

Terms of reference / Grille thématique

Meeting of the European Consortium for Church and State Research
15-17 November 2018, Certosa di Pontignano, Siena

TITLE

The Legal Status of Old and New Religious Minorities in the European Union

RATIONALE

Twenty-five years after the European Consortium meeting in Thessaloniki, the legal status of religious minorities in the European Union has changed as the result of two intertwined factors: (a) in society, new religious minorities have gained ground, often (but not exclusively) based on massive immigration; at the same time, secularization has led majorities to shrink, to the point that they are themselves becoming the new minorities. Traditional minorities are challenged from both sides: on the one hand the denominational majority with which they have been confronted for centuries is no longer as powerful in society, but remains very influential, and increasingly so as the bearer of a threatened national culture and identity; on the other hand new minorities have grown in number and influence, due to their social salience, institutional dynamism and readiness to assert their influence through judicial and other processes; (b) in the law, the status of traditional minorities has generally improved, thanks to national, European and international legal developments, whereas the status of new minorities is very much under discussion (just think of Islamic communities or the Church of Scientology). The meeting of the European Consortium will investigate legal repercussions of social change on the status of old and new minorities in the European Union, in both domestic and European law. In previous meetings the Consortium has systematically analyzed the legal status of religious communities in key areas. Therefore the meeting will not aim at drawing an exhaustive picture thereof, but at investigating past and future developments, comparing the status of different communities and discuss inequalities, claims and strategies.

TERMS OF REFERENCE / GRILLE THEMATIQUE*

PART I. Definition and status

1.1. Social science definition. If social scientists in the relevant country use the category of religious minority, how do they define the category and how do they identify religious minorities? Do they differentiate between old and new religious minorities, and/or between sects and religious minorities? Do they understand the traditional majority(ies) as a new minority because of decline in believing, belonging or practice? Are the unaffiliated considered as a new minority, or indeed majority? Report about the state of social sciences research in the area (abundance or scarcity of quantitative and/or qualitative research; interdisciplinary collaboration between legal scholars and social scientists). *NB What is required here is only a report on the definition and use of the category of religious minorities in social sciences and not a description of the present religious landscape of the country (for which, see below 2.1). If needed, the rapporteur will involve specialists from social sciences and explain who and how in the Report.*

1.2. Legal definition.

a) Is “minority” in domestic official legal sources a general category applicable to religious minorities? Is “religious minority” a category used in domestic official legal sources such as the constitution, legislation / statutes, administrative measures or case law? If so, how is the category substantially defined? Are other kinds of minorities (eg national or linguistic minorities) in domestic official legal sources a category with significant impact on religion? Was the legal definition of religious minority directly or indirectly discussed in Parliament or in court? Is it used in policy documents? If so, how was/is the category substantially defined? Based on official sources, how does the category of religious minority relate to other legal categories such as recognized or unrecognized communities/groups of faith or belief?

b) Based on official sources how are minorities identified to the effect of their legal operation and relationship with the government? Is this based on the procedure for the granting of legal personality to communities of faith or belief? In this case, does the relevant country comply with the 2015 OSCE Guidelines on the legal personality of religion or belief communities? In case an official census is administered in the country, does it have any impact on the legal identification of religious minorities?

c) Do legal scholars employ the category of religious minority? If so, how is the category substantially defined? How do legal scholars determine who is included and who is excluded (eg Church of Scientology, Baha’ism, Rastafarians and Pastafarians, Humanists and atheists)? Do they draw a line between old and new religious minorities (eg by using the expression “new religious movements”) and/or between sects and religious minorities? Do they explicitly or implicitly borrow from social science?

d) Is article 27 of the 1966 UN International Covenant on Civil and Political Rights Pact on religious minorities (and the relevant CCPR General Comment n. 23 of 1994) of significance? If so, how?

* Terms are divided in three parts. Each part will correspond in one of the three sessions of the meeting.

e) Is the Framework Convention for the Protection of National Minorities adopted in 1994 by Council of Europe's Committee of Ministers of significance? If so, how?

1.3. Legal status. Describe present differences in legal status: a) between the religious majority/ies and minorities, and b) between religious minorities in terms of more (eg access to fiscal advantage or civil recognition of religious laws) or less (eg anti-sect or anti-headscarf measures) advantageous treatment. Consider areas of particular significance in the relevant country (eg. teaching of religion in public schools and religious schools; access to media; marriage and family law; fiscal exemptions; conscientious objection). Describe how structural features of the relevant legal system impact on the above differences (eg bilateral agreements in Italy and Spain or federal system in Belgium and Germany). *NB What is required here is only a report on the present legal status of minorities: a) limited to differences between the religious majority/ies and minorities, and b) not including analysis of historic-legal dynamics behind the present picture (for which, see below 2.2).*

PART II. Social and legal change

2.1. Social change. Describe quantitative and qualitative social change of old and new minorities in your country and identify crucial factors (eg migration and secularization), actors and strategies behind such change. Provide data on the present landscape (number of members and other relevant indicators of growth/stability/decline such as service attendance, religious marriages, ministers, chaplains or schools) as well as on change over time (in particular in the last 25 years). Describe features of minorities and in particular their local/international character and social and political influence. In particular, is it of significance that a particular religion with a minority presence in European countries is the majoritarian faith, often with significant political and social influence, elsewhere in the world? *NB If needed, the rapporteur will involve specialists from social sciences and explain who and how in the Report.*

2.2. Legal change. Describe historic-legal dynamics behind what has been reported under 1.3. How has the legal status of religious minorities changed, especially in the last 25 years? In which areas and for which minorities was change more substantial, visible and problematic? In which sense? Was there a correlation between the upgrading of the legal status of minorities and legal change for the majority? Describe if and how domestic, European and international legal developments resulted in change in the status of religious minorities in the relevant country, and identify the most significant developments.

PART III. Social and legal developments.

3.1. Social developments. Identify and describe social issues and current or possible/probable developments related to old and new religious minorities. Special attention should be paid to: a) claims and strategies of minority religious actors, political movements and NGOs; b) claims and strategies of religious majorities (eg former majority groups understanding themselves as a new minority under threat by secularists, or as creative minorities), c) developments within faith communities; d) experiences of interfaith and ecumenical dialogue as well as dialogue between minorities and local/national governments; e) practices of social innovation and the impact of social media and information technology; f) multi-level public policies; g)

driving arguments and factors such as security, national interest and identity, equality and diversity. *NB If needed, the rapporteur will involve specialists from social sciences and explain who and how in the Report.*

3.2. *Legal developments.* Identify and describe legal issues and current or possible/probable developments related to old and new religious minorities. Special attention should be paid to: a) litigation and case law; b) legislative reform in religious laws (within faith communities) and religion law (States or other public legislative bodies); c) legal developments within religious majorities with an impact on minorities; d) domestic impact of European and international legal developments; e) intersection with developments in anti-discrimination law, especially on grounds of gender or sexual orientation, or in the case of migrants and refugees.