation constitue un progrès considérable, en particulier, pour le groupement religieux des Témoins de Jéhovah qui pour des motifs de conviction font l'objet de poursuites judiciaires dans de nombreux Etats du Monde.

La déclaration sur l'élimination de toutes les formes d'intolérance et de discrimination fondées sur la religion ou la conviction proclamée par l'Assemblée Générale des Nations Unies le 25 novembre 1981 a donné lieu à des rapports sur son application. La classification des *« communautés religieuses »* faisant l'objet d'allégations d'atteintes à leur liberté de conviction est la suivante: religion chrétienne, religion musulmane, religion bouddhiste, religion judaïque, puis dans une rubrique: *« Autres religions et groupes religieux »* sont cités: Ahmadis, Baha' is, Pentecôtistes, Témoins de Jéhovah, Adventistes du 7ème jour, Hare Krishna, Scientologie, Eglise de la Vie Universelle. En apparence, l'approche est voisine de celle du Comité des droits de l'Homme, mais chaque nouveau mouvement religieux n'est pas classé comme religion (28).

L'année 1995 — année des Nations Unies pour la tolérance — a notamment abouti à la Déclaration des Principes sur la Tolérance adoptée par la Conférence Générale de l'UNESCO à sa 28ème session, le 16 novembre 1995. Sept conférences régionales ont précédé l'adoption de cette déclaration mais les documents finaux de ces conférences ne font même pas mention des nouveaux mouvements religieux.

— Le paragraphe 17 de la *Recommandation de Séoul* (29) mentionne seulement le rôle capital que *« les diverses religions et confessions existant dans le monde »* ont à jouer pour répandre la tolérance.

(28) Rapport de M. AMOR, rapporteur spécial conformément à la résolution 1995/23 de la Commission des droits de l'Homme E/CN.4/1996/95, 15 décembre 1995.

(29) Conférence internationale sur la Démocratie et la Tolérance (Seoul, 27-29 septembre 1994).

— La *Charte de Carthage* sur la tolérance en méditerranée (30) s'adresse aux trois religions monothéistes dans le bassin méditerranéen auxquelles il incombe *de promouvoir en leur sein, dans leurs rapports mutuels et dans les diverses sociétés, les valeurs de liberté de tolérance et de droits de l'homme ».*

— Enfin, *l'Appel d'Istanbul* ne fait pas davantage mention des *nouveaux mouvements religieux* alors que le symposium qui examinait les documents finaux établis antérieurement rassemblait un nombre important d'hommes de religion. Les participants ont considéré: *« que la connaissance mutuelle des diverses religions notamment de l'hindouisme, du bouddhisme, du judaïsme, du christianisme et de l'Islam tout comme des religions traditionnelles africaines, amérindiennes et asiatiques dans un esprit de compréhension réciproque, est nécessaire pour la paix »* (31).

Pour résumer, seul, le Comité des droits de l'Homme assimile explicitement les nouveaux mouvements religieux aux religions traditionnelles.

2.2. *Une assimilation exceptionnelle dans l'application des instruments de droit européen*

Cette proposition se vérifie aussi bien dans le cadre des Communautés européennes (A.) que dans celui du Conseil de l'Europe (B.).

A. Les Communautés européennes

L'existence de nouveaux mouvements religieux est à l'origine d'un arrêt de la Cour de justice des Communautés européennes et d'un Rapport devant le Parlement européen.

Les § 1 et § 2 de l'article 48 du Traité de ROME du 25 mars 1957 instituant la Communauté économique européenne assurent la libre circulation des travailleurs à l'intérieur de la Communauté sous réserve des limitations justifiées par des raisons d'ordre public, de sécurité publique et de santé publique. L'Etat

(30) Conférence sur la pédagogie de la Tolérance dans le bassin méditerranéen (Carthage, 21-22 avril 1995).

(31) Symposium d'Istanbul sur la Tolérance (Istanbul, 4-6 octobre 1995).

peut refuser l'entrée sur son territoire mais aux termes de l'article 3-1 de la Directive 64/221 du Conseil du 25 février 1964, cette décision doit être exclusivement fondée sur le « comportement personnel » de l'individu qui en fait l'objet. Les autorités britanniques avaient refusé l'entrée sur le territoire à une ressortissante néerlandaise venue au Royaume Uni pour occuper un emploi de secrétaire auprès de l'Eglise de Scientologie, mouvement considéré comme un danger social mais non interdit. La Cour a dit pour droit qu' *« un Etat membre se prévalant des restrictions justifiées par l'ordre public peut prendre en considération comme relevant du comportement personnel de l'intéressé, le fait que celui-ci est affilié à un* groupe *ou à une* organisation *dont les activités sont considérées par l'Etat membre comme constituant un danger social sans pourtant être interdites, et cela même si aucune restriction n'est imposée aux ressortissants de cet Etat qui souhaitent exercer une activité analogue à celle que le ressortissant d'un autre Etat membre envisage d'exercer dans le cadre de ces mêmes groupes ou organisations » (32).* La décision prend seulement en compte l'affiliation à l'organisation qu'elle ne caractérise pas comme un mouvement religieux.

23. Devant le Parlement européen, M. Richard Cottrell a présenté un rapport le 2 avril 1984 sur l'activité de certains « nouveaux mouvements religieux *à l'intérieur de la Communauté européenne* (33):

> L'Eglise de l'unification de Moon, les enfants de Dieu, l'Eglise de Scientologie, l'organisation « *Rajneesh* » et Hare Krishna. L'auteur expose que les mouvements doivent satisfaire aux lois des Etats et respecter les droits des personnes. Il n'établit aucun rapprochement entre ces mouvements et les religions traditionnelles.

Il apparaît que seul est retenu le danger que présentent ces nouveaux mouvements religieux. Dans une réponse récente à une question écrite d'un parlementaire européen, la Commission déclare: « Dans la mesure où certaines sectes adoptent des méthodes et poursuivent des activités qui relèvent du domaine de la crimi-

(32) CJCE, 41:74, 4 décembre 1974, VAN DUYN, Rec. 297, V. J. ROBERT et J. DUFFAR, *Droits de l'Homme et Libertés Fondamentales*, Paris, Montchrestien, 1996, p. 452.

(33) Document de séance 1984-1985-1-47/84.

nalité, ces comportements n'échappent pas aux poursuites des Etats membres et rentrent dans le champ d'application des mesures de coopération judiciaire et policière qu'ils développent dans le cadre du Titre VI du Traité sur l'Union européenne. Aux termes de l'article K 2, ces questions sont traitées dans le respect de la Convention européenne de sauvegarde des droits de l'Homme. La Commission, bien que pleinement associée aux travaux du Conseil dans ces domaines, n'y dispose pas d'un droit d'initiative » (34). Bien qu'elle s'en défende, la Commission pourrait trouver un terrain de compétence dans les dispositions du Traité relatives à la citoyenneté de l'Union (art. 8) ainsi que dans les articles 126 et 127: Education formation professionnelle et Jeunesse.

B. Le Conseil de l'Europe

Avant d'analyser en détail la jurisprudence des organes de la C.E.D.H. - 2. -, il faut rappeler les recommandations de l'Assemblée parlementaire - 1. -

1. *Recommandations de l'Assemblée parlementaire*

Le rapport précité de sir John HUNT (cf. supra 1.2. A.) a été suivie par une Recommandation 1178 (1992) relative aux sectes et aux nouveaux mouvements religieux. L'Assemblée recommande au Comité des Ministres d'inviter les Etats à adopter les mesures suivantes: une information à transmettre sur les « religions majeures »; une information *« sur la nature et les activités des sectes et des nouveaux mouvements religieux »*; des mesures de protection des mineurs et des enfants; la déclaration auprès des organismes sociaux du personnel employé par les sectes. De plus, les membres d'une secte doivent être informés qu'ils ont le droit de la quitter à tout moment.

Dans la Recommandation 1202 (1993) relative à la tolérance religieuse dans une société démocratique, l'Assemblée marque son intérêt pour les religions monothéistes majeures et les confessions reconnues. Elle énonce que: *« la religion procure à l'individu une relation enrichissante avec lui-même et avec son dieu ainsi qu'avec le*

(34) Réponse à la question écrite E 2798/96 posée par Cristiana MUSCARDINI à la Commission, JOCE, n° C72/80, 7 mars 1997.

monde extérieur et la société dans laquelle il vit », (n° 3); chacune des trois grandes religions monothéistes repose sur des principes de nature à engendrer la tolérance et le respect mutuel vis-à-vis des adeptes d'une autre foi ou des non croyants; chaque être humain est considéré comme la création du dieu unique ... (n° 11). L'histoire européenne montre que *« la coexistence des cultures juives, chrétienne et islamique, lorsqu'elle se fonde sur le respect mutuel et la tolérance contribue à la prospérité des nations (n° 13). L'Etat laïque ne devrait imposer aucune obligation religieuse à ses citoyens. Il devrait en outre encourager le respect de toutes les communautés religieuses reconnues et faciliter leurs relations avec la société dans son ensemble »* (n° 15) plus loin, il est encore fait référence à *« toutes les confessions reconnues »*. Les nouveaux mouvements religieux ne seraient concernés par la Recommandation que s'ils avaient fait l'objet d'une reconnaissance. Plus généralement de nombreux mouvements *« religieux »* ne correspondent pas aux critères de la religion telle que décrite dans la recommandation.

C'est dans cette perspective qu'il faut placer un document informel de la Sous Commission des droits de l'Homme de l'Assemblée parlementaire du 19 mars 1997 intitulé « Les Sectes » Projet de programme de l'audition qui se tiendra le 8 avril 1997 à PARIS (Assemblée Nationale). Dans la recommandation 1178 (1992) (cf. supra 2.2. B.) l'Assemblée parlementaire *« n'a-t-elle pas implicitement assimilé secte à religion »?* (...). L'audition *« devra permettre de répondre aux questions suivantes: les sectes sont-elles dangereuses? Les sectes* sont-elles assimilables à des religions *et doivent-elles, à ce titre, bénéficier des garanties de la Convention européenne des droits de l'Homme et notamment de son article 9 qui garantit la liberté de conscience et de religion? Faut-il préconiser des mesures restreignant les libertés des sectes, et si oui, lesquelles? ».* Ainsi le nouveau mouvement religieux n'est pas juridiquement une religion sinon à titre exceptionnel comme le montre la jurisprudence des organes de la Convention.

2. *La jurisprudence des organes de la Convention*

La jurisprudence des organes de la Convention paraît considérer la liberté de religion et la liberté de la manifester comme

répondant à certains critères auxquels les nouveaux mouvements religieux ne satisfont qu'exceptionnellement. L'article 9 de la C.E.D.H. dispose:

« 1. — Toute personne a droit à la liberté de pensée, de conscience et de religion; ce droit implique la liberté de changer de religion ou de conviction, ainsi que la liberté de manifester sa religion ou sa conviction individuellement ou collectivement, en public ou en privé, par le culte, l'enseignement, les pratiques et l'accomplissement des rites.

« 2. — La liberté de manifester sa religion ou ses convictions ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité publique, à la protection de l'ordre, de la santé ou de la morale publiques, ou à la protection des droits et libertés d'autrui ».

Les critères d'une *« religion »* ou d'une *« conviction »* ont été dégagés par la jurisprudence.

— Dans l'arrêt du 7 décembre 1976, *Kjeldsen, Madsen, Pedersen*, la Cour déclare: « Il en va de même du caractère religieux si l'on tient compte de l'existence de religions formant un ensemble dogmatique et moral très vaste qui a ou peut avoir des réponses à toute question d'ordre philosophique, cosmologique ou éthique ». On mesure, par cette description, la distance qui sépare certains nouveaux mouvements religieux des religions. Celles-ci comportent une explication globale du monde.

— De même, ne pourra-t-on parler légèrement des *« convictions »* religieuses. Elles impliquent davantage que de simples idées ou opinions, ce sont des vues *« atteignant un certain degré de force, de sérieux, de cohérence et d'importance »* (35). La conviction est l'expression d'une vision cohérente sur des problèmes fondamentaux (36).

— On ne pourra davantage revendiquer comme *« pratique »* au sens de l'article 9 n'importe quel comportement: les actes du culte et de dévotion sont sans doute des aspects de la pratique mais non des actes quelconques seulement motivés ou inspirés par une

(35) Cour, 25 février 1982, Campbell et Cosans, n° 36.

(36) D 8741/79, 10 mars 1981, DR 24/141.

religion ou une conviction (37). Ainsi, une société commerciale qui recherche le profit n'est pas titulaire des droits de l'article 9: la personne morale doit poursuivre des buts religieux ou philosophiques (38).

Tels sont les critères que la jurisprudence a dégagés pour caractériser une religion: les mouvements qui voudraient être qualifiés *« religieux »* devraient sans doute y satisfaire. Il semble qu'actuellement, et selon la jurisprudence des organes de la C.E.D.H., les Témoins de Jéhovah rempliraient seuls ces conditions. Plusieurs arrêts de la Cour ont par exemple constaté qu'en Grèce « la confession » remplit dans l'ordre juridique grec les conditions d'une « religion connue ». La Cour a estimé, qu'à des titres divers les Témoins de Jéhovah avaient été notamment victimes de la violation de l'article 9 de la Convention (39).

C'est par le biais de l'objection de conscience que la Commission a été conduite à désigner ce mouvement comme une secte religieuse (40). *« La Commission relève que les Témoins de Jéhovah adhèrent à tout un ensemble de règles de comportement couvrant bon nombre d'aspects de la vie quotidienne. Le respect de ces règles fait l'objet d'une surveillance sociale rigoureuse mais informelle parmi les membres de la communauté. L'une de ces règles commande le rejet du service militaire et de tout service de remplacement.*

« Il s'ensuit que l'appartenance aux Témoins de Jéhovah constitue une présomption très forte que les objections au service obligatoire s'appuient sur des convictions religieuses authentiques. Aucune présomption comparable n'existe lorsqu'il s'agit d'individus objectant au service obligatoire sans être membres d'une communauté présentant des caractéristiques analogues.

(37) R 7050/75, Arrowsmith, 12 octobre 1978, DR 19/5; D 7805/77 x et church of scientology c/ Suede, 5 mai 1979, DR 16/68, Le Comité des droits de l'Homme a déclaré qu'une croyance qui consiste essentiellement ou exclusivement dans le culte et la distribution d'un stupéfiant ne saurait entrer dans le champ d'application de l'article 18 du Pacte (Liberté de religion et de conscience) Communication 570: 1993, 8 avril 1994, Rapport du Comité, 1994, p. 392.

(38) D 7865/77, Soc X c/ Suisse, 27 février 1979, DR 16/85; D 11921/86, 12 octobre 1988, DR 57/81, 96; D 20471/92, 15 octobre 1996, DR 85 B/43.

(39) Cour, Kokkinakis, 25 mai 1993; Cour, Manoussakis, 26 septembre 1996.

(40) Cf. supra 2.

« La Commission estime dès lors que l'appartenance à une secte religieuse comme les Témoins de Jéhovah est un fait objectif qui rend très probable que l'exemption n'est pas accordée à des individus simplement désireux de se soustraire au service militaire, car il est douteux qu'un individu adhère à cette secte uniquement pour ne pas avoir à accomplir un service militaire ou de remplacement » (41). Ce sont des règles qui s'ajoutent aux critères déjà dégagés par la jurisprudence (42) et qui permettent de présumer une conviction religieuse authentique. Ce n'est qu'exceptionnellement qu'un mouvement ou une secte sera qualifié « religieux » et que l'assimilation entre un « nouveau mouvement religieux » et une religion pourra être constatée ».

3. La protection des personnes dans les Nouveaux Mouvements Religieux

La jurisprudence des organes de la C.E.D.H. ne reconnaît, du moins jusqu'à présent, qu'à titre exceptionnel l'existence d'une secte religieuse, d'un mouvement religieux. La protection de ceux qui y adhèrent procède des deux principes suivants le contrôle des Etats (3.1.) et le respect de la non-discrimination (3.2.).

3.1. *Le contrôle des Etats*

Il entre dans les pouvoirs de police des Etats de s'assurer si tel comportement procède d'une « conviction religieuse authentique » ou si la religion n'est invoquée que pour couvrir des activités délictuelles ou mercantiles. La Commission avait déjà exprimé l'avis: *« que le principe qui est énoncé au 1er paragraphe de l'article 9 — quant à la manifestation d'une conviction par les pratiques — ne protège pas des professions de prétendue foi religieuse qui apparaissent comme des 'arguments' de vente dans des annonces à caractère purement commercial, faites par un groupe religieux »* (43). Plus récemment: *« La Cour reconnaît que les Etats disposent du pouvoir de contrôler si un mouvement ou une association poursuit,* à des

(41) D 10410/83 N c/ Suede, 11 octobre 1984, DR/213; D 20972/92 Kaj Raninen c/ Finlande, 7 mars 1996, DR 84 N/33.

(42) Cf. supra 2.2. B. 2. les critères "religion" et "conviction".

(43) D 7805/77 X et Church of Scientology, c/ Suede, 5 mai 1979, DR 16:74.

fins prétendûment religieuses, *des activités nuisibles à la population »* (44). La jurisprudence fournit certains exemples qui s'appliquent aux mouvements religieux comme à n'importe quel autre groupement.

Les Etats doivent garantir le respect de l'article 11 de la C.E.D.H.. Si les personnes ont un droit général d'affiliation aux groupements (45), doit aussi leur être garanti le droit de ne pas être contraint d'adhérer à une association (46): L'article 11 consacre un droit d'association négatif (47). Il appartient aux Etats de veiller à ce que l'adhésion au groupe ne soit pas décidée, ni maintenue sous la contrainte ou encore que les membres ne fassent pas l'objet de traitements interdits par l'article 3 (48) ou d'ingérences illicites dans leur vie privée et familiale (art. 8).

Mention doit être faite du contrôle particulier que les Etats doivent exercer pour assurer la protection des mineurs, soit que leur santé soit menacée, soit que leur éducation soit compromise. La Cour a pu considérer que des ingérences dans le droit au respect de la vie familiale répondaient aux buts légitimes de l'article 8 § 2, de la C.E.D.H. lorsqu'elles étaient destinées à sauvegarder le développement l'enfant (49). La protection du développement *« de l'enfant »* pouvait impliquer de féconder potentialités.

L'article 2 du Protocole Additionnel à la C.E.D.H. dispose: « Nul ne peut se voir refuser le droit à l'instruction. L'Etat, dans

(44) Cour, 26 septembre 1996, Manoussakis, n° 40.

(45) D 1028/61 X c/ Belgique, 18 septembre 1961, Rec. 5/69.

(46) D 9926/82 X c/P.B., 1er mars 1983, DR 32/177.

(47) Cour, 30 juin 1993, Sigurjonsson.

(48) *« Nul ne peut être soumis à la torture, ni à des peines ou traitements inhumains ou dégradants ».*

(49) Cour, 24 mars 1988, Olsson, n° 65. L'article 5, § 5 de la Déclaration sur l'élimination de toutes les formes d'intolérance et de discrimination fondée sur la religion ou la conviction du 25 novembre 1981 énonce: *Les pratiques d'une religion ou d'une conviction dans lesquelles un enfant est élevé ne doivent porter préjudice ni à sa santé physique ou mentale, ni à son développement complet, compte tenu du paragraphe 3 de l'article premier de la présente Déclaration ».* Une idée identique est exprimée par l'article 14 de la Convention relative aux droits de l'enfant du 26 janvier 1990. Ce texte fait obligation aux Etats de respecter: *« le droit de l'enfant à la liberté de pensée, de conscience et de religion.* Les parents ont seulement le droit: *de guider celui-ci dans l'exercice de ce droit d'une manière qui correspond au développement de ses capacités ».*

l'exercice des fonctions qu'il assumera dans le domaine de l'éducation et de l'enseignement, respectera le droit des parents d'assurer cette éducation et cet enseignement conformément à leurs convictions religieuses et philosophiques ». Des décisions récentes ont enrichi une jurisprudence déjà importante (50). La Cour a décidé que l'article 2 du Protocole n'avait pas été violé en infligeant à des élèves Témoins de Jéhovah la sanction disciplinaire du renvoi temporaire pour s'être abstenues de participer au défilé scolaire organisé chaque année à l'occasion de la fête nationale. En effet, les convictions pacifistes des élèves ne pouvaient être heurtées par le propos ou des modalités de la manifestation. De telles commémorations d'évènements nationaux servent à leur manière à la fois des objectifs pacifistes et l'intérêt du public (51). La Commission a également fait prévaloir l'intérêt supérieur de l'enfant et le respect des finalités sociales par rapport aux convictions des parents: « L'article 2 ne garantit pas aux parents le droit absolu d'assurer l'éducation de leurs enfants conformément à leurs convictions philosophiques mais le droit au respect de ces convictions » (52). « Les convictions de l'article 2 du Protocole n° 1, visent des convictions qui ne vont pas à l'encontre du droit fondamental de l'enfant à l'instruction. Lorsqu'au lieu de le conforter, les droits des parents entrent en conflit avec le droit de l'enfant à l'instruction, les intérêts de l'enfant priment » (53). Les parents ne peuvent pas, au motif de leurs convictions, refuser l'éducation à un enfant (54). Ainsi l'article 2 du Protocole: « implique pour l'Etat le droit d'instaurer une scolarisation obligatoire, qu'elle ait lieu dans les écoles publiques ou grâce à leçons particulières de qualité et d'autre part que la vérification et l'application des normes éducatives font partie intégrante de ce droit » (55).

(50) J. DUFFAR, *La liberté religieuse dans les textes internationaux*, Revue du Droit Public, 1994, pp. 962-966.

(51) COUR, 18 décembre 1996 (2 arrêts), VALSAMIS c/ GRECE; EFSTRATIOU c/ GRECE.

(52) D 10233/83, Famille H c./ R.U., 6 mars 1984, DR 37/111.

(53) D 17187/90, BERNARD c/ LUXEMBOURG, 8 septembre 1993, DR 75/57.

(54) D 17678/91, BN et SN c/ SUEDE, 30 juin 1993.

(55) D 10233/83, 6 mars 1984, DR 37/112; DR 17678/91, 30 juin 1993; COUR, 25 février 1982, CAMPBELL et COSANS n° 41.

La limite du contrôle est le respect du pluralisme. L'article 9 de la Convention protège contre l'endoctrinement religieux par l'Etat qu'il s'agisse de l'instruction scolaire ou de toute autre activité dont l'Etat assume la responsabilité (56). La seconde phrase de l'article 2 du Protocole implique, plus précisément, que l'Etat, en s'acquittant des fonctions assumées par lui en matière d'éducation et d'enseignement, veille à ce que les informations ou connaissances figurant au programme soient diffusées de manière objective, critique et pluraliste. Elle lui interdit de poursuivre un but d'endoctrinement (57).

3.2. *Le respect de la Non-discrimination*

L'article 14 de la C.E.D.H. dispose que la jouissance des droits et libertés reconnus dans la Convention doit être assurée sans distinction aucune fondée notamment sur (...) la religion (58). La Cour a explicité le principe dans les termes suivants: *« Nonobstant tout argument contraire possible, on ne saurait tolérer une distinction dictée pour l'essentiel par des considérations de religion » (59).* Plus généralement, une différence de traitement ne constitue pas une discrimination lorsque la mesure adoptée présente une justification objective et raisonnable et qu'il existe une proportionnalité entre les moyens utilisés et le but visé (60). Comment s'appliquent ces principes aux membres d'abord des nouveaux mouvements qui ne sont pas qualifiés religieux (A.) puis à ceux des nouveaux mouvements religieux (B.).

(56) D 10491/83, ANGELINI c/ SUEDE, 3 décembre 1986, DR 51/57.

(57) COUR, KJELDSEN, BUSK MADSEN et PEDERSEN, 7 décembre 1976, n° 53.

(58) Cette disposition (...) n'a pas pour effet d'attirer dans le champ *d'application de la Convention, et notamment de son article 9, toute distinction dictée par des motifs touchant à la religion »* (...). L'article 14 ne prohibe que les discriminations dans la jouissance des droits et libertés qui sont par ailleurs reconnus dans la Convention (cf. D 7565/76, DR 9/117.120; COUR, Syndicat national de la Police Belge, 27 octobre 1975, n° 44) D 8493/79, DEMEESTER c/ BELGIQUE, 8 octobre 1981, DR 25/213.

(59) COUR, 23 juin 1993, HOFFMANN c/ AUTRICHE, n° 36.

(60) COUR, 23 juillet 1968, Affaire relative à certains aspects du régime linguistique de l'enseignement en BELGIQUE.

A. Les membres des « nouveaux mouvements »

Il a été exposé (cf. supra 1ère partie) que les nouveaux mouvements religieux sont assimilés à n'importe quel groupement de personnes; l'observation s'applique à fortiori aux mouvements dont le caractère religieux n'a pas été reconnu. Les membres de ces mouvements sont traités à égalité avec les autres membres de la société. Cependant, ceux-ci par exemple, invoquent la discrimination dont ils seraient l'objet par rapport aux membres des communautés religieuses et singulièrement des Témoins de Jéhovah qui sont exemptés du service militaire. La Commission relève que pour ceux-ci l'objection de conscience s'appuie sur des convictions religieuses authentiques alors qu'il n'existe aucune présomption comparable lorsque l'objection est exprimée par des personnes n'appartenant pas à une secte religieuse (61). Le membre d'un groupement ou une personne seule ne pourrait donc invoquer utilement les articles 9 et 14 de la C.E.D.H. (Discrimination fondée sur la religion) en revendiquant des avantages qui sont seulement octroyés en considération des convictions religieuses partagées par un mouvement religieux (62).

B. Les membres des nouveaux mouvements religieux

Il ne devrait exister aucune discrimination, ni à l'égard des nouveaux mouvements qualifiés *« religieux »* (*« secte religieuse »*), ni à l'égard de leurs membres. La Commission a estimé compatible avec la liberté de religion l'obligation imposée à un enseignant de respecter les heures de travail qui correspondaient selon lui à ses heures de prière. Il ne résulte pas de son argumentation que les services de l'enseignement l'aient à titre individuel ou en tant que membre de sa communauté religieuse (musulman) traité moins favorablement que les individus ou groupements placés en situation comparable. Le requérant n'a pas montré que d'autres enseignants

(61) D 10410/83, N c/ SUEDE, 11 octobre 1984 DR 40/213; D 20372/92 RANINEN c/ FINLANDE, 7 mars 1996, DR 84B:33.

(62) Celles-ci ne pourraient justifier à priori une exonération fiscale. La Commission estime que le droit à la liberté de religion n'implique nullement que les Eglises où leurs fidèles doivent se voir accorder un statut fiscal différent de celui des autres contribuables. D 17522/90 IGLESIA BANTISTA... c/ ESPAGNE, 11 janvier 1992, DR 72/258.

appartenant à des minorités religieuses — les enseignants israëlites par exemple — aient été mieux traités que lui (63). Ces principes qui intéressent la non-discrimination entre deux religieux traditionnelles (Islam-Judaïsme) ont été reproduits dans une décision relative à un adventiste du 7ème jour qui interrompait son travail le vendredi dès le coucher du soleil. La Commission estime que le requérant n'a pas été licencié en raison de ses convictions religieuses mais pour avoir refusé de respecter les horaires de travail. Même, s'il est motivé par ses convictions religieuses, ce refus de travailler n'est pas protégé par l'article 9 § 1. D'ailleurs, le requérant était libre d'abandonner son emploi, garantie suprême, pour la Commission, du droit à la liberté de religion (64).

Ces deux décisions assimilent par ailleurs nouveau mouvement religieux et religion minoritaire pour rejeter la discrimination invoquée (art. 9 + art. 14) tenant au jour férié de repos hebdomadaire. La Commission observe que dans la plupart des pays, seules les fêtes religieuses de la majorité de la population sont déclarées jours fériés. Si le jour de repos est en principe le dimanche, le droit absolu d'avoir un jour férié particulier n'est pas garanti aux membres d'une certaine communauté religieuse. Le requérant n'a pas été traité différemment par rapport aux membres d'autres communautés religieuses.

Il ne devrait pas exister non plus de différence entre les ministres des religions traditionnelles et ceux des nouveaux mouvements religieux. La Commission avait constaté que les requérants, ministres de la confession des Témoins de Jéhovah, à la différence des ministres de la religion orthodoxe n'avaient pas obtenu, comme pasteurs d'une religion *« connue »*, l'exemption du service militaire. En l'absence de justification raisonnable ou objective de cette différence de traitement, ils avaient, selon la Commission, subi une discrimination en raison de leurs convictions

(63) D 8160/78, X c/R.U., 12 mars 1981, DR 22/49.

(64) D 24949/94, KONTINNEN c/ FINLANDE, 3 décembre 1996, DR 87A/68 — V. J. DUFFAR, Religion et travail dans la jurisprudence de la Cour de Justice des Communautés Européennes et des organes de la Convention européenne des droits de l'Homme, Consortium Européen pour l'Etude des relations Eglise-Etat, Madrid 1993, 34 p.

religieuses (art. 14 + art. 9) (65). En revanche, la Cour a dit à l'unanimité qu'il y a eu violation des articles 5 § 1 et 5 § 5 de la Convention mais qu' il n'y a pas lieu de rechercher s'il y a eu violation de l'article 9 pris isolément ou combiné avec l'article 14 de la C.E.D.H. (66).

Enfin, il ne devrait pas non plus subsister de différence dans les relations entre, d'une part, les personnes et, d'autre part, les Eglises ou les mouvements religieux. Il faudra transposer le principe général d' « immunité » qui s'applique aux rapports entre les fidèles et les religions traditionnelles. L'article 9 ne fait pas obligations aux Etats d'assurer que les Eglises relevant de leur juridiction accordent la liberté religieuse à leurs fidèles ou à leurs prêtres (67). Ils sont entièrement soumis à l'autorité de l'Eglise qui bénéficie d'une autonomie que les sectes religieuses pourront revendiquer par assimilation. Ainsi, il suffit, par exemple, que le ministre du culte ait toute latitude de quitter ses fonctions pour que la Commission considère qu'a été respectée la garantie fondamentale de son droit à la liberté de pensée de conscience et de religion (68).

4. Conclusion

Les nouveaux mouvements religieux ne laissent pas indifférent. Ils suscitent des travaux nombreux notamment en sociologie religieuse. Ils stimulent les praticiens, des droits internes (magistrats, avocats) par les difficultés concrètes que posent leur présence et leurs activités. Ils intéressent même parfois l'application des instruments internationaux universels de protection des droits de l'Homme comme victimes de pratiques discriminatoires.

Dans l'espace européen, ils ont inspiré la crainte aux assem-

(65) R n° 19233/91 et 19234/91, 7 mars 1996.

(66) Cour, 29 mai 1997, Tsirlis et Kovloumpas c/ Greece.

(67) D 7374/76, 8 mars 1976, X c/ Danemark, DR 5/117.

(68) D 12536/86, Karlsson c/ Suede, 8 septembre 1988, DR 57/178 et plus généralement D 12242/86, Rommelfanger c/ RFA, 6 septembre 1989.

blées parlementaires des institutions. Celles-ci ont recommandé; d'ailleurs sans réel succès, que des mesures de surveillance soient adoptées afin de les mieux contrôler.

Enfin, plus fondamentale est leur entrée dans la jurisprudence des organes de la C.E.D.H. Ceux-ci ont depuis l'origine approfondi et enrichi l'article 9 (Droit à la liberté de pensée de conscience et de religion) et l'article 2 du Protocole Additionnel (Droit à l'instruction et à l'éducation). Certains concepts ont pris forme: la conviction, la religion, les pratiques, le respect du droit des parents, etc.. C'est à partir de ces traits que s'est constituée une sorte de modèle sans doute inachevé, mais auquel la jurisprudence se réfère lorsque par exemple est qualifiée *« religieuse »* la secte chrétienne des Témoins de Jéhovah. Les autres mouvements qui dériveraient d'une religion traditionnelle, savent désormais à quelle ébauche ils doivent se conformer. La tâche sera en revanche nouvelle et plus difficile lorsqu'un mouvement qui ne se rattacherait à aucune religion traditionnelle préexistante, revendiquera néanmoins d'être traité comme une secte ou un mouvement religieux.

LISTE OF ORATORS

12. M. BARDI, *Il dolo nel matrimonio canonico*, Milano, Giuffrè, 1996, 8°, p. VIII-274.

13. EUROPEAN CONSORTIUM FOR CHURCH-STATE RESEARCH, *Religions in European Union law*, Proceedings of the colloquium (Luxembourg/Trier 21-22 november 1996), Milano, Giuffrè, 1998, 8°, p. VI-196.

14. EUROPEAN CONSORTIUM FOR CHURCH-STATE RESEARCH, *"New liberties" and church and state relationships in Europe*, Proceedings of the meeting (Tilburg 17-18 november 1995), Milano, Giuffrè, 1998, 8°, p. VIII-470.

15. EUROPEAN CONSORTIUM FOR CHURCH-STATE RESEARCH, *New religious movements and the law in the European Union*, Proceedings of the meeting (Lisbon, Universidade Moderna 8-9 november 1997), Milano, Giuffrè, 1999, 8°, p. VIII-392.