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Freedom of religion and living together in a democratic society

Committee Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Sir Edward LEIGH, United Kingdom, European Conservatives Group

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Committee on Culture, Science, Education and Media, Mr Rafael Huseynov (Azerbaijan, ALDE), on his comprehensive report, and supports by and large the proposed draft resolution and draft recommendation. The committee points out that it has reached similar conclusions regarding many issues raised by Mr Huseynov in the report of its former member Mr Tudor Panțiru (Romania, Socialist Group) on “Combating all forms of discrimination based on religion”² in 2011.

2. The committee nevertheless proposes some amendments to further strengthen the draft resolution and draft recommendation regarding some legal and human rights aspects and the accuracy of the terminology used.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 3, after the words “Those values and principles”, add the words “, which are non-negotiable,”.

Amendment B (to the draft resolution)

In paragraph 3, after the words “the European Convention on Human Rights (ETS No. 5)”, add the words “and its Additional Protocols”.

Amendment C (to the draft resolution)

In paragraph 3, delete the second sentence.

1. Reference to committee: [Doc. 13364](#), Reference 4022 of 31 January 2014. Reporting committee: Committee on Culture, Science, Education and Media. See [Doc. 13851](#). Opinion approved by the committee on 28 September 2015.

2. [Doc. 12788](#), see also [Resolution 1846 \(2011\)](#) and [Recommendation 1987 \(2011\)](#).



Amendment D (to the draft resolution)

At the end of paragraph 4, add the following sentence:

“States Parties to the European Convention on Human Rights should also strive to find a fair balance between conflicting interests resulting from the exercise of freedom of thought, conscience and religion, and other human rights and fundamental freedoms, such as the right to respect for private and family life, the right to freedom of expression and the prohibition of discrimination.”

Amendment E (to the draft resolution)

In paragraph 7, at the end of second sentence, add the following words: “and the Assembly is aware of the fact that there is no consensus among Council of Europe member States on these matters.”

Amendment F (to the draft resolution)

In paragraph 7, third sentence, replace the words “while it is aware that standards cannot be imposed” by “while it is aware that States Parties to the European Convention on Human Rights have a wide margin of appreciation in this field”.

Amendment G (to the draft resolution)

Delete paragraph 8.

Amendment H (to the draft resolution)

At the end of paragraph 10, add the following sentence:

“The Assembly notes that the European Convention for the Protection of Animals for Slaughter (ETS No. 102) and the European Union’s Council Regulation (EC) No. 1099/2009 on the protection of animals at the time of killing do not prohibit ritual slaughter.”

Amendment I (to the draft recommendation)

In paragraph 3.2, after the words “the European Union”, insert the words “the Organisation for Security and Co-operation in Europe (OSCE)”.

C. Explanatory memorandum by Sir Edward Leigh, rapporteur for opinion

1. I can only congratulate Mr Huseynov on his report, which underlines the role of religions in today’s multicultural European societies and the necessity of promoting and implementing a culture of “living together” and “reasonable accommodations”. The report pays particular attention to three societal issues related to religious practices: the wearing of full-face veils in public space, male circumcision and ritual slaughter of animals. It also rightly refers to the recent judgment of the European Court of Human Rights (“the Court”) in *S.A.S. v. France*³ of July 2014, concerning the ban on wearing clothing designed to conceal one’s face. In this context, I would like to stress that similar issues – in particular the notion of “reasonable accommodations”, the principle of State neutrality vis-à-vis religions and the fight against discrimination – were examined in some detail by our committee in October 2011, on the basis of the report by Mr Tudor Panțiru (Romania, Socialist Group) on “Combating all forms of discrimination based on religion”.

2. I should like, however, to propose a few amendments to the draft resolution and the draft recommendation, with a view to completing them mainly with regard to compliance with human rights and fundamental freedoms. These amendments take into account the terminology used by the European Court of Human Rights and they aim to stress the lack of European consensus on certain societal issues related to religion and the wide margin of appreciation that States Parties to the European Convention on Human Rights (ETS No. 5, “the Convention”) enjoy as regards the exercise of the rights guaranteed in Article 9 of the Convention.

3. Application No. 43835/11, judgment of 1 July 2014 (Grand Chamber).

1. Amendment A (to the draft resolution)

Explanatory note:

The amendment is related to Amendment C, which proposes to delete the second sentence in paragraph 3 (see below). In order to keep the phrase “these values and principles are non-negotiable” in this paragraph, it is proposed to move it to the first sentence.

2. Amendment B (to the draft resolution)

Explanatory note:

This amendment aims to add a mention to the additional protocols to the Convention, as some of them enshrine additional rights and freedoms, the implementation of which is necessary to ensure a full respect of the freedom of thought, conscience and religion. This is particularly true for parents’ right to ensure their children’s education in conformity with their own religious and philosophical convictions (Article 2 of Protocol No. 1 (ETS No. 9)) and the general prohibition of discrimination (Article 1 of Protocol No. 12 (ETS No. 177)).

3. Amendment C (to the draft resolution)

Explanatory note:

The amendment aims to delete the second sentence in paragraph 3, and more precisely the phrase “and they must prevail over any social or religious norms that counter them”. The first sentence in this paragraph refers to member States constitutions and the European Convention on Human Rights, which are legal norms, while the second sentence refers to social and religious norms. Both sets of norms should not be compared with each other, as they do not have the same legal authority. As regards religious norms, it should be pointed out, on the one hand, that the right to freedom of religion in its “internal” aspect, as stipulated in Article 9.1 of the Convention, is an absolute right; an individual’s religious ideas and convictions cannot be the subject of restrictions imposed by State authorities, even if, in theory, such ideas and convictions would not be in line with principles and values enshrined in “democratic constitutions” and the Convention – which does however not prevent the State authorities from sanctioning any human behaviour that would contradict such principles and values. On the other hand, the absolute formulation of the second sentence does not sufficiently take into account the States Parties’ margin of appreciation in these matters, according to the Court’s case law. Thus, I propose to delete the sentence in question, as it creates confusion and may open a philosophical discussion on the hierarchy of legal and non-legal (religious, social and other) norms.

4. Amendment D (to the draft resolution)

Explanatory note:

This amendment aims to complement the ideas expressed in paragraph 4, by pointing out that States Parties to the Convention should ensure a fair balance between conflicting interests resulting from the exercise of freedom of thought, conscience and religion, and other human rights and fundamental freedoms. The case law of the European Court of Human Rights shows that such conflicts may occur, in particular, in respect of the exercise of the right to respect for private and family life, the right to freedom of expression or the prohibition of discrimination.⁴

4. The European Court of Human Rights has examined this problematic in particular in the context of the exercise of the right to freedom of expression; see in particular the leading case on this matter, *Otto-Preminger-Institut v. Austria* (Application No. 13470/87, judgment of 20 September 1994), in which it found no violation of Article 10 of the Convention with respect to the seizure of a movie containing images offensive for the Catholic population.

5. Amendment E (to the draft resolution)

Explanatory note:

The draft resolution refers to three specific issues related to freedom of religion: wearing of full-face veils in public places, circumcision of young boys and ritual slaughter of animals. The amendment aims to underline that there is no European consensus on these matters. This has been confirmed by the Court's case law on wearing religious symbols and clothing in public space. On the two other issues, the Court has remained silent so far (except for the case of *Cha'are Shalom Ve Tsedek v. France*⁵, mentioned in the report, concerning ritual slaughter in France).

6. Amendment F (to the draft resolution)

Explanatory note:

This amendment aims to propose a wording which would be compliant with the terminology used by the European Court of Human Rights. That is why instead of speaking about "imposing standards" (which is impossible in the context of religious pluralism), it is proposed to stress that States Parties to the Convention keep a broad margin of appreciation in the religious sphere.

7. Amendment G (to the draft resolution)

Explanatory note:

It is proposed to delete paragraph 8 of the draft resolution, as the wearing of full-face veils in public space is a controversial issue in Council of Europe member States.

8. Amendment H (to the draft resolution)

Explanatory note:

The amendment aims to recall the existing European regulations – by the Council of Europe and the European Union – concerning the protection of animals for slaughter (mentioned in paragraph 53 of the report). Both the European Convention for the Protection of Animals for Slaughter of 1979 (ETS No. 102), to which 25 member States of the Council of Europe have adhered, and the European Union's Council Regulation (EC) No. 1099/2009, which is binding on all 28 member States of the European Union, do not preclude ritual slaughter, although the latter may be subject to certain conditions.

9. Amendment I (to the draft recommendation)

Explanatory note:

The amendment aims to add the Organisation for Security and Cooperation in Europe (OSCE) as a partner of the Council of Europe in stepping up co-operation with leading religious and humanist communities. The OSCE has done important work on issues related to freedom of thought, conscience and religion, also in cooperation with the European Commission for Democracy through Law (Venice Commission). In particular, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), which is assisted by an Advisory Panel of Experts on Freedom of Religion or Belief, has prepared a number of guidelines and opinions on freedom of religion or belief.⁶

5. Application No. 27417/95, judgment of 27 June 2000 (Grand Chamber).

6. For more information: www.osce.org/odihr/44455.