

FOREF Europe promoted FoRB rights at the OSCE Human Dimension Implementation Meeting 2016

Defending Freedom of Religion and Belief as a Matter of Principle

By D. Zoehrer



Vienna & Warsaw, 11.10.2016 (FOREF) – Ever since 2003, FOREF Europe has regularly represented civil society at the OSCE ODIHR Human Dimension Implementation Meeting (HDIM) in Warsaw. In this report we share points made by the introductory speakers at the working session on freedom of religion and belief (FoRB) at the HDIM (1), and discuss our intervention on Hungary’s controversial church law (2), the phenomena of government sponsored NGOs such as FECRIS (3), and the need of defending fundamental freedoms including FoRB as a matter of principle (4).

The Organization for Security and Co-operation in Europe (OSCE) is the world's largest regional security organization. With 57 participating states in North America, Europe and Asia some refer to the OSCE as “the little UN”.

The beginning of the OSCE traces back to the Helsinki Final Act (1975) and the subsequent series of conferences known as the Conference on Security and Co-operation in Europe (CSCE). The latter

served as an important multilateral forum for dialogue between East and West during the Cold War and responded to new challenges arising in the post-Cold War period with the break-up of former Yugoslavia and the subsequent conflicts. Evolving beyond its original role the CSCE was renamed as the OSCE in 1994.

The OSCE serves as a forum for political dialogue that addresses security issues through (i) the politico-military, (ii) the economic and environmental, and (iii) the human dimensions, on the basis of political commitments among the participating States. The “human dimension” encompasses the advancement of human rights and fundamental freedoms, support for holding transparent and democratic elections, ensuring the rule of law and the protection of national minorities and the promotion of tolerance and non-discrimination.

The central OSCE institution committed to the human dimension is the Warsaw-based Office for Democratic Institutions and Human Rights (ODIHR). The largest annual human rights conference in the OSCE region is the Human Dimension Implementation Meeting (HDIM) hosted by the ODIHR. This conference provides a forum for dialogue between delegations of the 57 member states and representatives of civil society.

The total financial contributions by participating states to the OSCE amounts to 141,107,600 EUR according to the [Annual Report 2015](#). The biggest contributors are the USA (13,0%), Germany (11,0%), France, the United Kingdom and Italy (10,4% each). (The share given by the Russian Federation of 3,9% or 5,8 million EUR is comparably low.)



1. The HDIM 2016 in Warsaw

FOREF Europe attended working session 12 of this year’s HDIM on Tuesday, 27 September 2016 themed “Fundamental freedoms I, including freedom of thought, conscience, religion or belief”. The session was moderated by Dr. Kishan Manoha, Senior Advisor of the ODIHR Human Rights Department, and opened by two introducers: Prof. Heiner Bielfeldt, UN Special Rapporteur on Freedom of Religion or Belief, and Ms. Joelle Fiss, researcher and member of the ODIHR Panel of Experts on Freedom of Religion or Belief (FoRB).

Explaining the fundamental value of FoRB for maintaining free societies, Ms. Fiss first underlined that FoRB and national security are not incompatible: “It is a dangerous assumption to believe that the higher a religious conviction, the more security measures need to be met,” she said. The OSCE, however, prefers a “holistic approach to security” and regards all dimensions – the human, political, mili-

tary and economic dimensions – as compatible. Secondly, Ms. Fiss pointed out that “a growing amount of literature confirms that FoRB ensures social cohesion.” This means that religious freedom is in fact good for social order and stability, increases economic progress and serves as an indicator for press freedom and democratic culture. Thirdly, FoRB has a direct impact on gender equality and the prevention of radicalization. After all, women can strengthen radicalization or social cohesion. In summary, the more people are free to practice FoRB, the more stable a society becomes. (FOREF’s position

Prof. Bielefeldt, a philosopher, theologian and historian by profession, continued to elaborate on the relationship between state security and FoRB rights. “Respect for human dignity is the source of all rights and an absolute norm. But respect is also the source of security. Can we provide security without respect for human dignity?”, Prof. Bielefeldt said. A security policy that is based in the rule of law will be far more sustainable than security measures leading to repression, intimidation and a climate of mistrust. Therefore, any “balancing” of FoRB rights through limitation closures requires a clear justification logic and must adhere to the principle of proportionality. In other words, before any limitation is put on FoRB rights through state legislation in the name of security it must be proven that the restriction is suited to solve a problem. There is no connection between a restrictive dress code (“burqa ban”) and terrorism, and thus prohibiting women from wearing the veil does not add to state security at all.

“The first priority is respect of human dignity and human freedom. Then limitations may enter the picture, but the state carries the burden of justification. There is a real danger of selling out the substance of FoRB rights and a tendency to relativize and trivialize fundamental freedoms. We need a paradigm shift away from a balance metaphor of ‘security vs. freedom’ towards a justification logic whenever freedom rights are limited,” Prof. Bielefeldt stated.

<https://www.youtube.com/watch?v=foSUzI5pG8k&list=PL8DHbLgTnz1taXQy0K65yTP4KYdkgyq75&index=1>

2. Appeal to Amend Hungary’s Legislation on Church Registration

FOREF Europe made an [intervention in the working session 12](#) of the OSCE HDIM criticizing the Hungarian government for its refusal to correct its discriminatory church law. FOREF board member David Baer recommends that the Hungarian government amend its legislation on religion in order to accord with Helsinki standards, the European Convention on Human Rights (ECHR) and the ruling of the European Court of Human Rights (ECtHR) from September 2014. Furthermore, FOREF advised to restore the legal status of churches that were stripped of legal personality in 2011. This incidence has been ruled unconstitutional by Hungary’s Constitutional Court in 2013 and criticized by the ECtHR as a violation of the ECHR in April 2014. In September 2015, the government of Hungary announced a new draft of its church law, but ignored the suggestions of opposition parties and NGOs intending to improve the bill. Nevertheless, the government introduced the bill unaltered to Parliament in December 2015 without securing the necessary 2/3 majority vote to pass. Ever since the Hungarian government has taken no additional steps to amend its church law, nor has taken appropriate measures to respond to the ongoing violations of FoRB rights identified by the ECtHR.

The legal status of many deregistered communities in Hungary remains unresolved. They face increasing challenges in the maintenance of their institutions and their ability to run schools or enter into contracts is severely impaired.

FOREF Europe underlined Prof. Bielefeldt’s introductory remark that any restriction of FoRB rights requires a justification logic based on transparent, objective criteria. Such criteria have been lacking in Hungary’s legislation on church registration.

The Hungarian OSCE delegation did take notice the intervention by FOREF Europe (see video, minute 2:57). Applying their “right to reply” the Hungarian delegate mentioned FOREF by name and delivered the usual avowals of innocence. She expressed that

(a) the legislation on church registration before the change in 2011 had often been “misused” by religious groups;

(b) the implementation of the ECtHR rulings by the Hungarian government are still an “ongoing process”; and

(c) the free exercise of the religious groups’ individual and collective FoRB rights are fully respected by the Hungarian government and not at all impeded by the legislation on church registration.

The first explanation is common, but completely contradicts the logic of human rights. The fact that fundamental freedoms may be exploited does not mean that fundamental freedoms can or should be restricted by the state. Whereas argument (b) is more or less a matter of evidence and interpretation, argument (c) might prove trickier. Regardless of whether or not a religious community enjoys a legal personality or state recognition, their collective FoRB right must be protected according to international law. However, the recognition of legal personality of religious groups in Hungary as well as many other European countries often provides for special privileges that go beyond fundamental rights prohibiting state intervention in personal freedoms. **The question thus arises whether FoRB rights are also affected when some religions are privileged by the state while others are not.**

At this point it should be noted that in practice the recognition of religious entities occurs to various degrees. In his report Prof. Heiner Bielefeldt, the UN Special Rapporteur on FoRB, discerns between three forms of recognition of religious communities ([Report of the Special Rapporteur on freedom of religion or belief](#), p. 8):

1. basic respect for dignity and FoRB rights [including the freedom of collectives with or without legal personality];
2. the provision of a basic legal personality status *without privileges* [registration or partial recognition];
3. the provision of a *privileged* status position [full recognition].

According to international human rights law, a refusal by the state to grant legal personality status (category 2) to a religious or belief association is equivalent to an interference with the exercise of the right to FoRB and the freedom of association (cf. cf. [OSCE guidelines on the legal personality of Religious or Belief Communities](#), p. 10). The right to a basic legal personality status (or state registration) guarantees that an organized community can hold bank accounts and have judicial protection of the community, its members and its assets. A registered community is able to establish and maintain schools and other educational institutions, employ staff and run media operations. Therefore, the right to legal status is an essential element to the full realization of the right of FoRB. The OSCE thus recommends **the procedure for faith-based associations to receive legal personality to “be quick, transparent, fair, inclusive and non-discriminatory”**. (cf. [ibid.](#), p. 13). However, a concrete provision on this issue does not exist in international law, apart from similar recommendations by Prof. Bielefeldt referring to non-discriminatory legislation as a fundamental human rights principle:

“Should States provide for specific status positions on behalf of religious or belief communities, they should ensure that these provisions are conceptualized and implemented in a non-discriminatory man-

ner. Non-discrimination is one of the overarching principles of human rights.” ([Report of the Special Rapporteur on freedom of religion or belief](#), 22 December 2011, A/HRC/19/60, p. 17)

Unfortunately, very few states have realized non-discriminatory legislation on religion. Reflecting on the status quo regarding the registration of religious groups, the Special Rapporteur has observed many “discriminatory practices and policies of States when it comes to providing specific status positions and concomitant privileges to some denominations, while withholding the same position from others. In many cases, the criteria applied remain vaguely defined or are even not defined at all.” (ibid.) State favoritism of a single religion often refers to the outstanding, but often subjectively determined historical and cultural significance of a particular church/religion. **This is also true for Hungary where the registration and recognition of churches occurs in an arbitrary and discriminatory manner without objective and transparent criteria.**

FOREF Europe appeals to states of the OSCE region and beyond to treat religious communities equally under the law. Most of the privileges enjoyed by certain churches amount to *de facto* discrimination against citizens who are not associated with those churches. Such practice is wrong because it discriminates against other religious groups and lacks objective criteria for state recognition, thus violating the principle of equality under the law.



3. Exposing GONGOs at the OSCE

At the HDIM civil society representatives receive an important chance to present their critique of bad government practices in front of 57 state delegations of the OSCE region. However, an interesting phenomenon is the presence of so-called GONGOs (government-organized non-governmental organizations) - NGOs that are fully financed by respective governments - shamelessly taking their seats in the civil society section. Such GONGOs are often being deployed by states characterized by legal frameworks that are institutionally restrictive against FoRB rights, i.e. Russia or France.

One such GONGO is FECRIS (European Federation of Research and Information Centers on Sectarianism), a European umbrella organization that is completely financed by the French government and closely cooperates with representatives of the Russian-Orthodox church (cf. [the recent HDIM state-](#)

[ment by Coordination des Associations et des Particuliers pour la Liberté de Conscience](#)). Already in October 2013 FOREF Europe openly remarked on the state affiliation of FECRIS in a brief intervention at the HDIM setting and criticized its objective of exporting France's highly controversial and discriminatory anti-cult legislation to other countries in the OSCE region (see [Reply to the FECRIS Statement](#)). A highly acclaimed scientific study regarding the ideology, structure, activities and financing of FECRIS has been published by Gerhard Besier and Hubert Seiwert in 2012 (see [Freedom of Religion or Belief - Anti-Sect Movements and State Neutrality. A Case Study: FECRIS](#)).

FECRIS representatives used to regularly read their statements in HDIM sessions on FoRB issues. However, in recent years FECRIS only submits their document to the OSCE online platform without presenting it during the civil society's speakers time. This year their statement was again crafted with highly abstract and pseudo-scientific terms such as "mind control process", but failed to articulate clear and operational recommendations based on OSCE commitments. Instead, Luigi Corvaglia, the president of the FECRIS subgroup CESAP, claims in his statement that FoRB rights are "used as a Trojan horse" to infiltrate democratic institutions. (See the FECRIS statement for the HDIM 2016 [here](#).)

Recently a [new documentary](#) has revealed the perfidious methods applied by FECRIS and how the anti-cult formation financially exploits naïve parents by promising them to "rescue" their child from the hands of a "cult". Alexander Dvorkin, FECRIS vice-president, and Alexander Neveev, a psychologist, masterminded an operation against 19-year old girl in Odessa/Ukraine. Yulia Yalovaya's mother paid 12,000 dollars to FECRIS in order to "liberate" her daughter from a job at an alternative newspaper. NGOs authentically representing civil society will not cease to expose the anti-cult narrative of FECRIS and how it abuses public funding for violating the fundamental freedoms of individuals and religious minority groups.

4. Reporting on Violations of FoRB as Matter of Principle

Whereas various civil society groups criticize "Christianophobic" or "Islamophobic" acts, FOREF Europe takes a broader view and monitors any form of violation of FoRB rights. The terms Christianophobia or Islamophobia easily lose their analytic value when cases of persecution of Christians by Christians (see [Russia: Vladimir Putin has declared war on Jehovah's Witnesses](#) or [Demolition of the Ukrainian Orthodox Church in the Moscow Region](#)) or persecution of Muslims by Muslims (see [Pakistan: 42 Years of Systematic Discrimination of Ahmadis by State Actors](#)) are being raised. In those situations, the victims have been declared to be non-Christian or non-Muslim at the outset implying that they have no right to FoRB. However, the point is that no matter which denomination a person adheres to, his or her FoRB rights must always be respected. By using unclear terms such as Christiano- or Islamophobia the discussion tends to get distracted and leads to debates on what constitutes orthodoxy or deviation.

Furthermore, a rather odd, but widely used definition of Islamophobia is being applied by the [European Islamophobia Report 2015](#) (edited by Enes Bayrakli and Farid Hafez): "When talking about Islamophobia, we mean anti-Muslim racism." (p. 7) Whereas hate crimes against Muslims must be clearly condemned, such an elusive definition of Islamophobia implies that Islam is more than a religion or a cultural value system: Islam is a race and it is impossible to change the race one has been born into. Unfortunately, the term Islamophobia generally does not include the ongoing violations of the fundamental right of Muslims to freely choose their specific branch of belief, to convert to another religion or to leave their faith. If [more than 1,3 billion Muslims](#) do not have the basic freedom to choose their faith, the concept of Islamophobia is led *ad absurdum*. This is true especially when the underlying idea behind the term holds that Islam is a "race" and that belonging to this race thus becomes an unquestionable biological fact. Any act of questioning or criticizing Islamic mainstream tenets or traditions thus easily becomes an Islamophobic act, an act of blasphemy.

The question what defines who is Christian and who is Muslim leads to subjective answers as there are no objective criteria to measure the Christian-ness or the Muslim-ness of a certain belief system. However, both anti-Muslim and anti-Christian sentiments – as vague as these terms may be – are results of a more essential problem, namely the widespread lack of understanding and respect of FoRB rights as fundamental freedom rights of any individual.

Being a secular, non-confessional NGO condemning any form of FoRB violations, FOREF Europe tries to take a principle-based position. It is hoped that this is what distinguishes our approach among civil society representatives speaking out at the OSCE HDIM.