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Mr. Moderator, Ladies and Gentlemen,

1. Introduction

I am grateful for the opportunity to be here and to be able to share some thoughts with you on the legislative developments as regards religion in the OSCE region. I would like to stress that I am speaking in a personal capacity and not as a Co-Chair and Member of the ODIHR/OSCE Advisory Panel of Experts on Freedom of Religion or Belief.

The aim of this presentation is two-fold: first, to sketch a perspective against which to assess registration of religion; second, to address the role of the OSCE in issues of religious liberty.

2. Registration of religions

In dealing with socio-religious change, states often turn to the instrument of legislation. In this legislation, the mechanism of registration of religions plays a crucial role. Indeed, one of the recurrent issues under which legal problems of religious liberty become manifested in the OSCE region is that of the registration of religions. This has also made the phenomenon of "registration" itself suspect.

It is important, however, to realize that registration, even if this mechanism has become charged in the context of legislative change, is not in itself good or bad. The assessment of registration from a point of view of religious liberty entirely depends on the function that registration fulfils in a legal system and the legal consequences that are attached to registration. The assessment of registration and the criteria to be met in order for a religion to be registered depends on these underlying elements. This starting-point allows us to make some concrete observations.

Registration as an absolute requirement

1. A requirement of registration of religious groups as a precondition for the lawful exercise of religious freedom is worrisome in the light of international human rights standards. Prior permission of the government for allowing a person to adhere to a religion and to exercise this religion in community with others is problematic in the light of internationally acknowledged religious liberty standards. Religious liberty should not be made dependent on prior government "clearance". This touches the very essence of religious liberty. The motives for requiring registration in this case, banning or controlling religion, are not in tune with international standards. The same is true for coupling this requirement with the penalization of adherence to an unregistered religion.

2. A government may wish to counter particular behavior. Controlling the existence of or adherence to religions as such, introducing a requirement of registration is not the right approach. The law should deal with the actions and manifestations themselves instead of criminalizing a particular religion in general. In other words, if, in such case, the motives of a government, i.e., to tackle particular behavior, were justifiable, using the mechanism of registration is not the right means to achieve that end. The problem with registration in this case lies with the legal consequences attached to it.

Registration and entity status

3. It is important to notice that registration also fulfils many other functions in the legal systems of OSCE countries. One of the primary conditions for being able to function as an organization in society is that of enjoying entity status, i.e., to be able to function as a legal entity, as a collective distinct from the individual members. In order to function as a legal entity, a certain structure is required; the allocation of responsibilities for decision-making and financial matters needs to be clear.

Legal systems often require some sort of registration for obtaining such entity status. If registration fulfils a role in the process of requiring entity status, the role of the state is, in principle, a facilitative one. Without such a legal status, on the basis of which an organization can function independently from its members, the effective exercise of a religion as an organization would be illusory. Thus, registration for religious and other groups (whether or not this distinction is made) is basically an expression of the facilitative role of the state.

The facilitative role of the state can change into its opposite if the criteria to be met in order to register are disproportionately burdensome. For instance, a requirement of having a minimum of thousands of members simply to gain entity status would be disproportionate and would hence be hard to justify in the light of religious liberty. Instead of an expression of the facilitative role of the state - allowing entity status - the requirement would be an overt expression of a restriction of collective and organizational religious liberty. The requirement of a long-standing existence in the particular country can be seen in the same perspective. Overly broad discretionary powers for administrative authorities in this perspective are obviously not desirable either.

3. Religious liberty and the structure of church and state relationships

The facilitative role of the state is not limited to the granting of entity status. Often in states more elaborate facilities exist to enable the functioning of religion and religious organizations in society, such as chaplaincy services in public institutions, religious education in (the context of) state schools, or the establishment of acknowledged private schools, access to the mass media, tax facilities, or ancient church monument care. The precise legal format of these facilitative arrangements depends on legal cultural factors and the general legal system of a particular country, for example, how the general education system is set up. These elements are, of course, important for the functioning of religions in the societal reality. In societies as ours, which are highly regulated and in which the state has a strong ordering and re-distributive function, they play an important role. However, they exceed the very basic functioning of entity status.

Registration and the integration of religious organizations in the general social sector

4. In one form or another, facilities to enable the functioning of religion and religious organizations in society are available in all types of systems of church and state relationships, whether there is separation of church and state relationships, or systems of cooperation or of established churches. Differences in these issues often seem to depend more on the general role of the state in society (a stronger role of the private sector (more “market”) or a stronger role for the public sector) than on constitutional principles regarding the role of the state vis-à-vis churches.

In systems of separation of church and state, a decision on whether a particular religion or religious organization qualifies for a facility needs to be taken in the context of the law that regulates the particular issue. In the Netherlands, for example, access to the public mass media system requires an administrative judgement. The granting of fiscal benefits, such as tax exemptions for charitable purposes, also need to be seen in the light of the requirements of the specific law. As a result, these judgements tend to be less visible and generally are not dealt with in the context of “registration”, although their underlying rationale is not fundamentally different.

Typically, in systems of cooperation between church and state, organizations based on a religion or belief which meet particular criteria are entitled a certain status, giving them not only entity status, but qualifying them for a set of other facilities as well. Thus, the systems becomes multi-tiered. From a viewpoint of religious liberty, this is not a problem. Indeed, the facilitative role of the state is paramount. It is also clear that, in the perspective of the facilities granted, often more and stricter requirements are needed than for simply obtaining entity status. Whether these requirements are acceptable depends on their being adequate and proportional for the purpose. As long as the system is open, that is, as long as all religions which meet the requirements qualify for the facilities, the facilitative dimension of the system is paramount. For those who do not meet the requirements, obtaining entity status in some form or other should be possible.

In conclusion, we need to see through the outward design of the system and concentrate on the substantive issues of the position of one religion and another. Not one particular type of system is a priori “better” from a religious liberty point of view. A more detailed scrutiny and assessment is necessary in order to form a sound legal opinion. But there are certainly some approaches and criteria that can guide us in assessing registration issues.

4. The role of the OSCE

The predominantly non-legally binding nature of OSCE commitments and the political-diplomatic functioning of the OSCE are sometimes seen as a weakness of the organization. These features, however, are also its strength. Without duplicating other international efforts, the OSCE contributes to the promotion of human rights - including religious liberty - in a unique and supplementary way. This is true with respect to religious liberty as well.

The role of the OSCE in dealing with religious liberty could be - to engage (participating states) in a process of further developing a common understanding of the dimensions and requirements of religious liberty,

- to focus primarily on structural developments, and
- to aim at reaching viable long-term results.

As religious liberty issues are seldom isolated, main streaming religious liberty issues in a broader human rights perspective is important as well.

The OSCE has manifested involvement with issues of religious liberty both in developing standards and in making their interpretation and implementation subject of attention, notably through Human Dimension Implementation Meetings and the organization of Seminars.

The interest taken in issues of religious liberty is also reflected by the establishment of the OSCE/ODIHR Advisory Panel of Experts for freedom of religion or belief. This took place in the aftermath of the 1996 Seminar on the topic of 'Constitutional, Legal, and Administrative Aspects of the Freedom of Religion'. The Panel is an advisory and consultative body to the ODIHR. Through the ODIHR, the panel may provide assistance on religious liberty issues. The composition of the Panel reflects different geographical, denominational, and legal backgrounds, although each member acts in a capacity of expert. In a relatively short time, the Panel has already been able to offer advice on particular issues of religious liberty in various countries, including that of the registration of religions.

However important the legal dimension of religious liberty is, legal problems often reflect underlying problems. For this reason, the Panel has three focus areas. Apart from Legislative Issues, issues with which this presentation is concerned, the panel has outlined Education and Tolerance, and Conflict Prevention and Dialogue as areas of distinct interest, and has formed its working groups accordingly.

5. Conclusion

Issues of religious liberty deserve international attention, based on international human rights law. Such an international approach should have its own distinctive contribution to the protection of religious liberty, exceeding merely national perspectives.

The specific value of OSCE involvement with issues of religious liberty lie in their focus on the long term and in the contribution it can make to creating a forum for dialogue and the building of understanding, under the acknowledgment of and adherence to its human rights commitments. Thus, it offers concrete and structural assistance to states in addressing these problems which are important for the quality of society.