

THE PROTECTION OF MINORS AGAINST EXCESSES OF SECTS: THE SALLES REPORT¹

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1. Obviously, the protection of minors is a legitimate concern in the democratic societies composing the Council of Europe. The Salles Report is however far from responding to this concern satisfactorily.

A. Diversion targets

2. Despite its title, the Salles report contains many passages which are of general scope and suggest that minors are used as a collateral or a pretext for an offensive against "sects" .

a) A specific target

3. The draft recommendation³ deals exclusively with the protection of minors. It therefore corresponds to the official purpose of the report.

b) A general target

4. As to the draft resolution, it is aiming at a much larger target⁴. Indeed, half of its points do not refer to children and teenagers: they concern "*religious and spiritual sectarian groups*" (§ 6.3) , "*sectarian excesses*" (§ § 6.6, 6.7 and 6.8) and "*cult phenomenon*" (§ 6.6).

5. This is also the case with the explanatory memorandum, including important developments that have no relationships with minors (§ § 11-13 , 22-26 , 28, 35 , 37 and 42-44) .

6. The same applies to the summary of the responses by parliamentary delegations of Member States to the questionnaire sent by the Rapporteur (§ § 1 a) -d) and 2 b) - d)), which was also often of a general nature .

B. Unfounded premises

7. Salles report is based on premises whose relevance is questionable, whether explicit or implicit.

a) Explicit premises

8. A European approach is necessary to protect minors: this is far from obvious, to the extent that, according to the Rapporteur himself, many countries do not face serious cases of "*sectarian excesses*" affecting minors and that the vast majority of the States deem useless to legislate on this issue.

¹ Report by M. Rudy Salles, Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe.

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³ Adopted by the Committee on March 3, 2014.

⁴ Adopted by the Committee on March 3, 2014.

9. The "*sectarian excesses*" against minors are a "*deeply worrying phenomenon*" (explanatory memorandum, § 38) and "*remains very worrying*" (explanatory memorandum, § 46): this is contradicted by the available data on rare abuses recorded in some States.

b) Implicit premises

10. "Cults" present a priori a danger to minors: this discredits and throws suspicion on all non traditional churches and communities and on all new religious and spiritual groups, while only a tiny minority of these entities may – or may have in the past – given rise to such criticism.

11. The legislation of Member States, and particularly criminal law, is not sufficient to protect minors: this is a serious accusation against national legislators, suspected of negligence, or even complacency, towards dangerous groups.

12. Public services of Member States do not perform their duties properly, in particular to ensure schooling and health of minors: here again, this is an accusation aimed at national authorities.

C. Questionable models

13. In a veiled yet clearly way, the draft resolution and especially the explanatory memorandum are campaigning for combative systems against "*sectarian excesses*", that are supposed to be effective and valid throughout all of Europe.

a) The French "model"

14. The French system, in particular, is presented as a model that should be adopted by all other Member States. But it has not proven its effectiveness, as shown by the paltry number of abuse cases reported by Miviludes. As to the About / Picard law, it has aroused the concern of the Parliamentary Assembly, which invited the French government to reconsider it (Resolution 1309 (2002) Freedom of religion and religious minorities in France, § 6), without success. However, the draft resolution advocates repression – without, however, any reference to minors – of the "*abuse of psychological and / or physical weakness of persons*". This is a concept that lies at the heart of the French law but is devoid of scientific value.

b) The German "model"

15. The German system is also portrayed favorably, although less emphasized. Catholic and Protestant churches play an important role in "*counseling victims of 'sectarian excesses' and gathering information on sectarian groups*" (explanatory memorandum, § 38). The Rapporteur encourages the authorities to grant them financial support for this purpose. However, we can question the neutrality of such churches, which are in direct competition with "cults". One must also consider the risk for the State to delegate its powers to private institutions, to the point that they become the armed branch of public authorities.

D. Redundant initiatives

16. Apart from the aforementioned dangers and drawbacks, the Salles report does not provide any "added value" to the works of the Parliamentary Assembly on the issue and is often only repetitions.

a) Previous works

17. The works of the Parliamentary Assembly on the protection of children against abuses led to

Resolutions 1530 (2007) and 1952 (2013) and Recommendations 117 (2007) and 2023 (2013). They have a triple character. First, they are very recent. Then they remedy what seems to appear, in the eyes of the Rapporteur, a deficiency of the European Parliament in the considered field. Finally and most importantly, they cover all issues related to violations of the physical or moral integrity of children. They appear therefore amply adequate.

b) The draft resolution

18. On a general level, the Parliamentary Assembly adopted Recommendations 1178 (1992) and 1412 (1999): the first is about sects and new religious movements, the second about the illegal activities of sects. Yet the draft resolution includes two invitations that are already contained in Recommendation 1412 (1999) (§ 8 and § 10 ii and iv.) "*to provide teaching in the history of religions and the main philosophies in schools*" (§ 6.4) and "*to make sure that compulsory schooling is enforced and ensure strict, prompt and effective monitoring of all private education, including home schooling*" (§ 6.5).

E. Inaccurate assumptions

a) The explanatory memorandum

19. The Salles report notes that "*The ECHR has never issued judgments directly concerning minors who have been victims of the influence of sects either directly or through their parents or persons caring for them*" (explanatory memorandum, § 14). He explains this in part by "*the specific nature of proceedings before the Court*" and the "*lack of legal capacity to act*" of minors under domestic law (*ibid.*). He adds that "*it is hard to imagine a situation in which parents or legal guardians – followers of a sect – would turn to the courts to protect the children concerned against themselves*" (*ibid.*). He thus suggests that children are helpless, which is incorrect .

b) The Strasbourg jurisprudence

20. States party to the European Convention on Human Rights have a positive obligation to protect individuals. This obligation applies primarily to minors and may be invoked before the national courts by relatives who deem that they are in danger. It is the same in Strasbourg: an indirect victim of a violation of the Convention can complain since he/she has a specific and personal connection to the direct victim. This would be the case of close relatives such as grandparents and aunts or uncles. The absence of ECHR judgments concerning minors affected by "*sectarian excesses*" is therefore not explained by any impossibility to file applications meeting the conditions of admissibility.

F. Conclusion

21. If they were adopted as such by the Parliamentary Assembly , the draft resolution and the draft recommendation would be likely to seriously undermine religious freedom and freedom of association guaranteed by the European Convention on Human Rights. Indeed, they cast aspersions on all new religious and spiritual groups that have emerged in Europe alongside traditional churches and denominations, in suspecting them, a priori, of "*sectarian excesses*" unlawful and harmful to minors.