

# **THE ROLE OF THE COUNCIL OF EUROPE IN THE PROTECTION OF RELIGIOUS FREEDOM AS PART OF HUMAN RIGHTS**

*Géza Mezei*

I am most grateful for the invitation to address this distinguished audience on the role of the Council of Europe in the protection of religious freedom as part of its endeavour to protect human rights.

I believe that this Conference is first of all building bridges of understanding. The Council of Europe has been building bridges for almost 50 years and will continue to do so, Strasbourg, the seat of the organisation, in its own way is a symbol. Alsations have seen their frontiers come and go many times since 1870. But frontiers do not seem all that important any more. In fact, border controls are a thing of the past between Germany and France. So let it be in the greater Europe. Transfrontier cooperation, regional cooperation, confidence-building measures between the local population can certainly help to achieve what we call democratic security in the new Europe....

Following the end of the European "civil war" in 1945 there was an urgent need for stability, security and peace to overcome, politically and psychologically, the atrocities of the past, to rebuild mutual understanding and trust and set up barriers against new dictatorships and totalitarian regimes which present a permanent threat to neighbouring countries. The creation of the Council of Europe, in 1949, was the first political and institutional reply to this call for overcoming divisions and conflicts in Europe.

Indeed, since its inception in 1949, the Council of Europe has worked towards a transnational set of common values aimed in particular at respect for the dignity of all human beings regardless of their racial, religious and other differences. (I think that in this context it is important to underline that the aims of the Council are fundamentally secular - even if they are founded on Christian-Judeo traditions).

With the radical changes in Europe since 1990, the Council of Europe has grown to comprise 40 members, including the three Baltic states, most Central European States as well as Ukraine and the Russian Federation. Adherence to the principles of the Council is a pre-requisite for membership. Member States are mutually committed to common standards and to a collective form of control exercised, within the organisation, of the Member States' compliance with these standards.

Through its dynamic policy of enlargement and its definition of clear commitments based on its achievements in the fields of pluralist democracy, human rights and the rule of law, the Council of Europe has increased its contribution to democratic security in Europe. If the basis for security was previously predominantly discussed in military terms, recent years have seen a considerable broadening of the debate. Following the end of the Cold War and with the gradual emergence of a new European (state) system we have increasingly come to understand more about the economic, political and cultural foundations of security and about the need to base it on a broader basis than pure balance of power considerations.

The Council of Europe is a European institution which by its statute can make an essential contribution to stability and peace although it has no direct competence with regard to security and defence. However, the defence of freedom, human rights and democracy has proven to be a more powerful weapon against dictatorships than any one may ever have imagined. This is also why immediately after the beginning of the reforms in 1989 in the countries of central and eastern Europe, the Council of Europe launched its programmes of cooperation with the emerging democracies, thereby placing at their disposal its democratic expertise, its experience and the legal instruments forged over forty years of cooperation between its member states.

Indeed, the best guarantee of peace and stability is a continuous effort to strengthen democracy and respect for human rights. The horrific events in the former Yugoslavia provide a tragic example of the alternative. A free and democratic society cannot function unless the ground rules have been laid down. The Council of Europe possesses a "corpus" of highly elaborate common regulations and shared standards, covering all aspects of the functioning of a democratic society, from the European Convention on Human Rights, the European Social Charter and the European Charter on Local Self-Government, to the Framework Convention on the Protection of Minorities.

The Council of Europe also attaches great importance to promoting greater social cohesion in our societies. This involves a good cooperation with civil society. We attach therefore great importance to our good cooperation with the churches and church organisations. It is essential that more attention be paid to social development in addition to economic development.

Many of our activities are devoted to the Organisation's general objective of promoting a climate of understanding and mutual tolerance and the respect for the culture of other people. This is, for example, the case of our activities in the field of education (education for a European democratic citizenship, intercultural education, language learning, and new approaches to history teaching), culture and cultural heritage protection, media, migration, relations between different ethnic communities and transfrontier cooperation.

However, the standards enshrined in these instruments are not static. They have shifted over years ever upwards. That what is being asked of new applicant countries, namely in the crucial realm of political pluralism, human rights guarantees, prevention of torture and judicial independence, was not required from the ten founding members in 1949 and those who joined in the seventies. In brief, Council of Europe standards have risen, but at the same time the Council has become willing to admit members on the basis of their proven democratic progress as well as their commitment to pursue ongoing democratic reforms.

The recent enlargement process of the Council of Europe should be seen as the politics of principles : the conviction that Europe can be built

as the solid foundation of shared values and that joint efforts are needed to strengthen these foundations.

To strengthen them is necessary, for nowhere are they rock solid. Neither in central and eastern Europe, where the economic vicissitudes of the transition and stark new inequalities pose constant threats to the great achievements that have already been made in building free and democratic societies. Nor in Western Europe, where new tensions and social cleavages tend to erode civic confidence in established political institutions and procedures.

The core values are normative: they define our common ideals. The actual behaviour of both citizens and governments may diverge from these ideals. Membership in the Council of Europe is, however, a solemn pledge. A state joining the Organisation commits itself seriously to promoting and defending the core principles both at home and in the continent as a whole. In this lies the profound significance of the Council of Europe's enlargement in the 1990s: at long last, Europe is united on the basis of shared values.

As one of the major consequence, *monitoring* has become one of the key functions of the Council of Europe. It concerns all member states, old as well as new, and is closely linked to various support activities. Condemnation alone leads nowhere. Mutual supervision and mutual help as two sides of the same coin.

We hope that the six European countries still remaining outside the Council of Europe will be able to join our Organisation in the coming years. The integration of these states with the Organisation is an important political act, confirming the Government's determination to avoid new rifts in the continent and to build a common European civilisation of democratic nations.

The standards themselves are set out in the form of legally binding instruments in international treaties. In addition, the Committee of Ministers and the Parliamentary Assembly are involved in various standard setting programmes. Specific examples of the treaties are the European Social Charter, the Code on Social Security, and conventions in the field of legal matters such as extradition, mutual assistance in criminal matters adoption and child abduction.

Probably the best known example of a Council of Europe treaty is the European Convention on Human Rights, with its protocols. The Convention provides for two types of applications. The first is inter-State applications, which are rare, and which enable members of the Council to monitor the human rights performance of other members. The second type of application is the individual application, in which an individual can complain - in the first instance - to the European Commission on Human Rights that his or her Convention rights have been violated.

It was individual applications which were the great novelty in the 1950s and 1960s, when the Convention system began, and which made the Convention system the forerunner of a number of other international human rights enforcement mechanisms. Individual applications are subject to a number of conditions, some of which I shall mention later, and have given rise to over 30,000 applications before the Commission, and some 400 judgments from the European Court of Human Rights, the "second instance" to which certain cases can be sent.

Mr Chairman, may I now turn to a few issues that are of particular relevance to the concerns of your conference:

### **The right to freedom of thought, conscience and religion**

Probably, the freedom of conscience is the most intimate and somehow the profoundest of all human freedoms. That is really where the autonomy of the human being starts. This may also be the reason why freedom of conscience is sometimes so difficult to accept for those who rule. But also very difficult to accept for human beings, as far as the freedom of others is concerned. So difficult to accept for religious groups, who find it extremely difficult to accept this freedom for others who may have different convictions and different beliefs.

The experience of church/state relations and its impact on human rights therefore generates two separate but interrelated questions: (i) How can religious freedom be protected from the intrusive and coercive powers of the state?; and, (ii) How can the influence of a majority religion, in a functioning majoritarian democracy, be prohibited from exerting political influence on state policy and law that would be detrimental to the rights of religious minorities and non-believers?

The right to freedom of thought, conscience and religion is protected by Article 9 of the ECHR, although cases concerning this right have rarely reached the European Court of Human Rights, the Council of Europe has worked on a number of important aspects of this right, in particular the subject of conscientious objection to compulsory military service. (cf. Recommendation. 87/8 of the Committee of Ministers.) In addition, the Parliamentary Assembly has always been sensitive to issues in relation to this right. In this context, in January 1992 the Assembly adopted Recommendation 1178 (1992) on sects and new religious movements. In 1993 the Assembly prepared a new report on the right to conscientious objection to compulsory military service (Doc. 6752, Rapporteur : Mr Rodota).

An other example of the Council of Europe involvement with matters related to the relationship between the Church and the State can be seen in a Parliamentary Recommendation 1202 (1993) on religious tolerance in a democratic society. This last Recommendation underlined the lack of moral values in present day Europe, but weighed against this that religion is often used to reinforce international, social and national minority conflicts. The Recommendation states that the secular state should not impose any religious obligations on its citizens, and should encourage respect for all recognised religious communities within a society. The Recommendation called for guarantees of religious freedom and flexibility in the accomodation of different religious practices; it called for improved teaching and information, and called for a network of research institutes to facilitate work on tolerance.

### **The respect of personal dignity and integrity**

In the social field the Council of Europe wishes to guarantee the respect of personal dignity and integrity. The European Convention on Human Rights and the European Social Charter are the main legislative tools for achieving this. In June 1996 in the face of increasing instability within its member states, the Council of Europe, under the aegis of the Steering Committee on Social Policy, launched a large scale project on human dignity and social exclusion.

The objectives are first to look at the main trends in poverty and social

exclusion across Europe, and analyze the main processes involved in a context of economic, political, social and cultural change. Second, to outline and analyse the connection between poverty and social exclusion and the denial of basic human rights, and to integrate social rights into a programme for combating poverty and social exclusion, and, third, to establish a set of core principles for the move against poverty and social exclusion.

For this purpose, a research project has been set up on a pan-European basis and by means of a five topic approach - education, training, employment, housing, social protection, and health.

The aim is to collect data, analyse the processes leading to poverty and exclusion and develop practical recommendations in order to assist governments to develop more effective policies, programmes and structures for preventing and combating poverty and social exclusion. We also encourage non-governmental organisations to take initiatives enabling the poor and the socially excluded to recover their dignity as individuals. Finally we wish to strengthen the Council of Europe's role in the combat against poverty and social exclusion and provide information and ideas on how this combat can be best incorporated with the future work of the Council of Europe. This project is made financially feasible by a number of governments, NGOs and partner foundations.

### **Minority protection and confidence building measures**

I believe you would agree with me that the test of the seriousness of a society's and an individual's commitments to human rights lies in the encounter with the other, with otherness. This is the way in which the then dissident great thinkers of Salamanca, in particular Bartholomé de Las Casas "discovered" human rights in the encounter with others and otherness, with the Indians of the Americas.

When seen in the context of national minorities, strong cross-cultural and inter-ethnic links can help prevent manipulation and exploitation of ethnic issues to political purposes - a frequent phenomenon, particularly evident in conflicts and antagonisms ranging from ex-Yugoslavia to the former Soviet Union.

The experiences of almost 50 years of European co-operation and the ever-increasing geographical dimension of the Organisation make the Council of Europe an appropriate political and legal framework to consolidate the new Europe and to contribute to the solution of the most urgent problems endangering this consolidation of European construction. The protection of minorities and the strengthening of confidence and tolerance against the resurgence of nationalism, racism, xenophobia and anti-semitism, count amongst these priority areas.

Th specific activities of the Council of Europe in these fields are based on:

- (i) the conviction that the diversity of traditions and cultures has for centuries been one of Europe's richness' and that the principle of tolerance is the guarantee of the maintenance in Europe of an open society respecting the cultural diversity to which we are attached.
- (ii) as well as on the conviction that to bring about a democratic and pluralist society respecting the equal dignity of all human beings remains one of the prime objectives of European construction.
- (iii) the national minorities which the upheavals of history have established in Europe should be protected and respected so that they can contribute to stability and peace.
- (iv) the Europe under construction must respond to this challenge: assuring the protection of the rights of persons belonging to national minorities within the rule of law, respecting the territorial integrity and the national sovereignty of States. On these conditions, these minorities will make a valuable contribution to the life of our societies.
- (v) the creation of a climate of tolerance and dialogue is necessary for the participation of all in political life. In this regard an important contribution should be made by regional and local authorities.
- (vi) it is important to conclude bilateral agreements between States, aimed at assuring the protection of the national minorities concerned, in view of stability and peace in Europe.

The Council of Europe's contribution to good neighbourly relations are of particular relevance to central and eastern Europe. The Council's action here concerns the protection of national minorities through various mea-



asures, resulting from the Vienna Summit in October 1993, which are essentially of two kinds: the first category of measures is legal standard-setting through the opening for signature of the Framework convention for the Protection of Minorities, and of the European Charter on Regional and Minority Languages.

The 1993 Vienna Summit called for confidence-building measures aimed at increasing tolerance and understanding between peoples. This objective is based on the realisation, first, that in addition to its activities which are of a general European scope, the Council of Europe must be ready to assist in the solution of specific minority problems; second, that in the field of minorities, if changes in the law are to achieve their purpose effectively, they must be accompanied by changes in the attitudes and mentalities of those concerned.

The specific contribution of the Council of Europe to confidence-building is thus of two main kinds:

- (i) provision of expert assistance and advice for the drafting of bilateral treaties, national legal provisions or policies concerning the situation of a given minority.
- (ii) support to pilot projects aimed at fostering good relations between minorities and the majority "on the ground".

Confidence-building measures may be undertaken in a wide variety of fields such as media, education, housing and welfare services, culture, social affairs, youth, local democracy, or regional co-operation. Their primary distinguishing characteristic, however, is that the activities to be supported will involve above all non-governmental partners. The direct impact of such projects will generally be felt mainly at a local level.

### **The second Summit of Heads of State and Government of the Council of Europe**

The second summit of the Council of Europe will take place on 10 and 11 October 1997 in Strasbourg. This Summit is expected to be action orientated and should give a clear profile to the specific contribution of the enlarged Council of Europe in the reconstitution of the unity of the continent, as well as its role in the European institutional framework. The

Summit should proclaim the commitment of European States and citizens to the fundamental aims of the Council of Europe, that is to say respect for and development of human rights, pluralist democracy and the rule of law.

It should also seek common responses to the major challenges facing European societies and promote shared political, social and cultural values in Europe as a whole.

The idea is to adopt a plan of action for the Council of Europe that will contain four chapters on "the reinforcement of the protection of human rights, the promotion of human dignity and social cohesion, the security of the citizen, and education, training in democratic values and cultural diversity.

It is clear that the aim of the second Summit will be to strengthen the Council of Europe's role in ensuring the democratic security in our societies and to consolidate peace and the confidence and well-being of the 750 million citizens of our member states.

The Council of Europe's action is future oriented. We know that genuine democracy cannot survive without the existence of a flourishing civil society. We therefore attach greatest importance to the eminent contribution of the churches and church organisations in responding to the challenges of our democratic societies and engaging in a constructive and critical dialogue on the action we should take.

\*\*\*

Integration versus self-identification is a crucial question in the post-1989 Europe. Today, once again, Europe has a strong need for stability, security and peace, particularly in the face of emerging nationalist, ethnic and racial tensions and conflicts within and between European countries. This conflict situation is aggravated by economic setbacks which create social unrest and dissatisfaction with those who are politically responsible, ie, the governments. But I am convinced that only the safeguarding of common values and principles, as well as a well-functioning participatory democracy will provide the new Europe with the sound foundations to face the political, economic, social and moral challenges ahead.